



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

01 August 2023

MEDIA RELEASE

R (SC 64/2022) v CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS

(SC 64/2022)

Hearing in the Supreme Court Tuesday 8 August 2023

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPLICANT PROHIBITED BY S 201 OF THE CRIMINAL PROCEDURE ACT 2011 AND PURSUANT TO SS 107RA AND 107G OF THE PAROLE ACT 2002. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360347.html>

Background

The Appellant, Mr R, is intellectually impaired and has been assessed as posing a high risk of sexual offending. He is subject to both an Extended Supervision Order (ESO) under the Parole Act 2002 and a Compulsory Care Order (CCO) under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. An ESO is used to monitor the long-term risk posed by a high-risk sex offender who is released back into the community, while a CCO is for the rehabilitation of an individual with an intellectual disability who has been found unfit to stand trial on an imprisonable offence. Mr R believes he should not be subject to both orders, and that only the CCO should apply.

For most of the last 50 years, Mr R has lived in secure care, either at a mental health facility or in prison, as a result of his sexual offending. He was first admitted to a psychiatric facility at age 14, after an allegation of familial sexual offending. At age 18, after an allegation of rape at the facility, he was made a special patient and placed in a different secure unit. He was discharged at age 30, but following further offending was returned to care as a special patient. There have been incidents of absconding, and further sexual offending while at large.

In 2005, following his release from prison, Mr R was subject to an ESO for 10 years. The second, current, ESO came into force in 2017. In 2019, Mr R was charged with criminal offending at the secure residence where he was living. Having been found unfit to stand trial,

Mr R was given a CCO and moved to a secure community placement. The CCO was extended for a further two years in 2022.

In 2021, the Chief Executive of the Department of Corrections applied for a review of Mr R's ESO by the High Court. The High Court has a discretion to review an ESO and either confirm or cancel it. In this case, the Judge confirmed the ESO, finding it was necessary when considering the risks Mr R might pose to himself and the community when the CCO expires.

Mr R appealed to the Court of Appeal. He argued, among other things, that the discretionary decision to confirm the ESO was discrimination on the basis of intellectual disability and an unjustified restriction on his liberty where other, adequate safeguards existed. The Court of Appeal dismissed the appeal, finding that the High Court Judge did not err in the exercise of their discretion.

Relevantly, Mr R relied on the Court of Appeal's recent decision in *Chisnall v Attorney-General* [2022] NZCA 24. In that case, a declaration was made that the ESO regime was inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA) because it amounted to a second punishment. The Court of Appeal decision in *Chisnall* has also been appealed to the Supreme Court. The reserved judgment of this court in *Attorney-General v Chisnall* (SC 26/2022) will be relevant to the outcome in the present appeal.

This appeal

Mr R applied for leave to appeal the part of the decision of the Court of Appeal relating to discretion. On 11 April 2023, the Supreme Court granted leave to appeal.

The approved question is:

How does the New Zealand Bill of Rights Act 1990 affect the exercise of the court's discretion to renew an Extended Supervision Order when the individual concerned is also subject to a Compulsory Care Order?

The relevant NZBORA rights for consideration include the right to justice (s 27) and a fair hearing (s 25(a)); the right to be free from disproportionately severe treatment (s 9), discrimination (s 19) and arbitrary detention (s 22); and the right against retroactive penalties (s 26(1)) and double punishment (s 26(2)).

Viewing of hearing

The courtroom is open to the public in accordance with the [COVID 19 Protection Framework Protocol](#).

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice O'Regan	The Hon Justice Kós
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Judges as seen from the public gallery

Counsel

- R (Appellant): *A J Ellis and G K Edgeler*
- Chief Executive of the Department of Corrections (Respondent): *U R Jagose KC and R K Thomson*

Sitting hours

Court will begin at 10:00 am and conclude at 4:00 pm with adjournments taken from 11:30 to 11:45 and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: Not publicly available

Supreme Court leave decision: [\[2023\] NZSC 31](#) (11 April 2023)

