



Supreme Court of New Zealand

20 December 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**JAMES JOSEPH KAPA v THE QUEEN
(SC 114/2011)
[2012] NZSC 119**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

On 2 December 2007 James Kapa, the appellant, and Ronald van Wakeren burgled the National Army Museum at Waiouru and stole 96 gallantry medals worth over \$5 million. Two members of the public, Lord Ashcroft and Mr Tom Sturgess, offered a substantial reward of up to \$300,000 for the return of these medals. The Commissioner of Police administered the reward. Messrs Kapa and van Wakeren handed over the medals anonymously, through their lawyer, to the Commissioner. In return, Mr Kapa received \$100,000 and Mr van Wakeren received \$100,000. Messrs Kapa and van Wakeren were eventually arrested for and charged with burglary of the museum. Both pleaded guilty. Mr van Wakeren repaid his share of the reward but Mr Kapa did not. The District Court Judge imposed on Mr Kapa both a sentence of imprisonment and a sentence of reparation of \$100,000, being the reward amount that Mr Kapa received. The issue for the Supreme Court was whether Lord Ashcroft and Mr Sturgess, as the reward donors, were persons for

whose benefit a sentence of reparation could be made under s 32 of the Sentencing Act 2002.

The Supreme Court has held, by a majority comprising Elias CJ, McGrath, William Young and Chambers JJ, that the donors of the reward were not persons for whose benefit a sentence of reparation could be made. Only victims, as defined in s 4 of the Sentencing Act, can be the recipients of a sentence of reparation under s 32(1). Specifically, a person who is not himself or herself a victim cannot recover for loss or damage consequential on a victim's loss of or damage to property under s 32(1)(c). Reward donors do not, by their payments, make themselves victims. The loss suffered by reward donors cannot be considered direct loss under s 32(1)(a) or consequential loss under s 32(1)(c). Nor can the Commissioner of Police recover reward money by way of a sentence of reparation. The costs he incurs are part of his investigative expenses. However, it may be possible to recover the reward amount from Mr Kapa under the Criminal Proceeds (Recovery) Act 2009.

Glazebrook J dissents. She would have held that reward donors have suffered a direct loss under s 32(1)(a), and, if not, consequential loss under s 32(1)(c).

In accordance with the views of the majority, the appeal is accordingly allowed and the sentence of reparation is quashed.

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