

CANADA / JUDGMENT

R. v. Muckle

2023 BCSC 1779

COURT

Supreme Court of British Columbia

DECIDED

22 September 2023

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2023 BCSC 1779 R. v. Muckle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Muckle,

2023 BCSC 1779

Date: 20230922

Docket: 73912

Registry: Chilliwack

Between:

Albert Muckle

Applicant

And

His Majesty the King

Respondent

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Judgment

Counsel for the Respondent:

V. Young

The Applicant, appearing in person:

A. Muckle

Place and Date of Hearing:

Chilliwack, B.C.

September 22, 2023

Place and Date of Judgment:

Chilliwack, B.C.

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INTRODUCTION

- [1] In this proceeding, Albert Muckle applies for habeas corpus relief and various other orders.
- [2] Mr. Muckle's application is based on allegations that his rights have been violated as established under:
 - a) Section 24 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA] in relation to the records of Correctional Service Canada ("CSC"); and
 - b) Section 12 of the Canadian Charter of Rights and Freedoms which prohibits cruel and unusual treatment or punishment.
- [3] The Attorney General of Canada ("AGC"), representing the Crown, opposes the relief. The AGC takes the position that Mr. Muckle's habeas corpus application is ill-founded, in that he has not established the Court's jurisdiction to grant that relief and that the issues raised are res judicata and an abuse of process. The AGC also opposes the other relief sought.
- [4] I agree with the position and arguments of the AGC and conclude that Mr. Muckle's applications should be dismissed.

BACKGROUND FACTS

Criminal History

- [5] On July 11, 2005, Mr. Muckle brutally attacked and sexually assaulted a young woman in Banff, Alberta.
- [6] On August 29, 2005, Mr. Muckle pleaded guilty to attempted murder and aggravated sexual assault before the Alberta Provincial Court in Banff.
- [7] On July 27, 2006, the Alberta court designated Mr. Muckle as a dangerous offender and, in accordance with the mandatory requirements then in effect, sentenced him to an indeterminate sentence pursuant to s. 753 of the Criminal Code, R.S.C. 1985, c. C-46. This ruling followed from Mr. Muckle's concession to the Crown and the court to a dangerous offender designation, after he had reviewed Crown disclosure to that time.

Appeal History

- [8] On March 28, 2012, almost six years after his conviction and sentence, Mr. Muckle filed a notice of appeal in the Alberta Court of Appeal. He sought to appeal both his conviction and sentence.
- [9] On March 14, 2013, Mr. Muckle filed his application for an extension of time to appeal. The Alberta Crown Prosecution Service opposed the application.
- [10] On April 25, 2013, the Alberta Court of Appeal heard and dismissed Mr. Muckle's application to extend the time to file his appeal.
- [11] On September 23, 2014, Mr. Muckle filed an application for leave to appeal to the Supreme Court of Canada ("SCC"). Mr. Muckle raised various grounds in support of his application for leave toward challenging his conviction and sentence, including: that his lawyer "railroaded" him; that he was tricked into entering a guilty plea; that he did not consent to the dangerous offender designation; that he did not meet the requirements of a dangerous offender designation; and, that there was no Gladue report at the time.
- [12] Again, the Alberta Crown Prosecution Service opposed Mr. Muckle's application to appeal to the SCC.
- [13] On March 19, 2015, the SCC dismissed Mr. Muckle's applications to extend the time for filing leave to appeal and to appoint counsel for him: *R. v. Muckle*, [2014] S.C.C.A. No. 421, 2015 CanLII 13585 (SCC). The Court further noted "[i]n any event, had such motions been granted, the application for leave to appeal would have been dismissed".

Correctional History

- [14] Mr. Muckle is a federally incarcerated, medium security inmate.
- [15] In July 2021, Mr. Muckle was transferred from Kent Institution, a maximum security facility, to Pacific Institution ("Pacific"). He was transferred to Pacific as a medium security inmate, and he has resided in the medium security unit since then.
- [16] Mr. Muckle has never been granted parole. On October 14, 2022, the Parole Board of Canada ("PBC") reviewed whether Mr. Muckle should be entitled to day or full parole under s. 761 of the Criminal Code. The PBC denied any parole.

ISSUES

- [17] I would observe at the outset that Mr. Muckle's materials are far-ranging and often difficult to discern in terms of the legal issues raised and the facts upon which he relies. He is self-represented on this application and it is clear that he has struggled in the past and continues to struggle to address the various legal issues he wishes to raise in respect of his circumstances.

[18] Nevertheless, I agree with the AGC that the issues can be distilled as follows:

- a) Does this Court have jurisdiction to hear this habeas corpus application? In particular, has Mr. Muckle demonstrated an unlawful deprivation of his liberty?
- b) Does this Court have jurisdiction to grant mandamus and direct CSC and/or the PBC to correct alleged factual inaccuracies in their records?
- c) Should this Court grant Mr. Muckle's application to subpoena a CSC employee for this habeas corpus application and the other applications?

DISCUSSION

[19] I will address the issues in the same order as above.

Issue 1: Is There Jurisdiction for Habeas Corpus?

[20] The writ of habeas corpus is an extraordinary procedure, which allows a reviewing court to "release" an individual from an unlawful deprivation of liberty. That is the only remedy available under habeas corpus in that it is not a discretionary remedy, in contrast to remedies available in a judicial review to the Federal Court of Canada: *Mission Institution v. Khela*, 2014 SCC 24 [Khela] at paras. 29, 39-41; *Chambers v. Daou*, 2015 BCCA 50 at para. 56.

[21] On an application for habeas corpus, the applicant must establish that: (1) they have been deprived of liberty (in the prison context, of a residual liberty interest); and, (2) a legitimate ground upon which to question the legality of that deprivation of liberty. If the applicant is successful on the first part of the test, the onus shifts to the respondent to establish that the deprivation of liberty was lawful: *Khela* at para. 30.

[22] The AGC's position is that this Court lacks jurisdiction to entertain this application in that Mr. Muckle has failed to establish the first part of the *Khela* test, namely that there has been a deprivation of liberty that could be unlawful.

[23] Firstly, it is manifestly the case that Mr. Muckle's attempt, through his application, to challenge his conviction and sentence are not appropriate. As the AGC notes, Mr. Muckle was convicted and sentenced in a proper legal process that was undisturbed on the various appeals. I agree with the AGC that Mr. Muckle's arguments before the Alberta courts now mirror those asserted on this application.

[24] I agree with the AGC that Mr. Muckle's attempt in doing so is, in substance, a collateral attack on the legality of his conviction and sentence and entirely met by the application of *res judicata*.

[25] Mr. Muckle advances a number of complaints about his conviction and the dangerous offender designation. He asserts that his files are incorrect, in that the Alberta court relied on convictions that were for charges beyond those he did commit and that the files include convictions belonging to his brother. However, these allegations could only have been advanced in the context of an appeal from those decisions. That is, in fact, what took place

and his conviction and sentence were upheld. A habeas corpus application cannot be brought as a vehicle to appeal the merits of a conviction and sentence under the Criminal Code: *Wu v. Canada (Attorney General)*, 2022 BCSC 2084 at paras. 31-32, citing *May v. Ferndale Institution*, 2005 SCC 82 at para. 36.

- [26] The AGC cites various examples of case authorities dismissing habeas corpus applications seeking to challenge convictions and sentences on the basis that they are collateral attacks or fail on the basis of *res judicata*: *R. v. Gustavson*, 1999 BCCA 525 at para. 9; *R. v. Gustavson*, 2000 BCCA 649 at paras. 7 and 12-15; *Gustavson v. Mission Institution*, 2002 BCCA 380 at paras. 9-11; *R. v. Gustavson*, 2005 BCSC 634 at paras. 15 and 27 [*Gustavson BCSC*], *aff'd* 2007 BCCA 509 at paras. 1-3.
- [27] Secondly, I also accept the AGC's submissions regarding Mr. Muckle's circumstances in terms of his incarceration. As I have said, no issues of his initial incarceration arise since his sentence as a dangerous offender with an indeterminate sentence is legal and valid. In addition, there are no issues relating to any decision of the Warden of Pacific regarding Mr. Muckle's security reclassification or his transfer to another institution. In fact, Mr. Muckle's transfer to Pacific is at a lesser security level than his initial placement. Finally, there has been no change in Mr. Muckle's sentence, which again was lawful.
- [28] Mr. Muckle remains on an indeterminate sentence and he has not been granted parole at any time. He has not undertaken the established procedure for challenging the PBC's decision to deny parole. In any event, habeas corpus has no application to a denial of parole, which does not result in any change in an inmate's detention: *Wu* at para. 17; *R. v. Latham* (1989), 80 Sask. R. 79 (C.A.) at paras. 1-4; *R. v. Latham* (1997), 113 C.C.C. (3d) 222 (Ont. C.A.) at para. 5; and *Gustavson BCSC* at paras. 11-13.
- [29] 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.
- [30] 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.
- [31] 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.

Issue 2: Is there Jurisdiction to Issue a Writ of Mandamus Against CSC and/or PBC?

[32] Mr. Muckle further demands that the PBC and CSC be directed to correct alleged factual inaccuracies in their records. Mr. Muckle alleges that his "childhood files" that were before the Alberta court for sentencing were inappropriately "merged" with his brother's files. He then suggests that this resulted in the Alberta court considering that he had committed someone else's assaults, which were in turn relied upon in designating him as a dangerous offender.

[33] Mr. Muckle confirmed during this application that he has made various efforts to obtain documentation from sources, including CSC and the Alberta Crown Prosecution Service. It appears he has been successful to a degree but he continues in those efforts.

[34] In particular, in relation to his application to obtain CSC files, Mr. Muckle refers to s. 24 of the CCRA which provides:

24(1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

[35] However, in addition to denying that any such inaccuracies exist, the AGC correctly points out that the Federal Court has exclusive original jurisdiction to issue writs of mandamus against federal entities, such as the PBC and CSC, pursuant to s. 18 of the Federal Courts Act, R.S.C. 1985, c. F-7 [FCA]. The PBC and CSC are both within the purview of s. 2 of the FCA that defines "federal board, commission or other tribunal" as:

any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made under a prerogative of the Crown, other than the Tax Court of Canada or any of its judges or associate judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867.

[Emphasis added.]

[36] The AGC refers to Wu in support. The Court found that any challenges to decisions of the PBC, as a federal board, must be made to the Federal Court: Wu at paras. 22, 28-30.

- [37] Accordingly, I conclude that any issues relating to alleged errors which may exist in any CSC and/or PBC records can only be addressed by the Federal Courts. This Court has no jurisdiction to address Mr. Muckle's issues. His recourse is elsewhere in terms of any potential challenges that might be made, whether under an internal grievance procedure, an appeal and/or a judicial review.
- [38] In addition, there is no application before me in relation to document production by any other entity, whether in conjunction with this habeas corpus application or otherwise.

Issue 3: Should this Court Issue a Subpoena?

- [39] Mr. Muckle seeks to subpoena Dr. Michelle McQoid. Dr. McQoid is a psychologist employed by CSC. In his application, Mr. Muckle suggests that Dr. McQoid can confirm that his brother's files were mixed up with his, as is relevant to his habeas corpus application.
- [40] The AGC opposes this relief. They assert that there is no basis for this relief, particularly since it must be assessed in light of the merits or lack of merits of his habeas corpus application. In any event, the AGC says that Mr. Muckle has failed to demonstrate the relevance, materiality, probative value or evidentiary significance of Dr. McQoid to the habeas corpus application.
- [41] On the first point I agree. Mr. Muckle wished to have Dr. McQoid appear at the habeas corpus application, presumably to give evidence upon which he might rely upon in seeking that relief. To the extent that Dr. McQoid was involved in the sentencing of Mr. Muckle, again, any issues with the sentence were to be addressed in Mr. Muckle's appeal proceedings which were undertaken and failed. Since I have concluded that there is no merit to his habeas corpus application, this aspect of his application in seeking a subpoena would also fall away as serving no practical purpose: *R. v. Antonius*, 2016 BCSC 997 at paras. 28 and 51.
- [42] Further, as the AGC points out, habeas corpus is intended to be a summary procedure that takes place on the basis of the record, as supplemented with evidence that addresses a legitimate basis for review: *Keiros-Meyer v. The Attorney General of Canada*, 2019 BCSC 2457 at para. 30. That will usually mean that affidavits are before the court and any application to cross-examine on affidavits will be scrutinized by the court in terms of whether it is necessary to fully flush out the facts necessary for the application.
- [43] This gate-keeping function of a court on a habeas corpus application was employed in *Antonius* in addressing whether certain CSC employees should be tendered at the hearing. At para. 29, Justice Donegan stated that she had to determine whether these employees were likely to give material evidence.
- [44] In Mr. Muckle's memorandum of fact and law, he alleges that Dr. McQoid is willing to confirm that Mr. Muckle's brother's file was "mixed up with his file presenting much misconduct and many assaults never committed by [Mr. Muckle]". Mr. Muckle has also sworn an affidavit on June 2, 2023 where he states:

I have adamantly reported to the CMT/CSC/PBC that [Dr. McQoid] can confirm my brother Edward's childhood's file information has been merged with my file and vice versa.

[45] However, Mr. Muckle has not provided any further details as to how he came to that belief. He has also not disclosed when and what exactly he thinks Dr. McQoid knows or has learned about his files. Even if I had not decided that this aspect of the application fails along with the habeas corpus application, which I have, this lack of evidence does not meet the necessary evidentiary threshold to even consider the issue of materiality.

CONCLUSION AND ORERS

[46] I agree that the style of cause should be amended to reflect the Warden of Pacific Institution as the Respondent, instead of His Majesty the King, and the case name will read "Muckle v. Pacific Institution (Warden)": Petrowski v. Mountain Institution (Warden), 2016 BCSC 1137 at para. 3; Bromby v. Warden of William Head Institution, 2020 BCSC 1119 at paras. 31-32; Alam v. Matsqui Institution (Warden), 2022 BCSC 1115 at para. 3. That is so ordered.

[47] If Mr. Muckle has a remedy to address his issues, it does not rest with this Court and on a habeas corpus application. Mr. Muckle's entire application is dismissed, including his application for habeas corpus.

"Fitzpatrick J."

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