

IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2013
[2013] NZSC 78

BETWEEN STEWART MURRAY WILSON
Applicant

AND THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: A McKenzie for Applicant
J E Mildenhall for Respondent

Judgment: 20 August 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Wilson was convicted in 1996 of a range of sexual and violent offending against a number of women and girls. The offending took place over some 25 years. In total he was sentenced to 21 years imprisonment.

[2] Mr Wilson was released from prison on special conditions on 31 August 2012.¹ Prior to Mr Wilson's release from prison, the Chief Executive of the Department of Corrections applied² to the High Court at Christchurch for an extended supervision order (ESO) to be imposed for a period of 10 years from Mr Wilson's statutory release date, 1 September 2015.³

¹ He was, however, recalled to prison on 10 April 2013.

² Under Parole Act 2002, s 107F.

³ The 2015 statutory release date results from a three-year cumulative sentence imposed for the wilful ill-treatment of a child.

[3] The ESO application was granted by Lang J in a judgment of 13 July 2012.⁴ Lang J accepted the evidence of the health assessor, Dr Freeman-Brown, that Mr Wilson was indiscriminate in his offending and that therefore both adult and young females would be at risk from him in the future.

[4] The Judge considered the likelihood of any change occurring before the expiry of Mr Wilson's release conditions and concluded that Mr Wilson would remain at risk of offending against young females well beyond the expiry of his release conditions. Nor did he consider that the manner in which Mr Wilson complied with his release conditions would have any effect on the duration of the order. The Judge noted that, since his conviction, Mr Wilson had consistently denied his sexual offending and refused to undertake treatment to address that offending.

[5] Mr Wilson's appeal to the Court of Appeal was dismissed in a judgment released of 9 May 2013.⁵ In that Court, Mr Wilson had submitted that the determination of the application was premature given the delayed implementation date and there was not sufficient likelihood that he would commit a relevant specified offence after his statutory release date.

[6] Further, the Court doubted it had jurisdiction to hear an appeal against a refusal to adjourn the hearing of an application for an ESO.⁶ In any event, the Court said its focus in an appeal against the making of an ESO is whether it was rightly made.⁷ The Court held that there was no doubt that the requisite test of whether Mr Wilson was likely to commit a relevant specified offence after his release date was met.⁸ Accordingly, the appeal was dismissed.

[7] Mr Wilson seeks leave to appeal to this Court, advancing essentially the same two grounds as before the Court of Appeal. With regard to the first ground, he submits that other sufficient means of protection continued until 1 September 2015 and the courts below erred in imposing a retrospective penalty prior to it being required as a remedy of last resort.

⁴ *Chief Executive of the Department of Corrections v Wilson* [2012] NZHC 1634 (Wilson HC).

⁵ *Wilson v Chief Executive of the Department of Corrections* [2013] NZCA 144 (Wilson CA).

⁶ *Wilson* CA at [17].

⁷ *Wilson* CA at [24].

⁸ *Wilson* CA at [40].

[8] As to the first ground, Lang J expressly considered the delay in the implementation of the ESO and whether that affected either the risk or the length of the ESO. Mr Wilson has not advanced anything in his leave application to suggest that Lang J's assessment of that issue was erroneous. In any event, if there is a change of circumstances, Mr Wilson may (even if the ESO has not come into force) apply for discharge of the order.⁹

[9] As to whether the requirements for an ESO to be imposed are met, both Lang J and the Court of Appeal applied standard legal principles to the facts of this particular case. There is no point of public importance and nothing has been put forward by Mr Wilson to suggest that there is any risk of a miscarriage of justice.

[10] The application for leave is dismissed.

Solicitors:
Crown Law for Respondent

⁹ See Parole Act 2002, s 107O(1).