

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2009-404-003758**

BETWEEN                      GRAHAM ASHLEY ROBERT PALMER  
   Plaintiff  
  
AND                                CUSTODY MANAGER OF MT EDEN  
   PRISON  
   Defendant

Hearing:            25 June 2009

Counsel:           Plaintiff in person  
                         Siobhan M Buckley for defendant

Judgment:        25 June 2009

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**[ORAL] JUDGMENT OF HUGH WILLIAMS J**

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**The application for *habeas corpus* is dismissed**

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[1] On 24 June 2009 the plaintiff, Mr Palmer, issued an originating application for *habeas corpus*.

[2] By reason of the preemptory requirements of s 9 of the Habeas Corpus Act 2001, determination of the *habeas corpus* application has received the required priority and has been dealt with, though postponing other urgent business, on the morning of 25 June.

[3] The position as disclosed by the application is that Mr Palmer is currently in gaol having been convicted in two District Court jury trials.

[4] On the first, he was convicted of indecent assault and was sentenced to eight months imprisonment by Judge McCauslan on 26 May 2009. Mr Palmer has filed an appeal to the Court of Appeal against both conviction and sentence. That occurred on 4 June 2009. As yet, although there are timetabling arrangements in place, there is no indication as to a possible hearing date. That trial lasted 1-1½ days. Notes of evidence were produced as the trial proceeded and presumably the Judge's summing-up was also recorded and should be available together with her remarks on sentencing in relatively short order.

[5] Some delay may, however, occur in readying that appeal for hearing in that one of the grounds on which Mr Palmer relies on the appeal is counsel incompetence. He advised this morning he has given the necessary waiver of privilege, but the Crown has until 23 July 2009 to file any affidavits from counsel who represented Mr Palmer during that trial.

[6] The grounds of appeal in that matter include not just counsel incompetence but an assertion that the trial was a nullity as the District Court Judge failed to recuse herself after dealing with pre-trial matters. Mr Palmer also will take the point that s 30 of the Sentencing Act 2002 was not complied with as counsel acting for him during the trial had, as he puts it, "no more standing than a Duty Solicitor". There are also issues arising on the facts of the matter.

[7] The second sentence Mr Palmer is currently serving is one of 15 months imprisonment imposed on him by Judge Singh on 29 May 2009 following a three week trial alleging GST fraud. Mr Palmer represented himself at that trial because he says he was jointly charged with a company. One of the anomalies of the Legal Services Act is that companies, even small family companies, are ineligible for Legal Aid. Mr Palmer says that the result was that he was forced to defend himself and the company (although whether the two defendants might have been separated may be a matter for further consideration).

[8] Again, the notes of evidence were produced during the course of the trial. Mr Palmer has not yet received the transcript of the Judge's Summing-Up or Sentencing Remarks but presumably they, too, will be available in relatively short order.

[9] Mr Palmer's proposed grounds of appeal in relation to that matter include a challenge to the facts on which it was founded, and an assertion that since the trial fresh evidence, not discoverable pre-trial, has been obtained.

[10] There is also an assertion that the trial was conducted in breach of the rules of natural justice because four defence witnesses had died before the trial began.

[11] Mr Palmer also raises concerns about the form of the Warrant of Commitment following the GST trial. The warrant he produces says that the start date of the sentence was the date of the warrant, 29 May 2001, but also says that the 15 month term imposed was cumulative on the eight month term imposed for the indecent assault matter. That is a quiddity which may need to be resolved on appeal but does not affect the outcome of the *habeas corpus* application since, taking the view most favourable to Mr Palmer, the two sentences run concurrently and both currently remain in force.

[12] Two further matters are raised by Mr Palmer in relation to his appeal and the *habeas corpus* application.

[13] The first is an assertion that the trials were unfair as shortly before they began the “Close Up” programme on Television New Zealand broadcast a programme concerning Mr Palmer and his business activities and named him, he says, as a fraudster and a sex offender. The interview with him which formed part of that broadcast was, Mr Palmer says, conducted in the vision if not the earshot of some of the jurors in the trial. That, too, may be a matter for consideration by the Court of Appeal but does not affect the validity of Mr Palmer’s present incarceration.

[14] The second matter is that Mr Palmer has had a difficult history as far as the authorities and imprisonment is concerned. It is not to the present point to rehearse the rather tortuous background concerning Mr Palmer and previous convictions and imprisonment. But the background is fully set out in the judgment of this Court in *Attorney-General v Palmer: Vexatious Litigant Interim Order* [2005] NZAR 46 although the factual review of the alleged offences, convictions and sentences appears principally in paras [38]-[141] of that judgment and they are omitted from the published report. See also *Attorney-General v Palmer* H C Auckland CIV-2003-404-000588 7 September 2006 which is the final judgment in the Attorney-General’s application to have Mr Palmer declared a vexatious litigant. Notwithstanding that a number of proceedings issued by him over the years were found to be vexatious, the Attorney-General’s application was dismissed on the basis of Mr Palmer’s formal undertaking to the Court.

[15] The relevance of those matters as far as the present application is concerned is that Mr Palmer raises an argument based on s 79 of the Parole Act 2002 to the effect that the lengthy period he served in gaol as a result the matters referred to in the vexatious litigant judgments, means that the sentences of imprisonment he has currently serving should be set aside because he has in effect served the time already imposed on him in relation to those matters. That is a potentially complicated matter but, again, that may be a matter for the Court of Appeal should Mr Palmer wish to raise that issue in that forum.

[16] For present purposes, however, Mr Palmer also advises that he has lodged an application with the Ministry of Justice for compensation in respect of the lengthy period he has spent in prison prior to the present matters. That is under

investigation. It is not a matter, therefore, which can impinge on the issues raised in the *habeas corpus* application.

[17] As discussed with Mr Palmer during the hearing of this matter, the principal problem that faces his application for *habeas corpus* arises out of the terms of s 14 of the Habeas Corpus Act 2001. That reads:

**14. Determination of applications**

- (1) If the defendant fails to establish that the detention of the detained person is lawful, the High Court must grant as a matter of right a writ of habeas corpus ordering the release of the detained person from detention.
- (2) A Judge dealing with an application must enquire into the matters of fact and law claimed to justify the detention and is not confined in that enquiry to the correction of jurisdictional errors; but this subsection does not entitle a Judge to call into question—
  - (a) a conviction of an offence by a court of competent jurisdiction, the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, or a disciplinary officer acting under Part 5 of the Armed Forces Discipline Act 1971; or]
  - (b) a ruling as to bail by a court of competent jurisdiction.
- (3) A Judge must determine an application by—
  - (a) refusing the application for the issue of the writ; or
  - (b) issuing the writ ordering the release from detention of the detained person.

[18] Here, as Ms Buckley submitted on behalf of the Attorney-General, Mr Palmer has been convicted, twice, of offences by Courts of competent jurisdiction and although those convictions are under challenge by way of appeal, at the present time they stand. They raise an insuperable hurdle for Mr Palmer to surmount as far as his *habeas corpus* application is concerned. Therefore, despite the various issues raised by Mr Palmer, as discussed earlier, there can be no basis on which his application for *habeas corpus* can succeed.

[19] It is of note, however, that s 14(2)(b) also says that courts considering *habeas corpus* applications cannot call into question bail rulings by courts of competent jurisdiction.

[20] As mentioned to Mr Palmer in argument, in view of the appeals that he has lodged in respect of the two convictions, it would appear to him to be open to seek bail pending the hearing of his appeals under s 70(1)(2) of the Bail Act 2000. That gives either the Court of Appeal or the Judges who presided at his trials power to grant bail if the statutory grounds are made out. In the circumstances, it may be more realistic for Mr Palmer to apply to the Court of Appeal for bail pending the hearing of his appeals than to two District Court Judges, one of whom Mr Palmer understands may not be readily available at the present time.

[21] It would not be right for this Court to give any opinion as to the likely outcome of any such bail application but, given the relatively short sentences Mr Palmer is now serving, coupled with the parole provisions relating to those sentences, it may be that the Court of Appeal would balance any application for bail against the desirability of urgency being given to the hearing of Mr Palmer's appeals. That, of course, must be a matter for the Court of Appeal or the District Court should Mr Palmer decide to apply for bail under s 70.

[22] In sum, therefore, having regard to the provisions of s 14 of the Habeas Corpus Act, there is no basis to grant Mr Palmer's application for *habeas corpus* given the current validity of the convictions which have led to the sentences he is serving and it must be left to him, should he consider it appropriate, to file a bail application under s 70 of the Bail Act 2000. The *habeas corpus* application is accordingly dismissed.

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**HUGH WILLIAMS J.**

25 June 2009