

Ruling on Inmate's Transfer a Victory for Prisoners' Rights

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In a major victory for prisoners' rights, the Supreme Court of Canada has allowed an inmate wide scope to challenge his transfer to maximum security over a stabbing.

"No one should be deprived of their liberty without lawful authority," Justice Louis LeBel said in an 8-0 ruling, citing the nearly 1,000-year-old tradition of habeas corpus – the right to go before a judge to argue against illegal detention.

The ruling is the latest in a series of unanimous or near-unanimous defeats for the federal government at the hands of the country's most powerful court, and is especially important as the number of federal prisoners rises sharply, and prison violence and use of restrictions such as segregation rises along with it.

The court stressed that judges should not try to micromanage prisons. But it said prison authorities bear the burden of showing that their transfer decisions, and other restrictions on prisoners, are reasonable and carried out with fair process, including giving the prisoners summaries of the evidence on which they relied.

Gurkirpal Singh Khela was convicted of first-degree murder for hiring two men to carry out the 2002 killing of schoolteacher Gary Sidhu. In 2009, after the British Columbia man was transferred to Mission Institution, a medium security prison, from the maximum-security Kent Institution, prison authorities received information from three anonymous sources that he had hired two men to stab another prisoner in retaliation for an assault when he was at Kent, and paid them with three grams of heroin.

He was transferred in February, 2010, and challenged the transfer in court, saying the warden had not disclosed enough information about the allegations to allow him to fight them effectively.

The British Columbia Civil Liberties Association calls the case an "important chapter in the long and continuing struggle to ensure that the rule of law runs inside Canadian prisons." It stresses that the power of habeas corpus needs to be given wide scope, because prisoners are subject to near-total control by the state, out of the public eye, and abuses happen. It cited a public inquiry from the 1840s, in Kingston, Ont., the Arbour Inquiry into strip-searches of female prisoners in the 1980s and a report in the 2008 death of teenager Ashley Smith in an Ontario prison.

"The rule of law has struggled for a foothold in the harsh landscape of the Canadian penitentiary," the B.C. group said. "Now is not the time to undermine a vital and complementary part of judicial intervention. The work of the great writ [of habeas corpus] has hardly begun in our prisons."

Mr. Khela had won a unanimous ruling at the British Columbia Court of Appeal.

The federal government said that ruling would make quick, efficient hearings impossible, and was unrealistic for a prison system that needs to rely on confidential informers. It called the appeal court's ruling "an unwarranted expansion of the traditional writ of habeas corpus." It also said the detailed information from the anonymous sources showed it was reliable.

Mr. Khela's lawyers also point to the importance of habeas corpus. "Habeas Corpus traces its origins and development to virtually the same place as the very concept of the rule of law, and it is no mistake that the two ideas have been coextensive," they said in a written argument filed with the Supreme Court of Canada.

The Supreme Court said the prison warden had failed to explain why the anonymous sources were reliable.

The ruling means little in a direct sense for Mr. Khela. After he fought his transfer successfully in lower courts, his classification was changed in the summer of 2010, and after he fought that change and lost, he was transferred to maximum-security.

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