SUPREME COURT OF NOVA SCOTIA

Citation: *Gallant v. Springhill Institution*, 2014 NSSC 122

Date: 20140403
Docket: Amherst No. 424630
Registry: Amherst

Between:

Eric Gallant

Applicant

v.

Warden (Springhill Institution) and
The Attorney General of Canada

Respondents

DECISION

Judge: The Honourable Justice E. Van den Eynden

Heard: February 27, 2014, by recorded telephone conference, written submissions filed March 7, 2014

Written Decision: April 3, 2014

Counsel: Eric Gallant, Applicant, self-represented
Susanna Ashley, Solicitor for the Respondents

By the Court:

Introduction

[1] The Applicant Eric Gallant filed a *habeas corpus* application on February 24, 2014. Mr. Gallant's application substantively pertains to parole matters. At the time of filing his application he was awaiting a decision from the Appeal Division of the Parole Board of Canada. I understand that decision is still pending.

[2] The Respondents sought a preliminary determination on jurisdiction. They request this Court decline jurisdiction and dismiss the application. The Respondents argue there is an alternate complete, comprehensive and expert process in place; therefore jurisdiction should be declined. Mr. Gallant opposed the motion and argues this Court has concurrent jurisdiction and should maintain jurisdiction.

[3] The parties submitted written arguments; which I have reviewed. The sole issue before me is whether this Court should accept jurisdiction to hear Mr. Gallant's application.

Decision

[4] For the reasons set out herein, I decline to exercise jurisdiction. The application is dismissed.

Position of Respondents

[5] The Respondents argue this Court should decline jurisdiction for the following reasons:

1. The application relates solely to a decision made by the Parole Board of Canada;
2. Provincial superior courts should decline to hear applications for *habeas corpus* where there is a complete, comprehensive and expert procedure for review of administrative decisions;
3. The ***Corrections and Conditional Release Act,*** *S.C. 1992 c.20* ***("CCRA")*****:**
    a. establishes such a procedure; and
    b. grants exclusive jurisdiction over the review of parole and statutory release decisions to the Appeal Division of the Parole Board of Canada.
4. Mr. Gallant appealed the revocation of his statutory release to the Appeal Division and a decision is pending;
5. Should Mr. Gallant choose to challenge the Appeal Board decision once rendered he should do so by way of Judicial Review to the Federal Court:
6. The statutory scheme under the ***CCRA*** grants exclusive jurisdiction to the Parole Board (see section 107 and section 147 for the appeal process); and
7. Courts have consistently held that the ***CCRA*** framework provides a complete, comprehensive and expert process for the matters raised by Mr. Gallant.

Position of Mr. Gallant

[6] Mr. Gallant argues this Court has jurisdiction. He maintains this is his chosen forum and it would be proper for this Court to retain jurisdiction.

[7] He also refers to provisions of the ***Criminal Code of Canada*** respecting the duty of a trial judge to ensure an unrepresented accused has a fair trial and requests guidance from the Court. In addition, he requests more time to bring an undefined constitutional challenge. These latter two matters raised by Mr. Gallant are not relevant to the preliminary issue before me.

[8] In the recent decision of ***Mission Institution v. Khela***, 2014 SCC 24, the Supreme Court of Canada stated at paragraphs 42 and 55:

> [42] Twenty years after the *Miller* trilogy, in *May*, this Court stressed the importance of having superior courts hear habeas corpus applications. The majority in *May* unambiguously upheld the ratio of *Miller*: "[h]abeas corpus jurisdiction should not be declined merely because of the existence of an alternative remedy" (para. 34). In *May*, the Court established that, in light of the historical purposes of the writ, provincial superior courts should decline jurisdiction to hear habeas corpus applications in only two very limited circumstances:
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> > . . . where (1) a statute such as the *Criminal Code*, R.S.C. 1985 c. C-46, confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be or (2) the legislator has put in place complete, comprehensive and expert procedure for review of an administrative decision. [para. 50]…
>
> [55] This Court has been reluctant to place limits on the avenues through which an individual may apply for the remedy. As I mentioned above, the Court confirmed in *Miller* that habeas corpus will remain available to federal inmates in the superior courts regardless of the existence of other avenues for redress (pp. 640-41). Similarly, Wilson J. stated in *Gamble* that courts have not bound themselves, nor should they do so, to limited

> categories or definitions of review where the review concerns the subject's liberty (pp. 639-40). In *May*, the Court confirmed that there are in fact only two instances in which a provincial superior court should decline to hear a habeas corpus application: (1) where the *Peiroo* exception applies (that is, where the legislature has put in place a complete, comprehensive and expert procedure) (*Peiroo v. Canada (Minister of Employment and Immigration*) (1989), 69 O.R. (2d) 253), and (2) where a statute such as the Criminal Code, R.S.C. 1985, c. C-46, confers jurisdiction on a court of appeal to correct errors of a lower court and release the applicant if need be (*May*, at paras. 44 and 50). …

[9] Courts have consistently upheld the above noted exception to jurisdiction; in particular where the *"legislation has put in place a complete, comprehensive and expert procedure"* such as the ***CCRA*** in parole and statutory release matters. I refer to our Court of Appeal in ***National Parole Board v. Finck*** 2008 NSCA 56 and ***Blais v. Canada (Attorney General)*** 2012 NSCA 109.

[10] The deprivation of liberty Mr. Gallant asserts is a matter to be determined through the complete, comprehensive and expert procedure set out in the ***CCRA*.** In fact, Mr. Gallant availed himself of the process and is awaiting a decision on the issues he brought before this Court**.**

[11] The law is clear. This is one of the limited exceptions in which a provincial superior court should decline jurisdiction. I so decline. Mr. Gallant's application for habeas corpus is dismissed.

Van den Eynden, J.

04/03/14