

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 17/2017  
[2017] NZSC 20**

BETWEEN

RHYS RICHARD (NGAHIWI)  
WARREN  
Applicant

AND

THE CHIEF EXECUTIVE OF THE  
DEPARTMENT OF CORRECTIONS  
Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicant in person  
D L Harris and M R Pirini for Respondent

Judgment: 2 March 2017

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

**Background**

[1] Mr Warren is charged with two counts of attempted murder and five counts of using a firearm against a law enforcement officer.

[2] He is currently detained by virtue of a warrant issued by Brewer J on 15 June 2016 pursuant to s 168(4) of the Criminal Procedure Act 2011. The warrant complies with r 3.5 of the Criminal Procedure Rules 2012.

[3] On 21 December 2016, Mr Warren applied to the High Court for a writ of habeas corpus under the Habeas Corpus Act 2001. In an oral judgment delivered on 17 January 2017, Toogood J dismissed the application.<sup>1</sup>

### **Grounds of application**

[4] Mr Warren seeks leave to appeal against Toogood J’s judgment to this Court on the basis that:

(a) The Corrections Act 2004 was passed by an unlawful Parliament because the New Zealand Constitution Act 1852 (UK) was repealed and replaced by the Constitution Act 1986.

(b) Maori have retained “internal” sovereignty over New Zealand.

[5] Mr Warren also alleges that he was not informed about the scheduled hearing before Toogood J until the day before the hearing and that he could not obtain details of the hearing from the registry.

### **Our assessment**

[6] No exceptional circumstances have been raised which would justify an appeal direct to this Court.<sup>2</sup> In any event, the criteria for leave in s 13 of the Supreme Court Act 2003 are not met.

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<sup>1</sup> *Warren v Chief Executive of the Department of Corrections* [2017] NZHC 12.

<sup>2</sup> Supreme Court Act 2003, s 14. As of 1 March 2017, the Senior Courts Act 2016 governs applications for leave to appeal to this Court. However, that Act provides that all proceedings “pending or in progress” prior to the commencement of the Act continue under the relevant Act that was then in force: sch 5, pt 2, empowered by s 186. As this application was filed on 13 February 2017, it is governed by the Supreme Court Act 2003.

[7] As the Crown points out, Mr Warren does not challenge the warrant under which he is detained. His challenge is rather a challenge to the sovereignty of Parliament.<sup>3</sup> Similar challenges have been rejected by this Court.<sup>4</sup> Any appeal therefore would have no prospect of success.<sup>5</sup>

[8] As to the process issue raised by Mr Warren, he has not, as the Crown points out, provided any evidence of being given insufficient notice of the hearing. In any event, Mr Warren did attend the hearing and make submissions to Toogood J.

## **Result**

[9] The application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>3</sup> Both the Supreme Court Act and the Senior Courts Act explicitly provide that nothing in the Act affects New Zealand's "continuing commitment" to the sovereignty of Parliament: Supreme Court Act, s 3; and Senior Courts Act, s 3.

<sup>4</sup> *Wallace v R* [2011] NZSC 10, at [2]; *Wallace v R* [2012] NZSC 54 and *Warren v R* [2016] NZSC 156.

<sup>5</sup> Mr Warren did raise other issues in his submissions relating to the hearing before Toogood J. None of the other issues reach the threshold for granting leave.