



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

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MEDIA RELEASE

SOLICITOR-GENERAL'S REFERENCE (NO 1 OF 2023) FROM CA636/2021
([2022] NZCA 504)

(SC 12/2023) [2023] NZSC 151

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.

What this appeal is about

Under s 317 of the Criminal Procedure Act 2011, the Solicitor-General may apply for leave to refer a question of law to the Supreme Court. Leave was granted to address a question of law arising from the decision of the Court of Appeal to allow an appeal against conviction for aggravated robbery by Mr Darling. The Solicitor-General's Reference allows an issue of law to be raised without affecting the outcome of the original case. Accordingly, this Court's determination of the question does not affect the quashing of Mr Darling's conviction.

Background

Mr Darling and Mr Anderson were involved in an altercation with two complainants in a car at a Nelson beach. Both men were charged with aggravated robbery but Mr Darling was charged under s 235(b) of the Crimes Act 1961 and Mr Anderson was charged under s 235(a).

Section 235 provides that it is an offence if any person:

- (a) robs any person and, at the time of, or immediately before or immediately after, the robbery, causes grievous bodily harm to any person; or
- (b) being together with any other person or persons, robs any person;

...

The Crown prepared a summary of facts to which Mr Darling pleaded guilty. He was sentenced to four months' community detention and nine months' supervision. In contrast, Mr Anderson pleaded not guilty and went to trial. He was acquitted of the charge of aggravated robbery and others he faced at the time (including a charge of wounding with intent to cause grievous bodily harm).

Court of Appeal decision

Mr Darling appealed his conviction to the Court of Appeal on the grounds that there was no reasonable basis for the conviction given Mr Anderson's acquittal.

The Court of Appeal allowed Mr Darling's appeal and quashed his conviction. The Court essentially found that Mr Darling's guilty plea to the charge under s 235(b) could not be reconciled with Mr Anderson's acquittal of the charge under s 235(a). There had accordingly been a miscarriage of justice. The circumstances in which Mr Darling entered the guilty plea (ie. the pressures he was under at the time) also added weight to this conclusion.

Solicitor-General's Reference

This Court granted leave to the Solicitor-General in this case on the following question:

On the facts as set out in the Court of Appeal decision and the relevant documents on which guilty pleas were entered, did Mr Anderson's acquittal mean that Mr Darling could not, in law, have been convicted of the offence with which he was charged, despite his guilty plea?

As required under the Criminal Procedure Act when dealing with a Reference, the Court appointed counsel to assist the Court. This requirement reflects the fact there is no respondent at the hearing of the Reference.

Supreme Court decision

The Supreme Court has unanimously agreed the Court of Appeal was wrong in law about the effect of Mr Anderson's acquittal on Mr Darling's conviction. Mr Anderson's acquittal did not mean that Mr Darling could not, in law, have been convicted of the offence with which he was charged, despite his guilty plea. Therefore, the referred question is answered "No".

In coming to its decision, the Court first discussed the appropriate legal test in an appeal against conviction where a guilty plea is entered.

- The Court emphasised that the overriding test is whether a miscarriage of justice will result if the conviction is not overturned.
- Prior case law has discussed different categories of cases in which a miscarriage of justice may be indicated. However, these categories should not be seen as closed nor as confining or restricting the overriding miscarriage of justice test.
- A subsequent acquittal of a co-offender could, in some circumstances, be relevant to a challenge by the other offender to a conviction based on a guilty plea. But the significance of the acquittal of a co-offender to the outcome of a conviction appeal must be addressed on a case-by-case basis, having regard to the overall circumstances of the case. That reflects the miscarriage of justice test.

Applying these propositions to the present case, the Supreme Court held that the Court of Appeal was wrong to conclude there was a miscarriage of justice here and, in particular, that the acquittal of Mr Anderson meant that Mr Darling's conviction could not stand.

Mr Darling ultimately pleaded guilty to a different charge than that faced by Mr Anderson. The elements of the two offences are different. The admitted facts to which Mr Darling pleaded were sufficient to establish the elements of the offence of aggravated robbery under s 235(b). Mr Anderson's acquittal said nothing about Mr Darling's guilt. It was not correct to say (as the Court of Appeal had) that Mr Anderson's acquittal "draws into question whether there was a robbery at all". The most that could be said here is that the jury was not satisfied beyond reasonable doubt that Mr Anderson was guilty of a different offence with different elements.

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