TOADA -v- CONTROLLER OF PRISONS

High Court of Solomon Islands
(Muria ACJ)
Civil Case No. 168 of 1992
Hearing: 9 June 1992
Judgment: 11 June 1992

A. Radclyffe for Applicant
C. Ashley for the Respondent

MURIA ACJ: The Applicant applies for a Writ of habeas corpus ad subjiciendum in this case under Order 61 Rule 9 of the High Court (Civil Procedure) Rules of 1964.

The facts are not in dispute and are straight forward. The Applicant was convicted by the High Court in Buala on 8 May 1990 and was sentenced to a total of 3 years imprisonment for the following offences:

"Criminal Case No. 20/89	*Count 1*	*18 months*
	Count 2	*18 months*
	Sentences are concurrent.	
Criminal Case No. 21/89	*Count 1*	*18 months*
	Count 2	*18 months*
	Sentences are concurrent but consecutive to sentence in Criminal Case No. 20/89."	

For some reasons, only the Warrant of Commitment for Criminal No. 20 was executed and the Applicant was taken into prison. The Warrant of Commitment for Criminal Case No. 21 was not executed. As a result the Applicant had served his sentence for the offences in Criminal Case No. 20 and with remission he was released on 8 May 1991.

Upon discovery that the Warrant of Commitment also signed by the Chief Justice in Buala on 8 May 1990 had not been executed the Applicant was re-arrested on 25

January 1992 at his home and was taken to Prison to serve his sentence for Criminal Case No. 21.

The Applicant now asks this Court to release him on the ground that his detention now is illegal.

The issue therefore is whether his present detention in Prison is unlawful or not.

Mr Radclyffe, on behalf of the Applicant relied on section 24(5) of the Penal Code and argued that the Applicant's sentence was deemed to commence on 8 May 1990 and with full remission the Applicant's sentence on both cases would have been served by 8 May 1992. Thus Mr Radclyffe submitted that any detention of the Applicant beyond 8 May 1992 would therefore be illegal. Section 24(5) provides that:

> *"A Warrant under the hand of the Judge or Magistrate by whom any person is sentenced to imprisonment, ordering that the sentence be carried out in any prison within Solomon Islands, shall be issued by the sentencing Judge or Magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant. Subject to the provisions of this section every sentence shall be deemed to commence from and to include the whole of the day on which it was pronounced except where otherwise provided in this Code or otherwise ordered by the Court."*

It can be seen from this provision that the warrant signed by the Chief Justice on 8 May 1990 in cases No. 20 and No. 21 are "***full authority to ..... effect the sentence described in such warrant***". The provision also makes it clear that the sentence imposed in this case by the Court was deemed to commence from the day on which it was pronounced which is 8 May 1990 **except where otherwise ordered by the Court**.

It must be noted that the total sentence in Criminal Case No. 20 of 18 months imprisonment pronounced on 8 May 1990 commenced on that day. However the total sentence of 18 months imprisonment in Criminal Case No. 21 was not to commence on 8 May 1990 but as "***ordered by the Court***". The High Court ordered that the sentence in Criminal Case No. 21 was to be served consecutive to the sentence in Criminal Case No. 20. In other words the sentence of 18 months in Criminal Case No. 21 was to commence at the conclusion of the sentence in Criminal Case No. 20.

As it happened in the present case, the Applicant was released on 8 May 1991 at the conclusion of his sentence in Criminal Case No. 20. The Warrant of his commitment which ordered the Applicant to serve his sentence in Criminal Case No. 21 following the

conclusion of his sentence in Criminal Case No. 20 had not been effected. That warrant is full authority for carrying into effect the sentence described in the Warrant. That unexecuted warrant is in my view still effective and must be executed to give effect to the order of the Court.

Mr Radclyffe's argument that the Applicant's sentence of 3 years would have him released on 8 May 1992 and any further detention beyond that date would be illegal presupposes that the Applicant had served his sentence in Criminal Case No. 21 following the completion of his sentence in Criminal Case No. 20. But as the Applicant was released on 8 May 1991 after he served his sentence in Criminal Case No. 20 it cannot in my judgement be correct to say that the Applicant's release date would be 8 May 1992 as he did not commence his sentence in Criminal Case No. 21 as ordered by the Court until 25 January 1992.

The effect of the Applicant's release is that his sentence in the second case remained in abeyance until he was re-arrested and taken into prison to commence serving his sentence in respect of Criminal Case No. 21. It cannot be said that the period which the Applicant spent outside of prison following his release after serving his sentence in Criminal Case No. 20 is to be taken into account in determining the length of sentence to be served in Criminal Case No. 21. The 18 months imprisonment sentence in Criminal Case No. 21 must therefore start to run as from 25 January 1992 and any computation of remission (if any) must be on the actual term the applicant now serves.

Thus I find the detention of the Applicant to serve his sentence in Criminal Case No. 21 is done under lawful order of the Court and therefore legal. Section 31(5) of the Criminal Procedure Code only applies to where a person is illegally or improperly detained which is not the case here.

I have some sympathy for the Applicant as to the position he now finds himself in. But any administrative mistake (if there was any) cannot take away this Court's inherent powers to ensure that its orders are complied with.

The application is refused.

(G.J.B. Muria)
ACTING CHIEF JUSTICE