

IN THE SUPREME COURT OF NEW ZEALAND

SC 64/2015
[2016] NZSC 8

BETWEEN NICHOLAS PAUL ALFRED REEKIE
 Applicant

AND ATTORNEY-GENERAL (SUED ON
 BEHALF OF THE DEPARTMENT OF
 CORRECTIONS)
 First Respondent

 ATTORNEY-GENERAL
 Second Respondent

 THE DISTRICT COURT AT
 WAITAKERE
 Third Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person
 J E Foster and H T N Fong for Respondents

Judgment: 15 February 2016

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] The applicant applies for the recall of this Court's judgment dismissing his application for leave to appeal.¹ Although he was represented by counsel in relation to his application for leave, this does not appear to be the case in relation to his application for recall.

¹ *Reekie v Attorney-General* [2015] NZSC 160.

[2] The applicant says that the Court was wrong to say that there was no suggestion in his application for leave to appeal that the Court of Appeal had wrongly interpreted the requirements of r 29A of the Court of Appeal (Civil) Rules 2005 or applied the wrong test in determining whether an extension of time to appeal should be granted. The background to this is that the applicant's appeal to the Court of Appeal was deemed to be abandoned under r 43 of the Court of Appeal (Civil) Rules. As he had not sought an extension of time within the three month time period set out in r 43(1) of those rules, it was not possible to revive that appeal. However, the applicant sought to commence a new appeal, and he required an extension of time under r 29A to do this.

[3] There is clear authority that the Court of Appeal has jurisdiction under r 29A to give an extension of time for the commencement of a new appeal even if the earlier appeal has been deemed to be abandoned under r 43 and an application for its revival has not been made within the three month period, meaning that the original appeal is not able to be revived.² The applicant's submission to the contrary is wrong. The existence of this jurisdiction was not disputed, nor was there any suggestion that the Court of Appeal had wrongly interpreted r 29A. Accordingly, there was no error in the judgment of this Court.

[4] The applicant also says that the Court was wrong to say that the applicant's first appeal was deemed to be abandoned under r 43(1) because he did not file a case on appeal and apply for a hearing date within the time specified in r 43. He says that the real reason was that he was unable to pay security for costs, which prevented him from filing the case on appeal and seeking a hearing. There was no inaccuracy in this Court's judgment. The statement that the applicant did not file a case on appeal and apply for a hearing within the time specified in r 43 was factually correct.

[5] The application for recall is therefore dismissed.

Solicitors:
Crown Law Office, Wellington for Respondents

² *Sexton v Rice Craig* [2007] NZCA 200 at [31]; *Siemer v Stiassny* [2009] NZCA 624 at [25].