IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 20/2018
[2018] NZSC 47

BETWEEN	GAVIN GRAHAM JARDINE Applicant
AND	THE QUEEN Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person
J E L Carruthers for Respondent

Judgment: 16 May 2018

JUDGMENT OF THE COURT

A An extension of time to apply for leave to appeal is granted.

B The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted after a judge alone trial in the District Court on four charges of accessing a computer system and thereby dishonestly and without claim of right obtaining a pecuniary advantage.[1] He was sentenced to a term of imprisonment of three years and eight months.[2] After the completion of his sentence he was deported from New Zealand to the United Kingdom, where he now lives.

[2] The applicant appealed to the Court of Appeal against conviction and sentence. He did not do this until after he had been released from prison, but the Court of Appeal

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1 *R v Jardine* DC Auckland CRI-2012-004-4089, 7 March 2014 (Judge Blackie).
2 *R v Jardine* DC Auckland CRI-2012-004-17992, 16 April 2014.

granted him an extension of time. However, the Court dismissed his appeal against conviction and sentence.[3]

[3] The Court of Appeal said that there were two major issues of concern for the applicant.[4] The first was his sense of grievance that he had been prosecuted, despite having entered into a settlement of a civil proceeding commenced against him by the victim of the offence, his employer, Maclean Computing Limited. Under that settlement, the applicant agreed to the entry of judgment against him for about $540,000 and agreed to make reparation payments totalling $440,000 over a period of just over five years. In return Maclean Computing agreed it would take no steps to enforce the judgment. The applicant considered that it was at least implicit in the settlement with Maclean Computing that criminal proceedings would not be commenced against him. His second concern was the way his defence had been conducted by his trial counsel.

[4] In his application for leave, the applicant focuses on the first of the concerns identified by the Court of Appeal. He wishes to argue on appeal that the prosecution should not have been commenced against him because it did not meet the public interest criterion in the Prosecution Guidelines.[5] The Court of Appeal considered whether the prosecution was an abuse of process and found that it was not.[6] No one associated with the prosecution had given any assurance to the applicant that he would not be prosecuted if he settled with Maclean Computing and made reparations.[7]

[5] As it transpired the applicant made no payments to Maclean Computing and was eventually bankrupted by its liquidators. The Court of Appeal was satisfied that the apparent circumstances in which the applicant reached his civil settlement with Maclean Computing did not render a subsequent prosecution an affront to justice.

[6] The applicant renews his complaint about the commencement of a prosecution in light of his civil settlement with Maclean Computing. We do not consider that this

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3 *Jardine v R* [2016] NZCA 371 (Ellen France P, Clifford and Katz JJ) [*Jardine* (CA)].
4 At [22].
5 Crown Law Office *Solicitor-General's Prosecution Guidelines* (1 January 2010) at [6.8]–[6.9].
6 *Jardine* (CA), above n 3, at [28].
7 At [30].

gives rise to any point of public importance. Nor do we consider that there is any risk of a miscarriage of justice in the event that leave to appeal is refused.

[7] In effect, the applicant seeks to argue the proposition that, although he admitted defrauding his employer of a considerable sum of money, he should not be held to account by the criminal law because he offered to repay the money. We do not see any prospect of such an argument being successful. And, as noted earlier, he did not, in fact, repay any of the money.

[8] The application for leave to appeal was filed on 21 March 2018. The decision of the Court of Appeal to which it relates was delivered on 4 August 2016. The application is, therefore, well out of time. However, the Crown took no objection to the Court considering the application and we have decided that we should deal with it on its merits.

[9] We allow an extension of time for the filing of the application for leave to appeal but dismiss the application.

Solicitors:
Crown Law Office, Wellington for Respondent