

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA241/2015  
[2015] NZCA 199**

BETWEEN

JOHN FREDERICK ERICSON  
Appellant

AND

CHIEF EXECUTIVE OF THE  
DEPARTMENT OF CORRECTIONS  
Respondent

Hearing: 11 May 2015 (last supplementary submissions received 21 May 2015)

Court: Randerson, Courtney and Kós JJ

Counsel: Appellant in person  
K Muller for Respondent

Judgment: 26 May 2015 at 2:15 pm

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**JUDGMENT OF THE COURT**

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**The appeal is dismissed.**

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**REASONS OF THE COURT**

(Given by Randerson J)

**Introduction**

[1] The appellant was convicted on a charge of murder and sentenced by Panckhurst J on 19 April 2000 to life imprisonment.<sup>1</sup> The appellant continues to serve his sentence at the Christchurch Men's Prison. By application dated 12 April

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<sup>1</sup> *R v Ericson* HC Christchurch T40/60, 19 April 2000.

2015 he applied by way of originating application for a writ of habeas corpus.<sup>2</sup> Nation J conducted a hearing by video link on 17 April 2015 and dismissed the application in a judgment delivered orally the same day.<sup>3</sup>

[2] The Judge recorded that the appellant advised him that he was no longer pursuing the first ground of his appeal alleging that the warrant of committal was no longer valid because the Criminal Justice Act 1985 had been repealed.<sup>4</sup>

[3] The second ground for the appellant's application was that the Superintendent of the prison was holding only a photocopy of the warrant of commitment. Mr Ericson had maintained that he was shown only a photocopy of the warrant. He suggested it was a photocopy of documents which he says were taken unlawfully from his cell.

[4] The Judge found that his obligation was to inquire as to whether the appellant's current detention is lawful. He did not need to concern himself about whether the Superintendent was holding the original warrant. Nor did the Judge consider it was of crucial importance whether Mr Ericson was shown the original warrant or only a photocopy of it. The Judge was satisfied that the appellant's current detention was authorised by an appropriate warrant signed in the form required by the Criminal Justice Act and that his current detention was lawful accordingly.

### **The appeal**

[5] We conducted a hearing of the appeal by video link on 11 May 2015. In his submissions, Mr Ericson continued to maintain that the Superintendent was not holding the original warrant of commitment and that various photocopies of the warrant before us were not photocopies of the original. He said they showed certain discrepancies between the different versions. He asked this Court to direct that forensic examinations be undertaken to establish the correct position. He also continued to maintain that documents had been stolen from his cell.

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<sup>2</sup> Received by the High Court on 15 April 2015.

<sup>3</sup> *Ericson v Superintendent of Christchurch Mens Prison* [2015] NZHC 756.

<sup>4</sup> An argument that this Court rejected in *Genge v Chief Executive of the Department of Corrections* [2015] NZCA 157.

[6] For the purposes of the appeal Mr J L Roper, the Prison Manager of the Christchurch Men's Prison, provided an affirmation to the Court dated 8 May 2015 in which he stated that a copy of the warrant of commitment for the appellant's imprisonment which he annexed was a copy of the original warrant issued under the Criminal Justice Act. Mr Roper added that the warrant was stamped "FAXED" and "Released under the Official Information Act 1982" in consequence of the appellant having asked for a copy of his warrant in the past.

[7] We asked for further clarification and Mr Roper has made a second affirmation dated 14 May 2015. Mr Roper provided a scanned colour copy of the original warrant of commitment held on the appellant's prison file. He confirmed for reasons explained in his affirmation that the warrant on the appellant's file is the original warrant that the Christchurch Prison received from the High Court in Christchurch and that the original warrant had also been signed by the appellant. Mr Roper was unable to state when Mr Ericson signed the original warrant, noting that he had been a prisoner in a number of different prisons and the warrant had followed him as part of his file. He also explained that in his previous affirmation he had provided a copy of a photocopy of the warrant held on the appellant's file showing the state of the warrant before it was signed by Mr Ericson.

[8] In reply submissions, the appellant continued to assert various discrepancies in the form of the warrant (or copies of it). However, we have no reason not to accept the evidence of Mr Roper that he continues to hold the original warrant of commitment on the appellant's file and that, at some stage, the warrant has been shown to the appellant. In addition, the appellant has been provided with a copy of the original warrant. Even if this Court had power to order some sort of further inquiry or forensic examination, we are satisfied there is no need to do so.

[9] In any event, we accept the submission made on behalf of the respondent that the validity of the appellant's detention does not turn on whether the prison manager is holding an original warrant. There is no dispute that the sentence of life imprisonment was imposed by Panckhurst J on 19 April 2000 and there is no reason to doubt that Panckhurst J signed a warrant of commitment in proper form that day.

At the time the warrant of commitment was issued s 143 of the Criminal Justice Act relevantly provided:<sup>5</sup>

**143 Warrant of commitment for full-time custodial sentence—**

- (1) Where a court passes a full-time custodial sentence, it shall direct the issue of a warrant stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence.

...

- (3) Where the sentence is passed by the High Court, any Judge of that court may sign the warrant.

...

[10] The form of the warrant of commitment was specified at the time as being Form 10 of the Criminal Justice Regulations 1985. The form provided that the warrant was directed to every constable and to the superintendent of a prison to be specified. In this case, the warrant specified that it was directed to every constable and to the superintendent of the prison at Christchurch.

[11] These provisions are consistent with s 15 of the Penal Institutions Act 1954 which, at the time the warrant was issued, relevantly provided:

**15 Effect of warrant, etc., for specified institutions**

- (1) Any warrant, writ, order, direction, or authority issued or given, whether before or after the commencement of this Act, for the detention of any person in any specified institution shall be sufficient authority for the reception and detention of that person in any other institution to which he might have been committed under his sentence.
- (2) Any warrant, writ, order, direction, or authority addressed to the Superintendent of an institution and identifying the institution by reference to its situation or by any other sufficient description shall not be invalidated by reason only that the institution is usually known by a different description.

[12] The Penal Institutions Act 1954 has been repealed and replaced by the Corrections Act 2004.<sup>6</sup> Section 37(2) of the Corrections Act 2004 provides:

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<sup>5</sup> This provision was repealed with effect from 30 June 2002 and replaced by s 91 of the Sentencing Act 2002 but the new section is in similar but not identical terms.

<sup>6</sup> With effect from 1 June 2005: Corrections Act Commencement Order 2005.

(2) Any committal order issued, whether before or after the commencement of this Act, for the detention of any person in any specified prison is sufficient authority for the reception and detention of that person in any other prison to which he or she might have been committed.

[13] The effect of the legislation is therefore clear. The warrant of commitment has to be signed by the High Court Judge and it is directed to, in this case, the Superintendent of the Christchurch Prison. The warrant is sufficient authority for the detention of the person specified in the warrant both initially and subsequently despite the repeal of the legislation in force at the time the warrant was issued.

[14] For the purposes of determining whether the appellant's detention is lawful, the crucial question is whether a valid warrant of commitment was signed by a High Court Judge. There is no requirement that the original warrant be held by the prison authorities although this is no doubt good practice. This appears to be current procedure; the Prisons Operations Manual notes that while faxed or emailed warrants are permitted on induction, original warrants must be received by the next working day.<sup>7</sup> We note that regulations require the superintendent of a prison to maintain a register of inmates including a record of the authority for admission and details of the warrant of commitment or an order for committal.<sup>8</sup> There are also obligations to provide specified information to prisoners on request but none of these requires the original warrant to be held.<sup>9</sup>

[15] Here, we are satisfied the warrant of commitment was signed by the sentencing Judge and the original warrant was held and continues to be held by the superintendent of the Christchurch Prison on the appellant's file.

[16] In his oral submissions, the appellant submitted that the warrant of commitment was invalid because it was not sealed with the seal of the High Court. We accept Ms Muller's submission that s 143 of the Criminal Justice Act required only the signature of a High Court Judge on the warrant and there is nothing in the

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<sup>7</sup> Prison Operations Manual, 31 May 2013, at [I.01.08].

<sup>8</sup> Penal Institutions Regulations 1999, reg 25 (which commenced 1 July 1999) and Penal Institution Regulations 2000, reg 32 (which commenced 1 July 2000).

<sup>9</sup> Penal Institutions Regulations 1999, regs 12 and 27 and the Penal Institutions Regulations 2000, regs 12 and 34.

legislation or relevant regulations to suggest that the seal of the High Court was required.

[17] For completeness we record that on 14 May 2015, the Registry of this Court received a large volume of material from a person described as a friend and supporter of the appellant. This material was unsolicited and appears to be material provided for the purpose of an application for the royal prerogative of mercy. It is dated 1 January 2010. On its face, it does not appear to relate to the validity of the warrant of commitment and we decline to consider it.

### **Result**

[18] There is no basis to disturb the judgment of the High Court. The appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent