

**NOTE: ORDER PROHIBITING PUBLICATION OF NAME OR
IDENTIFYING PARTICULARS OF AJN REMAINS IN FORCE**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 2/2022
[2022] NZSC 21**

BETWEEN	TODD AARON MARTELEY Applicant
AND	THE QUEEN Respondent

Court: Glazebrook and O'Regan JJ

Counsel: S N B Wimsett for Applicant
J E Mildenhall for Respondent

Judgment: 9 March 2022

JUDGMENT OF THE COURT

**The application for recall of this Court's judgment of
13 March 2017 (*Marteley v R* [2017] NZSC 31) is dismissed.**

REASONS

Introduction

[1] In September 2010, Mr Marteley pleaded guilty to murder. He was sentenced in November 2010 to life imprisonment with a minimum period of imprisonment of 14 years.¹

[2] Mr Marteley seeks leave to appeal against a decision of the Court of Appeal of 30 November 2021.² This dismissed an application by Mr Marteley which the

¹ *R v Marteley* HC Hamilton CRI-2009-019-9786, 5 November 2010.

² *Marteley v R* [2021] NZCA 636 (Collins, Duffy and Dunningham JJ) [CA 2021 judgment].

Court of Appeal treated as an application for recall of a 2018 decision.³ The 2018 decision declined Mr Marteley leave to withdraw a notice of abandonment of appeal against his conviction for murder.⁴ Alternatively, Mr Marteley seeks leave to appeal directly to this Court against his conviction.

[3] This is the second time Mr Marteley has sought leave to appeal directly to this Court against his conviction. His first application for leave was dismissed in 2017.⁵ His subsequent applications for recall of that decision were also dismissed, with this Court directing the Registry not to accept further applications from Mr Marteley on this matter.⁶

Submissions of the parties

Applicant submissions

[4] Mr Marteley submits that he had a tenable defence to the murder charge in that he was unaware that weapons were to be used. Further, he submits that he has never been afforded a full hearing on the merits of his conviction appeal, including with regard to what he submits was an improper inducement that undermined the voluntariness of his guilty plea.

Crown submissions

[5] The Crown submits that no new grounds have been advanced that might engage the Court's exceptional jurisdiction to consider a fresh application.

Our assessment

[6] There is no jurisdiction to hear an appeal against the Court of Appeal's decision to refuse a recall in criminal proceedings.⁷ This Court has already in 2017 dismissed Mr Marteley's application for leave to appeal against his conviction directly to this Court. A refusal of leave to appeal is final and successive applications for leave to

³ At [2].

⁴ *Marteley v R* [2018] NZCA 92 (Clifford, Simon France and Whata JJ).

⁵ *Marteley v R* [2017] NZSC 31 (William Young, Arnold and Ellen France JJ).

⁶ *Marteley v R* [2017] NZSC 72 (William Young, Arnold and Ellen France JJ) (first recall); and *Marteley v R* [2017] NZSC 83 (William Young, Arnold and Ellen France JJ) (second recall).

⁷ *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [19].

appeal are not permitted.⁸ We therefore treat his application as seeking a recall of our 2017 decision.

[7] We accept the Crown’s submission that nothing raised by Mr Marteley justifies recall. Indeed, the position has not changed since our 2017 judgment. In any event, there is nothing raised by Mr Marteley that would justify an appeal directly to this Court.⁹

[8] Mr Marteley is not without remedy. He has made an application to Te Kāhui Tātari Ture | Criminal Cases Review Commission. Mr Marteley has now clearly exhausted his appeal options and, indeed, had done so when the Court of Appeal in 2018 declined his application to withdraw his notice of abandonment.¹⁰

Result

[9] The application for recall of this Court’s judgment of 13 March 2017 (*Marteley v R* [2017] NZSC 31) is dismissed.

[10] The direction made in 2017 that the Registrar is not to accept any further applications in relation to this matter stands.

Solicitors:
Crown Law Office, Wellington for Respondent

⁸ At [20].

⁹ Senior Courts Act 2016, s 75.

¹⁰ Exhausting appeal options does not require applying for the recall of a judgment without grounds to do so, contrary to what the Court of Appeal appeared to be suggesting in its judgment: CA 2021 judgment, above n 2, at [46].