

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 46/2020
[2020] NZSC 69

BETWEEN JOHN FREDERICK ERICSON
Applicant

AND CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person
D G Johnstone and J A Herring for Respondent

Judgment: 23 July 2020

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C There is no order as to costs.**
-

REASONS

[1] The applicant is serving a sentence of life imprisonment for murder. He was released on parole in September 2018, but recalled to prison in March 2019. He remains in custody.

[2] The applicant filed an application for habeas corpus in October 2019. The application was dismissed by the High Court.¹ The applicant appealed to the Court of

¹ *Ericson v The Attorney-General* [2019] NZHC 2728 (Nation J).

Appeal against the High Court decision, but that appeal was dismissed.² He now seeks leave to appeal to this Court against the decision of the Court of Appeal.

[3] The application for leave to appeal to this Court was not filed within the 20 working day period provided for in r 11(1)(b) of the Supreme Court Rules 2004. However, the respondent accepts that it is not prejudiced by the delay and does not oppose an extension of time being granted. We therefore grant the necessary extension of time to apply for leave.

[4] The Court of Appeal recorded that, on the face of the record, the applicant was lawfully detained because:³

- (a) he had been convicted and sentenced to life imprisonment;
- (b) his recall from parole was the subject of a final recall order made by the Parole Board;
- (c) the Parole Board's decision was confirmed on review by the chairperson of the Parole Board; and
- (d) his appeals against the decisions of the Parole Board and its chairperson were dismissed by the High Court.⁴

[5] The applicant's challenge to the legality of his detention is based on an argument that a warrant to recall him to prison could be made only by the respondent or the Commissioner of Police under s 60 of the Parole Act 2002. In the applicant's case, the application for recall was made by the Department of Corrections' Regional Commissioner for the Southern Region.⁵

² *Ericson v Chief Executive of the Department of Corrections* [2019] NZCA 633 (Courtney, Brewer and Gendall JJ) [CA judgment].

³ At [4].

⁴ *Ericson v New Zealand Parole Board* [2019] NZHC 1806.

⁵ Mr Ericson thought it had been made by his probation officer, but the Court of Appeal rejected this after being presented with copies of the application for recall and supporting affidavit, which were, at the Court's request, subsequently confirmed as authentic by way of a further affidavit from the Regional Commissioner: CA judgment, above n 2, at [7]–[8].

[6] The Court of Appeal was satisfied that the Regional Commissioner held a delegation from the respondent under s 60(1) of the Parole Act and was therefore authorised to make the application. The Court rejected the applicant's argument that s 10(a) of the Corrections Act 2004, which prohibits the respondent from delegating the power to make an application for recall to "any staff member of a prison", prevented the delegation to the Regional Commissioner. This was because the Regional Commissioner was not, in fact, a staff member of a prison.⁶

[7] The applicant wishes to renew in this Court his argument about the effectiveness of the delegation to the Regional Commissioner. He also argues that he was prejudiced by the fact that the Court of Appeal received an affidavit from the Regional Commissioner as to the authenticity of the notice of application for recall and supporting affidavit that had been provided to the Court.

[8] We do not consider that the grounds for leave to appeal are met.⁷ On the delegation point, we do not consider that the argument the applicant wishes to make has sufficient prospects of success to justify a further appeal. On the affidavit point, we do not accept that the applicant was prejudiced by the Court of Appeal receiving formal proof of the documents that had been presented to it and which had been the subject of submission at the Court of Appeal hearing.

[9] The application for an extension of time to apply for leave to appeal is granted.

[10] The application for leave to appeal is dismissed.

[11] There is no order as to costs.

Solicitors:
Meredith Connell, Auckland for Respondent

⁶ At [10].

⁷ Senior Courts Act 2016, s 74.