

IN THE SUPREME COURT OF NEW ZEALAND

**SC 51/2006
[2006] NZSC 76**

ALAN IVO GREER

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: Appellant in Person
S P Edwards for Respondent

Judgment: 26 September 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Greer is appealing to the Court of Appeal against conviction for a number of sexual offences. The Court of Appeal has refused to grant him bail pending the hearing of his appeal to that Court. He now seeks leave from this Court to appeal against that bail decision.

[2] The application to the Court of Appeal was made under s 70 of the Bail Act 2000, which applies if a person is in custody under a conviction and is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court. The

disjunctive “or” recognises that the appeal may either be in the first place to the Court of Appeal and then to this Court, or direct to this Court (under s 14 of the Supreme Court Act 2003).

[3] Section 70(2) provides:

(2) The Court of Appeal or the Supreme Court (as the case may be) or the Judge who presided at the trial in the court below may, if it or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody only under the conviction to which the appeal relates.

[4] It appears from this provision that it is only the trial Judge or the Court to which the convicted person is appealing the conviction or sentence – the Court of Appeal or the Supreme Court “as the case may be” – which can grant bail thereunder. In the present case, Mr Greer chose to make his s 70 application to the Court of Appeal, which is seized of his appeal against conviction and sentence, rather than to the trial Judge. Once that Court refused the application, s 70 would seem to have no further relevance.

[5] This can be contrasted with the position of someone who is seeking bail pending trial. Section 69A(1) of the Bail Act expressly gives the Supreme Court power to hear an appeal against a decision of the Court of Appeal to refuse an application for bail under s 66, thereby creating a two-step process. If it had been intended that the position should be the same under s 70, it might have been expected that language similar to that in s 69A would have been employed. As s 70 stands, it does not seem to give this Court any power to grant bail unless the Court is also seized of the substantive appeal.

[6] The position is not so straightforward, however, because the definition of “civil proceeding” in s 4 of the Supreme Court Act includes “a proceeding under the Bail Act 2000”. Mr Greer’s bail application to the Court of Appeal is undoubtedly a proceeding under that Act. It is therefore a civil proceeding for the purposes of the Supreme Court Act, s 7 of which gives this Court the power to hear and determine an appeal by a party to a civil proceeding in the Court of Appeal unless an enactment

other than the Supreme Court Act makes provision “to the effect that there is no right of appeal against the decision”.

[7] Counsel for the Crown has pointed out that the definition in s 4 does not refer to *all* proceedings under the Bail Act, but to *a* proceeding, and has submitted that the definition simply recognises that the issue of bail can arise outside of a criminal proceeding, as this Court found in *Zaoui v Attorney-General*.¹ But, whilst that is true, it cannot so arise under the Bail Act, for that Act is concerned only with bail in criminal proceedings. It follows that the Supreme Court Act definition requires any appeal to this Court in a proceeding under the Bail Act to be dealt with as a civil proceeding under s 7. The classification of a bail proceeding as a criminal proceeding under r 3 of the Supreme Court Rules 2004 is for the purposes of the Rules only and cannot make any difference to the interpretation of the Supreme Court Act.

[8] The crucial question is therefore whether s 70(2) of the Bail Act must be read as a provision to the effect that there is no right of appeal against the Court of Appeal’s decision to refuse bail to a convicted person. Because this is a matter concerned with the liberty of a person whose right of appeal against conviction has not yet been exhausted, we do not consider that s 70(2) ought properly to be read as doing more than requiring that when a substantive appeal has been lodged in the Court of Appeal, it must be the Court of Appeal that makes the first appellate-level bail determination. In other words, the convicted person, having chosen to appeal to that Court against conviction or sentence, or both, cannot appeal directly to the Supreme Court on the question of bail. But we consider that s 70(2), which is silent on the point, should not be read as denying a right of appeal to this Court against a refusal of the Court of Appeal to grant bail.

[9] We have accordingly concluded that the Court has jurisdiction under s 7 of the Supreme Court Act to hear the appeal.

[10] It is plain, however, that the appeal fails to meet the criteria for leave in s 13 of the Supreme Court Act. The failure of Mr Greer’s s 70 application must be

¹ [2005] 1 NZLR 577.

viewed in light of s 14 of the Bail Act, which reverses the general presumption in favour of granting bail on pre-trial applications by requiring all convicted persons to show cause why bail should be granted pending determination of an appeal. The Court of Appeal was clearly not satisfied on the balance of probabilities that it was in the interests of justice to grant bail in Mr Greer's particular case. Similarly, we are satisfied both that no issue of general principle is raised, and that it does not appear on the material before us that a miscarriage of justice may occur if this Court does not hear the bail appeal.

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