

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 30/2021  
[2022] NZSC 29

BETWEEN MARK ANTHONY MCKINNEY  
Applicant  
AND NEW ZEALAND POLICE  
Respondent

Court: O'Regan, Ellen France and Williams JJ  
Counsel: A J Haskett for Applicant  
R K Thomson for Respondent  
Judgment: 25 March 2022

---

JUDGMENT OF THE COURT

---

**The application for recall of this Court's judgment of 21 June 2021 (*McKinney v New Zealand Police* [2021] NZSC 68) is dismissed.**

---

REASONS

[1] In a judgment delivered on 21 June 2021, this Court dismissed Mr McKinney's application for leave to bring a leapfrog appeal against a decision of the High Court.<sup>1</sup> In the latter decision, the High Court allowed an appeal by the Police against a decision of the District Court dismissing a charge against Mr McKinney for driving a vehicle while the proportion of alcohol in his breath exceeded 400 mcg of alcohol per litre of breath.<sup>2</sup> The High Court Judge had followed the decision of the Court of Appeal in *Solicitor-General's Reference (No 1 of 2020)*, and the objective of Mr McKinney's

---

<sup>1</sup> *McKinney v New Zealand Police* [2021] NZSC 68 [SC leave judgment].

<sup>2</sup> *New Zealand Police v McKinney* [2021] NZHC 330, allowing the appeal against the District Court judgment in *New Zealand Police v McKinney* [2020] NZDC 20169.

appeal was, in effect, to challenge the correctness of that decision of the Court of Appeal.<sup>3</sup>

[2] The applicant argues that the leave judgment should be recalled and reversed, relying on this Court's decision in *Uhrle v R*.<sup>4</sup> He argues that there are three "very special reasons" that justice requires the judgment to be recalled.

[3] Counsel for Mr McKinney filed a prolix (56 page) submission in support of the application for recall. In that submission, he argued that the three very special reasons why this Court's leave decision should be recalled were:

- (a) the point at issue involved matters of the highest general and public importance, which were understated in the leave decision;
- (b) the leave decision misstated the applicant's legal arguments; and
- (c) the Court's reasons for declining leave were inadequate.

[4] We deal with each in turn.

[5] The applicant makes a number of arguments as to the public importance of the issue that were not made in his submission in support of his application for leave. However, it was common ground that a matter of public importance arose and this was acknowledged in the leave judgment.<sup>5</sup> This is not, therefore, a very special reason for recalling the judgment.

[6] The second point is that this Court is said to have misstated the applicant's legal argument. In fact the Court well understood the applicant's argument, but under s 77 of the Senior Courts Act 2016, the Court's reasons for refusing to grant leave may be stated briefly and in general terms only. Therefore, the full detail of the argument was not set out in the leave judgment. This is also not a very special reason for recall.

---

<sup>3</sup> *Re Solicitor-General's Reference (No 1 of 2020)* [2020] NZCA 563.

<sup>4</sup> *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

<sup>5</sup> SC leave judgment, above n 1, at [11].

[7] The third reason is that the Court’s reasons for declining leave were inadequate. Again, s 77 of the Senior Courts Act applies: it is not necessary for the Court to set out detailed reasons and the Court rarely does so in relation to leave applications. We do not see this as being a very special reason for recall either.

[8] The points advanced in support of the application for recall are essentially a relitigation of points determined by the Court when refusing leave. As this Court pointed out in *Biddle v R* and *Foster v R*, that is inappropriate: the fact that a party disagrees with a decision is not a “very special reason” to recall that decision.<sup>6</sup>

[9] The application for recall is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent

---

<sup>6</sup> *Biddle v R* [2021] NZSC 129 at [4]; and *Foster v R* [2021] NZSC 130 at [4].