SUPREME COURT OF NOVA SCOTIA

Citation: *Brauss v. Canada (Attorney General)*, 2016 NSSC 269

Date: 2016-09-22
Docket: CR. ANT No. 453179
Registry: Amherst

Between:

Nicholas Richard Brauss

Applicant

v.

Attorney General of Canada
And
Correctional Service Canada
(Springhill Institution)

Respondents

Judge: The Honourable Justice N. M. (Nick) Scaravelli

Heard: September 22, 2016, Amherst, Nova Scotia

Oral Date: September 22nd, 2016

Counsel:

Nicholas Brauss appearing on his own behalf

Jan Jensen, counsel for the Respondents

[1] Habeas Corpus applications are time sensitive matters. As a result, I am going to give an oral decision today. I reserve my right to expand and edit my decision in the future.

[2] Mr. Brauss was an inmate at Springhill Institution at the time of filing Notice of Habeas Corpus on July 6, 2016. A first appearance by way of recorded telephone conference occurred on July 11th, 2016 before Justice Jeffrey Hunt. A hearing of the application was set for August 4th, 2016 at the request of Mr. Brauss, Justice Hunt granted an adjournment of the hearing to September 22nd, 2016. Mr. Brauss was of the view that he did not have time to prepare having received documentation late in the day.

[3] This application arises out of Mr. Brauss' placement in segregation following an incident and subsequent decision by Correctional Service Canada (CSC) to reclassify Mr. Brauss from medium-security to a maximum-security offender and his involuntary transfer from medium-security Springhill Institution Nova Scotia to maximum-security Atlantic Institution New Brunswick.

[4] In his application Mr. Brauss essentially asserts that his segregation and reclassification was not done according to the proper policies and procedures. The

deprivation of his liberty was done in an unlawful manner based upon unsubstantiated information. Mr. Brauss claims he was denied procedural fairness.

[5] The respondent submits the decision to place Mr. Brauss in segregation and to reclassify was lawful and reasonable. That Mr. Brauss was treated fairly throughout the process and was afforded due process.

[6] Mr. Brauss' placement in segregation and increased security classification is a deprivation of his residual liberty. The respondent has conceded the same. As a result, the burden of proof shifts to the respondent to prove the deprivation is lawful.

[7] A detailed affidavit was provided by Tara Harrison, the appellant's parole officer, prior to his transfer from Springhill Institution. The affidavit sets out in detail the facts and circumstances that were taken into consideration when placing the applicant in segregation and reclassifying him. It also sets out the provisions of the *Corrections and Conditional Release Act* (*CCRA)* and regulations as well as policy directives that were considered throughout the decision making process.

[8] A detailed confidential affidavit was filed by Neil Rideout, Security Intelligence Officer (SIO). The affidavit contained additional confidential and protected information which was gathered by the SIO. For reasons of safety and

security, which I find to be valid, the respondent's motion to continue to seal and treat the affidavit as confidential was granted.

[9] Mr. Brauss is a first time federal offender serving a three year sentence for break and enter and theft. He has a previous criminal record of 49 convictions.

[10] On intake Mr. Brauss' computed classification was maximum-security. This was due in part to his involvement in 32 incidents at Central Nova Scotia Correctional Facility prior to his transfer to federal custody. Mr. Brauss is also reported to have had several altercations at the East Coast Forensic Hospital. After three months in the reception centre at Springhill Institution he was given an opportunity to demonstrate he could be in a less structured environment and as a result, was given a medium-security classification and placed in the general population of the Institution on April 26, 2016.

[11] On June 13th, 2016 an inmate at Springhill Institution was physically assaulted. Camera footage and correctional staff observations identified Mr. Brauss as the person committing the assault. He was placed in involuntary segregation. After Mr. Brauss was placed in segregation, a search of his cell revealed a bottle of what appeared to be ink, an altered chord, and a rubber hose.

These are items that are unauthorized and often associated with tattooing and brewing.

[12] A review of Mr. Brauss' security classification followed. The review process consists of two components, the Security Reclassification Scale (SRS) and the Assessment for Decision (A4D). Mr. Brauss' SRS score was 27 which is the threshold score for maximum-security. The A4D component is conducted by a management team. It involves a broader clinical assessment of an offender's personal circumstances and risk factors in order to develop recommendations for security classification. The management team reviewed Mr. Brauss' institutional history, several intuitional incidents including the assault on another offender, the subject of this discipline.

[13] It was determined his behaviour constituted a serious management problem requiring a structured environment and constant direct supervision. As a result, his A4D was rated as high. Following the assessment a recommendation was made that Mr. Brauss be reclassified as a maximum-security offender.

[14] Mr. Brauss was provided with a copy of the SRS and the A4D. He had been previously provided with a "gist" or summary of the confidential security information gathered by the SIO.

[15] Mr. Brauss provided a written rebuttal to the reclassification and transfer recommendations. The rebuttal was provided to the Acting Warden for consideration. After considering all the above material, the Acting Warden concluded that Mr. Brauss should be reclassified as a maximum-security offender.

[16] A decision affecting liberty will be lawful it is reasonable, procedurally fair and falls within the jurisdiction of the decision maker. As stated by the Supreme Court of Canada in *Mission Institution v. Khela*, 2014 SCC 24, a review of such decisions by prison administrators requires deference given their expertise in a penitentiary environment. The role of the reviewing court is not to determine whether the placement and segregation and reclassification was correct.

[17] I commend Mr. Brauss for his informed presentation during this hearing as a self-represented person. He elected to not call evidence.

[18] I find the respondent clearly had the authority to make the decision challenged by Mr. Brauss under the *CCRA.* I also find the evidence of the respondent affiants to be forthright and credible.

[19] I find the conduct of the prison administration and the steps taken were fair, appropriate and reasonable in the circumstances. The behaviour of Mr. Brauss at the Springhill Institution followed many incidents of altercations at both CNSCF

and East Coast Forensic Hospital. Mr. Brauss' activities at the institution were determined to undermine the authority of the institution and pose a threat to the safety of the institution.

[20] I find no merit in the assertions of Mr. Brauss that the allegations precipitating the reclassification were unfounded. Mr. Brauss was provided full disclosure and was treated fairly throughout the process. Mr. Brauss pointed to errors contained in the Notice of involuntary transfer recommendation and the referral decision sheet for institutional transfer. These documents refer to the assault occurring in Mr. Brauss' holding unit over a telephone issue as opposed to another location in the institution. Although this information was acknowledged as incorrect, I find the error to be technical in nature. Clearly the decision to segregate and reclassify were based on the evidence regarding the assault captured on video as well as the clinical assessment information reviewed within the detailed A4D. The Acting Warden at the time made the final decision after reviewing the A4D.

[21] There is no merit to Mr. Brauss' allegation of procedural unfairness by not disclosing the video and the sources of information provided to prison administration. Pursuant to section 27(3) of the *CCRA* the CSC may withhold information from an inmate where there are reasonable grounds to believe that

disclosure of the information would jeopardize the safety of any person, the security of the penitentiary or the conduct of a lawful investigation. In those circumstances the inmate is entitled to receive a summary or "gist" of the information. Mr. Brauss did receive a detailed summary of the information contained in the sealed affidavit. As a result I find that Mr. Brauss' placement in segregation while the matter was being investigated was reasonable and lawful. His reclassification and transfer to a maximum-security institution was also reasonable and lawful.

[22] Accordingly, I dismiss the application. I have considered the respondents request for costs. Having reviewed the record I am not satisfied that an award of costs would be appropriate in these circumstances.

Scaravelli, J.