Supreme Court of New Zealand
Te Kōti Mana Nui

22 September 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

MICHAEL MARINO v THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS

(SC 35/2016)

EDWARD THOMAS BOOTH v R

(SC 10/2016) [2016] NZSC 127

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

What the appeal is about:

This judgment deals with the interpretation of the Parole Act 2002. Under that Act periods of detention before a person is sentenced to a period of imprisonment are treated as time served for the purposes of calculating parole and release dates. The appeal concerns how the Department of Corrections has been factoring in the time already spent in detention when calculating these parole and release dates.

The Supreme Court has unanimously held that the Act has been misinterpreted and as a consequence, in some instances – including those involving the appellants – parole and release dates have been calculated on an inappropriate basis.

The Supreme Court has held that the correct interpretation of the Act requires all periods of detention to be taken into account from the time of arrest on any charge until an offender is sentenced to imprisonment. This applies in relation to all charges faced in the period after that arrest.

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Details:

Mr Marino was remanded in custody on 12 February 2015 on charges of family violence. In March and June 2015 further charges were laid of attempting to pervert the course of justice. On 6 July 2015 Mr Marino pleaded guilty to all charges and was sentenced to serve 22 months imprisonment on both charges of attempting to pervert the course of justice and 12 months on the other charges, all to be served concurrently.

The issue in Mr Marino's appeal relates to the calculation of pre-sentence detention. Section 90 of the Parole Act 2002 deems pre-sentence detention to count as time served towards any sentence of imprisonment. Section 91 of the Parole Act defines pre-sentence detention as detention that occurs at any stage during the proceedings leading to the conviction or pending sentence of the person, whether it relates to any charge on which the person was eventually convicted, any other charge on which the person was originally arrested or any charge that the person faced at any time between his or her arrest and before conviction.

Mr Marino's pre-sentence detention was calculated by the Chief Executive of the Department of Corrections and the courts below on a charge-by-charge basis. On this approach, his sentence expiry date was 18 May 2016, meaning that Mr Marino would receive no credit for the period spent in custody between February and June 2015. This was because the second charge of perverting the course of justice was laid on 19 June 2015.

Mr Marino applied for a writ of habeas corpus, saying that he had served his sentence and should have been released on 12 January 2016. He was unsuccessful in both the High Court and the Court of Appeal.

The Supreme Court granted leave to appeal to Mr Marino on the question of whether the Court of Appeal erred in its interpretation of ss 90 and 91 of the Parole Act or in its application of these sections to Mr Marino.

Mr Booth was remanded in custody in July 2012 after being charged with offending against A. In May 2013 he was charged with offending against B. Mr Booth was sentenced to concurrent sentences of 11 years nine months' imprisonment on one of the sexual violation charges relating to B, eight years on the other sexual violation count relating to B and six months on an assault count against A.

On the approach taken by the Chief Executive of the Department of Corrections, the 10 month period spent on remand from July 2012 (on the charges related to A) until his remand in May 2013 (on the charges related to B) will not count as pre-sentence detention. If Mr Booth is required to serve his full sentence, he will effectively have been in prison for 12 years and seven months rather than the 11 years and nine months

actually imposed. Mr Booth sought a restructure of his sentence in the Court of Appeal to avoid this effect but his appeal was dismissed.

The Supreme Court granted leave to appeal to Mr Booth on the question of whether the sentencing Judge was correct to structure Mr Booth's sentence in the way that he did. If Mr Marino's appeal succeeds, however, Mr Booth would be required to serve only the sentence imposed and in that case would not pursue his appeal.

The Supreme Court has unanimously allowed Mr Marino's appeal. Elias CJ, Glazebrook, Arnold and O'Regan JJ held that pre-sentence detention is calculated in the aggregate. There is no warrant in the language of s 91(1) for it to be calculated on a charge-by-charge basis.

The s 91(1) definition of pre-sentence detention relates to detention during the whole of the Court process or processes from the original remand in custody on any charge up to the imposition of a sentence (or sentences) of imprisonment. The entirety of that period is deducted from each sentence or sentences of imprisonment imposed.

This means that, for both Mr Marino and Mr Booth, the whole period from first remand in custody until sentence is pre-sentence detention applicable to all charges.

Mr Marino would have been entitled to an order for his release as sought but he is no longer in custody. As Mr Marino's appeal has succeeded, this means that Mr Booth no longer pursues his appeal and it is dismissed accordingly.

William Young J joined the majority in result but differed as to the reasons. He held that all pre-sentence detention in respect of any charges dealt with on a single sentencing occasion count as pre-sentence detention in respect of the effective sentence imposed.

Note: In the case of *Edward Thomas Booth v R* [2016] NZSC 127 the publication of names, addresses, occupations or identifying particulars, of complainants are prohibited by s 203 of the Criminal Procedure Act 2011.

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