

CANADA / JUDGMENT

Moazami v. Canada (Attorney General)

2024 BCSC 1713

COURT

Supreme Court of British Columbia

DECIDED

13 May 2024

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2024 BCSC 1713 Moazami v. Canada (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Moazami v. Canada (Attorney General),

2024 BCSC 1713

Date: 20240513

Docket: 35772-1, 35772-2

Registry: Vancouver

Between:

Reza Moazami

Applicant

And

Attorney General of Canada

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment re Habeas Corpus Application

In Chambers

Counsel for the Respondent, Attorney General of Canada on behalf of Correctional Service
Canada:

J. Mack

The Applicant, appearing in person:

R. Moazami

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 13, 2024

Place and Date of Judgment:

Vancouver, B.C.

May 13, 2024

- [1] THE COURT: Reza Moazami brings an application for habeas corpus, which is opposed by the respondent, the Attorney General of Canada. The Attorney General of Canada also filed an application seeking to strike Mr. Moazami's notice of application on numerous grounds, both procedural and substantive.
- [2] The Attorney General is correct that technically, Mr. Moazami should have brought his matter as a petition for habeas corpus against the institution, but I am not going to fault Mr. Moazami as he is representing himself and he filed it in the criminal registry.
- [3] In brief, Mr. Moazami's application is really a challenge to his treatment and history of detention with Correctional Services of Canada. His notice of application is long and sometimes a bit difficult to follow, but I appreciate him making submissions. I am not being critical and note that he is representing himself. I am confident that I understand all of the grounds that he has raised.
- [4] Unfortunately, he has not described anything that is appropriate to be raised in a habeas corpus application for a number of reasons. The impugned decisions and conditions do not give rise to the legal right to habeas corpus.
- [5] Habeas corpus is a very specific and unique remedy that is available only in certain circumstances. In terms of the legal framework, the applicant must establish that they have been denied their liberty and the denial is unlawful. It is available for people who are in institutions, but only if there has been a deprivation of their "residual liberty": *R. v. Cunningham*, [1993] 2 S.C.R. 143 at 149, 1993 CanLII 139.
- [6] Not every change in condition, or even most changes in conditions, can give rise to an effect on residual liberty. A challenge often has to do with the classification of a person's detention, but challenges to a historical classification or changes in classification are generally unsuccessful. The remedy is not a form of appeal, or a basis for a damages claim, or a method to challenge denial of release, or to complain about the conditions of detention. Habeas corpus is not the appropriate remedy to seek if someone is seeking damages or relief that is available under other legal processes.

- [7] Those are the main reasons why Mr. Moazami's application cannot succeed, but I will set out in more detail why his application fails.
- [8] First of all, there are certain allegations made against the North Fraser Pre-Trial Centre, which is not represented during this hearing. It would be inappropriate to grant any relief against that institution when it has not been served or given notice of the relief sought. To the extent Mr. Moazami wants me to rely on facts that occurred there, that is not appropriate absent notice to that institution.
- [9] Even if the North Fraser Pre-Trial Centre was represented, however, none of the allegations raised amount to deprivation of residual liberty. They deal with matters that do not involve and cannot be sought under habeas corpus as commented on in a number of cases, including *MacKinnon v. Bowden Institution*, 2017 ABQB 574.
- [10] Mr. Moazami also refers to allegations that he has been discriminated against, but my understanding is he actually pursued those allegations through the grievance process and the Human Rights Tribunal. He has already tried to raise those allegations in the appropriate forums, but he was unsuccessful.
- [11] In any event, it is inappropriate to seek damages under the Charter of Rights and Freedoms, or declarations that the Human Rights Tribunal could grant by way of an application for habeas corpus.
- [12] With respect to his challenge to particular officers' conduct, a similar concern exists. His allegations might fall under a potential negligence claim or other civil claim. None of his allegations amount to what would be a deprivation of residual liberty giving rise to an application for habeas corpus: *McCargar v. Canada*, 2017 ABQB 416; and *Chung v. Alberta (Attorney General)*, 2017 ABQB 456.
- [13] He also makes allegations that Correctional Services Canada retaliated against him for filing particular reports in evidence, which is a constant theme throughout his material. I should say, first of all, that I am not satisfied on the evidence before me that the retaliation allegation has been substantiated. As I said, his material is somewhat difficult to follow and vague. However, I confirm that even if there had been evidence of retaliation, of which there is not, that would not amount to a deprivation of residual liberty. Specifically, his concern about the psychological assessment, the GSR scoring matrix, and his complaint about which program he was placed into, do not amount to a deprivation of residual liberty that could give rise to habeas corpus, even if he had evidence to substantiate his allegations.
- [14] Mr. Moazami complains about a previous transfer from Matsqui Institution to Mountain Institution. Both institutions are medium security. Therefore, the change does not amount to deprivation of residual liberty. Furthermore, he mentions a transfer at one point to maximum security. However, problematically for Mr. Moazami with respect to his transfer complaints, habeas corpus is only meant to deal with a current state of detention and not historical. Respecting the maximum security issue, that allegation is completely *res judicata*.

as he already raised a habeas corpus application that was denied and confirmed on appeal.

- [15] He makes allegations that he was assaulted at Mountain Institution and that inadequate steps were taken to look out for his safety. There is case law that states that that this type of issue does not give rise to habeas corpus grounds. Instead, in the event he enters evidence to substantiate those allegations, a civil claim and/or grievance may be successful, but not a remedy of habeas corpus.
- [16] He complains about a number of specific occurrences such as the loss of his belongings and the mishandling of legal documents. Again, those do not amount to a deprivation of liberty: see MacKinnon; Chung; and Mapara v. Ferndale Institution (Warden), 2012 BCCA 127, leave to appeal to SCC ref'd, 34818 (27 September 2012).
- [17] Mr. Moazami makes reference to the human rights complaints, judicial review in the Federal Court, the denial of escorted temporary absences, the denial of unescorted temporary absence, requests for information, and a number of other details. None of these grounds give rise to a deprivation of residual liberty. I note specifically that complaints respecting the denial of parole or conditions must be sought through judicial review in the Federal Court. The jurisprudence confirms that an applicant cannot receive habeas corpus in that situation.
- [18] One of the main themes of his submissions was that he believes that the hearings that he had in the correctional institution were unfair to the degree of making them unconstitutional. He complained about a lack of disclosure without reasons and says that he was denied certain rights. Again, these matters do not amount to a denial of residual liberty or a denial of liberty, and therefore they cannot form the basis for an application for habeas corpus. His route to address those concerns is a judicial review through the Federal Court system, not through this Court.
- [19] One of the other main complaints he raises is that he believes that his psychological risk assessment results were inaccurate. He believes that the psychologist failed to take into account accurate information. He claims his liberty is affected because the parole board and the institution continue to rely on that psychological assessment, notwithstanding what he says are confirmed inaccuracies in the results. I do not have any evidence to confirm there are inaccuracies but, even if he is correct to say the results relied on inaccuracies, this does not mean that the entire assessment is incorrect.
- [20] Even if he was able to establish on the evidence that the assessment was inaccurate, that would not amount to a denial of liberty on its own. Mr. Moazami wants to link the psychological assessment to the denial by the parole board. His perspective is that someone made an inaccurate report that has not been corrected. He believes that has been confirmed. Despite his concerns, he says the psychological assessment has not changed and the institution, as well as the parole board, continues to rely on the assessment to his detriment. However, his remedy for his concern is to challenge the parole board's decision, which he has actually sought. Accordingly, he knows that is the route he needs to take because he has filed a judicial review.

- [21] I add that all of the above comments respect the individual grounds raised. To be fair to Mr. Moazami, he did not try to rely on the individual grounds. His position is that there is a whole body of evidence that amounts to deprivations of his rights and unfair treatment in a manner that he believes entitles him to habeas corpus. I do not agree. The case law does not support him.
- [22] Even if one could agree that all of the allegations he raised rose to the level of having some chance of success, that does not result in a remedy of habeas corpus. He has raised potential Charter claims that would have to be started in another fashion, whether for damages or declarations, but not as an application for habeas corpus.
- [23] I agree with the Attorney General of Canada that this application was improperly brought because nothing in it actually is based on the legal test for habeas corpus. I say that both in relation to the individual complaints and those complains holistically. They do not amount to a deprivation of a residual liberty interest. Therefore, there is no way that Mr. Moazami can succeed in showing that his detention is in anyway unlawful in the material he has filed.
- [24] I grant the Attorney General's application to strike Mr. Moazami's application for habeas corpus without leave to amend.

[SUBMISSIONS ON COSTS]

- [25] THE COURT: The Attorney General of Canada has asked me to award costs against Mr. Moazami. The authority to do so comes from, among other cases, *Wu v. Canada* (Attorney General), 2022 BCSC 2084; and *Alam v. Matsqui Institution (Warden)*, 2022 BCSC 1115, where the Attorney General was entitled to have costs in a habeas corpus proceeding partially because the court determined that the applicant should have brought a judicial review: *Alam* at para. 67. In *Alam*, the court commented that the habeas corpus application was ill-conceived at best and frivolous at worst: para. 67.
- [26] The Attorney General in this case pointed out several procedural problems with Mr. Moazami's application and also argues that it succeeded in its application to strike based on the substantive and procedural grounds.
- [27] I do note that Mr. Moazami is representing himself, so I do not place as much weight on some of the procedural irregularities in his materials. However, I do agree that this matter clearly should not have been brought by way of habeas corpus. It did not meet the threshold, which is why the application to strike was granted.
- [28] Court time is precious. This was clearly an application that was not going to succeed. In my view, it is appropriate to award costs in favour of the Attorney General in the amount of \$440 based on four units.

"Sharma J."

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