



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

6 MARCH 2023

MEDIA RELEASE

JUSTIN RICHARD BURKE v THE KING

(SC 75/2022)

**Hearing of the Supreme Court in the Christchurch High Court Monday
20 March — Tuesday 21 March**

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

The appellant was associated with the Nomads gang. The appellant and the principal offender, a Mr Webber, planned to punish the victim, a member of the gang, by inflicting a “hiding”. Mr Webber was the gang’s enforcer and disciplinarian. In the course of the hiding, Mr Webber fatally attacked the victim with a knife. The appellant alleges that he had no knowledge of the knife and the trial Judge accepted at sentencing that the Crown had not proven that he had such knowledge.

Mr Webber pleaded guilty to the murder of the victim. The appellant was charged as a party to the murder. He pleaded not guilty and went to trial. At trial, he was convicted of manslaughter. The trial Judge sentenced him to imprisonment for five years and two months.

The appellant appealed against his conviction and sentence. On 29 June 2022, the Court of Appeal dismissed both appeals. On 21 October 2022, the Supreme Court granted leave to appeal against the conviction.



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This appeal

The Supreme Court granted the appellant leave to appeal on the approved question of whether the Court of Appeal correctly interpreted and applied s 66(2) of the Crimes Act 1961, which provides:

Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

The Court of Appeal Judges differed on the requirements of s 66(2) on the facts of the case. The majority concluded that, for the appellant to be found guilty of manslaughter, it was sufficient for the Crown to prove the appellant knew that an assault (that was likely to cause more than trivial harm) was a probable consequence of the prosecution of the common purpose. The minority Judge considered the Crown had to prove the appellant foresaw a real risk the victim would be killed in the course of carrying out the common purpose (though she found that the Crown had met this more stringent requirement and would also have dismissed the appeal). This difference of view on the requirements of s 66(2) frames the essential issue before the Supreme Court in the appeal.

The Criminal Bar Association of New Zealand and the Defence Lawyers Association New Zealand | Te Matakahi have been granted leave to intervene in the appeal and appear at the hearing to present oral submissions on issues of general principle raised by the appeal.

Viewing of hearing

The Supreme Court will hear this case in the Christchurch High 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 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



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Counsel

- Justin Richard Burke (Appellant): *J R Rapley KC, S M Grieve KC and S J Bird*
- The King (Respondent): *M F Laracy, F R J Sinclair and L C Hay*
- Criminal Bar Association of New Zealand (Intervener): *C B Wilkinson-Smith and A M Simperingham*
- Defence Lawyers Association New Zealand | Te Matakahi (Intervener): *R J Stevens and E E McClay*

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.

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 279](#) (29 June 2022)

Supreme Court leave decision: [\[2022\] NZSC 124](#) (21 October 2022)