



Supreme Court of New Zealand

4 July 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**TERRY JONES v R
(SC 128/2034)**

**MARK LEE v R
(SC 27/2014)**

[2014] NZSC 85

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Mr Jones and Mr Lee faced criminal charges arising out of a police investigation into the Red Devils Motorcycle Club in Nelson. In order to strengthen the credibility of an undercover police officer, a fake search warrant was prepared and executed, and the undercover officer was arrested and appeared in court on fake criminal charges. Once these events became known, those facing prosecution as a result of the investigation applied to the High Court for a stay of all charges on the ground of abuse of the courts’ process.

The High Court judge granted a stay of prosecution. On the application of the prosecutor, the Judge referred a question for the opinion of the Court of Appeal under s 381A of the Crimes Act 1961. The Court of Appeal allowed the appeal and lifted the stay.

Mr Jones and Mr Lee applied for leave to appeal to the Supreme Court. The preliminary question to be determined by the Court was whether it had jurisdiction to hear an appeal.

The Court has unanimously decided that there is no right of appeal to the Supreme Court against a decision of the Court of Appeal on a question referred under s 381A.

The Supreme Court's appellate jurisdiction is statutory. Section 10 of the Supreme Court Act 2003 provides that the Court has jurisdiction to hear and determine appeals authorised by certain legislation such as Part 13 of the Crimes Act, which includes s 381A. Section 381A does not expressly give either the prosecutor or an accused a right of appeal to this Court. The legislative history of Part 13 of the Crimes Act shows that rights of appeal to this Court have been specifically provided for where they are to exist. It would be incompatible with this context to either give s 10 general effect or to assume that, despite the absence of express language, it was intended that there would be a right of appeal to this Court under s 381A.

The applications for leave to appeal have been dismissed.

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