Federal Court  Cour fédérale

Date: 20170908

Docket: T-645-17

Citation: 2017 FC 818

Ottawa, Ontario, September 8, 2017

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

STEPHEN POLNAC

Applicant

and

REGINA

Respondent

JUDGMENT AND REASONS

[1] The Attorney General of Canada [AGC] has moved in writing on behalf of the Respondent "Regina" [the Crown] for an order pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106, striking out the Applicant's Notice of *Habeas Corpus* [the Application] without leave to amend and summarily dismissing the proceeding with costs. The relief is requested on the grounds that the Application is outside the jurisdiction of the Federal Court and therefore discloses no reasonable cause of action.

I. Background

[2] In support of the motion, the Crown relies on the affidavit of Ms. Laura Oremek, a paralegal with the Public Prosecution Service of Canada. The following facts are not in dispute.

[3] The Applicant was arrested on or about September 1, 2016 in Vancouver, British Columbia by members of the Canada Border Service Agency [CBSA] for being inadmissible to Canada. The Applicant was subsequently detained at the Fraser Regional Correctional Centre [FRCC].

[4] On September 6, 2016, the Applicant was arrested at the FRCC and charged with two offences under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], namely: (a) returning to Canada without Ministerial authorization contrary to subsection 52(1) of IRPA (Count 1); and (b) failing to appear for an examination to determine whether the Applicant was authorized to enter Canada contrary to subsection 18(1) of IRPA (Count 2).

[5] On September 20, 2016, Mr. Justice Gove of the British Columbia Provincial Court [BCPC] entered pleas of Not Guilty to the Offences on behalf of the Applicant and denied bail.

[6] Two days of preliminary inquiry were heard on October 31, 2016 and November 7, 2016.

[7] By letter dated August 2, 2017, the Respondent's counsel wrote to the Court to clarify that the Crown directed a stay of proceedings on Count 2; however, the criminal prosecution in regard to Count 1 is ongoing and a trial is scheduled to proceed in September 2017.

II. Application for Writ of *Habeas Corpus*

[8] The Applicant, who is self-represented, commenced the underlying proceeding by way of Notice of Application on May 1, 2017. The Applicant seeks a Writ of *Habeas Corpus* pursuant to section 10 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, "to address several violations of the principles of fundamental justice through abuse of process issues and rights violations that have arisen as a direct result from Provincial Court File No. 23371-1…"

[9] The Applicant alleges at paragraphs 1 to 3 of the Application that the federal prosecutor failed to ensure that the Applicant was brought before a judge within 24 hours as required by section 503 of the *Criminal Code*, RSC, 1985, c C-46, that she withheld full disclosure thereby violating the Applicant's right to make full answer and defense, and that she denied the Applicant's right to a fair and meaningful hearing by proceeding in a court that does not have jurisdiction to release the Applicant. Paragraphs 4 to 10 set out a litany of alleged errors of law and violations of the Applicant's rights committed by the Provincial Court.

[10] By way of relief, the Applicant seeks an order transferring his file before the BCPC to the Federal Court, an order removing the "immigration hold" placed on the Applicant, an order releasing the Applicant from custody and production of BCPC court transcripts.

III. Motion to strike

[11] On June 20, 2017, the Crown moved to strike the Application pursuant to Rule 221(1)(a) of the *Federal Courts Rules* on the basis that it discloses no reasonable cause of action as the relief requested is outside the jurisdiction of the Federal Court.

[12] Rule 221(1), which is contained in Part 4 of the *Federal Courts Rules*, provides that a statement of claim may be struck out on various grounds. There is no corresponding rule in Part 5 of the *Rules*, which governs proceedings brought by way of application, for striking out a notice of application. This characteristic was discussed by Mr. Justice Barry Strayer of the Federal Court of Appeal in the decision in *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA), [*David Bull*] at pages 596 and 597:

> [...] the direct and proper way to contest an originating notice of motion which the respondent thinks to be without merit is to appear and argue at the hearing of the motion itself. [...]

[13] Justice Strayer nonetheless concluded that this Court had jurisdiction, in very exceptional cases, to strike a notice of application, at page 600:

> [...] This is not to say that there is no jurisdiction in this Court either inherent or through Rule 5 [now Rule 4] by analogy to other rules, to dismiss in summary manner a notice of motion which is so clearly improper as to be bereft of any possibility of success. Such cases must be very exceptional and cannot include cases such as the present where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion.

IV. Analysis

[14] In my view, this case falls squarely within the *David Bull* exception on the basis that it is plain and obvious that the Federal Court does not have jurisdiction to entertain the Applicant's Application, let alone to grant the relief requested.

[15] The Federal Court is a court of statutory jurisdiction. The tri-partite test for Federal Court jurisdiction was set out in *ITO International Terminal Operators Ltd v Miida Electronics Inc*, 1986 CanLII 91 (SCC), [1986] 1 SCR 752 at 766 [*ITO*]. There must be: (1) a statutory grant of jurisdiction by the Parliament of Canada; (2) an existing body of federal law essential to the disposition of the case; and (3) the law must be a law of Canada.

[16] This Application fails the first requirement of the *ITO* test. The application for a writ of *habeas corpus* is clearly bereft of any possibility of success as subsections 18(1) and 18(2) of the *Federal Courts Act* do not give the Federal Court jurisdiction to grant such relief, except to members of the Canadian Forces serving outside of Canada, which is not the case here. The Federal Court was not created as a court of general or inherent jurisdiction with respect to the prosecution of criminal offences, such as those enumerated under paragraph 124(1)(a) of IRPA, nor was it granted supervisory jurisdiction over a provincial court by section 101 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3.

[17] In the present case, the Applicant's detention arises pursuant to criminal charges after bail was denied by the BC Provincial Court. To the extent that the Applicant wishes to contest the denial of bail, his remedy lies elsewhere.

[18] By way of parenthesis, it is worth mentioning that on July 12, 2017, the Applicant was released on bail on entering into a recognizance; however he was immediately placed under immigration detention by the CBSA. The Applicant's detention was ordered to continue by the Immigration and Refugee Board [IRB] following 48-hour and 7-day detention reviews, held on or about July 13 and July 21, 2017, respectively. In the event the Applicant takes issue with any decision rendered by the IRB, the proper recourse is to bring an application for leave and for judicial review pursuant to section 72 of IRPA. This Court otherwise has no statutory or inherent jurisdiction to entertain the matter.

V. Conclusion

[19] Based on the foregoing, I conclude that it is plain and obvious that the Federal Court does not have jurisdiction to entertain the Applicant's Application and it is bereft of any possibility of success. Accordingly, the Application for a writ of *habeas corpus* shall be struck out and application shall be dismissed.

[20] As for costs of the motion, I see no reason to deviate from the general rule that costs should follow the event given that the Applicant refused to concede that his Application was without any merit.

JUDGMENT IN T-645-17

THIS COURT'S JUDGMENT is that:

1. The Notice of *Habeas Corpus* is struck out.

2. The Application is dismissed.

3. Costs of the motion, hereby fixed in the amount of $500.00, inclusive of disbursements and taxes, shall be paid by the Applicant to the Receiver General of Canada.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-645-17
STYLE OF CAUSE:	STEPHEN POLNAC v REGINA

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	SEPTEMBER 8, 2017

WRITTEN REPRESENTATIONS BY:

Stephen Polnac	FOR THE APPLICANT (ON HIS OWN BEHALF)
Paul Singh	FOR THE RESPONDENT

SOLICITOR OF RECORD:

Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT