



IN THE
Supreme Court
OF THE
Commonwealth of the Northern Mariana Islands

SHAWN APPLEBY,
Plaintiff-Appellant,

v.

WALLY VILLAGOMEZ, COMMISSIONER, DEPARTMENT OF CORRECTIONS
AND
RAMON B. CAMACHO, CHAIRMAN, BOARD OF PAROLE,
Defendants-Appellees.

Supreme Court No. 2020-SCC-0011-CIV

ORDER GRANTING MOTION TO DISMISS

Cite as: 2020 MP 23

Decided December 17, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLONA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Criminal Action No. 20-0168-CV
Presiding Judge Roberto C. Naraja, Presiding

INOS, J.:

¶ 1 Shawn Appleby (“Appleby”) appeals the Superior Court’s dismissal of his petition for writ of habeas corpus (“writ”) for lack of subject matter jurisdiction.¹ Department of Corrections Commissioner Wally Villagomez (“Commissioner”) and Ramon B. Camacho, Chairman, CNMI Board of Parole (“BOP”) (collectively “Commonwealth”), move to dismiss the appeal for lack of a justiciable controversy because the parties agree the court had jurisdiction over the writ. In the alternative, the parties agree that we have discretion to address whether the BOP’s revocation order moots the deficiencies alleged in the writ. For the following reasons, we GRANT the motion to dismiss because the Superior Court has subject matter jurisdiction to hear the writ petition. We VACATE the trial court’s Order and REMAND for further proceedings consistent with this order.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 While on parole, Appleby was arrested and detained at the Department of Corrections on an alleged violation of conditions of his release.² At a BOP preliminary hearing,³ the BOP found probable cause that Appleby violated a condition of his release—to obey all Commonwealth laws—by committing assault and battery and disturbing the peace.

¶ 3 After the preliminary hearing, the Office of the Public Defender entered an appearance for Appleby and filed a Petition for Writ of Habeas Corpus in the Superior Court for various alleged due process violations relating to his incarceration and the parole preliminary hearing. The BOP held a final revocation hearing and found Appleby violated a condition of his release and ruled to revoke parole. Appleby was represented by counsel at this hearing. The written order revoking parole was not issued until after the writ was filed.

¶ 4 The Commonwealth moved to dismiss the writ on the basis that the subsequent revocation proceeding mooted the issues in the writ. The court neither granted nor denied the writ, nor entered dismissal based on the reasons in the motion to dismiss. The court instead dismissed the writ for lack of subject matter jurisdiction, Order at 1–2, holding the preliminary determination of probable cause was not a final order under the Commonwealth Administrative Procedure Act (“APA”) because the BOP had not yet issued a written order revoking parole. The court further held that the due process violations alleged in the writ petition were only subject to judicial review after the party had exhausted administrative remedies under the APA and dismissed the case without prejudice.

¹ *Appleby v. Villagomez*, No. 20-0168 (NMI Super. Ct. Aug. 17, 2020) (Order Dismissing Case for Lack of Subject Matter Jurisdiction) (“Order”).

² In 1996, Appleby was convicted of first-degree murder and sentenced to 40 years’ imprisonment. He was paroled in 2019.

³ Appleby asked the BOP for appointed counsel but was denied on the basis that the matter before the parole board “is one of public record and is not complex or difficult to develop or present.” Appellee’s Motion to Dismiss at 2.

¶ 5 Appleby appeals. The Commonwealth now moves to dismiss the appeal or, in the alternative, amend and brief the issue before us of whether the final parole revocation hearing mooted the alleged deficiencies in the preliminary hearing.

II. JURISDICTION

¶ 6 We have appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. DISCUSSION

¶ 7 Appleby and the Commonwealth agree that the court had subject matter jurisdiction to address the writ. They thus agree that there is no live controversy on appeal. We first discuss whether the court had jurisdiction to hear Appleby's petition.

¶ 8 A person legally harmed by an agency's action, such as that of the BOP, is entitled to seek administrative relief under the APA. 1 CMC §§ 9101–15. Generally, individuals are entitled to judicial review within 30 days of an agency action. 1 CMC 9112(b). The APA, however, recognizes that habeas corpus proceedings are an adequate and exclusive opportunity for judicial review of certain agency actions. Under 1 CMC 9112(c), "judicial review is the special statutory review proceeding relevant to the subject matter in the Commonwealth Superior Court, or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in that court." To be subject to judicial review under the APA, an agency action must be final, *unless otherwise made specifically reviewable by statute*. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 1 CMC 9112(d). In other words, the APA expressly exempts writs of habeas corpus from the requirement of final agency action as a prerequisite to judicial review.

¶ 9 A person seeking a writ of habeas corpus, whether pursuant to an agency decision or other action, must apply for such relief in the Superior Court. 6 CMC § 7101.⁴ The purpose of this writ is to provide a way to release an unlawfully

⁴ The statute states:

Writs of habeas corpus may be granted by the Commonwealth Superior Court or any of its judges. Every person unlawfully imprisoned or restrained of his or her liberty under any pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may apply for a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

6 CMC § 7101.

detained individual. It “furnishes an extraordinary remedy” for “prisoners who are restrained of their liberty.” *Commonwealth v. Appleby*, 2007 MP 19 ¶ 9. A writ of habeas corpus is thus the proper vehicle to challenge “a prisoner’s post-conviction sentence or the computation of parole eligibility.” *Id.* (quoting *Commonwealth v. Diaz*, 2003 MP 14 ¶ 13). Because habeas corpus provides for judicial review by statute without a requirement of final agency action, we find the court had jurisdiction in this instance to hear the writ.⁵

¶ 10 Federal courts likewise distinguish between habeas actions and challenges under the federal Administrative Procedure Act. *See Richmond v. Scibana*, 387 F.3d 602, 605 (“a prisoner claiming a right to *release* on parole must use [habeas corpus],” but a prisoner challenging prison conditions must exhaust administrative remedies under the federal Administrative Procedure Act); *see also U.S. ex rel. Branson v. U.S.*, 433 F.Supp.2d 931, 933 (2006) (the APA is applicable to a prisoner’s challenge to BOP’s policy but inapplicable to a petition for a writ of habeas corpus).

¶ 11 We next examine whether we should dismiss this case for lack of a justiciable controversy. Since there is no longer a dispute between the parties regarding subject matter jurisdiction, no justiciable controversy exists on appeal. In order to create a justiciable controversy on appeal, the Commonwealth alternatively requests to amend the issue and allow briefing on the merits the court did not address. Appleby agrees.

¶ 12 The parties urge us to adopt the Topsy Coachman Doctrine, a rule which allows an appellate court to affirm a lower court’s decision with flawed reasoning using a correct conclusion supported by the record. *See Lee v. Porter*, 63 Ga. 345, 346 (Ga. 1879). The doctrine promotes judicial economy by expediting decision-making where remand is unnecessary. *Exch. Comm’n. v. Chenery Corp.*, 318 U.S. 80, 88 (1943). The doctrine is only applicable, however, when the reviewing court is certain the lower judgment was correct.

¶ 13 The parties agree that the case would inevitably end up on appeal again, regardless of the decision below. To save judicial resources, the parties agree they should be allowed to amend and brief the issue. While the parties did brief the issue below, the court did not provide any reasoning in its final judgment bearing on the writ or its mootness. The record lacks discussion of the issues or analysis of the applicable law. At this stage, it is uncertain whether the court was correct in dismissing the case because the record is not fully developed. Thus,

⁵ The parties agree that the court had subject matter jurisdiction to address the writ and we concur in this instance. However, while we encourage agreement and compromise, the parties can “neither consent to nor waive [] subject matter jurisdiction.” *Simon v. Wal-Mart Stores, Inc.*, 193 F.3d 848, 850 (5th Cir. 1999); *see NMI R. Civ. P. 12(h)(3)* (a court *must* dismiss an action if it determines that it lacks subject matter jurisdiction) (emphasis added).

we cannot apply the Topsy Coachman Doctrine—we will allow the trial court to make findings of fact and legal conclusions.

¶ 14 The procedural posture of this case is somewhat unusual because we analyze Appleby’s legal issue on appeal, i.e., whether the court had subject matter jurisdiction, through the Commonwealth’s motion to dismiss. We note Appleby’s objection that we should instead grant the appeal because where the parties agree on the basis of the appeal, as here, the solution is not to dismiss it, but to grant it. While we dispose of this matter through a motion to dismiss rather than granting the appeal, we reach the same result Appleby seeks: remand to hear the merits of the writ.

III. CONCLUSION

¶ 15 For the foregoing reasons, we GRANT the motion to dismiss because the Superior Court has subject matter jurisdiction in this instance to hear the writ. We VACATE its Order and REMAND for further proceedings consistent with this order.

SO ORDERED this 17th day of December, 2020.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice

COUNSEL

J.P. Noguez, Saipan, MP, for Plaintiff-Appellant.

J. Robert Glass, Jr., Saipan, MP, for Defendants-Appellees.

NOTICE

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