

IN THE SUPREME COURT OF NEW ZEALAND

**SC 105/2010
[2010] NZSC 140**

BETWEEN

PAWEL MARIAN MISIUK
Applicant

AND

THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: Elias CJ, Tipping and McGrath JJ

Counsel: Appellant in Person
J C Pike for Crown

Judgment: 16 November 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This application for habeas corpus is principally based on the failure of the High Court to issue a warrant to detain the applicant under s 44(1) of the Bail Act 2000 after Winkelmann J revoked his bail (in his presence). The Court of Appeal was satisfied that the deficiency had been overtaken by successive subsequent warrants issued by the District Court. It rejected arguments that the whole process was tainted. The Court declined to go into the effect of the original error concluding that it had to address the lawfulness of detention at the time of the Court's hearing.

[2] The Court of Appeal's approach, which focused on the time that the application was heard, was correct. The writ can only issue if, at the time of its issue, the detention is unlawful. We are satisfied that at that time the applicant was

validly detained. Although there are other complaints by the applicant concerning the process, we are satisfied that none of them alters the validity of his detention.

[3] The application for leave to appeal is refused as the appeal has no prospect of success.

Solicitors:
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