Supreme Court of New Zealand

12 July 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

VINCENT ROSS SIEMER v SOLICITOR-GENERAL
(SC 37/2012)
[2013] NZSC 68

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

On 9 December 2010, Winkelmann J delivered a judgment making pre-trial rulings in criminal proceedings. The front page of the judgment carried a heading stating that the judgment was not to be published in news media or on the internet or other publicly accessible database or otherwise made publicly available until final disposition of the trial or further order of the court. Publication in a law report or law digest was permitted. Shortly after the judgment was delivered, the appellant published an article on each of two identical "Kiwisfirst" websites he operated. The article referred to the decision made by Winkelmann J, and included a hyperlink which gave readers of the article immediate electronic access to a copy of the 9 December judgment.

The Solicitor-General brought proceedings in the High Court seeking to have Mr Siemer committed for contempt of court. A Full Court of the High Court held that

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Winkelmann J had power to make the suppression order in relation to the judgment. Any other criticisms of the court order could not be a defence to a charge of deliberately breaching it. The Court was satisfied beyond reasonable doubt that Mr Siemer had knowingly published the judgment in breach of the order and found him to be in contempt of court. The Court sentenced Mr Siemer to six weeks' imprisonment. This decision was upheld by the Court of Appeal.

Mr Siemer appealed to the Supreme Court. The Supreme Court has, by a majority comprising McGrath, William Young and Glazebrook JJ, dismissed Mr Siemer's appeal. The Chief Justice has dissented.

The first issue before the Court was whether New Zealand courts have inherent power or jurisdiction to suppress judgments in criminal cases. The majority has held that New Zealand courts have an inherent power to suppress judgments. This power has not been extinguished or replaced by s 138 of the Criminal Justice Act 1985, which confers a limited statutory power to suppress. The majority has decided that a suppression order can be made consistently with the Bill of Rights Act where publication of the information would give rise to a real risk of prejudice to a fair trial right.

The second issue was whether a person who wishes to act in a manner contrary to a suppression order may seek to have it varied or rescinded. The majority has held that such a person may apply to the court for review of that order. The application must be made in writing and set out the reasons why review of the order, or its application to that person, is sought. The application must be considered by a judge, who will determine the procedure to be followed in response to the application, and make a decision upon the application itself.

The final issue was whether, in proceedings for contempt of court based on breach of a court order, the defendant may raise as a defence that the order should not have been made or made in the terms it was. The majority of the Court has decided that breach of a court order will constitute contempt of court, at least where the court had power to make an order of the relevant kind. It will not generally be open to a person facing contempt proceedings to defend them on the basis that the

order should not have been made. The person bound by the court order should instead apply to the court seeking to have the order varied or set aside. The Court has decided that there are very limited exceptions to this general rule where that is necessary in order to ensure that there is a meaningful and practically available opportunity for those subject to court orders to challenge them.

In the present appeal, it was open to Mr Siemer to apply to the Court to seek to have the suppression order made by Winkelmann J varied or set aside. There was no exceptional basis for allowing Mr Siemer to raise a defence, in the contempt proceedings, on the basis that the court order should not have been made at all or in the terms that it was. Mr Siemer's actions breached the order made by Winkelmann J and frustrated its purpose. For that reason, Mr Siemer's conduct was contemptuous.

The appeal is accordingly dismissed and the Supreme Court has directed that Mr Siemer must commence serving his sentence.

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