

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 97/2019
[2021] NZSC 18

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: 5 March 2021

JUDGMENT OF THE COURT

- A The application for recall of this Court's judgment of 22 November 2019 (*Prescott v New Zealand Police* [2019] NZSC 133) is dismissed.**
- B There is no order as to costs.**
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REASONS

[1] The applicant applies for recall of this Court's judgment of 22 November 2019.¹ In that judgment, this Court dismissed Mr Prescott's application for leave to appeal against a decision of the Court of Appeal.² In its decision, the Court of Appeal refused to grant the applicant an extension of time to appeal to that Court against a decision of the High Court striking out his application for judicial review.³

¹ *Prescott v New Zealand Police* [2019] NZSC 133.

² *Prescott v New Zealand Police* [2019] NZCA 380 (Brown, Clifford and Collins JJ).

³ *Prescott v New Zealand Police* [2019] NZHC 175 (Jagose J). The Court of Appeal judgment also refused to stay the execution of the costs order made against the applicant in the High Court.

[2] The judicial review application was made by the applicant to challenge a decision of the District Court upholding the applicant's conviction on a charge of exceeding the speed limit. The charge was that a motor vehicle registered in the applicant's name was captured by a speed camera travelling above the speed limit in July 2016. The applicant had denied the charge and the matter was set down for a hearing before Justices of the Peace, who found the charge proved in his absence after he failed to appear at the hearing. The applicant's appeal against the decision of the Justices of the Peace was dismissed by a District Court Judge.⁴

[3] The applicant then sought judicial review in the High Court instead of taking the more obvious step of applying to the High Court for leave to bring a second appeal under s 237 of the Criminal Procedure Act 2011. As already noted, the High Court struck out the judicial review application.

[4] Eventually, the applicant did seek leave to bring a second appeal to the High Court. Leave was granted and his appeal was successful.⁵

[5] The application for recall is based on the premise that because the applicant was successful in his appeal before Lang J in the High Court, the substance of his challenge to the District Court decision in his judicial review proceeding was vindicated. He seeks, in particular, the rescinding of the costs order made against him in this Court's judgment of 22 November 2019.

[6] The position in relation to recall of a judgment was summarised by this Court in *Craig v Williams* as follows:⁶

The case law has ... identified three categories of case in which a judgment may be recalled. These are an amendment after the hearing to relevant legislation or a new judicial decision of "high authority", where counsel has failed to draw the Court's attention to a relevant legislative provision or decision and "where for some other very special reason justice requires that the judgment be recalled".⁷

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

⁵ *Prescott v New Zealand Police* [2020] NZHC 2191 (Lang J).

⁶ *Craig v Williams* [2019] NZSC 60 at [10].

⁷ *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2], citing *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

[7] Neither of the first two of the above grounds applies, so the present application appears to be based on the third.

[8] The fact that the applicant was ultimately successful on his appeal to the High Court does not provide a basis for recall of this Court's judgment of 22 November 2019, which dealt with the procedural difficulties faced by the applicant as a result of his erroneous choice to challenge the District Court decision by way of judicial review instead of by appeal. Nothing in the decision of Lang J alters the fact that the case dealt with in this Court arose from the inappropriate use of the judicial review procedure by the applicant, which led to his judicial review claim being struck out and his subsequent application for an extension of time to appeal to the Court of Appeal being dismissed.

[9] There is no proper basis for recall of the judgment of 22 November 2019. The application for recall is therefore dismissed. There is no order as to costs.

Solicitors:
Crown Law Office, Wellington for Respondent