

IN THE SUPREME COURT OF NEW ZEALAND

[2015] NZSC 195

BETWEEN JOHN KENNETH SLAVICH
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, William Young, Glazebrook, Arnold and O'Regan JJ

Counsel: Applicant in person

Judgment: 18 December 2015

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed for want of jurisdiction.

REASONS OF THE COURT
(Given by William Young J)

[1] Mr Slavich seeks to review a judgment of Arnold J of 16 November 2015 upholding the conclusion of the Registrar not to accept documents for filing.¹ He has invoked the review jurisdiction conferred by s 28(3) of the Supreme Court Act 2003 and for this reason his application has been addressed by all permanent members of the Court including Arnold J.

[2] Initially in issue were two applications for leave to appeal filed by Mr Slavich on 17 October 2012. Both were by way of indirect challenge to the judgment of Heath J of 12 October 2006² in which he had found Mr Slavich guilty of a number of offences. They sought leave to appeal against the Court of Appeal's decisions in:

¹ *Slavich v R* [2015] NZSC 174.

² *R v Slavich (verdict)* HC Hamilton CIV-2006-419-89, 12 October 2006.

- (a) *Slavich v R*,³ in which the Court dismissed Mr Slavich's applications for recall of the Court's judgments in *R v Slavich*⁴ and *Slavich v R*,⁵ and
- (b) *Slavich v R*,⁶ dismissing Mr Slavich's appeal against a decision of Heath J⁷ in which the Judge refused to recall his decision of 12 October 2006.⁸

The Registrar was of the view that the Court did not have jurisdiction to hear the proposed appeals. Mr Slavich challenged his decision in relation to only the second application and this challenge was heard and rejected by Arnold J.

[3] Under the Supreme Court Act 2003, the jurisdiction of the Supreme Court to entertain appeals against decisions in criminal proceedings is provided for in s 10 which, at the time relevant to these proceedings, was confined to the jurisdiction conferred on the Court under Part XIII and s 406A of the Crimes Act 1961. Under s 383A, that jurisdiction in relation to judgments of the Court of Appeal was confined to decisions of the Court of Appeal on appeal under section 383.⁹ The decisions of the Court of Appeal in issue in this case are not of that kind. Accordingly there is no jurisdiction to hear them. We note that this is consistent with the view taken in *Blick v R*¹⁰ and *de Mey v R*.¹¹

[4] Mr Slavich's position is that *Blick* and *de Mey* dealt with applications for leave to appeal against decisions of the Court of Appeal refusing recall applications in respect of its own decisions and thus are not directly applicable to the decision of the Court referred to in [2](b) (which was a decision by the Court of Appeal

³ *Slavich v R* [2012] NZCA 431 (O'Regan P, Harrison and White JJ).

⁴ *R v Slavich* [2009] NZCA 188.

⁵ *Slavich v R* [2011] NZCA 586.

⁶ *Slavich v R* [2012] NZCA 432 (O'Regan P, Harrison and White JJ).

⁷ *Slavich v New Zealand Police* HC Hamilton CIV-2006-419-89, 13 December 2011.

⁸ We consider that this is a correct description even though Heath J's ground for dismissing the application was want of jurisdiction on the basis that the application was a collateral attack on decisions of the Court of Appeal and this Court.

⁹ 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.

¹⁰ *Blick v R* [2012] NZSC 108 at [3].

¹¹ *De Mey v R* [2005] NZSC 27.

dismissing an appeal against Heath J's rejection of a recall application). This, however, is a distinction without a difference. In dismissing the appeal against the judgment of Heath J, the Court of Appeal was not exercising a jurisdiction conferred by Part XIII and s 406A of the Crimes Act. This Court thus does not have jurisdiction to entertain an appeal from it.

[5] Accordingly the conclusions of the Registrar and Arnold J were correct. There is, however, an issue as to how no jurisdiction questions of the kind involved in this case should be dealt with to which we now turn.

[6] The Supreme Court Act 2003 (the Act) and the Supreme Court Rules 2004 (the Rules) do not explicitly address (a) how no jurisdiction issues should be determined in the first instance and (b) what, if any, review rights are available. Mr Slavich's application provides an opportunity to reconsider the way in which we deal with such issues.

[7] The possibly relevant provisions of the Act and Rules are set out in a judgment which we are releasing at the same time as this judgment which deals with related issues as to the access to court records.¹² As we note in that judgment, the Act and Rules are not exhaustive of the relationship between the Judges and the Registrar.¹³ And for reasons which are essentially the same as those given in respect of access to court records in that judgment, we consider that as part of the Court's inherent power to supervise the way in which the business of the Court is managed by the Registrar, the Court is entitled to determine how no-jurisdiction questions are to be dealt with.

[8] In the past where jurisdiction questions have arisen, the Court has proceeded on the basis that (a) it is open to the Registrar to refuse to accept documents for want of jurisdiction; (b) a Registrar's decision to do so is reviewable by a single Judge under s 28(2) of the Act; and (c) a decision made by single Judge is reviewable by all permanent Judges under s 28(3). This is illustrated by *Howard v Accident*

¹² *Greer v Smith* [2015] NZSC 196.

¹³ At [6].

Compensation Corporation.¹⁴ The approach taken in *Howard* has the advantage of guaranteeing an applicant full judicial consideration before a proposed appeal is finally held to be outside the jurisdiction of the Court. On the other hand:

- (a) The *Howard* approach is not particularly congruent with scheme of the Act and Rules; this because the power the Registrar exercises is not expressly conferred by the Rules and, as *Howard* recognises, the form of the s 28(3) review is not particularly apt for such an exercise.
- (b) The practical effect is to require three jurisdiction decisions to be made (by the Registrar, the single Judge and the full Court) instead of one decision, by a leave panel of two or three judges.

[9] We consider that, for the future, the Registrar should continue to identify jurisdiction issues with applications but that where the applicant wishes to persist with an application, it should be referred to a leave panel of two or three judges in the normal way. If of the view that there is no jurisdiction to entertain the proposed appeal, the Judges on that panel can then dismiss the application on that basis.

[10] We propose to deal with Mr Slavich's application in accordance with the process just described, save that all members of the Court have participated in the decision. We thus address directly the two applications for leave to appeal which the applicant wishes to pursue and, being of the view that the Court does not have jurisdiction to entertain them, dismiss them accordingly.

¹⁴ *Howard v Accident Compensation Corporation* [2014] NZSC 31.