IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE

CIV-2020-488-108
[2020] NZHC 3476

UNDER	the Habeas Corpus Act 2001
BETWEEN	DAVID SIMON BARTON Applicant
AND	CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIONS Respondent

Date of hearing: 21 December 2020

Appearances: Applicant in person via audio visual link
M B Smith for the respondent

Date of judgment: 21 December 2020

REASONS FOR JUDGMENT OF JAGOSE J

The reasons for judgment was delivered by me on 21 December 2020 at 2.00pm.
Pursuant to Rule 11.5 of the High Court Rules.

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Registrar/Deputy Registrar

Solicitors:
Marsden Woods Inskip Smith, Whangarei

Copy to:
Applicant

[1] David Simon Barton applies for a writ of habeas corpus.[1]

[2] Mr Barton currently is a prisoner in the Department of Corrections' Northland Region Corrections Facility, serving a sentence of 3 years, 2 months, and 2 weeks' imprisonment.[2] Although Mr Barton's application nominally is issued against the Parole Board (and a prison director of the Department of Corrections), the correct defendant is thus the Chief Executive of the Department of Corrections,[3] as this judgment will be entituled.

[3] Mr Barton complains the Parole Board failed to have regard for relevant considerations, including as to his health (but distinctly from those medical issues previously raised in support of his earlier application for the writ of habeas corpus,[4] which Mr Barton accepts he is prohibited from relitigating),[5] and took into account irrelevant considerations, in refusing him parole and declining his application for review. He argues his continued detention therefore is unlawful, referring to s 7(2) of the Parole Act 2002, in particular because he asserts he presents no risk to public safety.

[4] After hearing from Mr Barton this morning, I refused his application, for the reasons I then discussed with him, as I said I would record in this judgment, as follows.

[5] Section 7 of the Parole Act 2002 establishes guiding principles for exercise of, rather than confining, the Parole Board's jurisdiction. Be that as it may, ordinarily, it is for the Chief Executive to establish Mr Barton's detention is lawful.[6] But I may refuse Mr Barton's application, without requiring the Chief Executive to establish his detention is lawful, if "habeas corpus is not the appropriate procedure for considering [his] allegations".[7]

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1 Habeas Corpus Act 2001, s 6.
2 *R v Barton* [2018] NZDC 17502; upheld on appeal, *Barton v R* [2019] NZCA 644.
3 Habeas Corpus Act 2001, s 8(a).
4 *Barton v Chief Executive, Department of Corrections* [2020] NZHC 1099.
5 Habeas Corpus Act 2001, s 15(1).
6 Section 14(1).
7 Section 14(1A)(b).

[6] It is well-established dispute with a Parole Board determination is not effective to render the underlying detention unlawful.[8] The sentence continues, even while on parole.[9] Mr Barton's remedy is his express right to review the Board's decision under s 67 of the Parole Act 2002, and thereafter of judicial review of the Board's decisions.[10] That is the 'appropriate procedure' for considering his allegations.

[7] I was in any event satisfied, by examination of the District Court Judge's warrant, Mr Barton remains detained under a valid warrant signed by the Judge.

[8] I therefore refused Mr Barton's application.

[9] Mr Barton presently has a judicial review proceeding in train,[11] for which his statement of claim is awaited. I **direct** the documents he has filed in this proceeding be included in the court file for that proceeding, to avoid the need for their duplication by Mr Barton while in custody. For the Chief Executive, Mr Smith offered to convey the documents to the Crown Solicitor.

—Jagose J

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8 *Drever v Auckland South Corrections Facility* [2019] NZCA 346 at [31]–[32], citing *Huata v Chief Executive, Department of Corrections* [2013] NZHC 3569 at [12].

9 At [31].

10 New Zealand Bill of Rights Act 1990, s 27(2); Judicial Review Procedure Act 2016.

11 *Barton v The Chief Executive of the Department of Corrections* CIV-2020-404-1337.