NOVA SCOTIA COURT OF APPEAL
Citation: ***Blais v. Canada (Attorney General)***, 2012 NSCA 81

Date: 20120807
Docket: CA 373199
Registry: Halifax

Between:

Michel Joseph Blais

Appellant

v.

Attorney General of Canada

Respondent

Judge:	The Honourable Justice Peter M.S. Bryson
Motion Heard:	August 2, 2012, in Halifax, Nova Scotia, In Chambers
Held:	Motion is dismissed without costs
Counsel:	Appellant, in person Sandra Doucette, for the respondent

Decision:

[1] Michel Joseph Blais has appealed the judgment of Justice Cindy A. Bourgeois dated December 18, 2011 in which she declined jurisdiction over the *habeas corpus* pleading filed by Mr. Blais in that court (2011 NSSC 508). The Attorney General of Canada has brought a motion for dismissal of Mr. Blais' appeal. Both the appeal and the Attorney General's motion are scheduled to be heard by a panel of this court on September 26, 2012.

[2] Mr. Blais now brings a *Rowbotham* motion [*R. v. Rowbotham*, 25 O.A.C. 321 (C.A.)] for state funded legal representation with respect to the appeal. Parenthetically, Mr. Blais made a very favourable impression on the court while arguing his own case. He was clear, concise, thoughtful and respectful. He demonstrated a good understanding of the difference between the merits of his appeal and the merits of this motion. Mr. Blais feels strongly about what he characterizes as the mistreatment by prison authorities of inmates with mental issues.

[3] The background to this appeal is described in the decision of Justice Bourgeois:

> [2] Mr. Blais is currently an inmate at the Springhill Penitentiary which I understand is a medium security federal institution. He has brought an application before this court for *habeas corpus* with *certiorari*-in-aid. It appears to have been dated July 30th, 2011 and filed September 2nd, 2011. In a section of the application entitled "Relief Sought", Mr. Blais writes:
>
> > "The applicant requests that the Honourable court order a full complete record of OMS, Offender Management System, including Parole Board of Canada recordings, transcripts and e-mail communications in English of the following hearing dates, 20101109, 20101207 and for Correction Services of Canada, Springhill, Nova Scotia to use all relevant, reliable and persuasive information to release Mr. Blais in accordance with the statutory release date 20110915 to a less restrictive sanction of liberty that is appropriate in the circumstances such as the return to the Moncton community based residential facility to assist with his reintegration back into his community where he has the support of his family and which would enable him to work towards becoming a productive law abiding member of society."

[3] I understand from the material that Mr. Blais has also filed a Notice of Application for judicial review in the Federal Court of Canada. That appears to be dated June 28th, 2011 and filed September 6th, 2011.

[4] Although the relief sought before the Federal Court is worded somewhat differently than the relief sought in this Court, it is clear that both applications centre around a common set of facts and concerns consistently and repeatedly expressed by Mr. Blais.

[5] It would appear that Mr. Blais had been granted day parole after having served federal time, I believe in the Westmorland Institution. He was in the Moncton area where he has family support.

[6] Based on the materials that I have reviewed, Mr. Blais while originally incarcerated, was described in very favourable terms by those in the prison community. He was described as being polite, respectful, a hard worker and a good student. All very good things. And likely those types of attributes contributed to him being granted originally day parole, which I understand was in or around September of 2009.

[7] I also understand that at some point his day parole was suspended, but then reinstated by the National Parole Board. However, on December 7th, 2010 Mr. Blais' day parole was once again revoked by the National Parole Board. Mr. Blais appealed this decision, as he is entitled to do, with the appeal division of the National Parole Board ultimately upholding the revocation on May 27th, 2011.

[8] Mr. Blais takes issue not only with those decisions, but with the information provided by Correction Canada personnel to the Parole Board. He asserts, and he has consistently done so, that the information provided to the Parole Board was incomplete and much of the information was inaccurate or misleading. He has been diligently attempting to obtain full disclosure of documentation he feels would be of assistance in establishing that the decision made by the National Parole Board was unjust.

[9] Today I have to decide whether this court should exercise its jurisdiction to hear Mr. Blais' *habeas corpus* application. It is clear, as acknowledged by counsel for the Attorney General of Canada, that this Court does have jurisdiction. It is further clear that provincial superior courts do have a role, in fact an obligation to diligently guard against the erosion of the *habeas corpus* remedy and in particular its continuing application in the prison context.

[4] Since his appearance before Justice Bourgeois, Mr. Blais has been granted full parole and he presently resides in Moncton, New Brunswick.

[5] Much of Mr. Blais' Notice of Appeal is in fact an argument with respect to the merits of the appeal. However, from the Notice it is clear that Mr. Blais appeals because Justice Bourgeois refused to exercise *habeas corpus* jurisdiction.

[6] After reviewing relevant jurisprudence, Justice Bourgeois concluded:

> [19] I further have reviewed a recent decision of this court in **Wilson v. Canada (Attorney General)**, 2011 NSSC 143 where Justice Wright declined jurisdiction in a *habeas corpus* application brought by a federal inmate, also challenging the validity of a National Parole Board decision in part based upon failure to provide full documentary disclosure. The **Wilson** case and the present one, in my view are virtually identical in terms of the legal issues under review.

[7] In support of his application, Mr. Blais has filed an affidavit in which he deposes that he has no income, no assets and has been refused legal aid. Substantively, he swears:

> 9: **THAT** I believe my case is serious because I have been deprived of my liberty, a violation of my constitutional rights under section 7 of the Charter of Rights and Freedoms; and to ensure that the right to a fair hearing are protected by the provision of council.
>
> 10. **THAT** I do not know how to represent myself in a civil procedure. That suffering from anxiety, the proceeding might be too stressful for me to handle. My education level is: Secondary 12 equivalency.
>
> 11. **THAT** I believe my case is complex due to the litigation requirements of the Nova Scotia Procedures Rules and the relief of the judicial review remedy in the Charter of Rights and Freedoms in section 10(c).

[8] The Attorney General opposes the *Rowbotham* motion and has filed written representations, but no affidavit evidence.

ISSUE

[9] Should the appellant be afforded state funded legal representation?

ANALYSIS

[10] Mr. Blais has filed an eleven page brief in which he cites a number of the leading *Rowbotham* authorities, also relied on by the Attorney General. He argues that the issues on appeal are important to him personally but also of public importance because there are "mental health issues at stake" and this is his "...opportunity to expose TSC (Corrections Canada) abuse of the mentally challenged...".

[11] The Attorney General argues that Mr. Blais has initiated a civil process for which state funded counsel is virtually never available. The Attorney General submits that the public has no significant interest in the outcome of Mr. Blais' appeal. It is clear that this is a civil proceeding – see *Wilson v. Correctional Services of Canada*, 2011 NSCA 116, per Saunders J.A., and in particular paras. 24 to 32.

[12] In her decision of *Bradley v. Canada (Correctional Service)*, 2011 NSSC 463, Justice Bourgeois had to decide whether a federally incarcerated inmate is entitled to state funded counsel to advance a *habeas corpus* application. In *Bradley*, Justice Bourgeois referred to the Saskatchewan Court of Appeal decision of *R. v. Kahnapace*, 2008 SKCA 15:

> **22** This raises the question of whether the order granted by Maher J. is a justifiable extension of the practice in the context of criminal prosecutions or the circumstances of *G.(J.)*. In my respectful view, it is not. I note that since the decision in *G.(J.)* issued, in November, 1999, the right to state funded counsel to protect constitutional rights pursuant to s. 7 of the *Charter*, or any other provision, has not been expanded beyond the narrow context of that case. The residual liberty interest of the respondent at issue in the instant case is indistinct from that at issue in many prison discipline contexts. In no such context have the courts ordered state funded counsel. As the chambers judge pointed out, s. 97(2) of the *Corrections and Conditional Release Regulations* provides for the right to consult and retain counsel in these contexts. This right, however, is quite distinct from the right to be provided with state funded counsel. As the Ontario Court of Appeal pointed out in *Rowbotham, supra*, the right to retain counsel and the right to have counsel provided at the expense of the state are not the same thing. For this reason, the Court in that case noted that s. 10(b) of the *Charter* does not in its

> terms constitutionalize the right of an indigent accused to be provided with funded counsel. See also *R. v. Prosper*, [1994] 3 S.C.R. 236. By the same token, not every infringement of liberty by the state will raise issues of sufficient significance or complexity that the right to a fair hearing will entail a right to state funded counsel.

Also see: *R. v. Blanchard*, 2011 SKCA 60.

[13] Very exceptionally, state-funded counsel has been ordered where a significant public interest was involved (*British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 36).

[14] While Mr. Blais identifies the treatment of inmates by prison authorities as a significant interest in this case, the narrow issue on this appeal is whether Justice Bourgeois was right to decline to exercise *habeas corpus* jurisdiction where a convicted person's residual liberty interest is at stake. That is not a matter that rises to the level of significant public interest. It is an issue that has been addressed by appeal courts as well as the Supreme Court of Canada in previous cases (see for example: *May v. Ferndale Institution*, 2005 SCC 82; *R. v. Graham*, 2011 ONCA 138; *Wilson v. Canada (Attorney General)*, 2011 NSSC 143).

[15] After considering *Kahnapace* and other jurisprudence in *Bradley*, Justice Bourgeois concluded in *Bradley*:

> [11] In reviewing this matter before me today, I am convinced that this matter is of great importance to Mr. Bradley. I am also convinced, as in all cases, that as a litigant before this court, he would be assisted and helped by legal counsel. That however is not the test as to whether or not state-funded counsel should be ordered. <u>There is nothing before the Court in this particular matter, that establishes that the issues involved are those where significant public interests are at stake or the issues involved are sufficiently complex to warrant an order for publically-funded legal representation</u>. [Emphasis added]

[16] That logic applies here. Mr. Blais is on parole and there are no significant personal consequences for him if he is unsuccessful in this appeal. Nor is the nature and extent of *habeas corpus* jurisdiction a matter of public interest in the context of this case. The issues are not complex. Mr. Blais is intelligent and articulate. He is commendably concise in his submissions and demonstrates a

knowledge of the relevant issues and law. Accordingly, the motion is dismissed without costs.

Bryson, J.A.