

ARTHUR WILLIAM TAYLOR

v

THE QUEEN

Court: Blanchard, Tipping and Wilson JJ

Counsel: Applicant in Person
M E Ball for Crown

Judgment: 26 May 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Taylor seeks leave to appeal directly to this Court from his conviction in the High Court on charges of escaping from custody and kidnapping three prison officers. The charges arose out of an incident which occurred while Mr Taylor was being escorted from the prison in which he was an inmate to a family group conference. He wishes to argue that he was not in lawful custody while out of the prison for that purpose because (as is common ground) the Superintendent of the prison who purported to authorise the outing did not have the requisite delegated authority. Mr Taylor wants to “leap frog” the Court of Appeal because it dismissed

an appeal by his wife on this ground against her conviction on charges arising out of the same incident.¹

[2] The argument that Mr Taylor wishes to advance is hopeless, and cannot possibly succeed. Parliament has foreseen this very type of situation and addressed it by providing in ss 120(2) and 121(4) of the Crimes Act 1961 that custody under an irregular warrant or other irregular process is deemed to be lawful. Moreover, as the Court of Appeal pointed out when dismissing the appeal by Ms Taylor, Mr Taylor's custody was independently validated by s 16(2) of the Penal Institutions Act 1954. That section² provided that legal custody continued outside an institution while an inmate was in the custody of an officer of the institution (as was Mr Taylor) "pursuant to this Act". Whereas Miller J in the High Court held that s 16(2) could not apply because the purpose for which Mr Taylor was in custody during the outing was not validly authorised, the Court of Appeal held, correctly in our view, that the section did apply because Mr Taylor was in the custody of the officers pursuant to the Act.

[3] Mr Taylor also seeks to argue, in the alternative, that the indictment against him did not disclose an offence in alleging that he "being in lawful custody did escape from such custody". There is nothing in this point. Although the indictment may not have followed the precise wording of s 120, it plainly alleged that Mr Taylor had escaped from lawful custody and had thereby committed an offence under that section.

[4] The application therefore does not satisfy the criteria for granting leave to appeal under s 13 of the Supreme Court Act 2003, let alone the more stringent criteria for allowing a direct appeal from the High Court under s 14.

Solicitors:
Crown Law, Wellington

¹ *R v Carolyn Rochelle Taylor* [2007] NZCA 318.

² Now repealed and replaced by s 38(3) of the Corrections Act 2004.