



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

2 July 2025

## **MEDIA RELEASE**

**BARRY JOHN BAILEY v THE KING**

(SC 120/2024)

**Hearing in the Supreme Court Wednesday 16 July 2025**

### **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.

**NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

### **Background**

This case is about the relationship between s 147 of the Criminal Procedure Act 2011 (CPA) and the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) and whether charges can be dismissed under the former despite the applicability of the latter.

In 2020, Mr Bailey was charged in relation to alleged historic sexual offending. In October 2021, his counsel filed an application under s 147 of the CPA to dismiss the charges due to prejudice from delay. That section provides “[t]he court may dismiss a charge at any time before or during the trial, but before the defendant is found guilty or not guilty, or enters a plea of guilty”. A dismissal under s 147 comprises an acquittal.

The hearing and determination of that application was delayed. Mr Bailey has dementia. After filing the s 147 application, counsel applied under s 38(1) of the CPMIP Act for an order that a health assessor prepare a report to assess Mr Bailey’s fitness to stand trial. Judge Kellar in the District Court subsequently found him to be unfit to stand trial under s 8A(2) and directed that an involvement hearing (to determine whether Mr Bailey committed the alleged acts) take place under s 10(2) of the CPMIP Act.

On 17 August 2023, before the involvement hearing, Judge Savage decided the s 147 application, dismissing the charge solely based on Mr Bailey’s dementia. Judge Savage considered that he had jurisdiction to make s 147 orders notwithstanding the CPMIP Act process. As to whether he should make the order, he noted various matters, including that

Mr Bailey could not adequately comment on the allegations and the resulting unfairness at the involvement hearing. He consequently dismissed the charge.

On 30 October 2024, the Court of Appeal allowed the Crown’s appeal from the decision of the District Court to dismiss the charges under s 147. The Court of Appeal accepted that the court has jurisdiction to dismiss charges under s 147 notwithstanding CPMIP Act processes were underway. However, following *Regina v M*,<sup>1</sup> the Court held that dismissal can only be based on matters independent of the defendant’s mental impairment that resulted in the court’s finding of unfitness to stand trial. The Court therefore decided that the District Court erred in law and set aside the s 147 order.

The issue on appeal concerns the relationship between s 147 of the CPA and the CPMIP Act. The latter provides for a process for determining whether a defendant is unfit to stand trial. Section 8A(5) materially provides that if a defendant is found unfit to stand trial, the court “must” inquire into the defendant’s involvement. If the court is satisfied the defendant was involved in the alleged offending, then, under s 13, the court proceeds to deal with the defendant under subpart 3.

The Crown’s position is that the District Court was unable to dismiss charges under s 147 since s 8A(5) *requires* the court to hold an involvement hearing. It acknowledges there is a limited discretion to dismiss the charges before an involvement hearing, but Mr Bailey’s case—falling short of, for example, dismissal on the grounds of an abuse of process—does not come within that.

Mr Bailey’s position is that a broader discretion exists. While it is not ordinarily appropriate to divert a defendant away from the process in the CPMIP Act, circumstances such as Mr Bailey’s—unfitness due to a permanent mental impairment and the unavailability of disposition options responding to the defendant’s needs or the public’s safety—come within it. Dismissal under s 147 was both available and proper in Mr Bailey’s case.

## **This appeal**

On 5 March 2025, this Court granted leave for Mr Bailey to appeal. The approved question is whether the Court of Appeal was correct to allow the appeal. The issues are the same as those before the Court of Appeal and include the correct approach to interpreting the statutory provisions and the relevance of *Regina v M*.

## **Viewing of hearing**

The courtroom is open to the public.

This hearing of the appeal will also 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 Kós	The Hon Justice Ellen France	The Hon Justice Glazebrook	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

## **Counsel**

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<sup>1</sup> *Regina v M* [2001] EWCA Crim 2024, [2002] 1 WLR 824.

- Barry John Bailey (Appellant): *K J Beaton KC and M J McKillop*
- The King (Respondent): *M J Lillico and W J Harvey*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am 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](mailto: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

Supreme Court leave decision: [\[2025\] NZSC 10](#) (5 March 2025)

