

CANADA / JUDGMENT

Muckle v. Pacific Institution (Warden)

2024 BCCA 242

COURT

British Columbia Court of Appeal

DECIDED

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2024 BCCA 242 Muckle v. Pacific Institution (Warden) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Muckle v. Pacific Institution (Warden), 2024 BCCA 242 Date: 20240628 Docket: CA49534 Between: Albert Muckle Appellant (Applicant) And The Warden of Pacific Institution Respondent (Respondent) Before: The Honourable Madam Justice Newbury The Honourable Mr. Justice Abrioux The Honourable Justice Skolrood On appeal from: An order of the Supreme Court of British Columbia, dated September 22, 2023 (R. v. Muckle, 2023 BCSC 1779, Chilliwack Docket 73912). Referred by the Registrar for summary determination pursuant to s. 685(1) of the Criminal Code. Place and Date of filed Notice of Application for Leave to Appeal: Vancouver, British Columbia December 4, 2023 Place and Date of Judgment: Vancouver, British Columbia June 28, 2024 Written Reasons by: The Honourable Madam Justice Newbury Concurred in by: The Honourable Mr. Justice Abrioux The Honourable Justice Skolrood Summary: The appellant, a federally incarcerated inmate, seeks to appeal the dismissal of a habeas corpus application. Held: Appeal dismissed under s. 685(1) of the Criminal Code. The CA does not have jurisdiction to deal with any of the grounds of appeal enumerated in the appellant's notice of appeal. Reasons for Judgment of the Honourable Madam Justice Newbury:

- [1] This matter has been referred to us by the Registrar for consideration under s. 685 of the Criminal Code. Section 685(1) states: Where it appears to the registrar that a notice of appeal, which purports to be on a ground of appeal that involves a question of law alone, does not show a substantial ground of appeal, the registrar may refer the appeal to the court of appeal for summary determination, and, where an appeal is referred under this section, the court of appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing.
- [2] The notice of appeal filed by Mr. Muckle purports to appeal the dismissal of his habeas corpus application seeking relief under s. 24 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 ("CCRA"), and under s. 12 of the Charter, which prohibits cruel and unusual treatment or punishment.

- [3] The dismissal order was made by Madam Justice Fitzpatrick for reasons indexed as 2023 BCSC 1779. The reasons disclose that Mr. Muckle pleaded guilty in August 2005 to attempted murder and aggravated sexual assault before the Alberta Provincial Court. The Court designated Mr. Muckle as a dangerous offender and sentenced him to an indeterminate sentence under s. 753 of the Code.
- [4] In 2012, Mr. Muckle filed a notice of appeal in the Alberta Court of Appeal against both conviction and sentence; however, his application to extend the time to file his appeal was heard and dismissed ultimately by the Supreme Court of Canada on March 19, 2015. Even if his motions for an extension of time and for the appointment of counsel had succeeded, the Court added, the application for leave to appeal would have been dismissed.
- [5] Mr. Muckle is incarcerated in the Pacific Institution, a medium security facility, and he has never been granted parole.
- [6] Madam Justice Fitzpatrick noted that Mr. Muckle was self-represented on the applications before her and that it was often difficult to discern the legal issues he was raising and what facts he was relying upon. However, she agreed with the respondent that three issues were raised -- namely, whether the Supreme Court of British Columbia had jurisdiction to hear the habeas corpus application, which required that he demonstrate an unlawful deprivation of his liberty; whether the Court had jurisdiction to grant mandamus and direct the Parole Board of Canada ("PBC") to correct alleged factual inaccuracies in their records; and whether the Court should grant the application to subpoena an employee of the Correctional Service of Canada ("CSC") in connection with the habeas corpus application.
- [7] On the first issue, the Court ruled that Mr. Muckle had not articulated any factual basis which might demonstrate the alleged unlawfulness of his continued detention. As Fitzpatrick J. stated at para. 29 of her reasons: Other than as noted above, Mr. Muckle has failed to articulate any factual basis which might relate to the alleged unlawfulness of his continued detention. In short, Mr. Muckle has failed to discharge his onus of demonstrating any deprivation of liberty that could be unlawful that is necessary to ground a habeas corpus application. No issues of cruel and unusual treatment or punishment arise under s. 12 of the Charter. The AGC invokes the doctrine of abuse of process in support of a dismissal of Mr. Muckle's application, in addition to raising issues of collateral attack and res judicata. It remains the case that the Court has jurisdiction to control its process to ensure that frivolous claims or those entirely lacking merit are not allowed to proceed. I conclude that any one or more of the AGC's arguments is sufficient to conclude that it is plain and obvious that Mr. Muckle's application for habeas corpus has no merit, whether it is described as based on this Court's lack of jurisdiction, collateral attack, res judicata or abuse of process. No issues of unlawful deprivation of liberty arise in these circumstances to ground Mr. Muckle's application for habeas corpus relief. [At paras. 29-31.]

- [8] As to whether there was jurisdiction to issue a writ of mandamus, the judge found that the Court had no jurisdiction to address this question, whether in a habeas corpus application or otherwise. (At para. 38.)
- [9] The final question concerning the issuance of a subpoena arose out of Mr. Muckle's allegation that his CSC file had been "mixed up" with his brother's file so that his, the appellant's, file contained references to various assaults and other misconduct that had never been committed by him, but were committed by his brother. The judge noted that habeas corpus is intended to be a summary procedure that takes place on the basis of the record as supplemented by evidence that addresses a legitimate basis for review. The "gatekeeping" function of a court on a habeas corpus application had been employed in *R. v. Antonius* 2016 BCSC 997 in addressing whether certain CSC employees should be tendered at the hearing of the application.
- [10] However, the judge noted, Mr. Muckle had not provided any further details of this allegation and in particular had not filed any evidence, whether from Dr. McQoid (who Mr. Muckle said could confirm this information), or an affidavit as to how the appellant knows what exactly is in the files. The judge concluded that even if she had not decided that this aspect of the application failed along with the habeas corpus application, this lack of evidence did not "meet the necessary evidentiary threshold to even consider the issue of materiality." (At para. 45.)
- [11] The Court did agree that the style of cause in this matter should refer to the Warden of the Pacific Institution as the respondent in place of his Majesty the King, which has been carried out in this court.
- [12] In the end, Mr. Muckle's entire application was dismissed.
- [13] Mr. Muckle's notice of appeal indicates that he wishes to pursue the application for habeas corpus in connection with his parole and security classification, as I understand it. However, as the registrar advised him at a case management conference in May, these matters are within the exclusive jurisdiction of the Federal Court in accordance with s. 18 of the Federal Courts Act, R.S.C. 1985, c. F-7. Each of the CSC and the PBC comes within the definition of "federal board, commission or other tribunal" and thus the Federal Court has exclusive jurisdiction over their decisions. Conversely, this court has no jurisdiction to deal with any matters relating to his parole eligibility, classification or treatment in the corrections system. To the extent that he wishes to pursue an argument that he is being unlawfully detained, he has already pursued his rights of appeal all the way to the Supreme Court of Canada, unsuccessfully. In any case, British Columbia courts of course have no jurisdiction to deal with convictions made in the Province of Alberta.

- [14] In addition, habeas corpus cannot be used to effect a collateral attack on the lawfulness of his detention. This means, as Fitzpatrick J. noted in her reasons, that the prayer for a subpoena falls away as serving no practical purpose. (Even if it were otherwise, the appellant's general "belief" that his file had been "mixed up" did not, as the judge held, meet the evidentiary threshold.)
- [15] In summary, Mr. Muckle's notice of appeal does not show a substantive ground of appeal in the sense that this court has any jurisdiction to deal with the matters raised. Nor does the application for habeas corpus raise any issue over which this court has jurisdiction.
- [16] Accordingly, we are all of the view that a full hearing of this matter is not necessary and that the appeal must be dismissed under s. 685(1) of the Code. "The Honourable Madam Justice Newbury" I agree: "The Honourable Mr. Justice Abrioux" I agree: "The Honourable Justice Skolrood"

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