

IN THE SUPREME COURT OF NEW ZEALAND

SC 48/2017
[2017] NZSC 107

BETWEEN WAYNE THOMAS PATTERSON
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: D A Ewen for Applicant
 K Laurenson for Respondent

Judgment: 6 July 2017

JUDGMENT OF THE COURT

A The application for an extension of time is granted.

B The application for leave to appeal is dismissed.

REASONS

[1] Mr Patterson was sentenced to a term of two years' imprisonment for, amongst other matters, attempting to pervert the course of justice.¹ On his release, on the application of the Department of Corrections, a number of special release conditions were imposed under s 93 of the Sentencing Act 2002.²

[2] The relevant conditions required him to do the following: (a) submit any electronic devices to a probation officer on request for the purpose of monitoring compliance with the release conditions; and (b) provide details of his bank accounts

¹ The incident giving rise to this offending took place in June 2013 when, whilst serving a term of imprisonment in relation to a large-scale fraud, Mr Patterson provided forged letters in support of his parole application.

² *Department of Corrections v Patterson* [2016] NZDC 14672 (Judge Cameron).

and money to the Department of Corrections. The conditions will have expired by 26 July 2017.

[3] Mr Patterson’s appeal to the High Court against the release conditions was successful in part.³ In particular a further condition, preventing Mr Patterson’s access to the internet, was amended on the basis it was too “draconian”.⁴ The conditions were otherwise left in place.

[4] Mr Patterson sought leave to appeal to the Court of Appeal. The Court of Appeal granted leave on the question of whether s 93(2)(b) of the Sentencing Act authorises a court to confer a power of search upon a probation officer.⁵ Leave to appeal was declined on the question of whether the two conditions, (a) and (b) above, were reasonable and proportionate.

[5] In dismissing the appeal on the first question, the Court of Appeal concluded any condition must show “a rational nexus”⁶ to the s 93(3) purposes, namely, to use the words of s 93(3) it must be designed to:

- (a) reduce the risk of reoffending by the offender; or
- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
- (c) provide for the reasonable concerns of victims of the offender.

[6] Further, the Court said that “when considered with other conditions to be imposed it must be reasonably necessary and proportional”.⁷

[7] On the proposed appeal to this Court the applicant wishes to pursue the arguments made in the Courts below about the impact of the New Zealand Bill of Rights Act 1990 (the Bill of Rights) on the nature of conditions that may be imposed under s 93 of the Sentencing Act.

³ *Patterson v R* [2017] NZHC 49 (Williams J).

⁴ At [44]. The condition was amended to require disclosure to a probation officer of such devices capable of accessing the internet as Mr Patterson wanted to own or use.

⁵ *Patterson v R* [2017] NZCA 66 (Wild, Miller and Cooper JJ).

⁶ At [18].

⁷ At [18].

[8] As we apprehend it, the logic of these arguments leads to the proposition that a special release condition cannot involve actions that would involve interference with a right under the Bill of Rights. Nothing raised by the applicant suggests that this proposition is seriously arguable and, in this case, because the conditions will have expired before the proposed appeal could be heard, the issue is moot. In those circumstances, the criteria for leave to appeal are not met.

[9] The application was filed out of time but there is no objection to an extension of time. An extension of time to file the application for leave is granted. The application for leave to appeal is dismissed.

Solicitors:
WCM Legal, Carterton for Applicant
Crown Law Office, Wellington for Respondent