NOVA SCOTIA COURT OF APPEAL

Citation: ***Finck v. Canada (National Parole Board)***, 2005 NSCA107

Date: 20050719
Docket: CA 179012
Registry: Halifax

Between:

Lawrence Ross Finck

Appellant

v.

National Parole Board of Canada
The Correctional Service of Canada
The Solicitor General for Canada
Warden Allen Alexander and
Attorney General for Nova Scotia

Respondents

Judge(s): MacDonald, C.J.N.S.; Freeman & Hamilton, JJ.A.

Appeal Heard: May 20, 2005, in Halifax, Nova Scotia

Held: Appeal dismissed, as per reasons for judgment of Hamilton, J.A.; MacDonald, C.J.N.S. and Freeman, J.A. concurring

Counsel: Lawrence Ross Finck, self-represented appellant
Scott McCrossin & James Gunvaldsen-Klaassen, for the respondents, National Parole Board of Canada, The Correctional Service of Canada, The Solicitor General for Canada and Warden Allen Alexander

<u>Reasons for judgment</u>:

[1] This appeal is from the April 3, 2002 oral decision of Justice Walter R.E. Goodfellow of the Nova Scotia Supreme Court wherein he dismissed the appellant, Lawrence Finck's, application for *habeas corpus*.

[2] The National Parole Board ("NPB") granted the appellant a statutory release commencing December 1, 2001, in connection with a sentence he was serving. One of the conditions of his statutory release was that he participate in psychological counselling. He failed to participate in psychological counselling despite being given the opportunity to participate and being encouraged to do so. His statutory release was suspended on February 25, 2002 by Warrant of Apprehension and Suspension of Statutory Release.

[3] The appellant applied for *habeas corpus* in connection with this suspension of his statutory release. The motions judge heard the application and dismissed it on April 3, 2002 on the basis the NPB had the authority to impose a condition of psychological counselling on the appellant's statutory release and that his statutory release was properly suspended when he failed to participate.

[4] The appellant commenced this appeal April 24, 2002 but took some time to perfect it.

[5] Shortly after the dismissal of his application for *habeas corpus* the appellant was released. In addition, the warrant suspending his statutory release that was issued on February 25, 2002 subsequently expired on August 1, 2002. The appellant has not been incarcerated for matters relating to the February 25, 2002 suspension of his statutory release, and hence for matters relating to this appeal, for almost three years.

[6] At the beginning of the hearing before this court the appellant indicated he had prepared a factum that was lost but that he did not need it because it dealt with facts and his argument would deal mainly with law. During the hearing he sought to introduce two documents as new evidence, an Order for Production (General) dated May 31, 2004 signed by then Justice Deborah Smith and a statutory release certificate dated November 28, 2001. The Order was in a different proceeding. The

statutory release certificate is identical to the one in the appeal book except that it indicates the appellant refused to sign it. I am satisfied neither is relevant to the issue before the court especially given the mootness of the issue on appeal.

[7] I am satisfied the subject matter of this appeal was rendered moot almost three years ago and should not be dealt with by this court.

[8] The Supreme Court of Canada explained the doctrine of mootness in **Borowski v. Canada** (Attorney General) (1989), 57 D.L.R. (4th) 231 at 239:

> ¶ 15 The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice.

[9] The appellant's application for *habeas corpus* related to his apprehension on February 26, 2002 pursuant to the February 25, 2002 warrant suspending his statutory release. He was released shortly after his application for *habeas corpus* was dismissed. The warrant underlying the suspension of his statutory release expired August 1, 2002. The appellant has not been incarcerated pursuant to the impugned warrant for almost three years. A remedy in the nature of *habeas corpus* has long since been impossible to grant in this matter.

[10] The outcome of the appeal will have no practical effect. There is no live controversy between the parties.

[11] The appellant's argument that there is a second part to his *habeas corpus* application, namely that he is seeking compensation, and that this court should somehow turn his appeal into a claim for compensation and send it to the Federal Court to be heard, is without any basis. There was no second part to the

appellant's application before the motions judge, even if such were possible. No claim for compensation was made in his application.

[12] Accordingly I would dismiss the appeal.

Hamilton, J.A.

Concurred in:

MacDonald, C.J.N.S.

Freeman, J.A.