

1965
*March 15
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ROBERT TERRY MORRISON APPLICANT;

AND

HER MAJESTY THE QUEEN RESPONDENT.

WRIT OF HABEAS CORPUS

Criminal law—Robbery—Plea of guilty—Habeas corpus—Warrant of committal.

The applicant pleaded guilty to a charge of robbery. Some three years later he applied to the Court of Appeal for an extension of time for leave to appeal in writing against his conviction, and when this application was refused he applied again to the Court of Appeal for an extension of time for leave to appeal in writing against his sentence. That application was also refused. The grounds brought forward by the applicant were that he had been improperly induced by fraud and threats to elect trial by the Magistrate and to plead guilty. He then applied to this Court for a writ of habeas corpus.

Held: The application should be dismissed.

The writ of habeas corpus could not be granted as the warrant of committal showed that the applicant was confined in execution of a legal sentence, imposed by a Court having jurisdiction, after conviction and that the sentence had not expired.

Even if he had sought leave to appeal to this Court, this relief could not have been granted. This Court has no jurisdiction as regards a sentence; and as regards the conviction there was no dissenting judgment in the Court of Appeal and his grounds before that Court did not include any ground of law in the strict sense.

As no relief could be afforded to him by this Court nothing could have been gained by adjourning the matter to enable him to make the necessary arrangements to be brought before this Court as he had requested in a letter addressed to the Registrar.

*PRESENT: Cartwright, Judson, Ritchie, Hall and Spence JJ.

Droit criminel—Vol—Plaidoirie de culpabilité—Habeas corpus—Mandat de dépôt.

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Le requérant a plaidé coupable à une accusation de vol. Quelques trois ans plus tard il demanda à la Cour d'Appel une prorogation du délai pour obtenir permission d'appeler par écrit à l'encontre du verdict de culpabilité, et lorsque cette demande fut refusée il demanda à la Cour d'Appel une prorogation du délai pour obtenir une permission d'appeler par écrit à l'encontre de sa sentence. Cette demande fut aussi refusée. Les motifs d'appel soulevés par le requérant étaient à l'effet qu'il avait été improprement induit par fraude et menaces à choisir un procès devant le Magistrat et à plaider coupable. Il demanda alors à cette Cour l'émission d'un bref d'habeas corpus.

Arrêt: Cette demande doit être rejetée.

Le bref d'habeas corpus ne peut pas être accordé vu que le mandat de dépôt démontre que le requérant était détenu en exécution d'une sentence légale, imposée par une Cour ayant juridiction, après une déclaration de culpabilité et que la sentence n'était pas expirée.

Même s'il avait demandé permission d'appeler à cette Cour, ce recours n'aurait pas pu lui être accordé. Cette Cour n'a pas juridiction relativement à une sentence; et quant à la déclaration de culpabilité le jugement de la Cour d'Appel ne comportait aucune dissidence et ses motifs d'appel devant elle ne comprenaient aucun motif de droit dans le sens strict.

Puisque aucun recours ne pouvait lui être accordé par cette Cour, il n'y avait pas lieu d'ajourner la cause pour lui permettre de conclure les arrangements nécessaires pour être amené devant cette Cour ainsi qu'il l'avait demandé dans une lettre adressée au Registraire.

REQUÊTE pour obtenir un bref d'habeas corpus déferée à la Cour par le Juge en chambre. Requête rejetée.

APPLICATION for a writ of habeas corpus referred to the Court by the Rota Judge. Application dismissed.

No one appearing for the applicant.

C. M. Powell, for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—By notice in writing, dated February 5, 1965, Robert Terry Morrison, hereinafter referred to as 'the applicant', applied to this Court for a writ of habeas corpus and certiorari. The application was referred to the Court by the Rota Judge.

It appears from the certified copy of the warrant of committal which accompanied the application that the

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applicant was convicted in the County of York before the late Magistrate F. W. Bartrem on February 17, 1961, upon a charge of robbery and that on February 27, 1961, he was sentenced to be imprisoned in the penitentiary for the term of fifteen years. Pursuant to that warrant of committal he is now confined in the penitentiary in British Columbia.

At the request of the Court counsel for the Attorney General for Ontario has furnished us with a copy of the record of the proceedings in regard to the above charge in the Court of Appeal for Ontario.

From this it appears that the applicant pleaded guilty to the charge of robbery, that in August 1964 he applied to the Court of Appeal for Ontario for an extension of time for leave to appeal in writing against his conviction, that on October 20, 1964, that application was refused, that thereafter, in November 1964, he applied to the Court of Appeal for Ontario for an extension of time for leave to appeal in writing against his sentence and that on December 1, 1964, that application was refused.

The grounds put forward by the applicant in writing in the Court of Appeal were that he was improperly induced by fraud and threats to elect trial by the Magistrate and to plead guilty.

It is clear from the record that a writ of habeas corpus cannot be granted as the warrant of committal shews that the applicant is confined in execution of a legal sentence, imposed by a court having jurisdiction, after conviction for the offence of robbery and that the sentence has not expired.

Even if the applicant had sought leave to appeal to this Court from either of the orders of the Court of Appeal it is clear that no relief could have been granted to him. The jurisdiction of this Court in criminal matters is strictly limited. As regards the sentence this Court has no jurisdiction; as regards the conviction there was no dissenting judgment in the Court of Appeal and the grounds on which in that Court the applicant sought to question his conviction did not include any ground of law in the strict sense. In such circumstances this Court has no jurisdiction. Mention has been made in these reasons only of the conviction on the charge of robbery; the applicant at the same time as he pleaded guilty to that charge also pleaded guilty

to other charges but the sentences imposed in regard thereto were made concurrent with that on the charge of robbery.

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By a letter addressed to the Registrar of the Court the applicant stated that he wished to appear before the Court in person on this application. As the material, including the statements of the applicant, makes it clear that no relief could be afforded to him by this Court nothing would be gained by adjourning the matter to enable him to make the necessary arrangements to be brought before the Court.

The application for a writ of habeas corpus and certiorari is dismissed.

Application dismissed.
