

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-000519
[2020] NZHC 653**

UNDER The Habeas Corpus Act 2001
IN THE MATTER OF An application for a writ of habeas corpus
BETWEEN PETER RICHARD PRESCOTT
Applicant
AND NEW ZEALAND GOVERNMENT
Respondent

Hearing: (On the papers)
Counsel: Applicant in Person
A Todd for the Respondent
Judgment: 25 March 2020

JUDGMENT OF MOORE J

This judgment was delivered by me on 25 March 2020 at 3:45 pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

Registrar/ Deputy Registrar

Date:

Solicitor:
Crown Law Office, Wellington

Copy to:
The Applicant

[1] The applicant, Mr Prescott, has filed this afternoon an application seeking a writ of habeas corpus under s 6 of the Habeas Corpus Act 2001.¹

[2] Mr Prescott's application is founded on his claim that given the Prime Minister's recent announcement of a national lock down as from 11:59 pm tonight, his circumstances are such that he will be detained. He says that such a detainment is unlawful and, as a consequence, he asks that a writ of habeas corpus issue.

[3] According to Mr Prescott's application he lives in a motor home which is immobile and is neither registered nor warranted. It is situated in a storage yard at Hibiscus Marine and Storage Ltd ("HMSL") in Whangaparaoa. Because the storage yard is not an essential service, HMSL has advised that they will be closing the gates and locking them.

[4] This is Mr Prescott's only residence. He says that he must stay in the yard because that is where his home is and that is where he must self-isolate.

[5] He says that as a result of the lock down he will become a prisoner of the State from 5:00 pm today, that being the time he has been advised the gates will be locked for a minimum of four weeks.

[6] He claims that HMSL are effectively acting as agents of the New Zealand Government.

[7] If locked in the yard he says he will be denied access to necessities such as food, toiletries and medical items. He will be unable to replenish his LPG tanks which provide him with hot water, cooking and refrigeration. He has an existing medical condition which requires regular prescriptions. The lock down will also mean that he is unable to check on elderly friends and deliver them food if required.

[8] He works for Tourist Holding Limited ("THL") as an emergency driver. He advises that he is scheduled to do a run to Hastings tomorrow to deliver a motor home

¹ The application purports to be made under s 9. That section is inapt. It relates to the well-known principle that such applications must be given precedence over all other matters in the High Court.

in response to the COVID-19 outbreak. Locking the gates will frustrate his ability to work.

[9] He says he requires a key to the storage yard. He seeks an order to that effect.

[10] I am not prepared to grant the writ for the following reasons.

- (a) First, any unlawful detention must be ongoing at the time of the application. There is no detention at this point. It is, at best, anticipated on the material before me.
- (b) Secondly, any detention will be at Mr Prescott's will. It is up to him to elect whether or not to remain within the yard. It is open to him to leave before the facility is locked. I accept that being locked inside the yard may well cause personal inconvenience, even hardship, but that is an inevitable consequence of the government's declaration of Level 4 and the declaration of a state of emergency. There are many others in a much worse position.
- (c) Thirdly, no argument has been presented to me that the Government's declaration is unlawful.
- (d) In any event HMSL is a private entity. It is not part of the Crown, let alone an agent. Furthermore, it is not a party to this application and the relief sought is not within the power of the Crown to provide. The Crown is not controlling or managing any detention.

[11] For these reasons I am not prepared to grant the application. It is dismissed.