Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

6 NOVEMBER 2023

MEDIA RELEASE

VAN SILFHOUT v PATHIRANNEHELAGE

(SC 21/2023) [2023] NZSC 148

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

Mr Pathirannehelage, whom we refer to as the respondent, was a victim of offending by the appellant, Mr van Silfhout, in 2010. In January 2020 the Department of Corrections agreed to pay the appellant $12,000 compensation for an alleged breach of privacy. The Prisoners' and Victims' Claims Act 2005 (PVCA) enables victims to make claims against compensation awarded to offenders. So, in reliance on the PVCA, on 2 April 2020 the respondent lodged with the Victims' Special Claims Tribunal a claim for $10,000 compensation for emotional harm arising out of the offending.

Because the respondent's claim against the appellant was made some years after the offending, it was necessary to consider whether the claim was time-barred. This required assessing the meaning of s 64(1) of the PVCA which states that the relevant limitation period, which sets a six-year deadline for bringing a claim, "cease[s] to run while the offender is serving a sentence of imprisonment in a penal institution, prison, or service prison". As the appellant had spent time remanded in custody prior to sentencing, the issue was whether a period of pre-sentence detention counted as "serving a sentence of imprisonment" such that the limitation period was suspended.

The Victims' Special Claims Tribunal (Tribunal) did not consider the respondent's claim was time-barred and decided that an award of $5,000 was appropriate.

Lower Courts

The appellant appealed against the Tribunal decision, first to the High Court and then to the Court of Appeal. For broadly similar reasons, both Courts concluded that time spent in pre-sentence detention did count so that the limitation period was suspended during this time. This meant that the respondent's claim was not time-barred and could proceed.

This appeal

Leave to appeal was granted to the appellant on the question of whether the Court of Appeal was correct in its interpretation of s 64(1) of the PVCA.

Supreme Court decision

The Supreme Court unanimously allowed the appeal, holding that the respondent's claim was time-barred. Accordingly, the award of $5,000 made to him by the Tribunal was set aside.

In reaching its view, the Supreme Court departed from the approach taken in the Court of Appeal. The Court of Appeal reasoning relied on treating the Parole Act 2002 regime, particularly s 90, as part and parcel of the relevant provisions of the PVCA. Section 90 states that "[f]or the purpose of calculating" certain dates (including the start date, sentence expiry date, release date, and parole eligibility date) an offender is "deemed to have been serving the sentence" during any period of pre-sentence detention (which includes time spent on remand).

The Supreme Court held that there were a number of reasons why it was wrong to have treated the Parole Act regime as applicable. First, although s 90 said that an offender is deemed to have been serving a sentence during time spent on remand, that deeming was for the specified purpose of calculating certain dates. It was not for the purposes of s 64 of the PVCA. Secondly, it was not necessary to incorporate the Parole Act regime into the provisions of the PVCA. The PVCA provisions covered off a number of situations that it would not have needed to if the Parole Act had governed the situation. Thirdly, the language in s 64 suggested it is forward-looking. In contrast, the Court of Appeal approach required determining with hindsight whether time that had previously been spent in pre-sentence detention was to now be deemed as time serving a sentence of imprisonment. Lastly, the Court emphasised that s 64 applies to an "offender", suggesting the person must have been convicted and had a sentence of imprisonment imposed.

The Supreme Court acknowledged there would be awkward consequences under either of the interpretations advanced. However, the most that could be drawn from these anomalies was that they served only to highlight tensions apparent in the legislation scheme.

Williams and Kós JJ wrote a separate concurring set of reasons. They highlighted some of the anomalous situations that could arise under the legislation and suggested it warranted reconsideration by Parliament.

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