

NOVA SCOTIA COURT OF APPEAL

Citation: *Cain v. Springhill Institution*, 2017 NSCA 75

Date: 20170831

Docket: CA 463698

Registry: Halifax

Between:

Percy Cain

Appellant

v.

Springhill Institution, Atlantic Institution,
National Parole Board, Attorney General of Canada

Respondents

Judge: The Honourable Justice Cindy A. Bourgeois

Motion Heard: August 10, 2017, in Halifax, Nova Scotia in Chambers

Held: Motion dismissed

Counsel: Percy Cain, Appellant in person
Tokunbo Omisade, for Respondents

Decision:

[1] On August 10, 2017, I heard a motion in chambers brought by the appellant, Percy Cain. At the time of the hearing, the appellant was an inmate at Atlantic Institution in Renous, New Brunswick, a maximum-security facility.

[2] The first aspect of the motion, the obtaining of a transcript from the court below, was resolved between the parties. As such, there is no need for a determination on that issue. The second aspect of the motion does require direction from the Court. Mr. Cain, in addition to the evidence that was placed before the hearing judge, is requesting that I compel disclosure of additional materials. I am unable to grant the appellant's request. Some background is helpful.

Background

[3] The appellant is 61 years of age. He has served prison terms before his current incarceration. In March 2017, the appellant was sentenced and arrived at Springhill Institution. He was shortly thereafter assessed as requiring a maximum-security placement and he was accordingly transferred to Atlantic Institution.

[4] The appellant sought to challenge his security classification by way of a *habeas corpus* application. The application was heard on May 3, 2017. The appellant filed materials in support of his position, as did the respondent Attorney General of Canada. Notably, an affidavit was filed by the appellant's parole officer which attached the materials used in reaching the classification decision. She was cross-examined by the appellant. The application was dismissed by oral decision of the court.

[5] On May 23, 2017, the appellant filed a Notice of Appeal. It appears to be directed at broader issues beyond that of the appropriateness of the appellant's security classification. By way of example, the appellant seeks from this Court compensation for his time wrongfully spent in detention and an order directing "all false and unproven information" be removed from his file.

[6] At the motion hearing, the appellant confirmed that his objectives on appeal were broader than challenging the security classification which was the subject of the *habeas corpus* application. He repeated his request to have false information removed from his file. I understand this to include both his institutional file and

his file materials at the National Parole Board. The appellant is also seeking monetary compensation for 14 months he says he spent in segregation. He wants punitive damages for allegedly slanderous comments made by correctional officials.

Analysis

[7] The appellant wants me to compel extensive disclosure of materials which were not before the court below. Some of his requests are specific, some are vague. Most of the material he seeks appears to be related to the “broader issues” he is injecting into the *habeas corpus* appeal.

[8] Some of the material he requests is relevant to the security classification undertaken last March. The court below was provided with the information relied upon in reaching the security classification. It consisted of a summary of information contained in the appellant’s correctional file material. The appellant takes issue with the accuracy of some of the information contained in the summary. His request for further information is aimed at disproving that information.

[9] The problem for the appellant is two-fold. As noted earlier, much of the information he requests is irrelevant to the issue of *habeas corpus*. Secondly, it would appear that s. 27(1) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, specifically contemplates a summary being adequate disclosure in the present circumstances. It provides:

Information to be given to offenders

27 (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision **or a summary of that information.** (Emphasis added)

[10] In a *habeas corpus* matter, the appellant is not entitled to disclosure of all relevant material, rather the disclosure mandated by s. 27(1). There does not appear to be a dispute that a summary was provided. The problem is that the appellant takes issue with the factual accuracy contained in it. His wide-sweeping request for background material is not something he is entitled to. Rather, he is entitled to what he has already received.

[11] I am not satisfied that there is any merit to the appellant's request for disclosure. As such, the motion is dismissed without costs.

Bourgeois J.A.