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Mike Ferguson Situation - Urgent Update

For those of you writing to the Parole Board - Urgent Information **Patrick Cleary adds some essential information**

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I would like to highlight an important part of the Appeal Court's decision in overturning the "cruel and unusual" sentencing exemption that directly relates to the content of letters being written to the Parole Board and the Minister of Justice.

In its decision to overturn Mike's mandatory sentencing exemption, the Court considered Mike's eligibility for parole as a factor mitigating against a finding that a mandatory four year sentence, in Mike's case, amounted to cruel and unusual punishment. Accordingly, the court reasoned that the "trial judge erred by not considering the prospect of parole." The Appeal Court noted that the "Conditional Release Act" provides for full parole eligibility after one-third of a sentence is served, with day parole eligibility six months earlier citing sections 119(1)(c)(i), s. 120(1) of that Act. The Court reasoned that, on a jail sentence of three years and five months (that being, the mandatory four years less seven months' credit for pre-trial custody), Mike would have been eligible for day parole after serving slightly less than eight months, and for full parole after less than 14 months. The Court found this to be "a significant reduction in the term of imprisonment and a compelling circumstance in assessing whether the sentence was cruel and unusual."

Mike has now served over 2 years of his sentence and was therefore eligible for full parole over one year ago! As we know, Mike is now back in jail without, as yet, having access to a decision regarding his parole eligibility. I would hope that everyone writing to the Parole Board would highlight the fact that the Appeal Court found that Mike's sentence was not cruel and unusual punishment, "compellingly", because of his parole eligibility. As noted, Mike is currently eligible for full parole and, to date, has not yet had the access to the legislated sentencing relief afforded him. To remain within the law, the Parole Board

needs to immediately give effect to his parole application along with due consideration as to one of the principal reasons the Appeal Court found that a four year sentence did not amount to cruel and unusual punishment.

It seems apparent that the Parole Board needs to be made aware that time is of the essence in setting a date for a Parole Board hearing and a subsequent affirmative decision regarding Mike's parole eligibility, else Mike will be denied the full benefit of the sentencing regime indicated by the Appeals Court and prescribed by current legislation.

Thanks,

Patrick Cleary, RCMP Regimental No. 32496 (retired) Richmond, BC Canada

Thanks, Patrick

We'll pass the word and get this up on the discussion board.

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