

IN THE SUPREME COURT OF NEW ZEALAND

[2015] NZSC 174

BETWEEN JOHN KENNETH SLAVICH
Applicant

AND THE QUEEN
Respondent

Counsel: Applicant in person

Judgment: 16 November 2015

**JUDGMENT OF ARNOLD J
REVIEW OF REGISTRAR'S DECISION**

The application for review of the Registrar's decision is dismissed.

REASONS

[1] On 17 October 2012 the applicant, Mr Slavich, filed two applications for leave to appeal to this Court against decisions of the Court of Appeal:

(a) One application was against the Court of Appeal's decision in *Slavich v R*,¹ in which the Court dismissed Mr Slavich's applications for recall of the Court's judgments in *R v Slavich*² and *Slavich v R*.³

(i) In *R v Slavich*, the Court had dismissed Mr Slavich's appeal against his convictions on various dishonesty counts, including forgery, using documents for a dishonest purpose, uttering and making documents without lawful authority.

¹ *Slavich v R* [2012] NZCA 431 (O'Regan P, Harrison and White JJ).

² *R v Slavich* [2009] NZCA 188.

³ *Slavich v R* [2011] NZCA 586.

(ii) In *Slavich v R*, the Court had dismissed Mr Slavich's application for recall of its judgment on his conviction appeal.

(b) The second application was against the Court of Appeal's decision in *Slavich v R*,⁴ dismissing Mr Slavich's appeal against a decision of Heath J⁵ in which the Judge refused to recall his decision of 12 October 2006.⁶ In that 2006 decision, Heath J had found Mr Slavich guilty of the dishonesty offences.

[2] The Registrar has refused to accept the two applications on the ground that this Court does not have jurisdiction to deal with them. Mr Slavich now seeks a review of the Registrar's decision. I have concluded that the Registrar was correct to refuse to accept the applications as the Court lacks jurisdiction to deal with them. To explain my conclusion, I must set out the background in a little more detail.

[3] As I have said, following a Judge alone trial before Heath J, Mr Slavich was convicted of various offences of dishonesty. His appeal against conviction was dismissed by the Court of Appeal,⁷ as was his subsequent application for leave to appeal to this Court.⁸ Mr Slavich then applied for a recall of this Court's decision refusing leave but that application was also declined.⁹

[4] Next Mr Slavich sought a recall of the Court of Appeal's decision dismissing his appeal against conviction. That application was also dismissed.¹⁰ Mr Slavich then filed a further application for recall of the Court of Appeal's decision on his conviction appeal and an application for recall of its decision on his recall application. It was these applications that were dismissed in the first of the decisions in respect of which Mr Slavich presently seeks leave to appeal.¹¹

⁴ *Slavich v R* [2012] NZCA 432 (O'Regan P, Harrison and White JJ).

⁵ *Slavich v New Zealand Police* HC Hamilton CIV-2006-419-89, 13 December 2011.

⁶ *R v Slavich (verdict)* HC Hamilton CIV-2006-419-89, 12 October 2006.

⁷ *R v Slavich* [2009] NZCA 188.

⁸ *Slavich v R* [2009] NZSC 87.

⁹ *Slavich v R* [2011] NZSC 103.

¹⁰ *Slavich v R* [2011] NZCA 586.

¹¹ See above at [1](a).

[5] Mr Slavich also filed an application in the High Court for recall of Heath J's 2006 decision convicting him. Heath J dismissed this application on 13 December 2011. The Court of Appeal dismissed Mr Slavich's appeal against Heath J's decision on the recall application in the second of the decisions in respect of which Mr Slavich presently seeks leave.¹²

[6] In *Blick v R*, this Court, citing *de Mey v R*,¹³ confirmed that it did not have jurisdiction to hear an appeal against a decision of the Court of Appeal refusing an application to recall its earlier decision on a conviction appeal.¹⁴ The Court explained that under the Crimes Act 1961, this Court's jurisdiction to hear an appeal from the Court of Appeal relates to "a decision of the Court of Appeal on appeal under section 383".¹⁵ This means a decision of the Court of Appeal which determines an appeal; a decision of the Court of Appeal refusing to recall or re-open its appeal decision is not such a decision. It follows that the Court has no jurisdiction to hear an appeal against the first of the Court of Appeal's decisions in respect of which Mr Slavich seeks leave as that judgment related to two applications for recall.

[7] A similar analysis applies to the second of the Court of Appeal's decisions in respect of which Mr Slavich seeks leave to appeal. Having been unsuccessful in his attempts to appeal his convictions both in the Court of Appeal and in this Court, and in his efforts to have each Court recall its decision, Mr Slavich sought a recall of Heath J's original judgment finding him guilty of the fraud offences. Unsurprisingly, that application was dismissed for want of jurisdiction on the ground that it constituted a collateral attack on the earlier decisions of the Court of Appeal and of this Court, which had conclusively determined the issues which Mr Slavich was seeking to re-litigate.

[8] I consider that the Court of Appeal was right to dismiss Mr Slavich's appeal against Heath J's decision refusing to recall on the basis that the appeal was an abuse

¹² See above at [1](b).

¹³ *De Mey v R* [2005] NZSC 27.

¹⁴ *Blick v R* [2012] NZSC 108 at [3].

¹⁵ Crimes Act 1961, s 383A. The current appellate regime is found in the Criminal Procedure Act 2011, but the previous regime continues to apply by virtue of s 397 of the Criminal Procedure Act.

of process. Mr Slavich's application for leave to appeal to this Court is equally an abuse of process, its ultimate objective being to enable Mr Slavich to re-litigate matters that have been finally determined against him. Because the Court of Appeal's decision is not a decision on an appeal against conviction within the meaning of the Crimes Act, this Court has no jurisdiction to hear an appeal against it.

[9] For these reasons, I consider that the Registrar was right to refuse to accept Mr Slavich's applications of 17 October 2012.