ORDER CONTINUING SUPPRESSION OF THE APPLICANT'S NAME, ADDRESS, OCCUPATION AND ANY IDENTIFYING PARTICULARS UNTIL 2 PM ON FRIDAY 12 MARCH 2021.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 98/2020
[2021] NZSC 20

BETWEEN	JOSEPH PARKER Applicant
AND	THE QUEEN First Respondent
	STUFF LIMITED Second Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	M R Heron QC, I M Brookie and C E M Agnew-Harington for Applicant R K Thomson for First Respondent R K P Stewart for Second Respondent
Judgment:	11 March 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B We make an order continuing suppression of the applicant's name, address, occupation and any identifying particulars until 2 pm on Friday 12 March 2021. Suppression will lapse at that time.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal,[1]

[1] *Parker v R* [2020] NZCA 502 (Kós P, Wylie and Muir JJ) [second CA judgment].

dismissing his appeal against the decision of the High Court declining his application for name suppression.[2]

[2] The background to the application is set out in the judgment of the Court of Appeal, and we need only describe it in brief terms.

[3] The applicant is a well-known professional boxer. During a trial of three men accused of importation and supply of methamphetamine, there were a number of references to a third party said to have had some involvement in the offending or association with one or more of the offenders. These references can be broken into three groupings.

[4] An aspect of the Crown's case against the three accused involved the allegation that this third party was the applicant. However, the applicant was not charged and although he was approached by police, he did not make any statement. The police obtained a warrant to search his home but did not execute it.

[5] The applicant sought name suppression but this was refused by the trial Judge.[3] The applicant appealed unsuccessfully to the Court of Appeal.[4] He then sought leave to appeal to this Court, but before that application had been dealt with, a further development occurred. The development was that the applicant established that the first group of references to a person called "Joe" during the trial, which indicated an involvement in changing New Zealand currency for one of the defendants, was not the applicant.[5] The Crown accepts this is the case.

[6] The second group of references during the trial to the person the Crown says is the applicant again indicated the exchange of currency, while the third indicated that a person using the applicant's "Wickr" account had arranged for the purchase or supply

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2 *X v R* [2020] NZHC 1345 (Downs J).

3 *R v Fangupo* [2019] NZHC 1211 (Downs J). The second respondent, Stuff Ltd, exercised its right under s 210 of the Criminal Procedure Act 2011 to be heard in relation to the suppression application and has participated in all subsequent hearings. It made submissions to this Court opposing the present application for leave.

4 *Parker v R* [2019] NZCA 350 (Courtney, Venning and Dunningham JJ) [first CA judgment].

5 Following the first CA judgment, the applicant also produced further evidence to show that publishing his name would compromise his ability to secure an extension to a three-fight contract, and would jeopardise potential future contractual arrangements: see second CA judgment, above n 1, at [25].

of small quantities of drugs and had put another of the defendants in contact with an alternative supplier.[6] We reiterate, however, that the applicant has not been charged with, let alone convicted of, any offence arising from these alleged incidents.

[7] Both the first High Court judgment and the first Court of Appeal judgment had proceeded on the assumption that there were three relevant groups of references to the applicant at the trial. Once it was established that the person referred to in one of these groups of references was not, in fact, the applicant, he applied again to the High Court for name suppression.[7] His renewed application was unsuccessful, as was his second appeal to the Court of Appeal (in the judgment against which he now seeks leave to appeal).

[8] The applicant's name suppression applications were made under s 202 of the Criminal Procedure Act 2011. That section empowers a court to make a suppression order in relation to a person connected with proceedings or connected with a person who is accused of, convicted of, or acquitted of an offence. The court may make such an order only if satisfied that publication would be likely to cause undue hardship to the connected person.[8]

[9] In the present case, there is no dispute that publication would cause undue hardship to the applicant, so the discretion to make a suppression order was enlivened. However, in all of the four decisions considering the application, the Courts have determined that the discretion should not be exercised in favour of suppression, having regard to open justice principles.

[10] As stated, there is no dispute that publication of the applicant's name would cause undue hardship. So, while the test to be applied for determining "undue

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6 Wickr is an instant messaging application. Messages exchanged between users on Wickr delete themselves after an adjustable period of time.

7 He had applied for leave to appeal to this Court against the first CA judgment, but withdrew the application when he applied again to the High Court for name suppression. Before filing in the High Court, the applicant also applied to the Court of Appeal for the recall of its earlier judgment on the basis that the new evidence showed that he could not have been involved in transporting and changing money in the way alleged by the Crown at trial. The Court of Appeal rejected this application, noting that the correct approach was for the applicant to make a fresh application in the High Court: *Parker v R* [2019] NZCA 464 (Courtney, Venning and Dunningham JJ).

8 Section 202(2)(a)–(f) of the Criminal Procedure Act 2011 sets out other grounds upon which the court may make a suppression order. Only the undue hardship ground is relevant in this case.

hardship" may be a point of importance worthy of consideration by this Court in the future, it does not arise for consideration in the present case.

[11] The applicant advances his case for leave on the basis that the case involves matters of general or public importance,[9] and that a substantial miscarriage of justice may occur unless leave is granted.[10]

[12] The first matter of general or public importance said to arise concerns the types of factors relevant to the exercise of the Court's power under s 202 to grant suppression to connected persons. The applicant wishes to argue that the Court of Appeal took into account irrelevant factors and failed to take into account factors he says were relevant to the decision. He also suggests there are inconsistent Court of Appeal decisions on s 202 applications. In truth, however, the points the applicant wishes to raise are fact-specific rather than matters of general or public importance. The essence of the applicant's case is that the Court of Appeal was wrong not to exercise its discretion in favour of suppression. In reality, the applicant is seeking a further consideration of his position, which has now been determined against him on four separate occasions, albeit that the first two occasions were based on a mistaken understanding of the factual position.

[13] In relation to the miscarriage ground, the applicant argues that the Court of Appeal was unduly deferential to the High Court Judge, because, while it disagreed with some aspects of his approach to the case, it came to the same conclusion. We do not see that as indicating undue deference, but rather the reality that the Court of Appeal's analysis lead it to the same conclusion as that of the High Court Judge, albeit for slightly different reasons.

[14] The applicant also argues that, as he has established that he would suffer undue hardship if a suppression order were made, he should be entitled to the benefit of such an order since it is his only available remedy. We do not see how that submission can be reconciled with the terms of s 202, which clearly contemplates that the existence of

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9 Senior Courts Act 2016, s 74(2)(a).
10 Section 74(2)(b).

undue hardship establishes the power to make a suppression order, rather than obliging the Court to make one.

[15] We are not satisfied that it is in the interests of justice to grant leave, applying the test set out in s 74 of the Senior Courts Act 2016. We therefore dismiss the application for leave. This means that the interim suppression order made by the Court of Appeal in its judgment will lapse. However, in order to provide the applicant with the opportunity to communicate the result as he needs to, we make an order continuing suppression of the applicant's name, address, occupation and any identifying particulars until 2 pm on Friday 12 March 2021. After that time, there will be no impediment to the reporting of the applicant's name.

Solicitors:
Crown Law Office, Wellington for First Respondent