

In the High Court of Fiji at Suva
Civil Jurisdiction
HBM Civil Action No. 131 of 2016
Josefa Soqulu Nata
Applicant
And
Commissioner of the Fiji Corrections Service
First Respondent
And
Attorney General of Fiji
Second Respondent

COUNSEL: Applicant in person
Ms R. Panjivan for the respondents
Date of hearing : 14th October, 2016
Date of Judgment: 27th January, 2017

Judgment

1. The applicant by his ex parte notice of motion of 13 September, 2016, moves for a writ of habeas corpus for release from the Suva Corrections Centre. The applicant complains that he was re-arrested and unlawfully detained "*having being fully discharged after servicing a sentence of life imprisonment on one count of treason*".
The affidavit in support
2. In his affidavit in support, the applicant states that on 23rd June, 2003, he was sentenced to life imprisonment with a fixed minimum term of seven years imprisonment. The Court of Appeal dismissed his appeal against conviction, but allowed his appeal against sentence. The fixed minimum period of seven years was quashed and a "*recommended*" minimum period of seven years was substituted. The decision of the Court of Appeal was affirmed by the Supreme Court.
3. On 8 January, 2013, he was discharged by the Commissioner of Corrections. He served a total of 13 years and 7 months until his release, the minimum seven years recommended by Court and the 10 years regarded as life sentence.

4. The affidavit continues to state that on 7 March, 2013, he was re-arrested and imprisoned. The Commissioner informed him that after he had been released, he was summoned by the Attorney General and as a result of their meeting, he was taken back to prison.
5. He believes that his re-arrest and unlawful detention was improper and a violation of his personal right to liberty under Article 9 of the Constitution of 2013. The Commissioner of Corrections did not have the lawful authority to put him back in prison. His efforts to obtain an official explanation for his continued imprisonment have been futile.
6. He made an application to the Commissioner of Corrections for release under the Compulsory Supervision Order of section 65 of the Fiji Prison Act, (Cap 86) and the Prerogative of Mercy Commission, (PMC). The PMC had not met since 2011.
7. He concludes that his imprisonment is unlawful, discriminatory and against his right to equality before the law under Articles 16 and 26 (1), (2), (3) and 4 of the Constitution.
8. The Deputy Commissioner of the Fiji Corrections Service, in his affidavit in response states that the applicant is serving a life sentence for the act of treason. The Commissioner of Corrections did not have the authority to sanction the release of the applicant under the Constitution, the Fiji Corrections Act, 2006, and the Corrections Regulations of 2011. Hence the applicant was taken back to prison on 7th March 2013. His application is misconceived.
9. The applicant in his affidavit in reply reiterates the assertion in his affidavit in support that the Commissioner said that he had the power to release him and he was fully discharged.

The determination

10. The question for determination in this application is whether the applicant is being unlawfully detained.

11. The applicant, in his written submissions has cited the following useful authorities on the scope of the writ of habeas corpus.

12. **The Supreme Court Practice 1999**, (the White Book) at para 54/1/2:
The writ of habeas corpus ad subjiciendum (commonly known as habeas corpus) remains of the highest constitutional importance, for by it the liberty of the subject is vindicated and his release from any manner of unjustifiable detention assured.

13. **Halsburys Laws of England** (4th ed Reissue Vol 1 (1), para 207 states:
The writ of habeas corpus ad subjiciendum...is a prerogative process of securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or private custody. It is a prerogative writ by which the Sovereign has a right to inquire into the causes for which any of her subjects are deprived of their liberty. By it the High Court and the judges of that court, at the instance of the subject aggrieved, command the production of that subject, and enquire into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released.

14. In **R v Secretary of the State for the Home Department Ex p Cheblak**, (1991) 2 All ER 319 at 322 Lord Donaldson MR said:
A writ of habeas corpus will issue where someone is detained without any authority or the purported authority is beyond the powers of the person authorizing the detention and so is unlawful.

15. In **Railumu v Commander, Republic of Military Forces**, [2006] FJHC 7 (ABU 0066) as cited by Ms Panjivan, counsel for the respondents the FCA stated the “*principal objective of a writ of is to secure release of the applicant from unlawful or unjustifiable detention*”.

16. It is clear that the writ lies for the release of a party from unlawful or unjustifiable detention.

17. In the present case, the applicant has been convicted of the offence of treason under section 55 of the Penal Code and sentenced to life imprisonment. As Ms Panjivan pointed out, the applicant continues to be detained under his life sentence. His detention is lawful. Accordingly, a writ of habeas corpus cannot lie.
18. The applicant's contentions that he was fully discharged and re-arrested for the reason alleged are unsubstantiated.
19. Both parties in their written submissions have cited section 48 of the Corrections Services Act, 2006. This reads :
- Discharge of prisoner*
48. (1) *Every officer in charge shall be responsible for ensuring that a prisoner is discharged.*
- a) At the end of their effective sentence.*
- b) In accordance with the order of any court.*
- c) Into the custody of any person having lawful authority over the prisoner in accordance with a law applying in Fiji; and*
- d) In accordance with any decision made by a competent authority authorizing a prisoner's release on parole.*
20. This section provides that the Commissioner has power to discharge a prisoner in four situations.
21. The case before me falls into the first situation where a prisoner may be discharged at the end of his "effective sentence", defined as "the term of imprisonment that a prisoner is to serve".
22. The applicant stresses that he has served more than the period recommended by the Court of Appeal.
23. The answer to that contention is contained in the extracts from the following judgments referred to by the applicant, in his written submissions.

24. Madigan J in *Silatolu v The State*, (HAM 163 of 2014) said:

...it is not within the jurisdiction of the court to interfere with the Commissioner of Prison's role in determining when the convict is to be released, having served now his minimum term.

25. The Supreme Court in *Munesh Chand v The State*, (CAV 003/2012) declared that the court cannot interfere with the opinion of the Prison authorities.

26. The application fails.

27. Orders

- a) I decline the application for the writ of habeas corpus.
- b) I make no order as to costs.



A.L.B. Brito-Mutunayagam

**A.L.B. Brito-Mutunayagam
JUDGE**

27th January, 2017