

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

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

**CRI 2018-055-0930
[2019] NZHC 674**

THE QUEEN

v

SYDNEY JAYDEN KOKIRI

Hearing: On the papers

Appearances: HAM Watts for the Crown
I A Jayanandan for the Defendant

Judgment: 3 April 2019 at 10.30am

**JUDGMENT OF JAGOSE J
[Access to court documents]**

Counsel/Solicitors:
Kayes Fletcher Walker Limited, Auckland
Iswari Jayanandan, Manukau

[1] Mr Kokiri pleaded guilty to one charge of manslaughter. I sentenced him to two years' imprisonment, with leave to apply for home detention.¹

[2] Stuff Limited journalist, Edward Gay, seeks access to court documents under the Criminal Procedure Rules 2012. He wants to access "[t]he agreed summary of facts [and a] copy of the incident reportedly captured on CCTV security cameras". He explains he wants to look at these documents because:

The matter relates to a one-punch homicide.

Currently there is a private members bill before Parliament that would see one punch homicides covered by a new law.

With respect, one punch homicides are of particular public interest and this case may be used to debate the merits of such a law change.

[3] The Crown is neutral as to Mr Gay's access to the summary of facts. Defence counsel, Iswari Jayanandan, advises there is no objection to the summary of facts being provided to the media. Crown counsel, Hinewhare Watts, identifies the relevant summary of facts as being that annexed to Ms Jayanandan's 17 September 2018 email. Both counsel advise no footage of the incident was filed in Court. That is my comprehension of the Court file also. I therefore only address Mr Gay's request to access the summary of facts.

Applicable law

[4] Rule 6.1 of the 2012 Rules provides:

The rules providing for access to documents in the custody or control of the High Court ... in criminal proceedings are set out in the Senior Courts (Access to Court Documents) Rules 2017.

Rule 5(1) of the 2017 Rules states "[t]hese rules do not affect the court's inherent power to control its own proceedings".

[5] The summary of facts is not a document to which Mr Gay has a general right to access under Rule 8(3) of the 2017 Rules. His request for access is made under Rule 11, to be determined by my application of Rule 12, having regard to Rule 13.

¹ *R v Kokiri* [2019] NZHC 501.

[6] Rule 12 relevantly requires me to take into account “the orderly and fair administration of justice”, “the right of a defendant in a criminal proceeding to a fair trial”, “the protection of ... confidentiality and privacy interests”, “the principle of open justice”, and “the freedom to seek, receive, and impart information”, as well as any other matter I think appropriate. Rule 13(c) emphasises:

- (c) after the substantive hearing,—
 - (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
 - (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

Discussion

[7] In the present case, Mr Kokiri sought my indication of the sentence a court would be likely to impose on him if he pleaded guilty to the offence alleged against him, being manslaughter.² In giving that indication, I was required to have “a summary of the facts on which the sentence indication is to be given, agreed on by the prosecutor and the defendant”.³ Mr Kokiri’s subsequent guilty plea accepts that summary of facts.⁴ That is the document to which Mr Gay seeks access.

[8] However, criminal liability is not to be established by agreement between the Crown and a defendant. Rather, the agreed summary of facts enables a judge to make that decision in reliance on such agreed facts as “are essential to a plea of guilty or a finding of guilt”.⁵ The judge otherwise can accept or reject any other contention agreed between the prosecutor and the offender.⁶ That is the importance of the Court’s judgment, which should set out the facts found to be established.⁷

[9] The relevant factors for my decision favour granting Mr Gay access to the agreed summary of facts. That is in particular the open justice weight to be given to

² *R v Kokiri* [2018] NZHC 3247.

³ Criminal Procedure Act 2011, s 61(3)(a).

⁴ Criminal Procedure Rules 2012, r 5A.1.

⁵ Sentencing Act 2002, s 24(1)(b).

⁶ Section 24(1)(a), and see *R v Heti* (1992) 8 CRNZ 554 (CA) at 555-556.

⁷ *R v Lunjevich* [2012] NZCA 454 at [9].

documents on which I have relied in giving my judgment, and the absence of any claim of prejudice to Mr Kokiri. But the agreed summary of facts should not be understood as proof of anything not established in my judgment.

[10] Any misunderstanding of that nature has potential to undermine comprehensions of the orderly and fair administration of justice. Given the purpose for which Mr Gay seeks access, to avoid any such misunderstanding, any publication of the summary of facts should identify the facts proved against Mr Kokiri are only those set out in my judgment. I am entitled to condition Mr Gay's access to court documents.⁸

Result

[11] I grant Edward Gay and Stuff Limited access to the summary of facts annexed to Ms Jayanandan's email of 17 September 2018 on the Court file, on condition any publication of the whole of, or any extract from, that summary of facts is accompanied by a statement to the effect "The facts proved in the case are set out in *R v Kokiri* [2019] NZHC 501".

—Jagose J

⁸ Senior Courts (Access to Court Documents) Rules 2017, r 11(7)(a)(ii).