

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 97/2019
[2019] NZSC 133

BETWEEN PETER RICHARD PRESCOTT
 Applicant

AND NEW ZEALAND POLICE
 Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
 G M Taylor and C N Tocher for Respondent

Judgment: 22 November 2019

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the respondent.**
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REASONS

[1] The applicant seeks leave to appeal against a decision of the Court of Appeal¹ dismissing his application for an extension of time to file an appeal from a judgment of the High Court and refusing to stay the execution of the costs order made against him in the High Court.²

[2] The background to the case was that a vehicle with a number plate issued to the applicant was recorded by a speed camera as exceeding the 50 km/h speed limit.³

¹ *Prescott v New Zealand Police* [2019] NZCA 380 (Brown, Clifford and Collins JJ) [CA judgment].

² *Prescott v New Zealand Police* [2019] NZHC 175 (Jagose J) [HC judgment].

³ The number plate was a “trade plate”, which is a temporary plate issued under reg 25 of the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011.

An infringement notice was served on the applicant, alleging that he had been the driver of the vehicle at the relevant time. He contested this and sought a hearing. However, when the hearing commenced the applicant was not present so the hearing proceeded by way of formal proof. The Justices of the Peace found the offence proven and ordered the applicant to pay a fine of \$80 and court costs of \$30.

[3] The applicant appealed to the District Court but the appeal was dismissed.⁴

[4] The applicant could have applied to the High Court for leave to bring a second appeal under s 237 of the Criminal Procedure Act 2011. In order to be successful, he would have needed to establish that a matter of general or public importance arose or that a miscarriage of justice occurred or may occur unless the proposed appeal was heard. But he did not follow that orthodox course. Rather, he applied to the High Court for judicial review of the District Court decision. The Police successfully applied to strike out the application for judicial review.⁵

[5] The applicant applied to the High Court for recall of the High Court's judgment. That application was declined.⁶ The applicant attempted to file an appeal to the Court of Appeal against the recall decision, but his notice of appeal was rejected by the Court of Appeal registry. He then attempted to seek leave to appeal against the recall decision but was advised that no leave would be required if he wished to appeal against the substantive High Court judgment. The applicant then filed an application for leave to appeal against the substantive High Court judgment, which the Court of Appeal treated as a notice of appeal, since leave was not required to appeal against a decision striking out a judicial review proceeding. However, the time for filing an appeal against the substantive High Court decision had lapsed by just over a month prior to the date on which this document was filed, and so the applicant required an extension of time to file his appeal to the Court of Appeal.

[6] In its judgment dealing with the application for an extension of time, the Court of Appeal considered the factors set out in this Court's decision in *Almond v Read*.⁷

⁴ *New Zealand Police v Prescott* [2018] NZDC 5372 (Judge Tremewan).

⁵ HC judgment, above n 2, at [10].

⁶ *Prescott v New Zealand Police* HC Auckland CIV-2018-404-936, 28 February 2019.

⁷ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]–[39].

The Court accepted that the delay in filing the appeal was not significant and did not cause prejudice to the respondent.⁸ However, the Court considered that the proposed appeal had no merit: there was no basis upon which the applicant's judicial review application to the High Court could have succeeded.⁹ It therefore refused the extension of time on the basis that the proposed appeal had no chance of succeeding.¹⁰ That meant that there was no merit in the application to stay the execution of the costs order and that was also declined.¹¹

[7] The underlying concern expressed by the applicant is that the respondent was not required to prove beyond reasonable doubt that he was the driver of the vehicle that was detected by the speed camera as exceeding the speed limit. However, that argument was addressed in the District Court judgment, with the Judge explaining the application of s 133 of the Land Transport Act 1998. The problem for the applicant is that he did not appear at the hearing before the Justices of the Peace and having had his appeal dismissed in the District Court, he chose not to seek leave to appeal but rather attempted to challenge the decision by way of judicial review.

[8] The arguments the applicant wishes to raise on appeal are not matters of general or public importance,¹² but rather matters that are confined to the facts of this case and arise from the irregular procedure followed by the applicant in his attempts to challenge the conviction. We are satisfied that no matter of public or general importance arises. We also consider that the arguments that the applicant wishes to raise to challenge the Court of Appeal's decision not to extend time have insufficient prospects of success to justify a further appeal.

[9] We therefore dismiss the application for leave to appeal and award costs to the respondent of \$2,500.

Solicitors:
Crown Law Office, Wellington for Respondent

⁸ CA judgment, above n 1, at [15].

⁹ At [19].

¹⁰ At [20].

¹¹ At [21] and [23].

¹² Senior Courts Act 2016, s 74(2)(a).