IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2017-409-000010
[2017] NZHC 20

BETWEEN	RICHARD LYALL GENGE Applicant
AND	SUPERINTENDENT OF CHRISTCHURCH MEN'S PRISON Defendant

Hearing: On the papers

Counsel: Applicant self-represented
C Lange for the Crown

Judgment: 19 January 2017

JUDGMENT OF NATION J

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[1] On 16 January 2017, the High Court at Christchurch received an application for a writ of habeas corpus. In his application, Mr Genge states:

> 1. The Applicant makes application for a writ of habeas corpus to challenge the lawfulness of his detention.
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> 2. The Applicant seeks a hearing before the High Court in line with 23(1)(c) of the New Zealand Bill of Rights Act 1990.
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> 3. The Applicant is currently detained in Te Ahuhu Unit of Christchurch Mens Prison.
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> 4. The Applicant asks he be seen at the Courts earliest possible convenience.

[2] As has been previously recounted by Mander J in two earlier judgments declining previous applications for writs of habeas corpus, Mr Genge was convicted in October 1995 on one count of murder and one count of sexual violation by rape.[1]

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[1] *Genge v Superintendent of Christchurch Men's Prison* [2015] NZHC 1523 [*Genge* (2015 Decision)]; *Genge v Superintendent of Christchurch Men's Prison* [2014] NZHC 705 [*Genge* (2014 Decision)].

He was sentenced to life imprisonment, with a minimum period of imprisonment of 15 years on the charge of murder and a concurrent term of 12 years for the rape charge. On 25 October 1992, the same day as his sentencing, a warrant of commitment was issued.

[3] Mr Genge seeks a hearing and asks to be seen by the Court at the Court's earliest possible convenience.

[4] In *Ericson v Department of Corrections*, the Court of Appeal stated:[2]

> [4] The short answer to Mr Ericson's appeal is that no proper basis for habeas corpus has been advanced. There is no suggestion that, having been convicted of murder and sentenced to life imprisonment, Mr Ericson's detention in prison is unlawful. It is clear from s 14(1) of the Habeas Corpus Act 2001 and the decision of this Court in *Bennett v Superintendent, Rimutaka Prison* that the writ of habeas corpus is to be used only where it is sought to release someone entirely from unlawful custody. The writ is not appropriate for challenging the lawfulness of a conviction or the conditions under which an inmate sentenced to imprisonment is detained.
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> [5] Unless and until Mr Ericson's conviction is set aside, it remains valid at law and, where, as here, a sentence of imprisonment has been imposed, the warrant authorising that imprisonment remains in force. The Prison Manager is not only authorised to detain Mr Ericson for the duration of that sentence he or she is also legally obliged to do so under the Corrections Act 2004.
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> (citations omitted)

[5] As stated by Mander J in his earlier judgment of 2 July 2015 in relation to an earlier application by Mr Genge, under s 14(1)(a) of the Habeas Corpus Act this Court may refuse an application for the issue of the writ without requiring the defendant to establish that the detention is lawful if satisfied that an application for the issue of the writ is not the appropriate procedure for considering the allegations made by the applicant.[3]

[6] Section 15(1) of the Habeas Corpus Act 2001 states:

> **15 Finality of determinations**

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2 *Ericson v Department of Corrections* [2014] NZCA 118, [2014] NZAR 540, referring to *Bennett v Superintendent, Rimutaka Prison* [2002] 1 NZLR 616 (CA); Corrections Act 2004, ss 37 and 38.

3 *Genge* (2015 Decision), above n 1, at [14].

> (1) Subject to the rights of appeal conferred by section 16 of this Act and to sections 7 to 10 of the Supreme Court Act 2003, the determination of an application is final and no further application can be made by any person either to the same or to a different Judge on grounds requiring a re-examination by the court of substantially the same questions as those considered by the court when the earlier application was refused.

[7] In earlier judgments of Mander J, the High Court has concluded that Mr Genge's detention was lawful.[4] Mr Genge's appeal in relation to the judgment of 15 April 2015 was subsequently dismissed by the Court of Appeal.[5] His application for leave to appeal to the Supreme Court was declined.[6]

[8] On the face of Mr Genge's application, he is seeking to challenge the lawfulness of his imprisonment, an issue which has already been determined by the High Court. There is nothing in his application to suggest that he is seeking to pursue some new or different issue. Section 15(1) means that Mr Genge is not permitted to pursue the further application which he has now put before the Court.

[9] Mr Genge seeks to be heard in relation to his latest application on the basis of s 23(1)(c) of the New Zealand Bill of Rights Act 1990. Section 23(1) states:

> **23 Rights of persons arrested or detained**
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> (1) Everyone who is arrested or who is detained under any enactment—
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> (a) shall be informed at the time of the arrest or detention of the reason for it; and
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> (b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
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> (c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.

[10] Section 23(1)(c) has already been recognised and given effect to. Mr Genge has exercised his right to have the validity of his detention determined without delay

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4 *Genge* (2015 Decision); *Genge* (2014 Decision), above n 1.
5 *Genge v Chief Executive of the Department of Corrections* [2015] NZCA 157.
6 *Genge v Chief Executive of the Department of Corrections* [2015] NZSC 88.

by way of habeas corpus. On successive occasions the Court has found that his detention was lawful.

[11] Section 4 of the Bill of Rights Act also states:

> **4 Other enactments not affected**
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> No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),—
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> (a) hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
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> (b) decline to apply any provision of the enactment—
>
> by reason only that the provision is inconsistent with any provision of this Bill of Rights.

[12] Section 23(1)(c) is not inconsistent with s 15(1) of the Habeas Corpus Act but, even if it were, applying s 4 of the Bill of Rights Act, that would not require the Court to permit Mr Genge to pursue this latest application for a writ of habeas corpus and to allow Mr Genge to be heard on such an application.

[13] Accordingly, Mr Genge is not permitted to pursue this current application. Mr Genge is not entitled to a hearing of that application.

[14] Mr Genge's application is dismissed.

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Copy to the Applicant.