IN THE COURT OF APPEAL OF NEW ZEALAND

CA125/2010
[2010] NZCA 75

BETWEEN	DAVID OWEN CREQUER ACTING ON BEHALF OF PETER MORRISON PETRYSZICK Appellant
AND	CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIONS Respondent

Hearing: 16 March 2010

Court: Arnold, Panckhurst and Harrison JJ

Counsel: Appellant in Person
M D Downs for Respondent

Judgment: 16 March 2010

ORAL JUDGMENT OF THE COURT

The appeal is dismissed for want of jurisdiction.

REASONS OF THE COURT

(Given by Arnold J)

[1] Mr David Crequer appeals from a decision of Gendall J denying his application for a writ of habeas corpus on behalf of Mr Peter Petryszick, a remand prisoner.[1] We have heard the appeal as a matter of urgency.

[2] The background is that Mr Petryszick has been charged with an offence against s 306 of the Crimes Act 1961 and has been remanded in custody. Mr Crequer brought habeas corpus proceedings seeking his release, on the ground that the provisions of the Bail Act 2000 had been wrongly applied by the District Court. Gendall J refused to grant an order as he considered that he had no jurisdiction to do so as a result of s 14(2)(b) of the Habeas Corpus Act 2001. By virtue of that section, a Judge dealing with an application for habeas corpus is prohibited from calling into question a ruling as to bail by a court of competent jurisdiction.

[3] Since Gendall J's decision and the filing of this appeal, there has been a further bail hearing in relation to Mr Petryszick, at which he was represented by counsel. That occurred on 12 March 2010. Judge McDonald declined the bail application. There was also an order that Mr Petryszick be detained for 14 days under s 38(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 to enable the preparation of a report concerning his fitness to stand trial.

[4] The argument advanced on appeal is the same as that advanced before Gendall J, namely that the District Court misapplied the Bail Act. We agree with Gendall J that s 14(2)(b) is an insurmountable hurdle to the success of the appeal. This Court discussed this exclusion in *Taylor v Superintendent of the Waikato Bay of Plenty Regional Prison*.[2] That case also involved an application for the release of a person detained on remand. The Court held that s 14(2)(b) was a complete answer to the application and explained that, as a matter of policy, there is no need to resort to habeas corpus in this type of case because, under the Bail Act, there are full rights of appeal in relation to bail decisions.[3] In other words, a person detained as a result of a

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1 *D O Crequer acting on behalf of P M Petryszick v The Prison Manager, Northern Region Corrections Facility* HC Whangarei CIV-2010-488-000134, 10 March 2010.

2 *Taylor v Superintendent of the Waikato Bay of Plenty Regional Prison* [2002] NZAR 425 (CA).

3 At [14].

bail decision does not need to pay in aid habeas corpus – he or she has a right of appeal. Furthermore, judicial review may also be available.

[5] The Court in *Taylor* also made the point that the reference to a court of competent jurisdiction in s 14(2)(b) is a reference to a court which has the power to hear and determine applications for bail. The fact that such a court may have dealt with a particular bail application incorrectly does not mean that it is no longer a court of competent jurisdiction for the purposes of the provision.[4]

[6] Accordingly, we dismiss the appeal for want of jurisdiction.

Solicitors:
Crown Law Office, Wellington for Respondent

[4] At [13].