

ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF THE NAME, OCCUPATION AND HEALTH DETAILS OF THE APPLICANT'S PARTNER PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF THE APPLICANT'S PRIOR CONVICTION REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 28/2019
[2019] NZSC 43**

BETWEEN	EUGENE JOHN DE MARCO Applicant
AND	THE QUEEN Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: D P H Jones QC for Applicant
R K Thomson for Respondent

Judgment: 3 May 2019

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.**
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REASONS

[1] The applicant is facing criminal charges on which he is to be tried in the High Court, probably by jury. He sought an order in the District Court suppressing pre-trial publication of his name. This application was advanced on a number of grounds of which only one is now material: that publication of his name would be likely to result in internet searches which would reveal a previous conviction, resulting in possible prejudice against him in the minds of potential jurors. His application was refused in the District Court as was his appeal to Thomas J in the High Court.¹ A subsequent application for leave to appeal to the Court of Appeal was also dismissed.²

[2] There being no jurisdiction for this Court to entertain an appeal from the dismissal by the Court of Appeal of his leave application (given s 213(3) of the Criminal Procedure Act 2011), the applicant now seeks leave to appeal to this Court direct from the High Court decision.

[3] His application to this Court falls to be addressed under s 75 of the Senior Courts Act 2016 which requires him to satisfy us not only that the proposed appeal meets the usual s 74 criteria, but also that “there are exceptional circumstances that justify taking the proposed appeal directly” from the High Court.³

[4] The legal principles applicable to the suppression application are set out in s 200 of the Criminal Procedure Act. In her judgment, Thomas J addressed the two-stage test provided for by that section.⁴ She was not persuaded that the application had satisfied the jurisdictional requirements for making a suppression order.⁵ Most relevantly, she found that the applicant had not shown that publication would be likely to create a real risk of prejudice to his fair trial rights.⁶ This was an evaluative assessment in respect of which there is no appearance of error. The issue before her was routine in nature and does not raise any issue of public or general importance.

¹ *Serious Fraud Office v DeMarco* [2018] NZDC 12536 (Judge Hobbs); and *DeMarco v Serious Fraud Office* [2018] NZHC 2236 [*DeMarco* (HC)].

² *De Marco v Serious Fraud Office* [2019] NZCA 36 (Williams, Peters and Gendall JJ).

³ Senior Courts Act 2016, s 75(b).

⁴ *DeMarco* (HC), above n 1, at [17].

⁵ At [23], [36] and [42].

⁶ At [36].

[5] In those circumstances we are not persuaded that the usual s 74 leave criteria have been satisfied. As well, there is nothing in the application to suggest that the exacting exceptional circumstances test for the grant of leave for a leapfrog appeal is satisfied.

[6] For these reasons leave to appeal is declined.

[7] For fair trial reasons, we make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of the trial. Publication in law report or law digest permitted.

Solicitors:
Cook Morris Quinn, Auckland for Applicant
Crown Law Office, Wellington for Respondent