SUPREME COURT OF NOVA SCOTIA

Citation: Street v. Springhill Institution, 2013 NSSC 348

Date: 20130905
Docket: SAM. 418715
Registry: Amherst

Between:

Charles James Street

Applicant

v.

Warden (Springhill Institution)

Respondent

Revised Decision: This decision of November 12, 2013 replaces the previously released decision. Corrections have been made.

Judge: The Honourable Justice Michael J. Wood

Heard: September 5, 2013, in Amherst, Nova Scotia

Decision: September 5, 2013 (Orally)

Release of Written Decision: October 25, 2013

Counsel: Charles James Street, self-represented applicant
Melissa A. Grant, for the respondent

By the Court: (Orally)

[1] The applicant, Charles James Street, is a federal inmate, housed at the Springhill Institution in Nova Scotia. He brings this application for *habeas corpus* to challenge the lawfulness of the decision to transfer him from Millhaven Penitentiary in Ontario. Justice Bourgeois of this Court directed that there be an initial hearing on whether the *habeas corpus* jurisdiction had been triggered by a deprivation of Mr. Street's residual liberty as a result of the transfer. If there was, a second hearing would be held to decide if the decision was lawful. Today was the first hearing.

[2] There was affidavit evidence from Mr. Street, as well as Ms. Cairns, who is employed as a parole officer at the Springhill Institution. Both of these individuals were cross-examined.

[3] Following his conviction in August, 2012, Mr. Street was sentenced to three years incarceration. Initially, he was processed at facilities in Ontario and was given a security status of medium. At the same time, a decision was made to transfer him to Springhill Institution, which took place in January, 2013.

[4] On August 20, 2013, this *habeas corpus* proceeding was commenced. The Supreme Court of Canada in *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809, described the required elements for *habeas corpus* at para. 74 and I will just read that paragraph. It says:

> **74** A successful application for *habeas corpus* requires two elements: (1) a deprivation of liberty and (2) that the deprivation be unlawful. The onus of making out a deprivation of liberty rests on the applicant. The onus of establishing the lawfulness of that deprivation rests on the detaining authority.

[5] It is the first requirement that is under consideration in this hearing.

[6] I am not prepared to consider the lawfulness or reasonableness of the transfer decision, only whether it deprived Mr. Street of his residual liberty. It is relatively rare for a *habeas corpus* decision to focus on the deprivation of liberty. If there has been a change in security status or imposition of administrative isolation, the first part of the test is usually conceded and the hearing focuses on the lawfulness of the action.

[7] Here, we are dealing with a placement decision involving an interregional transfer without a change in security classification and Ms. Grant, on behalf of the Attorney General of Canada, argued that such a decision could never attract *habeas corpus* review because of a lack of impact on an inmate's residual liberty.

[8] The only reported decision that either party was aware of that dealt with such a situation was *Bonamy v. Canada (Commissioner of Corrections)* (2000), 198 Sask. R. 252 (Q.B.), a decision of the Saskatchewan Queen's Bench Court, which was issued in September, 2000. In that case, the applicant inmate was transferred from British Columbia to Alberta. As did Mr. Street, the applicant argued that this move restricted his ability to access his home community and family.

[9] After considering the legislative requirements to consider access to family and community in assigning an inmate to a penitentiary, the Court stated at para. 20:

> **20** Section 28(b) of the Act recognizes the following: (a) the supportive role an inmate's family may play in his or her rehabilitation; (b) the potential negative impact on members of an inmate's family if she or he is housed at a location that effectively denies them from liberal, routine access to the inmate; (c) the need to maintain an environment that will foster reconciliation between an inmate and his or her estranged family or friends; (d) the advantage of housing an inmate in the area where he is likely to live upon being released; and (e) that the unwarranted isolation of an inmate from his family and friends may constitute "retribution", an objective inconsistent with the provisions of ss. 718 to 718(2) of the Criminal Code. In my opinion, the placement of the applicant in a facility approximately 2000 kilometres from his home community, without any justification for doing so, results in a confinement of the applicant far more severe than contemplated by the Act. It denied him easy access to his family and friends and to that extent it constitutes a form of isolation that s. 28(b) seeks to avoid. In my view, the isolation impinges upon the applicant's residual liberty within the prison system comparable to that considered in Miller v. The Queen, supra. There, the prisoner was isolated from the company of the general prison population. In the instant case the applicant is isolated from his family and friends by virtue of the substantial travel distance and the obvious resulting costs.

[10] Ms. Grant argued that this decision was wrong and would not be decided in the same way in light of later decisions, including *May v. Ferndale Institution,*

supra, as well as Justice Bourgeois' decision in *Bradley v. Canada (Attorney General),* 2011 NSSC 463. I have reviewed those cases and find no inconsistencies.

[11] In both decisions the issue of infringement of liberty was not disputed and the focus was on lawfulness. That is not the case in this hearing. I believe that in light of the requirement to consider the inmate's connection to the community set out in s. 28 of the *Corrections and Conditional Release Act*, as supported by the Commissioner's Directive #705-7, transfer of an inmate may result in a situation where the Court's *habeas corpus* jurisdiction is triggered, even without an increase in security status.

[12] On this point, I will quote from the Directive and, in particular, Annex F, which is entitled Interregional Movements for Offender Intake Assessments in Interregional Penitentiary Placements. In s-ss. 4, it says:

> 4 The sending Regional Deputy Commissioner or delegate will confirm that:
>
> . . . .
>
> • all of the elements for selection of penitentiary as outlined in section 28 of the CCRA have been considered.
>
> . . . .
>
> (b) accessibility to
>
> (i) the person's home community and family,
>
> (ii) a compatible cultural environment,
>
> (iii) a compatible linguistic environment...

So even the Commissioner's Directive mandates consideration of those factors, which are also found in the *Act*.

[13] The burden is on the applicant, in this case, Mr. Street, to provide evidence to show that his residual liberty interests have been impaired. Aside from the

obvious point that the offence occurred in Ontario and his family resides there, Mr. Street described a family visit to Springhill in August of this year. He spoke about problems that family members had in securing visiting privileges and the short duration of the actual session.

[14] The difficulties described by Mr. Street are no different for any prisoner who is incarcerated in an area outside of their home community. It could apply to situations where family members live in the same province as the institution, depending upon their access to transportation or their family resources.

[15] On the evidence before me on this application, I am not satisfied that Mr. Street has met the burden on him to show a sufficient negative impact different from other prisoners on his residual liberty to justify the granting of *habeas corpus* relief and, as a result, his application is denied.

[16] Hearing no request from the Crown, the application is dismissed without costs.

Wood, J.