

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 13/2024  
[2024] NZSC 23

BETWEEN KYLE JAMES CRAIG  
Applicant

AND CHIEF EXECUTIVE OF THE  
DEPARTMENT OF CORRECTIONS  
Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: Applicant in person  
W S Taffs for Respondent

Judgment: 19 March 2024

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal and the application for an interim order are dismissed.**

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**REASONS**

[1] On 16 February 2024, the High Court declined to issue a writ of habeas corpus with regard to Mr Craig.<sup>1</sup>

[2] Mr Craig is currently serving a 16-month term of imprisonment imposed by the District Court on 19 January 2024 on three charges related to the breach of a protection order and two charges related to the possession of cannabis and refusal to give particulars to enable the unlocking of his mobile phone. He pleaded guilty to those charges.

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<sup>1</sup> *Craig v Chief Executive of the Department of Corrections* [2024] NZHC 202 (Radich J).

[3] Mr Craig’s arguments before the High Court related to the merits of the sentencing decision, the underlying merit of the protection order decisions and the terms and conditions of his imprisonment.<sup>2</sup>

[4] The High Court held that:

[14] There is no question but that Mr Craig is detained. Accordingly, the onus passes to the respondent to establish the lawfulness of the detention. This can be achieved by producing the warrant of commitment for a sentence of imprisonment. That warrant is in evidence. The statutory basis for it, and the warrant itself, are all in order.

[15] That does, on its face, as the respondent submits, provide a complete answer to the application. Under s 14 of the [Habeas Corpus] Act [2001], if the defendant fails to establish that the detention is lawful, then the Court must grant a writ of habeas corpus and release the detained person as a matter of right. However, under s 14(2), a Judge is not entitled to call into question a conviction of an offence by a court of competent jurisdiction.

[5] The High Court further held that the matters Mr Craig raised should be pursued through other processes and not a habeas corpus application.<sup>3</sup>

### **Grounds for application**

[6] Mr Craig in his application in essence replicates the arguments made in the High Court.

### **Our assessment**

[7] Mr Craig, in order to succeed in his application for leave to appeal, would have to satisfy the Court that it is necessary in the interests of justice to hear and determine his appeal, by reference to the leave criteria in s 74(2) of the Senior Courts Act 2016.<sup>4</sup> Given that he seeks leave to appeal directly to the Court from the High Court decision he also needs to show that there are exceptional circumstances.<sup>5</sup>

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<sup>2</sup> At [2].

<sup>3</sup> At [21], pointing to s 14(1A) of the Habeas Corpus Act 2001.

<sup>4</sup> Senior Courts Act 2016, s 74(1).

<sup>5</sup> Section 75.

[8] In this case nothing raised by Mr Craig suggests that the High Court decision may be erroneous. There is therefore no risk of a possible miscarriage of justice.<sup>6</sup> The issues raised relate to Mr Craig's particular circumstances and raise no issues of general or public importance.<sup>7</sup> The leave criteria are therefore not met. In any event, nothing raised points to any exceptional circumstances that would justify an appeal directly to this Court.

[9] On 15 March 2024 Mr Craig applied for leave to file response submissions. We have considered his application but nothing he wishes to raise would affect our conclusions. We would therefore not be assisted by any further submissions. Mr Craig also seeks, under s 11 of the Habeas Corpus Act 2001, an interim order for release from detention pending final determination of his application. Given his application for leave to appeal has been dismissed, this application must also be dismissed.

## **Result**

[10] The application for leave to appeal and the application for an interim order are dismissed.

Solicitors:  
Raymond Donnelly & Co, Christchurch for Respondent

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<sup>6</sup> Section 74(2)(b).

<sup>7</sup> Section 74(2)(a).