

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 95/2021
[2021] NZSC 139

BETWEEN LYND SAY MONK
Applicant

AND THE QUEEN
Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person
Z A Fuhr for Respondent

Judgment: 21 October 2021

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has applied for leave to appeal to this Court. The decision that prompted this is a decision of a Judge of the Court of Appeal, Courtney J.¹ In that judgment, the Judge declined Mr Monk's application for review of a decision of the Deputy Registrar of that Court to refuse to accept for filing a notice of application for leave to appeal against a judgment of the District Court that was delivered in 2011.²

[2] The background to the application is as follows:

- (a) Mr Monk and a Mr Cowlshaw were convicted of intentionally, and without claim of right, destroying ecological reserve vegetation, being

¹ *Monk v R* [2021] NZCA 313.

² *Police v Monk* DC Waitakere CRI-2009-090-8115, 7 October 2011 (Judge Mather).

the property of the Department of Conservation, having no interest in that property. Mr Monk and Mr Cowlshaw had created about three kilometres of tracks through the relevant reserve, cutting native vegetation at 22 separate locations and carrying out significant construction work, amongst other things. The Judge convicted and discharged both Mr Monk and Mr Cowlshaw and ordered them to pay reparation of \$500.

- (b) Mr Monk and Mr Cowlshaw appealed to the High Court, but their appeal was dismissed.³ Their application to the High Court for leave to appeal to the Court of Appeal was also dismissed.⁴
- (c) Mr Monk and Mr Cowlshaw then applied to the Court of Appeal for special leave to appeal, but their application was dismissed.⁵
- (d) There the matter rested, until Mr Monk tried to file the notice of application for leave to appeal to the Court of Appeal referred to earlier. This was initially rejected by the Deputy Registrar of that Court on the basis that it did not clearly identify what Mr Monk sought to appeal against. He then tried to re-file the notice of application for leave with a further page entitled “Brief Summary”, which said the proposed appeal related to the District Court proceeding and was a new matter that had not previously been heard. He argued his appeal was made under the New Zealand Bill of Rights Act 1990, not the Summary Proceedings Act 1957.
- (e) Courtney J pointed out that, having already been declined leave to appeal by the High Court and special leave to appeal by the Court of Appeal, Mr Monk’s appeal rights had been exhausted.

[3] The jurisdiction of this Court in criminal matters was, at the time, governed by s 13 of the Supreme Court Act 2003. Section 10 of that Act provided that this Court

³ *Cowlshaw v Police* [2012] NZHC 1244 (Allan J).

⁴ *Cowlshaw v Police* [2012] NZHC 3183 (Allan J).

⁵ *Cowlshaw v R* [2013] NZCA 240 (Arnold, Ellen France and Harrison JJ).

may hear and determine appeals authorised by s 144A of the Summary Proceedings Act. The categories of decisions listed in s 144A against which this Court could hear and determine an appeal did not include a decision of the District Court (and thus does not permit an appeal against any decision made in the District Court in this case). It also did not include a decision of a Court of Appeal Judge on review from a decision of the Registrar or Deputy Registrar of that Court (and thus does not permit an appeal against the decision of Courtney J). Nor did it include a decision of the Court of Appeal declining leave to appeal to that Court (and thus does not permit an appeal to this Court against the 2013 Court of Appeal decision). No independent right of appeal to this Court is conferred by the New Zealand Bill of Rights Act.

[4] This Court does not have jurisdiction to consider the application for leave to appeal. We therefore dismiss the application.

Solicitors:
Crown Law Office, Wellington for Respondent