

IN THE SUPREME COURT OF NEW ZEALAND

**SC 37/2012
[2013] NZSC 76**

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| BETWEEN | VINCENT ROSS SIEMER Appellant |
| AND | THE SOLICITOR-GENERAL Respondent |

Court: Elias CJ, McGrath, William Young and Glazebrook JJ
Counsel: A J Ellis for Appellant
Judgment: 26 July 2013

JUDGMENT OF THE COURT (RECALL)

The application for recall is dismissed.

REASONS

[1] On 15 November 2012 and 14 February 2013 this Court heard an appeal by Mr Siemer against a judgment of the Court of Appeal holding him to be in contempt of court. The Judges of this Court who heard the appeal were Elias CJ, McGrath, William Young, Chambers and Glazebrook JJ.

[2] Chambers J died on 21 May 2013 before judgment was delivered in the appeal and the remaining Judges decided, under s 30(1) of the Supreme Court Act 2003, to continue the proceeding to judgment. This decision was recorded in a minute on 12 July 2013 and the same day the Court delivered judgment dismissing

the appeal.¹ There had been no suggestion by the appellant prior to judgment that it should not be delivered or that the appellant wished to be heard on that matter.

[3] Mr Siemer has applied for recall of the Supreme Court's judgment on various grounds related to the decision under s 30 to deliver the judgment. They were that s 30 had not been properly applied, that the procedure that the Court followed was in error of law and that the Court had failed to give reasons for its decision to proceed.

[4] We are satisfied, despite the submissions to the contrary of the applicant, that there is no reason why the members of the Court who determined the appeal should not decide this application for recall. It is appropriate that we do so.

[5] Counsel's principal submission is that the decision of the remaining Judges to proceed to judgment was contrary to ss 392A and 395 of the Crimes Act 1961 and to rules of natural justice. We are satisfied that neither of the statutory provisions raised apply. They are essentially concerned with earlier stages of the process including the mode of hearing the substantive appeal. Natural justice did not require that the appellant be heard on the s 30 determination. Nor does s 25 of the New Zealand Bill of Rights Act require that the parties to an appeal are heard and a public hearing conducted before such a decision is taken. The parties have, of course, already been fully heard on the issues arising in the substantive appeal.

[6] The nature of the decision of the four remaining judges to continue did not require that reasons should be given. No further argument was advanced by the applicant to support the ground that s 30 was not properly applied. We are satisfied it was correctly interpreted and applied.

[7] We do not accept that the interests of justice require an oral hearing of the application for recall. Nor do we see any need for submissions from the respondent on the application for recall. The judgment of 12 July 2013 is a final judgment on the issues it addresses and no good reason has been raised by the applicant for the Court to revisit it or the prior decision by the four remaining Judges to deliver that judgment.

¹ *Siemer v Solicitor-General* [2013] NZSC 68.

[8] The application for recall is accordingly dismissed.

Solicitors:

N Dunning, Wellington for Appellant

Crown Law Office, Wellington for Respondent