

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 141/2021
[2022] NZSC 81

BETWEEN DAVID SIMON BARTON
 Applicant

AND CHIEF EXECUTIVE, DEPARTMENT OF
 CORRECTIONS
 Respondent

Court: O'Regan and Ellen France JJ

Counsel: Applicant in person
 M B Smith for Respondent

Judgment: 1 July 2022

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] In December 2020, whilst a serving prisoner, Mr Barton filed an application for habeas corpus. The application was advanced on the basis of failures by the Parole Board in refusing to grant him parole. Jagose J refused the application on the basis that Mr Barton's dispute with the Parole Board's determination did not make his underlying detention unlawful.¹ Jagose J was also satisfied, having examined the District Court Judge's warrant, that Mr Barton remained detained under a valid warrant signed by the Judge. On 27 July 2021, Mr Barton filed an application for an extension of time to appeal the High Court judgment under r 29A of the Court of Appeal (Civil) Rules 2005. The Court of Appeal declined to grant an

¹ *Barton v Chief Executive, Department of Corrections* [2020] NZHC 3476.

extension of time concluding that the proposed appeal was “clearly hopeless”.² Mr Barton then sought leave to appeal to this Court.

[2] The Court has since been advised that Mr Barton died shortly after his release. Some time is sought to allow the executor to consider the position. We have decided that we should, nonetheless, proceed to determine the application for leave. It is quite plain that the proposed appeal does not meet the criteria for leave to appeal.³ The Court of Appeal applied settled principles in declining to grant an extension of time and nothing raised by Mr Barton’s application challenges those principles.⁴ Nor is there any error apparent in the Court of Appeal’s assessment. The proposed appeal has insufficient prospects of success to warrant a grant of leave. In addition, with the passage of time, the points Mr Barton wished to raise in the underlying appeal are now moot.

[3] The application for leave to appeal is dismissed.

Solicitors:
Marsden Woods Inskip Smith, Whangarei for Respondent

² *Barton v Chief Executive, Department of Corrections* [2021] NZCA 529 (Brown, Collins and Cull JJ) at [16].

³ Senior Courts Act 2016, s 74(2).

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.