Federal Court of Appeal | Cour d'appel fédérale

Date: 20250122

Docket: A-120-24

Citation: 2025 FCA 19

CORAM: **WEBB J.A.**
LASKIN J.A.
ROUSSEL J.A.

BETWEEN:

ASHRAF BOUAB

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 20, 2025.

Judgment delivered at Ottawa, Ontario, on January 22, 2025.

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: WEBB J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] Mr. Bouab appeals from a judgment of the Federal Court (2024 FC 315) dated February 27, 2024, dismissing his application for judicial review of a decision of the Independent Chairperson of the Warkworth Institution Disciplinary Court.

[2] Mr. Bouab is an inmate at Warkworth Institution. On November 22, 2022, he was summoned to provide a urine sample as part of a random selection urinalysis program, conducted pursuant to paragraph 54(b) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA). Despite drinking water both before and after arriving at the collection area, Mr. Bouab was unable to provide enough urine to constitute the minimum 30-millilitre sample required by the Commissioner's directive 566-10: Urinalysis testing. Paragraph 66(1)(d) of the *Corrections and Conditional Release Regulations*, S.O.R./92-620 stipulates that the collector shall give the donor up to two hours to provide a sample, from the time of a demand. After discussing his options with the collection officer, Mr. Bouab left the collection area after approximately one hour and 40 minutes to attend to his work obligations.

[3] Mr. Bouab was charged with the disciplinary offence of failing or refusing to provide a urine sample pursuant to paragraph 40(l) of the CCRA. He pled not guilty, relying on his inability to provide the required sample. At the conclusion of the disciplinary hearing, the Chairperson delivered his decision orally, finding Mr. Bouab guilty of the offence as charged. Although the Chairperson stated that he preferred Mr. Bouab's evidence to that of the collection officer and found that Mr. Bouab had acted in good faith and was cooperative throughout, the Chairperson rejected Mr. Bouab's explanation that he was unable to provide the sample. The Chairperson noted that if Mr. Bouab had remained in the collection area the entire two hours, the Chairperson would have had a "reasonable doubt" regarding Mr. Bouab's inability to provide the required urine sample.

[4] The Federal Court dismissed Mr. Bouab's application for judicial review, finding that the Chairperson's decision was reasonable. The Federal Court disagreed with Mr. Bouab's arguments that the Chairperson's sole justification for his finding of guilt was Mr. Bouab's voluntary departure from the collection area before the two-hour period had elapsed and that the Chairperson had made factual findings that were legally incompatible with a finding of guilt. The Federal Court found instead that, when read as a whole, the reasons for the decision demonstrated that the Chairperson had considered Mr. Bouab's defence of involuntariness, but ultimately was not satisfied that the failure to provide a sufficient urine sample was involuntary.

[5] Mr. Bouab now appeals to this Court.

[6] Since the judgment under appeal disposes of an application for judicial review, the role of this Court is to first determine whether the Federal Court identified the correct standard of review, and then whether the Federal Court applied it properly. Put differently, this Court is required to step into the shoes of the Federal Court and focus on the decision of the Chairperson (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47).

[7] The parties agree that the Federal Court correctly identified reasonableness as the applicable standard of review.

[8] Mr. Bouab submits that the Chairperson's decision is unreasonable. To some degree, he raises the same arguments he made before the Federal Court. He argues that the Chairperson's

finding of guilt beyond a reasonable doubt is unjustified in relation to the Chairperson's findings of fact (that Mr. Bouab acted in good faith and was cooperative) and the Chairperson's acceptance of Mr. Bouab's exculpatory evidence. Mr. Bouab contends that the Chairperson conflated Mr. Bouab's voluntary departure from the collection area before the two hours had elapsed with the voluntariness of his failure or refusal to provide a urine sample.

[9] While the Chairperson's reasons could have been better articulated, I am satisfied that the Chairperson did not conflate, as suggested, Mr. Bouab's voluntary early departure from the collection area with the voluntariness of his failure or refusal to provide a urine sample.

[10] I agree with Mr. Bouab that failing to stay at the collection area for the full two-hour collection period does not automatically result in a finding of guilt beyond a reasonable doubt in accordance with subsection 43(3) of the CCRA. In *Ayotte v. Canada (Attorney General)*, 2003 FCA 429, this Court held that the act or omission under paragraph 40(l) of the CCRA must be voluntary to be culpable (*Ayotte* at para. 18).

[11] I also agree that the Chairperson accepted that Mr. Bouab was unable to provide a urine sample in the one hour and forty minutes he remained in the collection area despite his "good efforts" to do so. However, the Chairperson's reasons, read as a whole and in their overall context, demonstrate that the Chairperson found that Mr. Bouab may have been able to provide a sufficient urine sample by topping up what he had already provided if he had stayed the extra twenty minutes allowed, given the amount of water he had consumed both before and during the testing period. By leaving the collection area early, Mr. Bouab essentially deprived himself of

the ability to comply with the request by topping up the sample or, in the event he was unable to do so, to mount a defence that could have raised a reasonable doubt in the Chairperson's mind that Mr. Bouab's failure to provide a urine sample was involuntary. Mr. Bouab conflates the Chairperson's acceptance of the evidence with the acceptance of Mr. Bouab's defence.

[12] Moreover, I am not convinced that the principles set out in the Supreme Court of Canada's decision in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 assist Mr. Bouab.

[13] The burden is on the party challenging the decision to show that is it unreasonable. As the Supreme Court of Canada noted in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, administrative reasons should not be assessed against a standard of perfection. This is especially so in the context of oral decisions rendered by administrative decision-makers. Mr. Bouab has failed to persuade me that the Chairperson's decision is unreasonable.

[14] For these reasons, I would dismiss the appeal and award no costs as none were requested by the parties.

"Sylvie E. Roussel"
J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-120-24
STYLE OF CAUSE:	ASHRAF BOUAB v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 20, 2025
REASONS FOR JUDGMENT BY:	ROUSSEL J.A.
CONCURRED IN BY:	LASKIN J.A. WEBB J.A.
DATED:	JANUARY 22, 2025

APPEARANCES:

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