

CANADA / JUDGMENT

# HMTQ v. Biniaris

2000 BCSC 905

## COURT

Supreme Court of British Columbia

## DECIDED

8 June 2000

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

## Source record

2000 BCSC 905

Citation: HMTQ v. Biniaris  
2000 BCSC 905

Date: 20000608  
Docket No.:  
CC000653  
Registry: Vancouver  
IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF A PETITION OF RELIEF  
IN THE NATURE OF A WRIT OF HABEAS CORPUS AND A WRIT OF CERTIORARI  
AND PURSUANT TO SECTION 777(2) OF THE CRIMINAL CODE

BETWEEN: JOHN BINIARIS  
APPLICANT

AND: HER MAJESTY THE QUEEN,  
WARDEN OF REGIONAL RECEPTION ASSESSMENT CENTRE,  
DEPUTY COMMISSIONER OF THE CORRECTIONAL SERVICE  
OF CANADA (PACIFIC REGION)  
RESPONDENTS

## REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE BOYD

Counsel for the Applicant:

D.M. Turko

Counsel for the Crown:

J. Wright

K. Swift

Date and Place of Hearing:

Vancouver, BC

June 5, 2000

### Introduction:

- [1] This is an application for an order for a Writ of Certiorari challenging a Warrant of Committal.

### Background:

- [2] The applicant, John Binaris, was convicted by a jury of second degree murder and sentenced to life imprisonment without parole eligibility for five years. The British Columbia Court of Appeal set aside the murder conviction and substituted a conviction of manslaughter. The matter was remitted to this court for re-sentencing, by which time the accused had spent 3 years and 8 months in custody. I suspended the sentence and ordered that he be placed on probation for a period of 3 years. On appeal to the Supreme Court of Canada, the Crown's appeal was allowed and the murder conviction restored.
- [3] As a result of the restoration of the murder conviction, the applicant surrendered himself into custody on the Warrant of Committal on April 21, 2000.
- [4] The Correctional Services of Canada has determined that he has served the equivalent of 1342 days between the date of his arrest (August 13, 1994) and the date when he was given a suspended sentence, and that accordingly he will not be eligible for parole until August 14, 2001.
- [5] The applicant's position is essentially to the effect that given the 3 years and 8 months of goal time combined with the two years spent on probation, he has served the equivalent of 5 years and 8 months in custodial service. Accordingly, he submits this Court ought to either amend the Warrant of Committal or make an order declaring that he has served the equivalent of at least 5 years in custodial service to today's date, thereby rendering him eligible to apply for parole.
- [6] As I understand Ms. Turko's submission, the applicant takes no issue with the Correctional Services' calculation of the time the applicant has actually spent in custody. Rather the submission is that the re-sentencing in April 1998 on the manslaughter conviction has had an effect which was unintended by the Court, is unduly harsh and is in breach of s. 7 of the Charter of Rights and Freedoms. The anomaly is that by virtue of the re-sentencing in April 1998, this young man has spent over 5 years under the control and supervision of the Correctional Service (while either incarcerated or subject to the terms of a Probation Order), and now faces the prospect of a further 1.5 years of incarceration, well beyond the period which would initially have been served under the life sentence, before being eligible to apply for

parole.

- [7] Relying on the decision of the Court in *Re Carleton and The Queen* (1982), 2 C.C.C. (3d) 310 (B.C.C.A.), the applicant's counsel submits that certiorari lies to remove the warrant of committal and to make the declaratory order sought where, pursuant to s. 777(2), the court is "satisfied that a person was properly convicted of an offence but the punishment that was imposed is greater than the punishment that might lawfully have been imposed....".
- [8] She submits that the two years spent on probation, subject to the terms imposed, amounts to the equivalent of custodial service. Indeed she notes that in *Reference re Motor Vehicle Act* (1985) 2 S.C.R. 486, (S.C.C.) the Court acknowledged that "imprisonment (including probation orders) deprive(d) persons of their liberty."
- [9] Accordingly, she submits that retrospectively, the re-sentencing order made in April 1998 has resulted in a sentence which is inherently unfair to the accused, thus founding a remedy under s. 7 of the Charter. In *Steele v. Warden of Mountain Institution* (1990) 60 C.C.C. (3d) 1 (S.C.C.), the Court affirmed that a Charter remedy under s. 12 was appropriate where it could be demonstrated that a sentence was inherently unfair. She submits that here, by analogy, a Charter remedy ought to be available under s. 7.
- [10] I must note that in support of his application, the applicant's counsel has filed a folio of letters from friends, family, colleagues and other individuals, all of whom applaud his character and his demonstrated maturation into a hard working, contributing member of society. While I have read those letters, I will not rely on them in any way in reaching my decision here.
- [11] I have great sympathy with Mr. Binaris' situation. Nevertheless, I am not persuaded that any relief is available here by way of certiorari. I agree with the Crown that the declaratory relief sought is either an attempt to have me correct my own sentencing of the accused in April 1998 on the then manslaughter conviction (which I have no jurisdiction to do) or it is an indirect attack on the Correctional Services' issuance of the Warrant of Committal, which is a matter entirely within the exclusive jurisdiction of the Federal Court of Canada.
- [12] If I am wrong and I do have the jurisdiction either to re-visit the consequences of the sentence imposed in April 1998 or to set aside the Warrant of Committal, then I nevertheless find that pursuant to s. 719(4) of the Criminal Code, the law is clear. Custodial time does not include time spent on probation.
- [13] There is no basis upon which I can find the Correctional Service was in error. Accordingly, the application is dismissed.

"M.E. Boyd, J."

The Honourable Madam Justice M.E. Boyd

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**        <https://www.bccourts.ca/jdb-txt/sc/00/09/s00-0905.htm>

**CASE PAGE**                <https://chat.esheria.ai/case-law/canada/hmtq-v-biniaris-2000>

Prepared on 27 October 2026 · Esheria