

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 57/2024
[2024] NZSC 97

BETWEEN KYLE JAMES CRAIG
Applicant

AND CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: Applicant in person
W S Taffs for Respondent

Judgment: 13 August 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] On 19 January 2024, Mr Craig was sentenced in the Invercargill District Court to 16 months imprisonment for three breaches of a protection order, imprisonment of one month for possession of cannabis and imprisonment of one month for failing to assist with a computer search by providing a PIN code. All sentences were imposed concurrently and after guilty pleas.

[2] On 14 February 2024, Mr Craig filed an application for a writ of habeas corpus. On 16 February 2024 his application was dismissed by the High Court.¹ Mr Craig's

¹ *Craig v Chief Executive of the Department of Corrections* [2024] NZHC 202 (Radich J) [HC judgment].

appeal against that decision was dismissed by the Court of Appeal on 28 May 2024.² He now seeks leave to appeal to this Court against the Court of Appeal's decision.³

The decisions below

[3] Mr Craig's arguments in respect of his application to the High Court included challenges to the underlying basis for the charges related to the protection order breach and to the underlying documents in the Family Court related to the imposition of the protection orders. He maintained that there was no point in prison, particularly in cases where a prisoner has autism. He was also concerned that he was required to share a cell with another inmate. He submitted that this hindered his preparation for a Family Court case he was involved in.⁴

[4] The High Court accepted that Mr Craig was detained, and that the onus therefore passed to the respondent to establish the lawfulness of the detention. The warrant of commitment for the sentence of imprisonment was in evidence and the High Court held that the statutory basis for it, and the warrant itself, were in order.⁵ This provided a complete answer to the application: under s 14(2)(a) of the Habeas Corpus Act 2001 a Judge is not entitled to call into question a conviction by a court of competent jurisdiction.⁶ The High Court also explained that it was not for the Court to examine conditions of detention when considering an application for habeas corpus.⁷ Nor were there any grounds to consider: the basis on which the protection orders were made, their validity, the basis of the convictions for breach of the orders, or the sentencing decision that followed.⁸

² *Craig v Chief Executive of the Department of Corrections* [2024] NZCA 184 (Collins, Churchman and Osborne JJ) [CA judgment].

³ Mr Craig has previously been refused leave to appeal to this Court directly from the High Court's decision: *Craig v Chief Executive of the Department of Corrections* [2024] NZSC 23.

⁴ HC judgment, above n 1, at [8].

⁵ At [14].

⁶ At [15].

⁷ At [18].

⁸ At [19].

[5] In the Court of Appeal, Mr Craig's arguments were summarised as falling into the following two broad grounds:⁹

- (a) He challenges the legitimacy of the convictions for which he has been imprisoned. He also says that a term of imprisonment lacks merit in his case because he has autism.
- (b) He is also concerned that he is required to share his cell with another inmate. He says this arrangement hinders his ability to prepare for a Family Court case with which he is involved.

[6] The Court of Appeal held that Mr Craig's attempts to challenge the legitimacy of his conviction failed by a very wide margin.¹⁰ The Court said that it was beyond dispute that there was a protection order in place, that Mr Craig breached that order on three occasions and that he pleaded guilty to the charges.¹¹ In addition, his autism was specifically considered by the sentencing Judge.¹² The Court pointed to s 14(2) of the Habeas Corpus Act and rejected Mr Craig's contention that the District Court is not a court of competent jurisdiction.¹³ The Court also said that a writ of habeas corpus is not the appropriate mechanism for challenging the way a lawful sentence of imprisonment is administered.¹⁴

Submissions

[7] Mr Craig adopts the submissions he made in the Courts below.¹⁵

[8] The respondent opposes the application for leave to appeal on the basis that Mr Craig is no longer detained for the purposes of the Habeas Corpus Act. He was released from custody on 25 June 2024, having served half of his sentence. He is subject to both standard and special release conditions until their expiry on 22 August 2024, including a requirement to attend and complete appropriate alcohol and drug counselling. The respondent submits that release conditions are not sufficient to establish detention for the purposes of the Habeas Corpus Act and the special

⁹ CA judgment, above n 2, at [4].

¹⁰ At [15].

¹¹ At [13].

¹² At [14].

¹³ At [10].

¹⁴ At [16].

¹⁵ Mr Craig also filed further reply submissions without leave. These submissions would, however, have made no difference to the result.

conditions impose no further material impairment to Mr Craig's liberty than the standard conditions automatically imposed on a prisoner's release.

[9] It is also submitted by the respondent that Mr Craig is subject to those release conditions because he was sentenced by the District Court (a Court of competent jurisdiction). The validity of a conviction cannot be challenged in habeas corpus proceedings. The same applies conditions of detention and, in any event, Mr Craig is no longer subject to those conditions, having been released from prison.

Our assessment

[10] None of the grounds Mr Craig seeks to argue raises any issue of general or public importance.¹⁶ Nor does anything raised by Mr Craig suggest that the decisions below may have been in error. There is therefore no risk of a miscarriage of justice.¹⁷ In addition, as pointed out by the respondent, Mr Craig is no longer detained. This means that a writ of habeas corpus could not in any event be issued.

Result

[11] The application for leave to appeal is dismissed.¹⁸

Solicitors:

Raymond Donnelly & Co, Crown Solicitor's Office, Christchurch for Respondent

¹⁶ Senior Courts Act 2016, s 74(2)(a).

¹⁷ At s 74(2)(b).

¹⁸ Mr Craig also applied for a number of interim and other orders. Dismissing the application for leave means that these applications are necessarily also dismissed.