SUPREME COURT OF QUEENSLAND

CITATION:	*Schirmer v Queensland Health & Anor* [2005] QSC 353
PARTIES:	**JAIME LYNDON SCHIRMER** (Applicant) **v** **QUEENSLAND HEALTH** (First Respondent) and **QUEENSLAND POLICE** (Second Respondent)
FILE NO/S:	BS 5335 of 2005
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2005
JUDGE:	Atkinson J
ORDER:	**Application for statutory order for review dismissed**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISION AND CONDUCT – Existence of Other Review and Appeal Rights – where the applicant seeks an application for statutory review of orders made pursuant to the *Mental Health Act* 2000 (Qld) – where the applicant is entitled to seek a review of the matter by another court or tribunal ADMINISTRATIVE LAW – PREROGATIVE WRITS AND ORDERS – Habeas Corpus – where the applicant seeks a writ of habeas corpus – where the applicant is not under restraint such that a court could order his release *Judicial Review Act* 1881 (Qld) s 12, s 48 *Mental Health Act* 2000 (Qld) s 124, s 187, s 188, s 191 *Public Records Act* 2002 (Qld) s 7, s 8, s 13 *Jamie Lyndon Schirmer v Director of Mental Health* Mental Health Court, no 0113 of 2004, 15 February 2005. *Jamie Lyndon Schirmer v Director of Mental Health* Mental Health Court, no 0059 of 2005, 2 June 2005.

COUNSEL: The applicant appeared on his own behalf
J Fenton (*sol*) for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Solicitor for the respondent

[1] The respondents, who are described in the application as Queensland Health and Queensland Police, have applied to the court to have Jaime Schirmer's application for a statutory order of review dismissed. They have done so on two grounds. Firstly, pursuant to s 12 of the *Judicial Review Act* 1991 (Qld) (the JR Act) because the applicant has sought a review of the matter by another court other than under the JR Act and adequate provision is made by a law other than the JR Act, under which the applicant is entitled to seek a review of the matter by another court. The second ground on which it is sought to dismiss the application is found in s 48 of the *Judicial Review Act*. The respondents have applied for the application of a statutory order for review to be dismissed on the grounds found in s 48(1)(a)(b) and (c), that is:

> "(a) it would be inappropriate –
> (i) for proceedings in relation to the application or claim to be continued; or
> (ii) to grant the application … ; or
> (b) no reasonable basis for the application … is disclosed; or
> (c) the application … is frivolous … [and] vexatious ..."

[2] In order to deal with the application to dismiss the application for statutory order of review it is necessary in the first instance to consider what Mr Schirmer claims in his application for a statutory order of review. The orders sought are as follows:

> "A1 Any orders the Courts sees fit to establish the lawfulness of the respondent.
>
> A2 An order requiring the respondent to destroy the respondents' psychiatric records, mental health records and records mentioning mental health or psychiatric records in relation to the matter of the applicant.
>
> B1 Rulings finding the grounds, above, correct.
>
> B2 An order quashing and setting aside the Involuntary Treatment order in relation to the applicant.
>
> C1 An interlocutory *Writ of Habeas Corpus* ordered against the respondent."

[3] Essentially there are three orders sought. They are the quashing of the involuntary treatment order; an order requiring the respondents to destroy any mental health records relating to the applicant; and thirdly a writ of habeas corpus. In order to deal with each of these issues, it is necessary to look at the factual background to see what brings Mr Schirmer to the court seeking a statutory order of review.

Background Facts

[4] On 31 May 2004, a Justice of the Peace made a "justices examination order" pursuant to s 28 of the *Mental Health Act* 2000 (Qld) (MH Act) for the applicant, Mr Schirmer, to be examined. On 1 June 2004, the team leader at the Adult Mental Health, Acute Mental Health Unit, at Toowoomba Hospital, completed a request for police assistance in relation to the justices examination order on the grounds set out therein. A warrant for Mr Schirmer's apprehension was issued apparently pursuant to s 513 of the MH Act.

[5] Later that day, 1 June 2004, Mr Schirmer was assessed by an authorised mental health practitioner at the Toowoomba Hospital. As a result, he was placed on an involuntary treatment order which recorded that he was "highly psychotic and aggressive." Involuntary treatment orders are made under Division 1 Part 1 of Chapter 4 of the MH Act. Section 109 requires the authorised doctor to decide whether the person subject to the involuntary treatment order is to be treated as an in-patient or in the community. In the first instance, the involuntary treatment order was for Mr Schirmer to be treated as an in-patient.

[6] The involuntary treatment order was supported by a second examination by an authorised psychiatrist. It was reviewed on 13 July 2004 by the Mental Health Review Tribunal (MHRT) and was confirmed. The MHRT was satisfied that Mr Schirmer suffered from a mental illness which required immediate treatment which was available at Baillie Henderson Hospital and that, because of his illness, he was likely to suffer serious mental deterioration if the order was revoked. The MHRT found that there was no less restrictive way of ensuring that Mr Schirmer received appropriate treatment and that he lacked capacity to consent to such treatment. The involuntary treatment order was again confirmed on 24 September 2004 by the MHRT and full reasons were given for that decision.

[7] On 12 November 2004, the category of the involuntary treatment order was changed from in-patient to community. The reasons are recorded as being that Mr Schirmer was exhibiting some insight into his need for medication and had agreed to comply with conditions of discharge including to be law abiding and to comply with treatment and follow up.

[8] On 17 January 2005, Mr Callaghan SC completed an enquiry into the detention of the applicant pursuant to s 429 of the MH Act. Enquiries into detention of patients in authorised mental health services can be ordered by the Mental Health Court on its own initiative or on application. Mr Callaghan SC was appointed by an order made by Wilson J of the Mental Health Court on 29 November 2004. Mr Callaghan found that the justices examination order was validly issued but the warrant which was issued on 1 June 2004 was not lawfully issued. Although Mr Schirmer was, as a result, unlawfully detained from somewhere between 5.00pm and 6.00pm until 6.35pm on 1 June 2004, Mr Callaghan found that thereafter his detention for assessment was lawful pursuant to s 44 of the MH Act. There was, in Mr Callaghan's opinion, nothing unlawful about any aspect of the detention which continued thereafter.

[9] On 15 February 2005, Wilson J, sitting as the Mental Health Court, with Dr Wood and Dr Lawrence assisting, made Mr Callaghan's report part of the court record. The applicant appealed the decisions of the MHRT of 13 July 2004 and of 24 September 2004 to the Mental Health Court. After careful consideration, Wilson J dismissed the appeals giving full reasons for her decision on 15 February 2005.[1]

[10] On 8 April 2005, the MHRT confirmed the involuntary treatment order. The tribunal found that Mr Schirmer's insight remained limited and that without an involuntary treatment order, he would not accept treatment from a psychiatrist or take prescribed medication. He became very unwell without medication and treatment and the tribunal found that, without the involuntary treatment order, he would ingest marijuana in greater quantities and this would be very harmful to his mental condition.

[11] On 2 June 2005, the Mental Health Court dismissed Mr Schirmer's appeal against that decision and confirmed the involuntary treatment order. Mr Schirmer also sought an investigation pursuant to s 427 of the MH Act. Holmes J found that there was nothing that would warrant such an enquiry. Her Honour noted that he had been diagnosed as having paranoid schizophrenia and observed:

> "In terms of the considerations to be taken into account on review, his mental state and psychiatric history, his social circumstances and his response to treatment and willingness to continue treatment, I am satisfied that the continuation of the involuntary treatment order is entirely warranted and is essential."[2]

[12] The application for statutory order for review was filed on 4 July 2005.

[13] On 13 September 2005, an authorised doctor prepared a treatment plan pursuant to s 124 of the MH Act for the applicant. It showed that Mr Schirmer continued to be on a community category involuntary treatment order. It required him to be on prescribed medications only, to undertake a urine drug screen test weekly, to attend specific doctors' appointments, to see his case manager at regular intervals, it gave him a number to call during a crisis, and required him to abstain from alcohol and not to use illicit drugs. He is no longer required to be an in-patient in a hospital.

Adequate alternate remedy

[14] With regard to Mr Schirmer's application to have the involuntary treatment order quashed or set aside, s 13 of the JR Act provides that if provision is made by a law under which the applicant is entitled to seek review of the matter by another court, tribunal, authority or person, this Court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

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1 *Jamie Lyndon Schirmer v Director of Mental Health* Mental Health Court, no 0113 of 2004, 15 February 2005.

2 *Jamie Lyndon Schirmer v Director of Mental Health* Mental Health Court, no 0059 of 2005, 2 June 2005.

[15] The first matter with which I am concerned is whether or not the applicant is entitled to seek a review of his involuntary treatment order by another court, tribunal, authority or person. Chapter 6 of the MH Act deals with reviews by the MHRT for patients under involuntary treatment orders. Section 187 and 188 provide for a comprehensive review of any involuntary treatment order. An application may be made by the patient, a person on behalf of the patient or the director and must be given to the MHRT. An application may be made at any time. On review, the MHRT must, pursuant to s 191(1), decide to confirm or revoke the involuntary treatment order. If the MHRT confirms the involuntary treatment order, it may order that the category of the order be changed.

[16] Under Chapter 8 there is a right of appeal from such a decision of the MHRT to the Mental Health Court. These rights are by no means theoretical. Mr Schirmer has availed himself of the rights of review and appeal which he has under the MH Act. The MHRT and the Mental Health Court are subject to detailed legislation and are the appropriate jurisdictions for involuntary treatment orders to be reviewed. I am satisfied that provision is made by the MH Act under which the applicant is entitled to seek a review of the matter by another court or tribunal and I am satisfied that having regard to the interests of justice, the application for statutory order of review should be dismissed. In such a case the only appropriate order is to dismiss the application for review of the involuntary treatment order.

Habeas Corpus

[17] The applicant seeks "An interlocutory *Writ of Habeas Corpus* ordered against the respondent". Mr Schirmer is not being detained against his will. He is not in any relevant sense under restraint such that a court, even if it were minded to, could order his release. The writ of habeas corpus does not therefore lie: see rr 586-595 of the *Uniform Civil Procedure Rules* 1999 (UCPR). In any event, even if he were considered to be "under restraint", there is no suggestion that the order under which he must subject himself to treatment is not lawful and there would be no warrant therefore for the court to issue a writ of habeas corpus or order the applicant's release: see UCPR r 593(c).

Destruction of records by the respondents

[18] Pursuant to s 7 of the *Public Records Act* 2002 (Qld), a public authority must make and keep full and accurate records of its activities. A public authority includes a department such as the respondents named in this application. Section 8(1) provides that a public authority is responsible for ensuring the safe custody and preservation of records in its possession. Section 13 of the *Public Records Act* provides that a person must not dispose of a public record unless under authority given by the archivist or other legal authority, justification or excuse. Disposal is defined in schedule 2 to include destroying a record or any part of it. In these circumstances it would be unlawful for the respondents to destroy any records they have relating to the applicant.

[19] There is no reasonable basis for any application either for habeas corpus or for the destruction of Mr Schirmer's records and therefore those claims should be dismissed pursuant to s 48(1)(b) of the JR Act.

Conclusion

[20] As there is no proper basis for granting any relief under the application for statutory review which has been made, the respondents' application, to have Mr Schirmer's application for statutory order of review dismissed, should be allowed. The application for statutory order should therefore be dismissed.