

1963

*Oct. 28
Nov. 20

IN re RICHARD GEORGE DARBY

APPLICATION FOR WRIT OF HABEAS CORPUS

Criminal law—Habeas corpus—Theft from mail and possession—Conviction and sentence—Whether writ available.

The applicant was tried in the Supreme Court of British Columbia before a judge and a jury on two counts of theft from the mail and two counts of possession. He was convicted on the four counts and was sentenced to the penitentiary. He applied to this Court for a writ of *habeas corpus*.

Held: The application should be dismissed.

The applicant was confined pursuant to convictions made and sentences imposed by a Court of competent criminal jurisdiction. The certificate of conviction was valid on its face. In these circumstances no relief could be afforded by way of *habeas corpus*. *Goldhar v. The Queen*, [1960] S.C.R. 431, applied.

Application for a writ of *habeas corpus* referred to the Court by Spence J. Application refused.

No one appearing for the applicant.

W. G. Burke-Robertson, Q.C., contra.

*PRESENT: Cartwright, Fauteux, Abbott, Ritchie and Hall JJ.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an application for a writ of *habeas corpus ad subjiciendum*, originally made before Spence J. and referred by him to the Court pursuant to Rule 72. The application is made in writing and the applicant did not appear and was not represented by counsel.

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It appears from the certificate of sentence that the applicant was tried in the Supreme Court of British Columbia before Hutcheson J. and a jury on the following counts:

- (1) Theft of money from mail.
- (2) Theft of watch from mail.
- (3) Possession of money stolen from mail.
- (4) Possession of watch stolen from mail.

that he was convicted on all four counts and, on February 1, 1963, was sentenced on each of counts (1) and (2) to four years imprisonment in the penitentiary and on each of counts (3) and (4) to two years imprisonment in the penitentiary, the four sentences to run concurrently.

It appears therefore that the applicant is confined pursuant to convictions made and sentences imposed by a Court of competent criminal jurisdiction. The certificate of conviction is valid on its face. The reasons for judgment delivered in this Court in *Goldhar v. The Queen*¹ and the authorities therein discussed, make it clear that in these circumstances no relief can be afforded to the applicant by way of *habeas corpus*.

It follows that the application for a writ of *habeas corpus* should be dismissed and I would so order.

Application dismissed.

¹ [1960] S.C.R. 431, 33 C.R. 71, 126 C.C.C. 337, 25 D.L.R. (2d) 401.