

IN THE SUPREME COURT OF NEW ZEALAND

CIV SC 5/2004

AND BETWEEN	BENJAMIN EUGENE MANUEL (ALSO KNOWN AS EUGENE BENJAMIN MANUEL) Applicant
AND	THE SUPERINTENDENT, HAWKES BAY REGIONAL PRISON Respondent

Hearing: 3 August 2004

Coram: Gault J
Blanchard J

Appearances: A J Ellis and G Edgeler for Applicant
S P France for Respondent

Judgment: 3 August 2004

JUDGMENT OF THE COURT

[1] The applicant seeks leave to appeal against the judgment of the Court of Appeal delivered on 15 June 2004 dismissing an appeal from the High Court on an application for a writ of habeas corpus.

[2] The applicant was sentenced to imprisonment for life for murder on 20 July 1984 and was released on parole on 18 January 1993. However, he was the subject of an order for recall (following an interim order) and has remained in prison since 19 March 1996.

[3] Although the Superintendent of the penal institution is the only named respondent, the applicant challenges the underlying decision of the Parole Board on the application for recall. A range of arguments directed to the lawfulness of the

decision were advanced in the High Court and in the Court of Appeal. In its judgment, however, the Court of Appeal determined the matter primarily on the ground that the type of challenge to the underlying order for recall was not appropriate on an application for habeas corpus and should be dealt with by way of judicial review. The Court of Appeal went on, however, to deal with the other grounds and found them lacking in merit in any event.

[4] The written submissions in support of the present application present the following issues:

1. Could the appellant's intended arguments concerning alleged invalidity of the final recall order have been appropriately addressed on an application for habeas corpus?
2. If so, and therefore assuming availability of habeas corpus, was the final order of the Parole Board invalid:
 - (a) because of earlier procedural deficiency namely:
 - (i) ex parte issuance of the interim recall order; or
 - (ii) absence of a formal interim order; or
 - (iii) failure to advise the appellant of his rights at the time he was taken into custody under the interim order?
 - (b) because of a breach of s107L of the Criminal Justice Act 1985?
 - (c) because of the denial of adequate opportunity for obtaining legal advice for the purposes of the Board's hearing?
 - (d) because the final order constituted a disproportionately severe sentence?

[5] In support of the application, with particular reference to issue 2(b), Mr Ellis sought to place at the forefront of his proposed argument a point not previously taken either before the Parole Board or in the proceeding. That was directed to whether the Parole Board met to adjourn the hearing of the application for recall. We are

satisfied that is not an appropriate point to be taken for the first time on a final appeal.

[6] We accept that a point of importance on which the law may benefit from clarification is that relating to the appropriateness of the courts on applications for habeas corpus reviewing underlying decisions on conventional judicial review grounds. However, even if such a course were available, we are satisfied in this case that the grounds of challenge to the underlying decision are not of sufficient arguability to warrant leave for a second appeal. For that reason leave to appeal is not required in the interests of justice, and is refused.

Solicitors:
N B Dunning, Wellington, for Applicant
Crown Law Office, Wellington, for Respondent