

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 66/2019  
[2019] NZSC 105**

BETWEEN                      TIMOTHY JOHN JACKSON  
   Applicant  
  
AND                                NEW ZEALAND POLICE  
   Respondent

Court:                          Glazebrook, O'Regan and Ellen France JJ

Counsel:                      Applicant in person  
   M H Cooke for Respondent

Judgment:                    4 October 2019

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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**

[1] Mr Jackson was convicted of driving a motorcycle at a dangerous speed under s 35(1)(b) of the Land Transport Act 1998 following a judge-alone trial before Judge DJL Saunders in the District Court.<sup>1</sup> His appeal against conviction was dismissed by Nation J on 3 September 2018.<sup>2</sup>

[2] On 24 June 2019, the Court of Appeal declined Mr Jackson's application to bring a second appeal.<sup>3</sup>

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<sup>1</sup> *New Zealand Police v Jackson* [2016] NZDC 16002 [DC judgment].

<sup>2</sup> *Jackson v Police* [2018] NZHC 2297 [HC judgment]. There had been earlier appeals which are not relevant in the present context: *Jackson v New Zealand Police* [2017] NZHC 37; and *Jackson v New Zealand Police* [2018] NZCA 194.

<sup>3</sup> *Jackson v New Zealand Police* [2019] NZCA 247 (French, Miller and Lang JJ) [CA judgment].

[3] Mr Jackson now seeks leave to appeal to this Court against Nation J's decision (there being no right of appeal against the Court of Appeal's decision to refuse leave).<sup>4</sup>

[4] There was no transcript of Mr Jackson's trial. Mr Jackson maintains that the absence of a trial transcript means that he has been deprived of the right to appeal against conviction as enshrined in s 25(h) of the New Zealand Bill of Rights Act 1990. Mr Jackson also submits that the primary authority relied on by Nation J, *Kingi v R*,<sup>5</sup> should have been distinguished.

### **Background**

[5] On 20 December 2015 a police officer was operating a speed camera from a stationary vehicle. The speed camera recorded a motorcyclist travelling towards Kaikoura at a speed of 145 kilometres per hour.<sup>6</sup> The speed camera operator relayed the registration number and a general description of the motorcyclist to another officer in a patrol vehicle in the vicinity of Kaikoura.<sup>7</sup> Approximately 15 minutes later this officer located a motorcycle and motorcyclist (Mr Jackson) matching the description he had been given. The officer took photographs of Mr Jackson and his motorcycle.<sup>8</sup>

[6] At the hearing in the District Court, the speed camera photograph was enhanced to depict the registration number of the motorcycle.<sup>9</sup> The photograph also showed that the motorcyclist was wearing a black and white helmet, a pair of white calf-length boots and a backpack.<sup>10</sup> It was not in dispute that Mr Jackson's motorcycle has the registration number seen in the speed camera photograph and that, when the officer located him in Kaikoura, Mr Jackson was wearing a backpack, helmet and boots similar to those shown in the speed camera photograph.<sup>11</sup>

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<sup>4</sup> Criminal Procedure Act 2011, s 213(3).

<sup>5</sup> *Kingi v R* [2016] NZCA 160. See also HC judgment, above n 2, at [50]; and CA judgment, above n 3, at [15].

<sup>6</sup> CA judgment, above n 3, at [5].

<sup>7</sup> DC judgment, above n 1, at [12]; and CA judgment, above n 3, at [6].

<sup>8</sup> DC judgment, above n 1, at [22]; and HC judgment, above n 2, at [40].

<sup>9</sup> DC judgment, above n 1, at [10]. Nonetheless, the Judge found it possible to determine the registration number of the motorcycle from the photograph, without any digital enhancement.

<sup>10</sup> DC judgment, above n 1, at [10].

<sup>11</sup> CA judgment, above n 3, at [7].

[7] Judge Saunders considered this evidence was sufficient to identify Mr Jackson as having been the rider of the motorcycle at the time of the speed camera photograph.<sup>12</sup> The Judge also accepted that the speed recorded using the speed camera detection device was correct and reliable.<sup>13</sup>

[8] The Judge also held that the officer who took the photographs of Mr Jackson and his motorcycle in Kaikoura had the necessary authority to detain him and that therefore Mr Jackson had not been unlawfully detained and the photographs had not been improperly obtained.<sup>14</sup>

[9] Lastly, the Judge held that, in the circumstances, there was a reasonable likelihood of danger arising from the speed Mr Jackson had been travelling at and thus that the criminal charge had been made out.<sup>15</sup>

### **Nation J's decision**

[10] Nation J dismissed Mr Jackson's appeal to the High Court. He held:

- (a) The lack of a transcript of the evidence given at trial was not a sufficient ground for finding that Mr Jackson's conviction was unsafe or unsatisfactory.<sup>16</sup> Nation J noted that, although a transcript was not available, the most significant evidence on which Mr Jackson was convicted was clear and not in dispute.<sup>17</sup>
- (b) The speed camera photographs identified Mr Jackson as the speeding motorcyclist.<sup>18</sup>
- (c) The Judge could reasonably conclude Mr Jackson's speeding might have been dangerous to the public.<sup>19</sup>

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<sup>12</sup> DC judgment, above n 1, at [23]; and CA judgment, above n 3, at [8].

<sup>13</sup> DC judgment, above n 1, at [24]; and CA judgment, above n 3, at [8].

<sup>14</sup> DC judgment, above n 1, at [18]–[22]; and CA judgment, above n 3, at [9].

<sup>15</sup> DC judgment, above n 1, at [33].

<sup>16</sup> At [50], noting and applying the principles set out in *Kingi*, above n 5, at [30].

<sup>17</sup> At [37].

<sup>18</sup> At [70(c)].

<sup>19</sup> At [70(d)].

## **Our assessment**

[11] The issues Mr Jackson wishes to raise have all been examined in detail by the High Court and, indeed, the Court of Appeal in its decision declining Mr Jackson's application to bring a second appeal. Nothing raised by Mr Jackson suggests that the High Court's analysis may have been in error. The criteria for leave to appeal would therefore not be met.<sup>20</sup> In any event, there are no exceptional circumstances which justify an appeal directly to this Court.<sup>21</sup>

## **Result**

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

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>20</sup> Senior Courts Act 2016, s 74.

<sup>21</sup> Senior Courts Act, s 75. This threshold is even higher where an appeal against the decision of the Court of Appeal is precluded by statute, as it is in this case: *Burke v Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560 at [4]; and *Sena v New Zealand Police* [2018] NZSC 92 at [4].