

SUPREME COURT OF NOVA SCOTIA

Citation: *Coaker v. Nova Scotia (Attorney General)*, 2020 NSSC 252

Date: 20200917

Docket: Hfx 500141

Registry: Halifax

Between:

Matthew Coaker

Applicant

v.

The Attorney General of Nova Scotia

Respondent

DECISION

RE: *HABEAS CORPUS* APPLICATION

Judge: The Honourable Justice Jamie Campbell

Heard: September 8, 2020, in Halifax, Nova Scotia

Counsel: Matthew Coaker, self-represented Applicant
Drew Hampden, for the Respondent

By the Court (orally):

[1] Mathew Coaker has made an application for *habeas corpus*. The notice was filed on August 31, 2020 and in it, Mr. Coaker says that he has been “held in close confinement without review for 50 days illegally”. He alleges that his “residual liberty (is) being severely deprived being subjected to SHU range arbitrarily waiting for a min 30-40-day review depriving procedural fairness and due process”.

[2] Mr. Coaker is placed in the North Intensive Direct Supervision Unit (North 4) of the Central Nova Scotia Correctional Facility. The question is whether his placement in that unit amounts to an unreasonable or illegal deprivation of his residual liberty.

Procedure

[3] The matter was considered in a telephone conference with Justice Arnold on September 1, 2020. Justice Arnold was satisfied that Mr. Coaker had established a *prima facie* case that his residual liberty within the institution had been restricted and set the matter down for hearing. The onus is now on the institution to show that the deprivation of liberty is not unlawful or unreasonable.

North 4 Intensive Direct Supervision Unit

[4] Mr. Coaker has provided evidence about the way that his residual liberties have been restricted by his placement in the North 4 Unit. The Attorney General concedes that Mr. Coaker’s liberties have been restricted because his day room privileges have been reduced from 12 hours a day to 2 to 4 hours per day. That is a more restrictive condition of confinement than that of the general population of the facility.

[5] Concerns have been raised by inmates with respect to the North 4 Unit which was created in July 2020. It is a form of placement that falls short of the institutional definition of “confinement” and is not considered to be close confinement and subjected to the rules that apply to segregation. It was created this summer after the only general population unit in the facility was split into two separate units, with two separate day rooms. That was because of the increase in the number of inmates in the general population.

[6] There were several serious inmate and staff assaults after that. The management of the facility decided that one of those units would become a separate “step down” unit for inmates who showed continued and consistent behavioural issues. Inmates would be placed in that unit after having been unsuccessfully placed with other inmates. Inmates would remain in that unit until their behaviour improved. That unit is known now as the North Intensive Direct Supervision Unit, or North 4.

[7] The purpose of North 4 suggests that it is a disciplinary placement. Inmates do not want to go to North 4 and once there want to get out as soon as they can. It is not close confinement because inmates are permitted a minimum of two hours outside of their cells and have the company of at least one peer during that time. They do not suffer the loss of any other privileges as would be the case in close confinement. For example, they are permitted to play with PlayStation 4 and watch television while outside of their cells and in the dayroom. They are permitted 30-45 minutes outside each day. They are provided with toiletries and the amenities policy that applies to other inmates applies to them. They have the same library privileges as other inmates though library privileges have been generally restricted in response to Covid-19 limitations. They are permitted telephone privileges and video visits the same as other inmates in the facility. They are entitled to access programs available to other inmates, subject once again to the strictures imposed by the institution in response to Covid-19.

[8] An inmate placed in North 4 experiences incarceration the same as any other inmate except for the period in which he can be outside of his cell. Other inmates in the facility are locked down for 90 minutes during lunch, 90 minutes during dinner and overnight from 10pm until 7am. Otherwise they can congregate in the day room. Inmates on North 4 are on a rotational lockdown which means that they are locked in their cells except for 2 hours each day. So, inmates have a good reason to want to get out of North 4.

[9] An inmate is sent to the close confinement unit for a disciplinary infraction. That is for a definite length of time and relates to a specific incident. Once the inmate has served his time in close confinement, he would ordinarily be released into the general population of the facility. It is a blunt disciplinary tool which has been shown to have serious implications for those upon whom it is imposed. Management of the facility must have a way to impose a form of discipline that allows for a closer form of supervision for some inmates. The denial of privileges may help in managing the behaviour of some inmates. Some require a form of

discipline that can direct them toward modifying their behaviour while avoiding segregation.

[10] Inmates are placed in North 4 only if they meet the listed criteria for placement. The inmate must have scored high on an Institutional Security Assessment. That assessment is based on factors that include the number of sentences the person has served, institutional behaviour over the past 5 years, parole violations and the number of *Criminal Code* violations. An inmate may score very high (poorly) on the assessment and still not meet the criteria for placement in North 4. The inmate must have multiple serious disciplinary reports adjudicated recently. The inmate must be known to have participated in violent behaviour or serious threats to staff or have been found with drugs or weapons impacting the safety and security of the institution, staff or inmates. The inmate must be one whom the institution has information or reason to believe poses a serious risk to the safety and security of the institution.

[11] Inmates are not placed on North 4 indefinitely. Placements are reviewed daily by the Institutional Review Board. That board is made up of several managers who regularly consider changes in circumstances that would justify changes in placements. Inmates are entitled to appeal decisions of the Institutional Review Board to the Superintendent and to the Executive Director of Correctional Services. The appeal process is the same as the appeal process that applies to decisions regarding close confinement.

[12] Protective Custody is not an appropriate placement for inmates who meet the criteria for placement in North 4. It may pose risks for them and may pose risks for inmates in protective custody. In the past inmates have been transferred to other institutions as a way of managing behaviour without resort to the imposition of a term of close confinement. It also was not time limited in its effect. Covid-19 has made that option much less workable.

[13] North 4 was created under the express authority of the superintendent of each correctional institution to customize the use of the facility. Section 79 of the *Correctional Services Act* Regulations provides that the superintendent may impose different conditions of confinement for different offenders within the facility. The superintendent may confine offenders in parts of the facility to their sleeping quarters for reasons of safety, security and order in the facility.

[14] Justice Rosinski in *Crawley v. Nova Scotia (Attorney General)*, 2020 NSSC 221, confirmed that there was lawful authority for the placement of an inmate on

North 4. That part of the facility was lawfully designated as a direct supervision unit. Its purpose is to secure the safety and security of the facility by placing inmates there who require direct supervision. Their placement in that part of the facility is based on established criteria and subject to an appeal process.

[15] The question is whether Mr. Coaker's placement in that unit was reasonable.

Assessment of Reasonableness

[16] Mr. Coaker was first admitted during this custody term on July 12, 2017. The list of incidents in which Mr. Coaker was found to have been in breach of the rules of the institution is extensive. During the period from October 16, 2017 to August 14, 2020 there appear to be a total of 28 such incidents. They range failing to stand for inspection to assaulting other inmates and members of staff. The responses have included loss of privileges, confinement to his cell, and segregation.

[17] Mr. Coaker was involved in an assault against another inmate on July 3. He was sent to segregation. On July 16, he was found to have assaulted a member of facility staff. On the same day he was found with contraband which in that case was an improvised weapon in the form of a mug filled with hard material and wrapped in a sheet designed to swing at someone. Again, he was sent to segregation. When he completed his time in segregation, he was sent to the North Nova Scotia Correctional Facility in Pictou. On his arrival he was found to be in possession of contraband and assaulted another inmate. That was on August 14, 2020.

[18] When he got back to the Central Nova Scotia Correctional Facility, he was placed in North 4. His Institutional Risk Assessment was medium bordering on high. It was however within the range that according to the criteria would make him eligible for placement in North 4. On September 3, 2020 he was given a "Letter of Expectation" signed by Stephen Pothier, Assistant Deputy Superintendent CNSCF. That letter told Mr. Coaker that he had been placed on confinement for an incident that took place on August 14, 2020. He was told that the North 4 unit is considered an intensive direct supervision unit aimed at helping inmates that exhibit a pattern of behaviour that is unacceptable and potentially harmful to themselves and others. He was told that his placement in the unit would be discussed weekly at the unit review board so managers could assess his behaviour for future placement in regular units. The placement was noted as being for a minimum of 30 days and a maximum of 60 days. His 30 day review was

scheduled for September 12. Deputy Superintendent Verge of the CNSCF testified that no inmate had yet exceeded 30 days in the unit and based on Mr. Coaker's behaviour so far, his expectation would be that he would be leaving North 4 at the completion of the 30 day period. As of today, September 17, 2020 Mr. Coaker is no longer in North 4.

[19] As noted by my colleague Justice Chipman in *Ryan v. Nova Scotia (Attorney General)*, 2015 NSSC 286, the decisions of prison administrators are afforded considerable deference by the court. That is for good reason. Those administrators must take into account the safety and security of staff, other inmates and the public. They may have special knowledge of the safety concerns involved. They are in a better position to assess and mitigate the risks.

[20] Superior courts have the jurisdiction to review the conditions of a person's incarceration. The writ of *habeas corpus* is not merely a historical concept. It evolves and expands. It was a creature of judicial action and its continuing development depends on the willingness of the judiciary to administer it in a flexible and generous way. That does not mean that it should be used for the challenge and close review of all conditions of confinement including the loss of privileges enjoyed by the general inmate population. If *habeas corpus* is to remain the "palladium of liberty", it should not be used to review the removal of PlayStation 4 privileges.

[21] In this case placement in North 4 is a deprivation of liberty. It is not a deprivation of liberty that equates to placement in a close confinement unit. An inmate retains the privileges of other inmates with the significant exception, of restricted time out of the cell and in the day room. That placement is made by managers based on criteria that are set out and made known. Those criteria are intelligible and internally consistent with the other rules governing the administration of the facility. An inmate's placement is reviewed by the Institutional Review Board and is subject to the same rights of appeal as close confinement. The managers who make the decision regarding placement have expertise in assessing and mitigating risk in the context of the operation of a correctional facility. The level of deference to the decision in question here must take those considerations into account.

[22] Mr. Coaker's placement on North 4 is not unreasonable, especially having regard to the nature of the confinement and the extent of the deprivation of residual liberty. He has shown a pattern of behaviour that justifies the imposition of

disciplinary measures beyond the withdrawal of privileges. He is a general population inmate and cannot be placed in a protective custody unit because of safety concerns for the inmates in that unit. The amount of time that a person can be placed in segregation is properly limited. The North 4 Intensive Direct Supervision Unit is a form of control that is far less restrictive. It allows the facility to attempt to exercise control over Mr. Coaker without subjecting him to segregation and while affording him procedural rights of appeal.

[23] The procedure applied is fair. Inmates who are placed in North 4 meet with the managers of the unit upon their arrival. They are given a briefing on behavioural expectations and guidelines for transitioning to another unit. There is a weekly evaluation of each inmate and an assessment of their progress is made. An inmate must be free of level 3 disciplinary reports in order to transition back. The institutional review board approves when an inmate can be moved back to a regular supervision unit. If there is no consensus on whether the inmate can be reintegrated the superintendent of the facility is called upon to decide on placement.

[24] The North 4 Intensive Direct Supervision Unit is not a form of prison within a prison. It is not segregation, or a form of segregation created to avoid the legal limitations on close confinement. It is not a form of placement that allows the authorities to warehouse troublesome inmates and keep them away from the general population indefinitely. It is a unit created to deal with inmates who have shown ongoing behavioural issues that have to be addressed for the safety and proper management of the institution.

[25] The creation of that unit was reasonable and Mr. Coaker's placement within it was reasonable.

[26] The *habeas corpus* application is denied.

Campbell, J.