

**NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF
COMPLAINANT PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT
1985.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 24/2023
[2023] NZSC 111**

BETWEEN S (SC 24/2023)
Applicant

AND ATTORNEY-GENERAL
First Respondent

DISTRICT COURT AT AUCKLAND
Second Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person
Z R Hamill and W P So for First Respondent
H M Carrad for Second Respondent

Judgment: 23 August 2023

JUDGMENT OF THE COURT

**A The application for recall of this Court’s judgment of
18 July 2023 (*S (SC 24/2023) v Attorney-General* [2023]
NZSC 86) is dismissed.**

B There is no order as to costs.

REASONS

[1] On 18 July 2023, this Court dismissed the applicant’s application for leave to bring a direct appeal to this Court against a decision of the High Court.¹ The applicant had brought judicial review proceedings challenging a District Court Judge’s decision

¹ *S (SC 24/2023) v Attorney-General* [2023] NZSC 86 (Glazebrook, Williams and Kós JJ).

to commit him to trial, which the High Court struck out as an abuse of process.² The High Court also dismissed a parallel application for (effectively) bail pending the determination of the proceedings. The applicant now applies for recall of this Court's decision.

[2] The general rule is that a judgment, once delivered, must stand for better or worse, subject to appeal.³ A judgment will only be recalled in exceptional circumstances.⁴ A recall application cannot be used to relitigate the reasons for refusing leave.⁵ Recall will be appropriate where some procedural or substantive error has occurred that would result in a miscarriage of justice.⁶

[3] The applicant's arguments relitigate points already raised in his submissions and rejected by this Court in refusing leave to appeal. He also argues that this Court does not have jurisdiction to refuse an application for leave to appeal made under s 75 of the Senior Courts Act 2016.⁷

[4] Nothing raised by the applicant meets the threshold for a recall application to be granted. The jurisdictional argument is misconceived.

Result

[5] The application for recall is dismissed.

[6] As there was no need to hear from the respondents, there is no order as to costs.

Solicitors:
Crown Law Office, Wellington for Respondents

² *S v The Attorney-General* [2022] NZHC 2992 (Powell J).

³ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633 as cited in *Craig v Williams* [2019] NZSC 60 at [10]. Exceptions to this are discussed in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

⁴ *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

⁵ *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].

⁶ *Uhrle*, above n 4, at [27].

⁷ That section provides the circumstances for when this Court can grant leave to appeal against a decision of a court that is not the Court of Appeal.