IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 3/2024
[2024] NZSC 48

BETWEEN		KIRSTIN MAJORY SLESSOR Applicant
AND		COMMISSIONER OF POLICE Respondent

Court:	Glazebrook, Kós and Miller JJ
Counsel:	N T C Batts for Applicant R K Thomson and M J R Blaschke for Respondent
Judgment:	8 May 2024
Reissued:	25 July 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted of methamphetamine offending in 2011, and again in 2021. At the time of her original sentencing in 2011, the retention of a sum of cash seized and later held in a police trust account was overlooked.

[2] In 2022, Gordon J made a profit forfeiture order in the sum of $84,000 against her.[1] The Judge made a further order that the money in the trust account — $28,778 — could be used in part satisfaction of the first order. The applicant had argued the money was an advance from a friend to assist in her French Bulldog breeding business. This

1 *Commissioner of Police v Slessor* [2022] NZHC 3511 [HC judgment] at [102].

explanation was rejected by Gordon J, who held it was derived from the applicant's offending.[2]

[3] The applicant appealed the second (but not the first) order. The Court of Appeal declined her application to adduce further evidence and dismissed her substantive appeal.[3]

[4] The applicant wishes, on appeal to this Court, to re-run an argument rejected by the High Court and Court of Appeal; namely a defence of illegality based on deliberate, unlawful retention of the funds by the police.

[5] The criteria for leave are not met here. No matter of general or public importance is raised.[4] There are concurrent findings in the Courts below as to the unlawful source of the money forfeited, and as to the absence of bad faith by the police in retaining it.[5] Citing the decision of the United Kingdom Supreme Court in *Patel v Mirza*, the Court of Appeal held that denial of the order would be a disproportionate response to the modest impropriety involved in retention of the money by the police.[6] As the Court of Appeal put it: "In short, the police did little more than fail to return the proceeds of serious criminal offending to someone who had not hitherto asked for them."[7] Nothing has been raised by the applicant that throws doubt on the Court of Appeal's analysis or suggests a risk of a miscarriage of justice.[8]

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2 At [96].

3 *Slessor v Commissioner of Police* [2023] NZCA 612 (Courtney, Whata and Downs JJ) [CA judgment] at [57]–[58].

4 Senior Courts Act 2016, s 74(2)(a).

5 HC judgment, above n 1, at [90] and [96]; and CA judgment, above n 3, at [53]–[54].

6 CA judgment, above n 3, at [30]–[31], [51] and [54] citing *Patel v Mirza* [2016] UKSC 42, [2017] AC 467 at [120].

7 At [54].

8 As noted by this Court in *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369, the miscarriage ground now prescribed in s 74(2)(b) of the Senior Courts Act will only enable this Court to review a civil decision of the Court of Appeal "in the rare case of a sufficiently apparent error" of "such a substantial character that it would be repugnant to justice to allow it to go uncorrected": at [5].

Result

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

[7] Following delivery of this judgment on 8 May 2024, counsel advised that the applicant was in fact legally aided. Accordingly no order for costs is now made.

Solicitors:
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