

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160127

Docket: A-194-15

Citation: 2016 FCA 30

**CORAM: PELLETIER J.A.
DE MONTIGNY J.A.
GLEASON J.A.**

BETWEEN:

JAMES W. ROBERTSON

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on January 26, 2016.

Judgment delivered at Vancouver, British Columbia, on January 27, 2016.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**PELLETIER J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] In this appeal, the appellant seeks to set aside the March 10, 2015 judgment of Justice Manson of the Federal Court, indexed as 2015 FC 303, in which the Federal Court dismissed the appellant's application for judicial review.

[2] The Federal Court found at paragraph 32 of its Reasons that the appellant's judicial review application was aimed at challenging the April 2, 2014 decision to update the appellant's

Correctional Plan. This finding was based on submissions that the appellant made to the Federal Court about the scope of his application in response to a motion to strike the application.

[3] Despite this, the appellant argued before us that his judicial review application was directed toward challenging a Directive issued in 2012 by the Commissioner of Correctional Services Canada [CSC], which he asserted provides that individuals who have served their sentences and are subject to a Long Term Supervision Order [LTSO] may be subject to a Correctional Plan. That Directive, however, was never put before the Federal Court and is not before us.

[4] In light of the submissions made by the appellant to the Federal Court as to the scope of his judicial review application, there is no basis to interfere with the Federal Court's finding that the appellant's judicial review application sought to challenge the April 2, 2014 decision of his parole officer and the officer's supervisor to update the appellant's Correctional Plan. That decision was communicated to the appellant on April 11, 2014. He filed his application for judicial review on June 26, 2014.

[5] The Federal Court dismissed the appellant's application for judicial review because it was filed outside the 30 day time limit contained in subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 [the FCA] and because the appellant failed to avail himself of the grievance procedure under sections 90 and 91 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 [the CCRA]. The Federal Court went on to address the substance of the appellant's application and determined that it was without merit because the CCRA allows for a Correctional

Plan being applicable to an individual, like the appellant, who has served his sentence and is subject to a LTSO.

[6] I believe that this appeal must be dismissed as the Federal Court did not err in finding that the appellant's judicial review application was untimely or in declining to hear it because the appellant failed to exhaust the grievance procedure under the CCRA.

[7] On the timeliness issue, the mandatory 30 day time limit provided in subsection 18.1(2) of the FCA runs from the date an applicant has knowledge of the decision he or she wishes to review. In the appellant's case, that date was April 11, 2014. The applicable time limit was not extended by the fact that the appellant wrote subsequent letters of complaint to CSC or by the fact that CSC responded to them. Thus, the appellant's application for judicial review was filed late. As he did not seek an extension of the time limits, the Federal Court committed no error in dismissing the appellant's application for being untimely.

[8] Nor did the Federal Court err in declining to hear the application by reason of the appellant's failure to exhaust the grievance procedure under the CCRA. Judicial review is a discretionary remedy, and the case law recognizes that the Federal Court may appropriately decline to hear a judicial review application when an applicant has not filed a grievance under the CCRA: see, for example, *Froom v. Canada (Minster of Justice)*, 2004 FCA 352, [2005] 2 F.C.R. 195, at paragraph 12. Contrary to what the appellant asserts, the grievance procedure under the CCRA was available to him as an individual subject to a LTSO, and, indeed, his parole

officer confirmed this to the appellant and even forwarded him the form necessary to file a grievance.

[9] Also contrary to what the appellant argues, it was not inappropriate to require him to file a grievance in this case as the decision in question was not made by the CSC Commissioner but, rather, by the appellant's parole officers. The appellant's situation is therefore distinguishable from that in *Doran v. Canada (Correctional Services)*, [1996] F.C.J. No 304 (F.C.).

[10] The Federal Court therefore did not err in dismissing the appellant's judicial review application and I would accordingly dismiss this appeal with costs.

"Mary J.L. Gleason"

J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-194-15

STYLE OF CAUSE: JAMES W. ROBERTSON v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: JANUARY 26, 2016

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

DATED: JANUARY 27, 2016

APPEARANCES:

On his own behalf

FOR THE APPELLANT

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