

CANADA / JUDGMENT

Petrowski v. Mountain Institution (Warden)

2016 BCSC 1137

COURT

Supreme Court of British Columbia

DECIDED

21 June 2016

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2016 BCSC 1137 Petrowski v. Mountain Institution (Warden) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Petrowski v. Mountain Institution (Warden), 2016 BCSC 1137 Date: 20160621 Docket: 64953 Registry: Chilliwack Between: Richard Karl Petrowski Applicant And Warden of Mountain Institution Respondent Before: The Honourable Mr. Justice Grist Reasons for Judgment The Applicant appearing on his own behalf in custody, via videoconference: R.K. Petrowski Counsel for the Respondent: P.J.P. Alma Place and Date of Hearing: Chilliwack, B.C. May 30, 2016 Place and Date of Judgment: Chilliwack, B.C. June 21, 2016

- [1] The applicant asks for a writ of habeas corpus relating to revocation of his statutory release by the Parole Board of Canada ("PBC"). Mr. Petrowski was granted statutory release on conditions on March 6, 2015, and arrested when suspended by his parole officer on April 10, 2016. Following the arrest, the matter was reviewed by the PBC in August 2015, and Mr. Petrowski's statutory release was revoked. Mr. Petrowski appealed this decision to the PBC Appeal Division, who found that the August 2015 PBC hearing should have included an oral hearing of certain evidence accepted during the first hearing in documentary form, and remitted the matter for a rehearing. This was held in February 2016, following which Mr. Petrowski's parole was again revoked.
- [2] The matter is again on appeal to the PBC Appeal Division, but the applicant has also brought this habeas corpus application asking for return to his previous parole status. THE STYLE OF CAUSE
- [3] As a first matter, the style of cause needs correcting. The named respondents: Her Majesty the Queen in Right of Canada, Correctional Service of Canada, Parole Board of Canada and Public Safety Canada, are not properly joined, and should be replaced by the Warden of Mountain Institution, where Mr. Petrowski is incarcerated. THE ISSUES RELATING TO PAROLE REVOCATION

- [4] In short form, the concerns expressed by Mr. Petrowski's parole officer related to complaints he did not comply with a requirement that he report his financial circumstances, was not forthcoming in relation to possessing a cell phone and acquiring a vehicle, and in not reporting contact he had with certain individuals. Further, his relationship with the woman he was to live with had deteriorated to the point that she had applied for a no contact order on allegations Mr. Petrowski had threatened her safety.
- [5] Mr. Petrowski's submissions underscored his laudable efforts to acquire and maintain employment, and challenged the significance of obtaining the cell phone and vehicle, both of which he said were necessary for his employment. He denied having significant contact with suspect associates and denied acting in a threatening manner towards his domestic partner. JURISDICTION
- [6] Habeas corpus is a constitutionally guaranteed remedy giving the applicant access to the relevant provincial superior court, independent of alternative applications, say, by way of the Federal Court on judicial review.
- [7] The provincial superior court may, however, decline jurisdiction; and specifically will decline jurisdiction where there is in place a complete, comprehensive and expert procedure for review of an administrative decision: *May v. Ferndale Institution*, 2005 SCC 82 at para. 44.
- [8] The British Columbia Court of Appeal has recognized the PBC as providing such a procedure for review in a number of cases, notably in *John v. Canada (National Parole Board)*, 2011 BCCA 188.
- [9] In this case, the PBC has acted in a timely fashion in conducting the original hearing; having the appeal heard and remitting the matter for rehearing; and conducting the second hearing, within the course of a year.
- [10] The matter has again been appealed, and there is nothing in the record to suggest the second appeal will be anything less than an appropriate forum for the pending review. I find in this a further reason to decline the remedy sought. Contemporary proceedings for essentially the same relief are generally seen as inappropriate and an abuse.
- [11] For these reasons: the adequacy of the PBC procedures, and the fact that the matter has again been put before the Appeal Division by the applicant for a determination; I decline jurisdiction in this matter and dismiss the present application. "W.G. Grist J."

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