



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

10 JUNE 2025

MEDIA RELEASE

H (SC 1/2024) v THE KING

(SC 1/2024) [2025] NZSC 62

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.

PUBLICATION OF NAME, ADDRESS, OCCUPATION AND IDENTIFYING PARTICULARS OF THE APPELLANT IS PROHIBITED.

What this judgment is about

This judgment concerns how a young person—transferred out of the Youth Court to the High Court because of a more serious charge on which he was then found not guilty—should be dealt with on a remaining charge that could always have been disposed of in the Youth Court. It turns on s 276A of the Oranga Tamariki Act 1989, which provides that where the circumstances or reasons for transfer no longer apply, and the charge is within the Youth Court’s jurisdiction, the proceeding must go back to the Youth Court unless the interests of justice require otherwise.

Background

The appellant, H, who was 17 years old at the time, and T were with a group of young people. The group was involved in a fight with another group. Towards the end of the fight, T stabbed the victim, Mr Peihopa. The appellant then ran in, kicked Mr Peihopa, and fled the scene. The stab wound proved fatal.

T was charged with murder. The appellant was charged in the Youth Court with injuring with intent to cause grievous bodily harm. Some time later, he was charged alongside T as a party to the murder. Because of the murder charge, both charges against H were transferred to the High Court. The injuring charge was reduced to injuring with intent to injure and the appellant pleaded guilty to that charge. At trial, T was found guilty of the murder charge, but the appellant was found not guilty.

By the time he was sentenced in the High Court on the injuring charge, H was 19 years old. The Sentencing Judge found the appellant did not know Mr Peihopa had been stabbed and that there was no injury identified as resulting from his kick.

The appellant was convicted and discharged in relation to the injuring charge. The Judge considered the case in accordance with youth justice principles. However, the High Court did not accept that the appellant should be discharged without conviction because no particular consequences of a conviction had been identified.

The Judge declined the appellant permanent name suppression under s 200 of the Criminal Procedure Act 2011. The Judge noted that Mr Peihopa's whānau wanted to ensure T could be publicly identified. The Judge concluded that the appellant did not meet the extreme hardship threshold for name suppression. Interim name suppression has remained in place pending appeal.

The Court of Appeal

The Court of Appeal dismissed the appellant's appeals against conviction and the name suppression decision. A majority of the Court of Appeal rejected the appellant's argument that the sentencing outcome should mirror that in the Youth Court, namely, a discharge without conviction. The minority would have allowed the conviction appeal but did not engage with this argument.

The Court unanimously dismissed the name suppression appeal, agreeing with the Judge that extreme hardship was not made out.

Leave to appeal

The Supreme Court granted leave for the appellant to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeals.

Issues

There were three main issues before the Supreme Court:

1. whether the appellant should have been transferred back to the Youth Court under s 276A of the Oranga Tamariki Act following his acquittal on the murder charge;
2. whether the entry of a conviction against the appellant in the High Court was a miscarriage of justice; and
3. whether the appellant should have permanent name suppression.

Supreme Court decision

The Supreme Court has unanimously allowed the appeals.

Whether the appellant should have been transferred back to the Youth Court

The Supreme Court noted that the appellant was still within the jurisdiction of the Youth Court as the relevant age for jurisdiction purposes was that at the time of the offending. The Court emphasised the words of the statute: if the three requirements in s 276A(1) are met, s 276A(2) *requires* the High Court to transfer the proceeding back *unless* the interests of justice require

the proceeding to be retained. The Crown accepted the s 276A(1) requirements were met in this case, and the Court agreed.

Since the s 276A(1) requirements were met, the Judge was compelled to transfer the charge back to the Youth Court unless it was in the interests of justice for the High Court to retain it. Whether transfer was in the interests of justice was the focus of the arguments on appeal.

The Court said the starting position was that the interests of justice are generally best met by bringing the defendant back to the Youth Court because the outcomes available in that Court are attuned to the circumstance of young persons. The Court did not accept that Youth Court procedures were, if required, inappropriate for a 19-year-old. The Court noted that the appellant pleaded guilty on a summary of facts; the incident was preserved on CCTV footage; and the Judge could have recorded his key factual findings in a decision to transfer the appellant to the Youth Court. Accordingly, the Judge's familiarity with the trial evidence did not preclude transfer back. Had the Judge been asked to transfer the appellant back to the Youth Court, the conclusion would have been that there was no realistic prospect that the Youth Court would have needed to be able to resort to a sentencing outcome beyond its own jurisdiction. The Court therefore concluded that the interests of justice did not require the proceeding to be retained in the High Court and that the injuring charge should therefore have been transferred back to the Youth Court.

Whether entry of a conviction against the appellant in the High Court was a miscarriage of justice

The Court then considered how the Youth Court would have dealt with the injuring charge on which the appellant was sentenced. The Court concluded that the only possible outcome could have been a s 282 or s 283(a) discharge (without or with notation). In this case, the precise form of discharge that would have been entered made no practical difference. In neither instance is there a conviction.

It was clear that the failure to re-transfer had resulted in a conviction which would not otherwise have been entered. It followed that the entry of a conviction constituted a miscarriage of justice. A discharge without conviction was accordingly substituted by the Court.

The name suppression issue

Had the appellant been transferred back to the Youth Court, as he should have been, his name and identifying particulars would have been suppressed. That is an invariable, automatic statutory requirement under s 438(3) of the Oranga Tamariki Act. The Court therefore made an order suppressing the appellant's name and identifying particulars. In doing so, the Court acknowledged the strongly held contrary view of Mr Peihopa's whānau. But that must yield to the mandatory application of name suppression in the Youth Court. The Court understood the primary concern of the whānau was that T should be able to be publicly identified. As to that, the Court made it clear that T's name is not suppressed, and he may be identified as the person who killed Mr Peihopa, so long as that publication (including embedded links) does not in any way identify the appellant.

Result

The formal orders of the Court are as follows:

- A The appeal against conviction is allowed and a discharge without conviction is substituted.**
- B We make an order prohibiting publication of the name, address, occupation and identifying particulars of the appellant.**

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