

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 81/2024
[2024] NZSC 106

BETWEEN JESSIE CLARK
Applicant

AND NEW ZEALAND POLICE
First Respondent

ATTORNEY-GENERAL
Second Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: Applicant in person
W S Taffs for Respondents

Judgment: 28 August 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The application for a stay of all proceedings relating to other matters in the District Court is dismissed.**
-

REASONS

Introduction

[1] Following conviction on a charge of breaching a protection order, the applicant is on electronically monitored bail (EM bail).¹ He made an application to the High Court for a writ of habeas corpus on the basis that, as he is subject to EM bail, he is unlawfully detained. The application was declined by the High Court in a

¹ *New Zealand Police v Clark* [2024] NZDC 15857 (Judge Elkin).

judgment delivered on 29 July 2024.² He has filed an application in this Court for leave to appeal directly from the decision of the High Court. The applicant also seeks a stay of proceedings in the District Court relating to other outstanding charges against him.

The proposed appeal

[2] The applicant seeks to appeal directly to this Court on the basis, amongst other matters, that the issues he wishes to raise are both serious and urgent. He says that a miscarriage of justice has occurred and he has not been given due process, resulting in a restraint on his liberties.

[3] The applicant also argues that his submissions were not before the High Court Judge, and that the Judge erred in saying there was no jurisdiction to use the Habeas Corpus Act 2001. Finally, he says the fact there may be another available remedy or a right of appeal does not mean he is not entitled to immediate release from unlawful detention.

Our assessment

[4] The proposed appeal would largely reprise matters dealt with in the High Court.³ In dismissing the application for habeas corpus, the High Court noted that Mr Clark's submission he was "detained" in terms of the Habeas Corpus Act was challenged by the respondents. In submissions which are repeated in opposing the present application, the respondents argued in the High Court that the applicant's EM bail conditions did not amount to the "close custody" required to establish detention in terms of the Habeas Corpus Act.⁴

[5] The High Court was satisfied that it was not necessary to determine whether the applicant was detained. That was because, even if the conditions of his EM bail

² *Clark v New Zealand Police* [2024] NZHC 2078 (Dunningham J) [HC judgment].

³ The respondents note that an email from the High Court registry makes it clear that the Judge had the applicant's written submissions.

⁴ HC judgment, above n 2, at [8], citing *Drever v Auckland South Corrections Facility* [2019] NZCA 346 at [30].

comprised a detention, it was “clear” the detention would be lawful.⁵ The District Court order was “a continuation of” the applicant’s existing EM bail.⁶

[6] Further, the Judge noted that where, as in this case, a court of competent jurisdiction has made a ruling as to bail, s 14(2)(b) of the Habeas Corpus Act precludes the Court from calling that ruling into question.⁷

[7] The High Court also made the point that the applicant has appeal rights both in relation to the bail decision and as to the conviction.

[8] Finally, the Court said this:⁸

[15] This then leads to a further reason for declining the application, as pursuant to s 14(1A)(b) of the Act, an application for a writ of habeas corpus may be refused if it is not the appropriate procedure for considering the allegations made by the applicant. Here, the underlying challenge is to the merits of the conviction, and to the conduct of the subsequent bail variation hearing. It is clear that a fully argued appeal whether of the 9 July decision or the 24 July decision, or both, is the most appropriate procedure for determining the issues which Mr Clark raises in this application.

[9] Putting to one side, as the Judge did, the meaning of “detention”, it is plain that resolution of the matters raised by the applicant would turn on the specific facts. No question of general or public importance accordingly arises.⁹ Further, nothing raised by the applicant suggests that the proposed appeal has sufficient prospects of success to warrant an appeal to this Court. In this situation, there is no appearance of a miscarriage of justice and nor any exceptional circumstances that would warrant a direct appeal.¹⁰ The applicant has other, more appropriate, remedies he can pursue.

[10] Nor do we see any basis for a stay of the other proceedings relating to the applicant.

⁵ HC judgment, above n 2, at [11].

⁶ At [11].

⁷ Section 14(2) of the Habeas Corpus Act 2001 provides for a Judge dealing with a habeas corpus application to enquire into the factual and legal matters said to justify detention but the subsection “does not entitle a Judge to call into question ... a ruling as to bail by a Court of competent jurisdiction”.

⁸ HC judgment, above n 2.

⁹ Senior Courts Act 2016, s 74(2)(a).

¹⁰ Senior Courts Act, ss 74(2)(b), and 75.

Result

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

[12] The application for a stay of all proceedings relating to other matters in the District Court is dismissed.

Solicitors:
Raymond Donnelly & Co, Christchurch for Respondents