

IN THE SUPREME COURT OF NEW ZEALAND

SC 66/2014
[2014] NZSC 120

BETWEEN ROBERT ALFRED STEVENSON
Applicant

AND CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: Applicant in Person
H M Carrad for Respondent

Judgment: 4 September 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The appellant is serving a sentence of 16 years imprisonment with a minimum term of 10 years for various sexual offences. His appeal against conviction to the Court of Appeal was dismissed by the Court.¹ The principal ground on which miscarriage of justice was claimed was that the appellant was denied the right to call a witness for his defence. That basis of appeal fell away when the Court of Appeal accepted the evidence of trial counsel that the appellant had instructed him not to pursue the application for adjournment that would have been necessary in order to have the witness called.

[2] The applicant takes the view that his appeal was unlawfully dismissed and that the judges who heard the case in the Court of Appeal were guilty of misconduct. He did not however seek leave to appeal the judgment of the Court of Appeal.

¹ *S v R* [2013] NZCA 179.

Rather, he appealed unsuccessfully on two occasions to the High Court for writs of habeas corpus.² Dismissal of both applications in the High Court prompted their own appeals to the Court of Appeal. In a judgment of 4 July 2014, the Court dismissed both appeals.³ The judgment also dismissed a further appeal against a decision of Asher J in the High Court directing that no further application for habeas corpus be accepted.⁴

[3] The applicant now applies for leave to appeal against the decision of the Court of Appeal.

[4] The applicant acknowledged in the Court of Appeal that the warrants under which he is detained are lawful and cannot be directly challenged. Rather he claimed that the Court of Appeal's determination dismissing his appeal against conviction was unlawful and that, in determining the matter "unlawfully", the judges misconducted themselves.

[5] For the reasons given by the Court of Appeal, the applications for habeas corpus were misconceived. Section 14(2)(a) of the Habeas Corpus Act 2001 prevents a habeas corpus application calling into question a conviction made by a court of competent jurisdiction. The application for habeas corpus, although dressed up as a challenge to the conduct of the judges who sat in the Court of Appeal, is in effect a challenge to the convictions.

[6] No point of general or public importance arises in the case. Because the proposed appeal is inconsistent with the legislation, it is not necessary to consider the alternative ground on which the Court of Appeal dismissed the appeals from the refusal to grant a writ of habeas corpus, in application of *Kim v The Prisoner, Mt Eden Correction Facility*.⁵

² *S v Chief Executive of Department for Corrections* [2014] NZHC 1157; *Stevenson v Attorney-General* [2014] NZHC 1232.

³ *Stevenson v Chief Executive of the Department of Corrections* [2014] NZCA 308.

⁴ Minute of Asher J, 10 June 2014.

⁵ *Kim v The Prison Manager, Mt Eden Corrections Facility* [2012] NZCA 471, [2012] 3 NZLR 845.

[7] The application for leave to appeal is dismissed. The applicant being a serving long term prisoner, no order for costs is made.

Solicitors:
Crown Law Office, Wellington, for Respondent