

IN THE SUPREME COURT OF NEW ZEALAND

**SC 35/2009
[2009] NZSC 80**

BETWEEN	ARTHUR WILLIAM TAYLOR Applicant
AND	THE DEPARTMENT OF CORRECTIONS Respondent

Court: Blanchard, McGrath and Wilson JJ

Counsel: C J Tennet for Applicant
V E Casey for Respondent

Judgment: 24 July 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The application relates to judicial review of a decision of an adjudicator under s 134 of the Corrections Act 2004 to refer a disciplinary charge to a Visiting Justice. The Court of Appeal reversed the High Court's determination that the adjudicator's decision was invalid.

[2] The proposed appeal has no prospect of success. With the greatest of respect to the High Court Judge, we cannot see how a right to a hearing prior to an adjudicator's decision to refer can be read into s 134. The adjudicator is not called upon to decide on guilt or penalty but merely to form an opinion on the apparent seriousness of the prisoner's conduct and on the possible penalty if and when a

breach of discipline is established after a hearing. Nothing in s 139 requires a different reading of s 134 so as to import the need for a hearing.

[3] It was also perfectly proper for the adjudicator to take account of previous disciplinary breaches by the applicant. “Conduct” naturally is judged in part in light of such breaches when a penalty comes to be imposed by the Visiting Justice if guilt is proven. The argument for the appellant would, if accepted, lead to the absurd situation that a repetition of offending which in isolation would not justify reference to a Visiting Justice, and a higher penalty, might not be able to be referred under s 134. Yet, if there were a reference, the higher penalty might well be appropriate should there be a finding of guilt. That would be an unprincipled outcome.

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