

1965

*Dec. 14, 15
Dec. 20

MICHAEL JOHN TOKARAPPELLANT;

AND

HER MAJESTY THE QUEENRESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Criminal law—Appeals—Habeas corpus—Leave to appeal—Criminal Code, 1953-54 (Can.), c. 51, ss. 597(1)(b), 691(2)—Supreme Court Act, R.S.C. 1952, c. 259, s. 41(3).

The appellant was found guilty of breaking and entering, and his appeal was dismissed by the Court of Appeal. His subsequent application for a writ of habeas corpus was dismissed, and an appeal from that dismissal

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

¹ [1948] S.C.R. 46, 7 Fox Pat. C. 183, 7 C.P.R. 58, 2 D.L.R. 561.

was rejected by the Court of Appeal. He appealed to this Court from that judgment and also applied for leave to appeal to this Court.

Held: Both the appeal and the application for leave to appeal should be dismissed.

The appellant is confined in a penitentiary in consequence of his conviction and sentence by a Court of competent jurisdiction. The writ was therefore properly refused.

Subsection 3 of s. 41 of the *Supreme Court Act* precludes the granting of leave to appeal to this Court under that Act.

There was no question of law raised by the appellant which would warrant the granting of leave to appeal under s. 597(1)(b) of the *Criminal Code*.

There was no other remedy which the appellant was entitled to seek in this Court.

Droit criminel—Appels—Habeas corpus—Demande pour permission d'appeler—Code criminel, 1953-54 (Can.), c. 51, arts. 597(1)(b), 691(2)—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 41(3).

L'appelant fut trouvé coupable d'introduction par effraction et son appel fut rejeté par la Cour d'Appel. Sa demande subséquente pour un bref d'habeas corpus fut rejetée et ce jugement fut confirmé par la Cour d'Appel. Il en appela devant cette Cour de ce jugement et en plus produisit une demande pour permission d'appeler devant cette Cour.

Arrêt: L'appel et la demande pour permission d'appeler doivent tous deux être rejetés.

L'appelant est emprisonné à la suite d'une déclaration de culpabilité et d'une sentence venant d'une Cour de juridiction compétente. Le bref a été en conséquence proprement refusé.

Le paragraphe 3 de l'art. 41 de la *Loi sur la Cour suprême* rend impossible l'octroi de la permission d'appeler en vertu de ce statut.

L'appelant n'a soulevé aucune question de droit permettant de lui accorder la permission d'appeler sous le régime de l'art. 597(1)(b) du *Code criminel*.

L'appelant n'a droit à aucun autre recours devant cette Cour.

APPEL d'un jugement de la Cour d'Appel de la Saskatchewan, confirmant un jugement du Juge en chef Bence qui avait rejeté une demande pour un bref d'habeas corpus. Appel rejeté.

APPEAL from a judgment of the Court of Appeal for Saskatchewan, affirming a judgment of Chief Justice Bence dismissing an application for a writ of habeas corpus. Appeal dismissed.

No one appearing for the appellant.

S. Kujawa, for the respondent.

The judgment of the Court was delivered by

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MARTLAND J.:—This is an appeal from the judgment of the Court of Appeal for Saskatchewan, which dismissed an appeal by the appellant, based upon s. 691(2) of the *Criminal Code*, from the dismissal by Chief Justice Bence of the appellant's application for a writ of habeas corpus ad subjiciendum.

I have considered all of the submissions made by the appellant, and in my opinion this appeal fails. The appellant is confined in a penitentiary in consequence of his conviction and sentence by a court of competent jurisdiction, and I think the learned Chief Justice was right in refusing to grant the writ.

The appellant further requests leave to appeal to this Court under s. 41 of the *Supreme Court Act*. Subsection (3) of that section precludes the granting of such leave.

There is no question of law raised by the appellant which would warrant the granting of leave to appeal under s. 597(1)(b) of the *Criminal Code*.

Other than the foregoing, there is no remedy which the appellant is entitled to seek in this Court.

Appeal dismissed; leave to appeal refused.

Solicitor for the respondent: The Attorney General for Saskatchewan.
