QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2013 SKQB 397**

Date: **2013 11 06**
Docket: Q.B. No. 339 of 2013
Judicial Centre: Prince Albert

BETWEEN:

JEAN RICHER and LESLIE SINOBERT,

APPLICANTS

- and -

THE ATTORNEY GENERAL OF CANADA,

RESPONDENT

Counsel:

Jean Richer and Leslie Sinobert — appearing on their own behalf
Christopher J. Bernier — appearing for the respondent

JUDGMENT — DOVELL J.
November 6, 2013

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[1] The applicants, Jean Richer and Leslie Sinobert, (hereinafter referred to as "Richer" and/or "Sinobert") have brought an application for a *writ of habeas corpus* with *certiorari in aid*, seeking unconditional release from the Riverbend Minimum Institution in Prince Albert, Saskatchewan, due to a "threat" to their respective liberties claiming that the Correctional Service of Canada has violated their rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") in not allowing them to reside in a common

housing unit so that they can participate in their long-standing, same-sex relationship outside of the public domain.

A. Preliminary Request

[2] Prior to this application being heard, Richer requested that the Court allow him to represent Sinobert "as he has no ability to represent himself, having suffered three strokes since 1993 and suffers the effects from mercury poisoning (Minamata disease) and its effects, for which he has suffered with for his 62 years of life".

[3] It was obvious from the evidence the Court received concerning Sinobert's physical and mental health and the Court's observations of Sinobert during the application that he was suffering from some kind of disability. Rule 2-34 of *The Queen's Bench Rules* requires that a party with a disability be represented by a lawyer. However, in the unique circumstances of this case, with Sinobert consenting and the respondent not really taking issue with Richer's request, the Court allowed Richer to make submissions to the Court on Sinobert's behalf as well as his own. That proved to be beneficial for everyone as towards the end of the argument Sinobert had to be assisted by a court official for a blood sugar related situation that had culminated during the application.

B. Background Facts

[4] Most of the facts in this matter are not in dispute. Both Richer and Sinobert had been serving their "life" or "indeterminate" sentences at the medium security Saskatchewan Penitentiary until they were both transferred this year to the minimum security Riverbend Annex; Sinobert on April 9, 2013 and Richer on May 14, 2013.

Richer and Sinobert are both residing in housing units at Riverbend; Sinobert residing in a housing unit specifically designated for individuals with mental health issues.

[5] On May 21, 2013, Richer submitted an Inmate's Request requesting that he and Sinobert be allowed to reside together at Riverbend in the same housing unit.

[6] Pursuant to policies of the Correctional Service of Canada and as contained in the Riverbend Inmate Handbook, on June 5, 2013, Darcy Begrand, Manager of Assessment and Intervention, responded to the May 21, 2013 Inmate's Request as follows:

> No promises were made that you could move into Sinobert's house. His house is specifically for inmates with Mental Health needs. You and Sinobert have ample opportunity to visit & socialize in the AM, after work, & on weekends, outside of the Minimum Security houses.

[7] The Inmate Handbook outlines the institutional policy that all offenders are not allowed in housing units other than their own, but are to visit in common areas such as the multi-purpose building, the gymnasium and recreational areas, the cultural centre or outside the individual housing units.

[8] Rather than bringing a grievance under the Offender Complaint and Grievance Process as is outlined in Commissioner's Directive 081, Richer wrote to the Deputy Regional Commissioner, Brenda LePage, on June 14, 2013 requesting a meeting to discuss his concerns that he had not been allowed to reside or have private visits with Sinobert.

[9] Attached to his June 14, 2013 letter was a copy of his previous letter to her of May 26, 2013, and a copy of a first-level grievance response dated July 27, 2007,

which had been provided to Richer in response to a grievance he had filed in 2007 when he and Sinobert had been at the medium security Saskatchewan Penitentiary. Richer's grievance in 2007 was in regard to the same issues that were outlined in his May 21, 2013 Inmate's Request.

[10] In response to Richer's June 14, 2013 letter, Joan Dunajski, Regional Director, Communications and Executive Services, on July 3, 2013 wrote to Richer indicating that his concerns should be addressed through the Offender Complaint and Grievance System as it was the established process for offenders' redress when they felt they had been treated unfairly, or in a manner that was not consistent with the Correctional Service of Canada legislation and policies. Ms. Dunajski also informed Richer that the most fair and expedient resolution of offender concerns began with a first-level grievance and that his concerns could be addressed through that forum.

[11] Notwithstanding that direction, Richer, who is familiar with the grievance process as he has in the past made use of it on numerous occasions, has not made a first-level grievance with regard to the concerns as contained in this application.

[12] On July 13, 2013, Richer was located in Sinobert's Riverbend housing unit and was charged with the disciplinary offence of being in a housing unit other than his own. Richer was convicted of that offence and fined $5.00. Although institutional charges may sometimes lead to a security reclassification of an offender, Richer has remained assessed as a minimum security offender and has continued to be housed at minimum security Riverbend Institution.

[13] Rather than following the Offender Complaint and Grievance System, both Richer and Sinobert chose to bring a *habeas corpus* application to this Court in September 2013.

[14] As at the time of the application being heard both Richer and Sinobert continued to be housed at minimum security Riverbend Institution in separate living units, neither having had their security levels reclassified and neither having filed a first-level grievance. The Court assumes that neither of the applicants' situations have changed for the purpose of rendering this decision.

C. Analysis

[15] Although this Court and the Federal Court have concurrent jurisdiction to grant the remedies of *habeas corpus* and *certiorari in aid of habeas corpus*, in this case the Court has concluded that it must decline its jurisdiction to grant a remedy on the application guised as a *habeas corpus* application.

[16] Our Court's jurisdiction to grant remedies against federal institutions and decision-makers is narrow. It is not for this Court to determine the reasonableness of the administrative decisions made by the Correctional Service of Canada within the confines of its jurisdiction. *Habeas corpus* cannot be used to review the decision of the Correctional Service of Canada declining a housing reassignment request or the policy that all inmates found in a housing unit other than their own will be subject to disciplinary charges.

[17] The applicants are seeking to challenge administrative decisions of the

Correctional Service of Canada which do not impact their residual liberty. While Richer and Sinobert have framed their application under the pretence of *habeas corpus*, the true character of the remedies being sought by them is a *writ of certiorari*, prohibition or *mandamus*. These remedies fall within the exclusive jurisdiction of the Federal Court of Canada through a judicial review process.

[18] Thus, *habeas corpus* cannot be used to review the way the Correctional Service of Canada manages an inmate's sentence as is the case here. *Habeas corpus* is a guarantee of liberty, not a channel for drawing our Court into the day-to-day management of a prison.

[19] Rather than bringing this application to this Court, the applicants should have followed the grievance process on the issue of housing assignments. Richer knows full well the process as he followed it in 2007. In his letter to Brenda LePage of June 15, 2013, Richer enclosed a copy of the first-level grievance response he received when he grieved a decision in 2007. It is not that Richer does not know the proper procedure; he has chosen not to follow it as he finds the grievance process frustrating and time consuming. It may very well be all those things, but it is a process that must be followed as opposed to applying to this Court for a remedy. The grievance process must be followed by the applicants with a view to eventually bringing a judicial review application to the Federal Court if no favourable responses are obtained by them before then.

[20] In the event the Court had assumed jurisdiction over this *habeas corpus* application, the application for *habeas corpus* would have failed in any event. On the materials before the Court, the applicants have not established any deprivation of liberty,

and the respondent has established that any possible deprivation of liberty is lawful. Not every constraint on an inmate amounts to a "deprivation of liberty".

D. Conclusion

[21] For all the reasons as outlined in this decision, the application of the applicants is dismissed with costs to be taxed.

J.
M. L. DOVELL