

IN THE SUPREME COURT OF NEW ZEALAND

SC 1/2012
[2012] NZSC 16

BETWEEN

JAY MAUI WALLACE
Applicant

AND

CHIEF EXECUTIVE OF DEPARTMENT
OF CORRECTIONS
Respondent

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Applicant in person
C A Griffin for Crown

Judgment: 21 March 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Wallace has been convicted of offences involving violence. He is serving a sentence of five years and three months imprisonment. He has appealed against his conviction and sentence. His appeal is shortly to be heard by the Court of Appeal. In the meantime, he applied to the High Court for a writ of habeas corpus. The High Court considered that because Mr Wallace was serving a sentence of imprisonment which had been lawfully imposed upon him and was open to challenge only by way of appeal, s 14(2)(a) of the Habeas Corpus Act 2001 precluded the grant of any writ.¹ Mr Wallace appealed against that decision but the Court of Appeal has taken the same view.² That position is undoubtedly correct. Whilst the conviction and sentence stand habeas corpus is not available to challenge the imprisonment.

¹ *Wallace v Chief Executive of Department of Corrections* HC Auckland CIV-2011-404-4235, 19 July 2011.

² *Wallace v Ministry of Justice* [2011] NZCA 678.

[2] The procedural and other matters raised by Mr Wallace in his submissions cannot overcome that fundamental point. The proposed appeal therefore cannot succeed.

Solicitors:
Crown Law Office, Wellington