

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. T.W.O., 2013 NSSC 448

Date: 20130430

Docket: Hfx No. 414252

Registry: Halifax

Between:

T.W.O.

Applicant

v.

Her Majesty the Queen, The Attorney General for the Province of Nova Scotia,
The Superintendent of the Central Nova Scotia Correctional Facility

Respondents

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Restriction on Publication: Pursuant to the *Youth Criminal Justice Act*

Judge: The Honourable Justice John D. Murphy

Heard: April 30, 2013 in Halifax, Nova Scotia

Written Decision: November 13, 2014
{*Oral decision rendered April 30, 2013*}

Subject: *Habeas Corpus*

Summary: T.W.O. applied for *habeas corpus* seeking release from custody following the decision of a correctional facility superintendent to apply s.743.5 of the *Criminal Code* to convert the remaining supervision portion of his youth sentence into an adult sentence of incarceration. While serving the community supervision portion of a custody and supervision order imposed under s.42(2)(n) of the *YCJA*, T.W.O. breached two of the conditions of his community supervision. He was arrested and charged as an adult with two counts of failure to comply with sentence or disposition pursuant to s.137 of the *YCJA*. On the same day after his arrest, the Provincial Director issued a warrant of apprehension and remand for T.W.O. pending review of his youth sentence. A hearing was held before a Youth Court Judge to review the conditions of T.W.O.'s youth sentence and consider whether to substitute a period of custody. The Youth Court varied the conditions of the sentence, imposing three months of house arrest.

After seeking legal advice, T.W.O. pleaded guilty in Provincial Court to the adult charges and was sentenced to 30 days in custody, to be served intermittently on weekends. When T.W.O. arrived to serve his third weekend, he was informed by the superintendent that he would not be released. She indicated that the remaining supervision portion of his youth sentence had been converted into an adult sentence of incarceration in accordance with *s.743.5(1)* of the *Criminal Code*. As a result of the superintendent's decision, T.W.O.'s status changed on March 29, 2013 from being under community supervision until August 14, 2013, with house arrest until May 25th 2013 (youth sentence) and weekend custody until May 4, 2013 (adult sentence), to being committed to incarceration as an adult until August 14, 2013, with earliest release June 23, 2013.

Issues: Should *habeas corpus* be granted?

Result: *Habeas corpus* ordered.
The Court followed its determination in **R v. RMW**, 2008 NSSC 420 that the superintendent does not have jurisdiction to apply *Criminal Code s.743.5(1)* to override the decision of a Youth Court Judge and detain an inmate beyond the terms of a committal order. Subsequent decisions in other jurisdictions and an amendment to the definition of "sentence" in the *Corrections and Conditional Release Act* do not displace the ruling in **RMW**. A lack of communication among police, the Provincial Director, different courts and crown attorneys, and the superintendent resulted in unlawful deprivation of T.W.O.'s liberty when the superintendent invoked *s.743.5 (1)*, despite judges having declined to impose the incarceration which resulted. If an administrative decision maker contemplates detention of an offender beyond the term imposed by the court, directions should be obtained from the court before the person's liberty is curtailed.

Although the police did not have jurisdiction to detain and charge T.W.O. for breaching a condition of community supervision without first advising the Provincial Director of the alleged breaches and obtaining a warrant, the circumstances of arrest are not an additional ground warranting *habeas corpus* in this case. As T.W.O. pled guilty and was convicted of the charges which were the basis of his arrest, availability of remedies such as plea withdrawal or appeal preclude granting *habeas corpus* in a civil application related to an administrative decision.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.