



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

07 August 2023

MEDIA RELEASE

SOLICITOR-GENERAL'S REFERENCE (NO 1 OF 2023) FROM CA636/2021
([2022] NZCA 504)

(SC 12/2023)

Hearing of the Supreme Court in the Auckland Environment Court Wednesday 16 August

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.

Background

This case arose out of an altercation in a car at a Nelson beach. Mr Darling and Mr Anderson were initially charged with, among other offences, aggravated robbery causing grievous bodily harm. Mr Darling accepted a sentence indication and pleaded guilty to aggravated robbery under s 235(b) of the Crimes Act 1961. Section 235(b) applies where a person “being *together with any other person* or persons, robs any person”.

However, Mr Anderson went to trial. He had been charged with aggravated robbery under s 235(a). Section 235(a) applies where a person robs any person and causes grievous bodily harm. At trial, Mr Anderson was found not guilty (acquitted). In light of Mr Anderson's acquittal, Mr Darling appealed his conviction to the Court of Appeal. He argued that Mr Anderson's acquittal meant there was no reasonable basis for his conviction.

On 21 October 2022, the Court of Appeal allowed Mr Darling's appeal and quashed his conviction. The Court found that, on the facts, Mr Darling's guilty plea to the charge under s 235(b) could not be reconciled with Mr Anderson's acquittal of the charge under s 235(a). This was enough to establish that a miscarriage of justice had occurred. The circumstances in which Mr Darling entered the guilty plea also added weight to this conclusion.

What is a Solicitor-General's reference?

Under s 317 of the Criminal Procedure Act 2011, the Solicitor-General may apply for leave to *refer* a question of law to the Supreme Court. The reference allows the Solicitor-General to raise an important issue of law without impacting the outcome of the original case. This allows the Supreme Court to thoroughly examine the issue and make a ruling, which will be followed by courts in the future when similar issues arise. The outcome will not impact Mr Darling's conviction, which will remain quashed even if the Court rules in favour of the Solicitor-General. Mr Darling is not participating in the hearing.

This reference

On 6 April 2023, the Court granted leave to the Solicitor-General to refer the following question of law:

On the facts as set out in the Court of Appeal decision and the relevant documents on which guilty pleas were entered, did Mr Anderson's acquittal mean that Mr Darling could not, in law, have been convicted of the offence with which he was charged, despite his guilty plea?

As Mr Darling is not participating in the hearing, the Supreme Court has appointed senior counsel as counsel to assist the Court, in order to ensure the Court receives full argument on the reference.

Viewing of hearing

The Supreme Court will hear this case in the Auckland Environment Court. 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 O'Regan	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

Counsel

- Solicitor-General (Referrer): *E J Hoskin and T C Didsbury*
- Counsel assisting the Court: *F E Guy Kidd KC and K H Cook*

Sitting hours

The 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 taken.



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Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2022\] NZCA 504](#) (21 October 2022)

Supreme Court leave decision: [\[2023\] NZSC 30](#) (6 April 2023)