

CANADA / JUDGMENT

McCoy v. Canada (Attorney General)

2001 FCT 1346

COURT
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T-477-01 Neutral citation: 2001 FCT 1346 Between: JOHN McCOY Plaintiff

- and - ATTORNEY GENERAL OF CANADA Defendant REASONS FOR ORDER PINARD J.

- [1] The instant application for judicial review is asking the Court to quash a decision by the chairperson of the Port-Cartier Institution disciplinary court, Michel Dorval ("the chairperson") on February 22, 2001 finding the plaintiff guilty of the disciplinary offence mentioned in s. 40(g) of the Corrections and Conditional Release Act, S.C. 1992, c. 20 ("the Act").
- [2] The plaintiff is an inmate at the Port-Cartier maximum security penitentiary. On November 16, 2000, when he had just been sentenced by the disciplinary court to pay a fine of \$15, he told the corrections officer Francis Pelletier ("the officer"), as appears from the inmate offence report, [TRANSLATION] "You owe me \$15 and I'm going to make sure you give it to me".
- [3] The officer then asked him if that was a threat. The plaintiff agreed that it was indeed a threat. The officer wrote up another inmate offence report in which he indicated that the inmate was being charged under s. 40(g) of the Act.
- [4] On February 22, 2001 the plaintiff's disciplinary hearing was held. The chairperson found him guilty of the offence mentioned in s. 40(g) of the Act, which reads as follows:
40. An inmate commits a disciplinary offence who
- (g) is disrespectful or abusive toward any person in a manner that is likely to provoke a person to be violent . . .
40. Est coupable d'une infraction disciplinaire le détenu qui :
- g) agit de manière irrespectueuse ou outrageante envers toute personne au point d'inciter à la violence . . .

- [5] Here the Court essentially has to determine whether the evidence before the chairperson in fact established the disciplinary offence with which the plaintiff was charged.
- [6] In my opinion, considered objectively and in their proper context, the words used by the plaintiff, giving them the meaning which a reasonable person would give them, allowed the chairperson to find him guilty of the disciplinary offence mentioned in s. 40(g) of the Act (see by analogy *R. v. McGraw*, [1991] 3 S.C.R. 72, and *R. v. Clemente*, [1994] 2 S.C.R. 758, at paras. 9, 12 and 13).
- [7] Despite certain allegedly inaudible passages, the transcript of the hearing before the chairperson is sufficiently clear and indicative in this regard, as appears in particular from the following passages: [TRANSLATION] BY FRANCIS PELLETIER: Yes, at 2:10 p.m. on November 16, 2000 Mr. McCoy, after being given a disciplinary sentence of \$15 following a disciplinary report which I had made against him previously for something else, claimed the \$15 in a threatening manner several times. BY CHAIRPERSON: So can you tell us what his words were? - How did he ask you for it? BY FRANCIS PELLETIER: "You owe me \$15 and you must pay me." BY CHAIRPERSON: What did you answer to that? BY FRANCIS PELLETIER: I told him this was a threat. He said it was. BY CHAIRPERSON: What did he answer? BY FRANCIS PELLETIER: "Yes, it's a threat." BY CHAIRPERSON: At what time did that happen, Mr. Pelletier? BY FRANCIS PELLETIER: In the disciplinary court (inaudible). Then: [TRANSLATION] BY MR. GAUDREAU: And what you said, did it provoke violence? BY FRANCIS PELLETIER: No, not at all, I was not provoked to violence. It was he who made threats. And subsequently, the chairperson summarized as follows the admissions made by the plaintiff: [TRANSLATION] "It's true what he said. It is true I threatened him. It's not only true I threatened him, I intended to go on."
- [8] It is true that a little later, before the chairperson, the plaintiff sought to suggest that he intended to go on to sue the government for the amount of \$15, and even for more. That explanation is hardly convincing, especially as he had not previously given it to anyone.
- [9] It is also important to consider the context of the words allegedly said by the plaintiff: (1) they were said to a corrections officer as they were leaving a disciplinary court; (2) the plaintiff assured the corrections officer they were indeed threats; (3) they were said in a maximum security penitentiary where there is considerable tension between inmates and representatives of the prison authorities; and (4) no serious or credible explanation was given by the plaintiff to justify his remarks.
- [10] In the circumstances, I feel that a reasonable person would have regarded the words said by the plaintiff as a genuine threat, that is, action that was disrespectful or abusive towards a corrections officer and likely to provoke him to be violent. It should be borne in mind that provoking to violence does not necessarily imply that violence occurred.
- [11] For these reasons, the application for judicial review is dismissed with costs. YVON PINARD JUDGE OTTAWA, ONTARIO December 7, 2001 Certified true translation Suzanne M. Gauthier, LL.L. Trad. a. FEDERAL COURT OF CANADA TRIAL DIVISION NAMES OF

COUNSEL AND SOLICITORS OF RECORD COURT No.: T-477-01 STYLE OF CAUSE: JOHN MCCOY v. ATTORNEY GENERAL OF CANADA PLACE OF HEARING: MONTRÉAL, QUEBEC DATE OF HEARING: NOVEMBER 21, 2001 REASONS FOR JUDGMENT BY: PINARD J. DATED: DECEMBER 7, 2001 APPEARANCES: DANIEL ROYER FOR THE PLAINTIFF SÉBASTIEN GAGNÉ FOR THE DEFENDANT SOLICITORS OF RECORD: LABELLE, BOUDRAULT, CÔTÉ ET ASSOCIÉS FOR THE PLAINTIFF MONTRÉAL, QUEBEC MORRIS ROSENBERG FOR THE DEFENDANT DEPUTY ATTORNEY GENERAL OF CANADA

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