

CANADA / JUDGMENT

Taylor v. Canada (Attorney General)

2004 FC 1536

COURT

Federal Court

DECIDED

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20041101 Docket: T-527-04 Citation: 2004 FC 1536 BETWEEN: SHELDON TAYLOR Applicant and
THE ATTORNEY GENERAL OF CANADA Respondent REASONS FOR ORDER PHELAN J.

Introduction

[1] Mr. Taylor ("the Applicant"), a prisoner at the Millhaven Institution, was found guilty by the Independent Chairperson ("ICP") of possession of a "shank" contrary to section 40(i) of the Corrections and Conditional Release Act (the "Act"). In making this determination, the ICP held that whether Mr. Taylor knew or ought to have known that the shank was in his cell was irrelevant to the issue of his guilt. The Applicant now seeks judicial review of that decision.

Background

[2] An officer of Correctional Service of Canada conducted an emergency search of Mr. Taylor's cell. During that search, the officer discovered a homemade weapon or shank (a seven-inch piece of metal sharpened to a point) in plain view under Mr. Taylor's bed.

[3] Mr. Taylor was charged under section 40(i) of the Act. The pertinent provisions of section 40(i) and section 43 read as follows:

40. An inmate commits a disciplinary offence who

i) is in possession of, or deals in, contraband; ...

43. (1) A charge of a disciplinary offence shall be dealt with in accordance with the prescribed procedure, including a hearing conducted in the prescribed manner. Presence of inmate

(2) A hearing mentioned in subsection (1) shall be conducted with the inmate present unless

(a) the inmate is voluntarily absent;

(b) the person conducting the hearing believes on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or

- (c) the inmate seriously disrupts the hearing. Decision
- (3) The person conducting the hearing shall not find the inmate guilty unless satisfied beyond a reasonable doubt, based on the evidence presented at the hearing, that the inmate committed the disciplinary offence in question.
- 40. Est coupable d'une infraction disciplinaire le détenu qui:
 - i) est en possession d'un objet interdit ou en fait le trafic; [...]
- 43. (1) L'accusation d'infraction disciplinaire est instruite conformément à la procédure réglementaire et doit notamment faire l'objet d'une audition conforme aux règlements.
Présence du détenu
 - (2) L'audition a lieu en présence du détenu sauf dans les cas suivants:
 - a) celui-ci décide de ne pas y assister;
 - b) la personne chargée de l'audition croit, pour des motifs raisonnables, que sa présence mettrait en danger la sécurité de quiconque y assiste; c)celui-ci en perturbe gravement le déroulement. Déclaration de culpabilité
 - (3) La personne chargée de l'audition ne peut prononcer la culpabilité que si elle est convaincue hors de tout doute raisonnable, sur la foi de la preuve présentée, que le détenu a bien commis l'infraction reprochée.
- [4] In finding Mr. Taylor guilty, the ICP made the following finding which goes to the root of the issues raised: ... the mere fact that Mr. Taylor may have had this item for a day, a month or even four months, you know, quite frankly is irrelevant. And whether or not he knew or ought to have known it was there, again I consider that to be irrelevant under the circumstances.
- [5] The Applicant raises the issues of error of law and failure to prove beyond a reasonable doubt.

Analysis

Standard of Review

- [6] The Respondent contends that, while error of law is subject to the correctness standard, a finding of guilt in a disciplinary offence involves an appreciation of facts and an assessment of credibility to which a higher standard of review is applicable - reasonableness simpliciter.

- [7] To the extent that the ICP's statement is one of law - that actual knowledge or constructive knowledge is irrelevant - the statement must be correct. To the extent that one interprets the statement to mean that in these circumstances actual and constructive knowledge is irrelevant - presumably because Mr. Taylor was guilty under either type of knowledge - the statement is still one of law; that is, that constructive knowledge ("ought to have known") is a relevant legal test for possession of contraband.
- [8] While curial deference for an administrative tribunal considering disciplinary matters is high, the decision-maker must be correct as to the applicable legal test. See *Forrest v. Canada (Attorney General)*, [2002] F.C.J. No. 713 (T.D.) (QL).
- [9] It should also be borne in mind that section 43 imposes a criminal burden of proof - proof of the offence beyond a reasonable doubt. Parliament has recognized that the consequences of a finding of guilt in this type of offence can be significant and may include loss of privileges, pay and freedom, including adverse effect on parole. Accordingly, any confusion about the basis upon which guilt has been found must be construed in the prisoner's favour. *Re Knowledge*
- [10] The correct legal test for possession of contraband in prison is that the accused must be proven to have knowledge, care and control of the contraband beyond a reasonable doubt. This has been established by three cases in this Court: *Ryan v. William Head Institution*, [1997] F.C.J. No. 1290 (T.D.); *Lee v. Kent Institution*, [1993] F.C.J. No. 1136; *McLarty v. Canada*, [1997] F.C.J. No. 808.
- [11] Actual knowledge is usually established by inference from surrounding facts since there is seldom an admission of actual knowledge. Drawing on inference is the manner used to establish actual knowledge. Constructive knowledge, knowledge which the law deems a person ought to have, is a legal test, not a method of proof. Therefore the ICP's statement is one that holds that there are two tests of knowledge - actual and constructive. That is an incorrect statement of the law. On this basis the decision should be quashed. *Burden of Proof*
- [12] The Respondent says that in these circumstances there was sufficient evidence upon which to infer knowledge, including the fact that Mr. Taylor had been the exclusive occupant of the cell; that the cell had been searched five times previously without finding a weapon; that the cell is searched at least once a month; that the cell was clean and orderly; and that the weapon was clearly visible upon looking under the bed.
- [13] With all due respect to the ICP, the Court fails to see how these facts individually or cumulatively can establish beyond a reasonable doubt that Mr. Taylor knowingly had possession of the shank. See *Lee v. Kent supra*.

- [14] These facts do not establish that the only rational conclusion is that Mr. Taylor had knowing possession of the weapon. There was no evidence that Mr. Taylor was the only one who had been in the cell other than Correctional Service of Canada officials. The ICP never considered whether Mr. Taylor had exclusive use of or access to his cell or whether he was the only person who could have placed the shank under the bed.
- [15] It is patently unreasonable to reach a conclusion of guilt beyond a reasonable doubt on the basis of these facts or on considering all of the other circumstances in this case.

Conclusion

- [16] For these reasons, this judicial review will be allowed and the decision of the ICP quashed.
- "Michael Phelan Judge FEDERAL COURT Names of Counsel and Solicitors of Record
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