IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

CIV-2015-412-15
[2015] NZHC 326

IN THE MATTER OF	an application under the Habeas Corpus Act 2001
BETWEEN	ALAN GREER Applicant
AND	RAY SMITH First Respondent
	JACK HARRISON Second Respondent

On the Papers: 25 February 2015

Judgment: 2 March 2015

JUDGMENT OF MANDER J

The ancient writ is sought

[1] On 26 February 2015, the applicant, Alan Greer, filed an 18 page "application for writ of habeas corpus". The intituling records that Mr Greer is the "captive applicant", and each page contains the header "extorted by torture". The grounds upon which Mr Greer appears to seek his writ are recorded in the first paragraph as follows:

> TAKE NOTICE, that on the 12th day of February 2015 or as soon thereafter as the applicant can be heard, the applicant will move the Court for an order in the nature of a writ of habeas corpus upon the grounds that such an order is fair and just and furthermore upon the grounds contained herewith.

[2] What then follows in the remainder of the document are a series of statements alleging improprieties of the judicial branch of Government, and the derogation of rights. These include allegations around fair trial rights (including inadequate

facilities to prepare a defence), access to justice, impartiality and independence of Courts, prosecutorial impropriety, complaints against Corrections/Prison staff (including perjury) amongst a plethora of other such claims.

[3] Mr Greer was convicted by jury trial on counts of supplying methamphetamine (x2), supplying cannabis, rape, threatening to kill (x3), aggravated burglary (x2) and possession of an offensive weapon. On 26 September 2014 MacKenzie J sentenced Mr Greer on these offences.[1] On the charge of sexual violation by rape, he was sentenced to preventive detention with a minimum period of imprisonment of 10 years. Mr Greer appears to be in the process of appealing against both conviction and sentence. He currently is a sentenced prisoner at the Otago Correctional Facility.

[4] The filing of an application for a writ of habeas corpus would suggest, on its face, that Mr Greer is seeking to impeach the validity of his imprisonment following the entry of convictions and sentence. This does not, however, seem to be the case. While much of the material contained in the 18 page handwritten submissions is both inflammatory and repetitive, Mr Greer's position is perhaps best encapsulated in his own 'summary':

> … the applicant was held captive from August 2012 till March 2014, denied access to a computer and other facilities, contrary to common law, regulations, the processes of the jails FO.7 form, several attached herewith, and the Bill of Rights Act 1990 section 24…

[5] It is to the examination of the application I now turn.

The habeas corpus regime in New Zealand

The nature of the writ

[6] In New Zealand the Habeas Corpus Act 2001 governs all applications for habeas corpus. It is a writ that will issue to ensure that no subject of New Zealand is unlawfully detained. It is a narrow, but vitally important constitutional mechanism that the High Court, as the sole Court responsible for such applications, will strive to uphold. Every application is accorded the respect the writ commands.

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1 *R v Greer* [2014] NZHC 2364.

New Zealand legislation

[7] The Habeas Corpus Act 2001 came into force on 26 May 2001. The purposes of the Act are succinctly stated in s 5:

> **5 Purposes**
>
> The purposes of this Act are—
>
> (a) to reaffirm the historic and constitutional purpose of the writ of habeas corpus as a vital means of safeguarding individual liberty:
>
> (b) to make better provision for restoring the liberty of persons unlawfully detained by establishing an effective procedure for applications to the High Court for the issue of a writ of habeas corpus, and the expeditious determination of those applications:
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> (c) to provide certain unsuccessful parties in habeas corpus proceedings with a right of appeal to the Court of Appeal:
>
> (d) to abolish writs of habeas corpus other than the writ of habeas corpus ad subjiciendum.

[8] The Act provides that an application to challenge the validity of a person's detention may be made by writ of habeas corpus.[2] Applications must be made to the High Court in the form prescribed by the High Court Rules,[3] though that does not exclude the inherent jurisdiction of the High Court to hear oral applications in cases of unusual urgency.[4]

[9] The solemnity of the writ is emphasised by s 9(1), which provides that such applications "must be given precedence over all other matters before the High Court unless a Judge of that court considers that the circumstances require otherwise".[5] As to how the matter is to be disposed of, s 9(3) records:

> The Registrar must allocate a date for the *inter partes* hearing of an application that is no later than 3 working days after the date on which the application is filed.

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2 Habeas Corpus Act 2001, s 6.
3 Section 7(1).
4 Section 7(2).
5 Urgency was afforded to such applications before the Act came into force: *Chignell v Attorney-General* (1989) 4 CRNZ 257 (HC).

[10] Because this application was made to the Dunedin Registry, where there is no resident Judge, the application is being dealt with by the Christchurch High Court, as is required by s 10. Section 14 of the Act sets out the procedure for determining such applications:

> **14 Determination of applications**
>
> (1) If the defendant fails to establish that the detention of the detained person is lawful, the High Court must grant as a matter of right a writ of habeas corpus ordering the release of the detained person from detention.
>
> (1A) Despite subsection (1), the High Court may refuse an application for the issue of the writ, without requiring the defendant to establish that the detention of the detained person is lawful, if the court is satisfied that—
>
> (a) section 15(1) applies; or
>
> (b) an application for the issue of a writ of habeas corpus is not the appropriate procedure for considering the allegations made by the applicant.
>
> (2) A Judge dealing with an application must enquire into the matters of fact and law claimed to justify the detention and is not confined in that enquiry to the correction of jurisdictional errors; but this subsection does not entitle a Judge to call into question—
>
> (a) a conviction of an offence by a court of competent jurisdiction, the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, or a disciplinary officer acting under Part 5 of the Armed Forces Discipline Act 1971; or
>
> (b) a ruling as to bail by a court of competent jurisdiction.
>
> (3) Subject to section 13(2), a Judge must determine an application by—
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> (a) refusing the application for the issue of the writ; or
>
> (b) issuing the writ ordering the release from detention of the detained person.
>
> (4) All matters relating to the costs of and incidental to an application are in the discretion of the Court and the Court may refuse costs to a successful party or order a successful party to pay costs to an unsuccessful party.
>
> (5) A writ of habeas corpus may be in the form set out in the Schedule

[11] Section 15(1) then provides:

> **15 Finality of determinations**
>
> (1) Subject to the rights of appeal conferred by section 16 of this Act and to sections 7 to 10-7 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.

[12] The regime is clear and succinct. When an application is made, the Registrar must allocate a fixture date within three working days. This is, however, subject to the ability of a High Court judge to find that the circumstances are such that the application should not take precedence over all other business of the Court. The Registrar's obligation is to set the matter down for an *inter partes* hearing for the purpose of the respondent(s) estabishing, if they can, that the detention is lawful. If they cannot do so, the writ will issue and the detainee must be set free.

[13] The question arises as to whether there are any circumstances in which no hearing is necessary. In my view, there are two situations where that may arise. The first is where the narrow exceptions provided by s 14(1A) apply. Thus, where the application is an attempt to relitigate the same, or substantially the same questions as were raised in a previous application, the matter will not be heard by combination of ss 14(1A)(a) and 15(1). The other s 14(1A) ground is where an application for a writ is not the appropriate procedure for considering the allegations made by the applicant.

[14] A second situation where, arguably, no hearing would be necessary is where the application represents an abuse of process warranting invocation of inherent jurisdiction to strike the application out. It may, however, be that having regard to the solemnity and importance of habeas corpus and the statutory framework that now governs such applications, the statute supersedes any such jurisdiction. If that is the case, applications that would otherwise have constituted an abuse are now dealt with under ss 14(1A) and 15(1).

[15] This summary of the position is, I believe, supported by the work of the Law Commission and the passage of the Habeas Corpus Bill and its amendment through the House.

Legislative history – Law Commission Report

[16] The modern Act has its genesis in a report of the Law Commission, entitled *Habeas Corpus: Procedure*.[6] In that work there are several salient observations:[7]

> It is sometimes asserted that an unsuccessful habeas corpus applicant has the right, if he or she fails before one judge, to renew the application before another judge. It is doubtful whether that is the law in New Zealand … but, if it is, the draft Act abolishes any such right. Instead, the draft Act would confer on an unsuccessful applicant a right of appeal (as was done in England by s 15 of the Administration of Justice Act 1960)…

[17] The report goes on:[8]

> Section 11(2) of the Draft Act makes it clear that habeas corpus proceedings may not be employed to relitigate criminal convictions and bail applications…

[18] The final relevant comment concerns draft cl 12(1) (equivalent to what is now s 15(1)):[9]

> Subsection (1) is designed to clarify that there is no right for an unsuccessful applicant (to whom section 13 gives a right of appeal) to renew an application. This is probably the existing law (see *Ex parte Bouvey (No 2)* (1900) 18 NZLR 601 and *Re Hastings (No 2)* [1959] 1 QB 358; *Re Hastings (No 3)* [1959] Ch 368; to the contrary effect are *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1928] 1 AC 459 (PC) and *In re Tamasese* [1929] NZLR 209, 211).

Legislative history – the Law Commission becomes involved again

[19] Some six years after the enactment of the Act, several issues had become apparent. The Law Commission produced a report addressing these.[10] In the foreword to the new report Sir Geoffrey Palmer, then President, penned the following foreword:[11]

> It is no exaggeration to say that the writ of *Habeas Corpus* is one of the most ancient and effective legal methods of dealing with the arbitrary use of government power. The writ is older than Magna Carta. It establishes the process for checking illegal imprisonment. The Law Commission in 1997

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6 Law Commission *Habeas Corpus: Procedure* (NZLC R44, 1997).
7 At 4.
8 At 8. See too the discussion of cl 11 at 21, which repeats these sentiments.
9 At 23.
10 Law Commission *Habeas Corpus: Refining the Procedure* (NZLC R100, 2007).
11 At 4.

> recommended a simplified procedure for dealing with Habeas Corpus applications in New Zealand. The old and complicated English law was revoked.
>
> The reform has been successful. But like many laws experience has revealed a few anomalies. The purpose of this report is not to alter in any substantial way the law of Habeas Corpus but provide some technical tweaks that will allow it to work better.

[20] Some of the problems with the application of the Act were identified in its introduction:[12]

> Experience with the Act since it came into force suggests it has largely achieved its objective of providing an effective procedure for dealing with habeas corpus applications. However, some practical problems have emerged, including the misuse of the procedure by some applicants to obtain a priority hearing on matters that should be brought by another form of proceeding, such as judicial review.

[21] Under the "applications by the wrong procedure" heading, the Law Commission observed:[13]

> A further problem addressed in the Draft Study Paper is the use of the habeas corpus procedure in circumstances where the issues are not susceptible to summary determination. Many applications of this kind are brought by prisoners in person. Some cases have involved wide ranging complaints about matters that have nothing to do with unlawful condition, such as conditions in prison. Some appear to have been brought in circumstances where the applicant has known the procedure was wrong for the purposes of securing an early hearing. The Act currently allows the applicant to choose whether to bring an application for habeas corpus, or judicial review proceedings.

[22] The Law Commission then moved to consider the specifics of the issue:[14]

> For example, in *Greer v Parole Board* … the Court of Appeal noted that the appellant had made a number of habeas corpus applications where the distinction between matters properly brought as a habeas corpus application and those that are more properly dealt with in judicial review had arisen. The court also noted the scope for an applicant to present issues as a habeas corpus application in order to have them dealt with more urgently.
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> There have also been a number of cases involving repeat applications on substantially the same grounds despite the fact that section 15(1) of the Act bars successive applications.

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12 At 6.

13 At 14 (citations omitted).

14 At 14–15, footnotes omitted, but citing *Greer v Parole Board at Auckland* CA271/06, 21 December 2006; *Manuel v Superintendent, Hawkes Bay Regional Prison* [2006] 2 NZLR 63 (CA); *F v The Chief Executive of the Ministry of Social Development* CA79/07, 7 March 2007.

[23] The Law Commission reported on the costs and administrative burdens such applications pose:[15]

> While acknowledging that there is often no "bright line" between what is and what is not susceptible to summary determination, we consider that our recommendation that the court should be able to dismiss erroneous habeas corpus applications, without the respondent being required to establish the lawfulness of detention, should stand. It is wasteful of the scarce resources of the court, and of no benefit to an applicant, to have a hearing on a matter that will inevitably be dismissed because the wrong procedure has been used. The dismissal of the habeas corpus application will not preclude an applicant from commencing an application by the correct procedure, or indeed prevent the court from hearing the application as if it had been commenced by the correct procedure if the circumstances so require.
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> Accordingly we recommend that there be power to dismiss applications without the need for the defendant to establish lawfulness of the detention where the application is statute barred under section 15(1) of the Act or involves the wrong procedure. In cases where the wrong procedure is used, the judge could at the time of dismissal indicate the procedure by means of which the application could be appropriately brought.

Legislative history – Habeas Corpus Amendment Act 2013.

[24] On 29 March 2013 the Habeas Corpus Amendment Act 2013 received Royal Assent. It came into force the following day in accordance with s 2. This Act heralded important changes to the Habeas Corpus Act, dealing specifically with some of the issues raised by litigants such as Mr Greer. The Bill was introduced into the House on 28 June 2012. The first reading occurred on 15 August 2012.[16] The Hon Chris Auchinvole commended the bill to the House. He remarked:

> ... Sometimes it is clear on the face of an application for habeas corpus that the writ could not be issued, and this is one of the central problems that need to be addressed—for example, when the writ has already been refused by the court, or when a prisoner is serving an unexpired sentence. In that case, an immediate release is not a possibility, and yet the legal fraternity uses this as a device.
>
> The Law Commission noted that some of these applications appear to have been brought by applicants who know that it is the incorrect procedure. I am sure that members in the House with legal practice experience will be able to elucidate on the way applications for habeas corpus can be used as a device to defer High Court activity, and for other reasons. Allowing judges to summarily dismiss such applications will save time and make our courts more efficient.

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15 At 16 (citations omitted).

16 (15 August 2012) 682 NZPD 4435.

[25] The Hon Denis O'Rourke relevantly commented:

> Clause 7, which amends section 14A(1), says that even if a defendant has not proved the lawfulness of the detention, a judge can refuse to grant habeas corpus only if—two circumstances—firstly, section 15(1) applies, which prevents more than one application on substantially the same grounds, or, secondly, the habeas corpus procedure is not the appropriate one having regard to the applicant's allegations. That seems appropriate, as well. It does not infringe the right of habeas corpus, really, at all, in any genuine application.

[26] Mr Auchinvole also delivered the introductory speech at the third reading.[17] He stated:

> … The "great writ" will be protected from improper use and this ensures that we have an effective justice system. Habeas corpus is an ancient writ, requiring a person in State detention to be brought before a judge or court to determine whether their detention is lawful…
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> …
>
> This bill will allow the High Court or a judge of the High Court to be able to dispense with the rule that habeas corpus applications take precedence over all other business. It will ensure the easier transfer of applications to the Family Court where appropriate. It will provide for a judge to be able to dismiss applications that are statute barred or use incorrect procedure…

Discussion

[27] On 20 October 2014, Goddard J declined an earlier application made by Mr Greer for a writ of habeus corpus following his conviction and sentence on the charges he was found guilty at trial.[18] It is apparent therefore that Mr Greer's latest application breaches s 15(1) which bars the making of any further application 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. Goddard J held that Mr Greer was lawfully detained following his conviction and sentence.

[28] It follows therefore that the Court is entitled to refuse the application. The application should not have been accepted for filing, and is dismissed.[19] For completeness, I note an earlier application came before Williams J on 19 August

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17 (27 March 2013) 688 NZPD 9001.

18 *Greer v Chief Executive, Department of Corrections* HC Wellington, 20 October 2014 (minute).

19 *Ericson v Department of Corrections* [2014] NZCA 118, [2014] NZAR 540 at [8] and [9]; *Misiuk v Attorney-General* [2012] NZCA 13, [2012] NZAR 176.

2014. At that time, Mr Greer had only been convicted but not sentenced, however the reasoning of Williams J on that occasion in respect of Mr Greer's application remains applicable:[20]

> **The law as it applies to this application**
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> [8] I note first that I have considered Mr Greer's application the urgency required under s 9(1) of the Habeas Corpus Act. I am satisfied this matter can be determined on the papers, and as such I do not seek a response from the respondent. Nor does the matter need to be allocated a fixture for hearing under s 9(3).
>
> [9] An application under the Habeas Corpus Act must go to the lawfulness of persons detained. The only part of Mr Greer's application that I can entertain in the context of this application is his allegation that he is being held in "unlawful captivity".
>
> [10] In habeas corpus applications, the onus is on the respondent to establish that the detention of the applicant is indeed lawful.[21] The respondent is not required to prove lawful detention if the Court is satisfied that the application is not the appropriate procedure for considering the allegations made by the applicant.
>
> [11] Crucially, the Court cannot question any convictions entered against the applicant by a court of competent jurisdiction.
>
> [12] Mr Greer has been convicted in the High Court following trial in accordance with the law of very serious criminal charges. There is no substance to his claims that he is a "captive". Quite the contrary. He is a convicted prisoner awaiting sentence.
>
> [13] I decline to grant Mr Greer a writ of habeas corpus.
>
> [14] I do not need to consider the other matters raised by Mr Greer in his application because this is not, as I mentioned above, the appropriate forum to do so. If Mr Greer feels his complaints have merit, there are internal prisoner complaints procedures available to him.

Mr Greer's subsequent sentencing did not alter the position, as is apparent from the approach taken by Goddard J to Mr Greer's further application after he became a sentenced prisoner.

Additionally, I observe that the application Mr Greer has filed makes it apparent that he is not, in fact, challenging the legality of his detention. Rather, he is purporting to

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[20] *Greer v Rimutaka Prison Manager* [2014] NZHC 1957 (citations omitted).
[21] Habeas Corpus Act, s 14(1).

challenge, by collateral attack through the habeas corpus procedure, the alleged withholding of computer facilities, and other issues Mr Greer has with the management of the Otago Correctional Facility. This falls squarely within s 14(1A)(b), being issues that ought to be resolved by some other procedure, not habeas corpus. Indeed, judicial review or the internal prison complaints procedure would be more appropriate.[22] I therefore additionally decline to hear this application on the basis it is not challenging any unlawful detention at all.[23]

[29] Having reached that view, I reiterate that there is no basis for Mr Greer to bring an application for habeas corpus. He was found guilty of offending and sentenced to an indefinite period of imprisonment, with a minimum non-parole period of 10 years. In this respect I note the prohibition in s 14(2)(a) which prevents any Judge calling into question a conviction entered by a Court of competent jurisdiction. This, of course, is subject to Mr Greer's rights of appeal against his sentence and conviction.

[30] There is also one further issue in the present case. Mr Greer applied to the Court of Appeal for bail pending the outcome of his appeal against conviction and sentence.[24] That application was declined. In this respect, entertaining a habeas corpus application would have the effect of calling into question a ruling as to bail by the Court of competent jurisdiction. This is prohibited by s 14(2)(b).

Outcome

[31] This application for habeas corpus will not be heard. This is on the basis that Mr Greer is not in reality seeking to challenge the legality of his detention. Rather, it is an attack on the management of the Otago Correctional Facility that ought to be brought by other, more appropriate, means, if it is to be pursued at all. Insofar as

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22 As to judicial review, I note that this is not a case where the Courts will consider administrative law matters in an application for habeas corpus. There is a narrow jurisdiction to do so in relation to administrative decisions, lying upstream of apparently regular warrants: *Manuel v Superintendent of Hawkes Bay Regional Prison* [2005] 1 NZLR 161 (CA) at [46]. However, there are limitations to the habeas corpus procedure, which, by its very nature, is essentially summary: *Campbell v The Superintendent, Wellington Prison* [2007] NZAR 52 (CA) at [35].

23 I observe that the same result could be reached by reference to the Habeas Corpus Act, s 6. That section provides that an application must challenge the legality of a person's detention. This was relied on by MacKenzie J in *Mathiesen v Mathiesen* [2014] NZHC 2449 to refuse to entertain an application for habeas corpus in a bankruptcy case. The same considerations apply here.

24 *Greer v R* [2015] NZCA 1.

Mr Greer's application does constitute a challenge to the legality of his detention it is simply a repetition of the earlier application determined by Goddard J. The finality of that decision prevents any further application being made.

Solicitors:
Crown Law Office

Copy to:
Mr Greer