THE HIGH COURT OF NEW ZEALAND
TE KŌTI MATUA O AOTEAROA

16 February 2024

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

G v NEW ZEALAND POLICE

CRI-2022-485-76 **[2024] NZHC 189**

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 www.courtsofnz.govt.nz.

Summary

This case concerns the first referral made by Te Kāhui Tātari Ture | the Criminal Cases Review Commission pursuant to s 17 of the Criminal Cases Review Commission Act 2019. The appellant, a refugee from a war-torn country, was convicted in the District Court in 2001 of nine offences, the most serious being one charge of male assaults female, and was sentenced to 11 months' imprisonment. At the time he was understood to be 17 years old. The Commission considers that he was in fact only 15 years old, which would mean that he was dealt with in the wrong court and was sentenced to imprisonment when he was still a young person – an outcome that was prohibited by legislation.

This Court has found that the appellant's correct date of birth is 8 April 1986, meaning he was 15 years old when convicted and sentenced to imprisonment. The appeal is therefore allowed. The appellant's convictions are set aside and his sentence quashed.

Background

In 2001 nine charges were laid summarily against the appellant, pursuant to the Summary Proceedings Act 1957. His date of birth was recorded as 4 April 1984. He pleaded guilty to all charges except that of unlawfully getting into a motor vehicle, which he was found guilty of following a defended hearing. The appellant was sentenced to 11 months' imprisonment and was declined leave to substitute a sentence of home detention.

He appealed his sentence to the High Court on the grounds that it was manifestly excessive and his personal mitigating factors were not taken into account. His appeal was unsuccessful.

In 2020, the appellant applied to the Commission for review of his convictions and sentence. The principal ground of the application was that because various Government departments had incorrectly recorded his date of birth, the appellant was wrongly convicted and sentenced to a term of imprisonment while still a young person, being 15 years of age. He does not deny the offending.

The Criminal Cases Review Commission Act provides that the appellate court must hear and determine the referral as if it were a first appeal. Under the Summary Proceedings Act, first appeals were by way of rehearing.

Issues

There were two issues to be determined:

1. Was the appellant born on 8 April 1986 rather than 4 April 1984 and therefore a young person at the time of the 2001 offending?
2. If so, what are the consequences for the 2001 convictions and sentence?

High Court's findings

The appellant's date of birth
This Court found the evidence of both the appellant's aunt, who brought him to New Zealand, and his cousin as to his birthdate being 8 April 1986 convincing. His cousin is one month older than him, and there is no basis on which to conclude that she was born in 1984, as opposed to 1986.

The appellant was issued with a Certificate of Identity in 1993, recording his date of birth as 8 April 1986. This date is also that recorded on his Certificate of New Zealand Citizenship, issued in 1999.

While there was some evidence that suggested the appellant was born in 1984, having weighed all the evidence this Court is satisfied that the appellant's date of birth is 8 April 1986.

The penalties open to the court at the time for the defendant as a young person
Had the police realised in 2001 the appellant's true date of birth he would have been dealt with under parts 4 and 5 of the Children, Young Persons and their Families Act 1989 (as it then was). The process followed would have been entirely different – for instance, a Family Group Conference would have been required, a youth justice coordinator would have been involved and the appellant could not have been remanded in custody in an adult prison. The most severe order available under the Act (aside from transfer to the District Court) was up to three months' residence in a social welfare institution, followed by up to six months under the supervision of the Chief Executive. There is no suggestion that the 2001 offending was so serious that the Youth Court would have remitted the appellant to the District Court for sentence.

The appellant could not have been sentenced to imprisonment as this was precluded by legislation. The appellant should not have been convicted but rather he would likely have been admonished and ordered to reside in a welfare institution, for three months at most.

Remedies available for a mistake in age of an offender

The Summary Proceedings Act and Criminal Justice Act both contained provisions that meant the convictions and sentence were not automatically invalid. Both sections provided a process for a rehearing if there had been a mistake as to the age of the offender. However they do not preclude this Court exercising its powers on appeal under s 121 of the Summary Proceedings Act.

This Court must hear and determine the appeal as if it is a first appeal, and thus the remedies available on appeal are available.

The High Court's decision

The 2001 convictions and sentence were imposed over 20 years ago. This Court is satisfied the appropriate outcome in the circumstances is to set aside the convictions pursuant to this Court's powers on appeal. Setting aside a conviction would usually render a sentence appeal unnecessary, but because of the Youth Court context, the sentence appeal must also be addressed. The sentence of eleven months' imprisonment has long since been served and it is simply too late to substitute any other order that could have been made in the Youth Court. The sentence is quashed and there is no substituted order.