IN THE SUPREME COURT OF NEW ZEALAND

SC 16/2012
[2012] NZSC 24

BETWEEN	RONALD VAN WAKEREN Applicant
AND	CHIEF EXECUTIVE OF DEPARTMENT OF CORRECTIONS Respondent

Court: Blanchard, William Young and Chambers JJ

Counsel: Applicant in Person
A M Powell for Crown

Judgment: 5 April 2012

JUDGMENT OF THE COURT

Leave to appeal is declined.

REASONS

[1] The applicant seeks to challenge the dismissal, by the Court of Appeal,[1] of an appeal from a judgment of Toogood J dismissing his application for a writ of habeas corpus.[2]

[2] Three proposed grounds of appeal have been advanced.

[3] The first is that of the three Judges who dismissed his appeal, two were High Court Judges who, the applicant infers, had been appointed to sit under s 58A of the Judicature Act 1908 (which deals with criminal appeals) and not s 58B of the same

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1 *Van Wakeren v Chief Executive of the Department of Corrections* [2012] NZCA 22.
2 *Van Wakeren v Chief Executive of the Department of Corrections* HC Auckland CIV-2012-404-208, 26 January 2012.

Act (which addresses civil appeals). He maintains that his appeal was a civil appeal. We doubt whether the factual premise underpinning this contention is correct as it is probable that the High Court Judges were appointed under both ss 58A and 58B. But whether this is so or not is of no moment given s 58G of the Judicature Act.

[4] The second basis for the proposed appeal is that the warrant issued by the Court of Appeal following his earlier sentence appeal did not conform to s 91(2) of the Sentencing Act 2002 which requires that a warrant must state whether or not the offender was legally represented. It is true that this is the effect of s 91(2) of the Sentencing Act and it is also true that the warrant issued by the Court of Appeal did not conform to the section. But this defect in the warrant, which is well capable of correction, does not justify the issue of a writ of habeas corpus as the error does not affect the validity of the conviction, the sentence or the consequent detention.[3]

[5] The third and final proposed ground of appeal involves a challenge to the minimum period of imprisonment fixed by the Court of Appeal on the applicant's sentence appeal.[4] This is a challenge to the substance of the Court of Appeal's decision on the earlier sentence appeal which was the subject of an unsuccessful subsequent application for leave to appeal to this Court.[5] We are satisfied that there is no merit in this argument.

[6] For these reasons leave to appeal must be declined.

Solicitors:
Crown Law Office, Wellington

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3 *R v Governor of Lewes Prison ex parte Doyle* [1917] 2 KB 254 at 266 and 273-274 and J Farbey and RJ Sharpe *The Law of Habeas Corpus* (3rd ed, Oxford University Press, Oxford, 2011) at 50-52.

4 *Van Wakeren v R* [2011] NZCA 503.

5 *Van Wakeren v R* [2011] NZSC 147. An application to recall the refusal by this Court of leave to appeal is being dismissed in a judgment being delivered simultaneously with this judgment, see *Van Wakeren v R* [2012] NZSC 23.