IN THE SUPREME COURT OF NEW ZEALAND

SC 15/2011
[2011] NZSC 26

BETWEEN	ALLAN BRIAN MILLER First Applicant
AND	MICHAEL JOHN CARROLL Second Applicant
AND	THE NEW ZEALAND PAROLE BOARD First Respondent
AND	THE ATTORNEY-GENERAL Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: T Ellis for Applicants
F M R Cooke QC and V J Owen for First Respondent
U R Jagose and C A Griffin for Second Respondent

Judgment: 23 March 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] In these two cases the applicants, who are both detained in custody under sentences of preventive detention, seek leave to appeal from a decision of the Court of Appeal upholding a decision of the High Court which declined to grant them the relief they sought. Each applicant raises issues concerning the operation of the parole system, the composition of the Parole Board, and the alleged failure of the Department of Corrections to afford them appropriate treatment during their incarceration. Also raised are issues concerning the constitution of the Court of Appeal and allegations of apparent bias against certain members of that Court. These latter points are unarguable and nothing more needs to be said about them.

[2] Some of the matters to which the applicants direct attention concerning the parole system and the Parole Board are apt in particular circumstances to raise issues of general or public importance. But in the circumstances of the present cases the applicants have not demonstrated that there is any practical purpose in their seeking to ventilate their concerns. The applicants seek to challenge a particular recall decision made in the case of Mr Carroll some eight years ago which was not the subject of an available appeal. Since then the Parole Board has reconsidered both the case of Mr Carroll and that of Mr Miller on several occasions and on each occasion has determined that the applicants pose too high a risk to public safety for them to be released on parole. It is not shown how those determinations could properly be overturned, even if there were some arguable issues with earlier steps, as the Court of Appeal acknowledged.

[3] In these circumstances it would not be in the interests of justice to grant leave simply to enable the applicants to present a historical challenge to the operation and constitution of the Board, with no prospect of that challenge resulting in any tangible benefit to them.

[4] Much the same can be said of the allegations of a failure to provide treatment. The Court of Appeal found that there are no targeted programmes which have been shown to address successfully the propensity of adult offenders to re-offend. The Court held that on this premise the non-provision of such programmes was unremarkable and gave rise to no legal concerns. The Court was also satisfied that Messrs Miller and Carroll had received many of the available treatments for high risk offenders. Nothing is put forward in the application for leave which would give this Court any basis for differing from these factual assessments made by the Court of Appeal. There is therefore no realistic prospect of success on this aspect of the proposed appeal.

[5] It follows that the applications for leave by both applicants do not satisfy the statutory interests of justice test and must be dismissed.

Solicitors:
Crown Law Office, Wellington for Second Respondent