

Federal Court



Cour fédérale

Date: 20190314

Docket: T-1651-18

Citation: 2019 FC 314

Ottawa, Ontario, March 14, 2019

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PARMINDER SINGH ATHWAL

Applicant

and

**ATTORNEY GENERAL OF CANADA
PAROLE BOARD OF CANADA**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by the Parole Board of Canada [Board] not to grant a pardon or record suspension to the Applicant under section 4.1 of the *Criminal Records Act*, RSC 1985, c C-47 [Act].

II. Factual Background

[2] The Applicant had been convicted, over a period of 1990 to 2006, of numerous criminal offences including assault with a weapon (twice), possession of stolen property (eight times), numerous fraud and attempted fraud charges of varying types, possession of weapons and other serious charges.

[3] The Board received the Applicant's record suspension application on December 14, 2016. By January 3, 2018, the Board wrote a "propose to refuse" letter to the Applicant inviting him to make submissions.

[4] It also explained that as a result of court decisions, his application would be reviewed under the old provisions of the Act as it read before June 28, 2010, prior to the 2010 and 2012 amendments. This resulted in the Board reviewing his record suspension application using the less onerous "good conduct" standard rather than stricter terms of the Act as amended after June 28, 2010.

[5] In the "propose to refuse" letter the Board outlined areas of concern that post-date the Applicant's last conviction in 2006 based on a review of local police and provincial records.

These included:

1. A charge of mischief stayed in 2007;
2. A charge of criminal harassment stayed in 2008;
3. A charge of uttering threats and criminal harassment stayed in 2009;

4. Causing disturbances in 2011, 2012, and 2013 although no charges were laid;
5. Noted as a subject of concern twelve times and a suspect chargeable eight times between 2007 and 2009, mostly regarding a fence dispute with a neighbour that required ongoing police intervention;
6. Subject of a complaint regarding disturbing the peace in 2017 when he was banging on his ex-girlfriend's door;
7. Between 2013 and 2016, no charges were laid, but police recorded two incidents of criminal harassment, four incidents of causing a disturbance, one incident of driving without due care, three incidents of harassing communications, one incident of disturbing the peace, and one incident of uttering threats; and
8. Four minor provincial infractions.

[6] The Applicant made submissions including his suffering from PTSD, depression due to separation from his wife, and mistakes made dating certain women. He outlined his rehabilitation efforts including anger management courses, involvement in his church, volunteerism, and his commitment to the Alcoholics Anonymous 12-step program. In argument to this Court he added his suffering from colitis.

[7] In its final decision the Board denied the application on the basis that the Applicant was not of "good conduct" according to subsection 4.1(1) of the Act (subsection 4(1) mentioned in the letter was an obvious typo). The Board defined "good conduct" as behaviour consistent with and demonstrating a law-abiding lifestyle.

[8] The Board reviewed the numerous positive aspects of the Applicant's conduct; however, in weighing the positive against the negative aspects such as a failure to give fulsome explanations for areas of concern, the Board concluded that it saw a pattern of aggressive and harassing behaviour before which was not explained and several which had occurred in the past five years, including 2017.

III. Analysis

[9] While the Applicant made no submissions on the standard of review, this Court, in such decisions related to the pre-2010 Act as *Foster v Canada (Attorney General)*, 2013 FC 306 at paras 18-19, [2013] FCJ No 353 [*Foster*], had held the standard to be reasonableness. It is the applicable standard for this case.

[10] The Applicant also added discrimination and bias which is assessed against a "correctness" standard but failed to make out any basis for the allegations and therefore the higher standard became largely irrelevant.

[11] In substance the Applicant is asking this Court to reweigh the application and substitute its conclusions for those of the Board.

[12] Given the numerous negative interactions the Applicant has had even recently, it is impossible to see what was unreasonable about the Board's decision. It is reasonable for the Board to consider incidents recorded by police and charges that did not result in convictions when assessing good conduct, as in *Foster* at para 27, especially when the Applicant has had a

number of recent interactions with police. The Applicant may well be suffering from all the conditions he asserts but the measure of “good conduct” is objective.

[13] There were a number of procedural errors on the Applicant’s part in submitting inadmissible evidence and argument (both written and oral). Even if these were considered, the Applicant has not shown the Board’s decision to be unreasonable.

IV. Conclusion

[14] Therefore, this judicial review will be dismissed.

JUDGMENT in T-1651-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1651-18

STYLE OF CAUSE: PARMINDER SINGH ATHWAL v ATTORNEY
GENERAL OF CANADA, PAROLE BOARD OF
CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 11, 2019

JUDGMENT AND REASONS: PHELAN J.

DATED: MARCH 14, 2019

APPEARANCES:

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(ON HIS OWN BEHALF)

Tasneem Karbani

FOR THE RESPONDENTS

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FOR THE RESPONDENTS