

IN THE SUPREME COURT OF NEW ZEALAND

**SC 137/2014
[2015] NZSC 37**

BETWEEN

ALLEN LOUIS HARRIMAN
Applicant

AND

THE ATTORNEY-GENERAL
First Respondent

THE NEW ZEALAND PAROLE BOARD
Second Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicant in person
C A Griffin for the First Respondent
K L Clark QC and V J Owen for the Second Respondent

Judgment: 14 April 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order for costs.

REASONS

Background

[1] Mr Harriman was convicted of a number of drug offences. He is currently serving a sentence of 12 years imprisonment with a minimum non-parole period of six and a half years. He first became eligible for parole on 23 January 2012.

[2] Before any parole hearing, the Parole Board requires the preparation of a Parole Assessment Report by the Department of Corrections outlining, among other

things, where the offender proposes to reside after release. For various reasons Mr Harriman did not wish to cooperate in the preparation of that report.

[3] Mr Harriman's first application for parole was dismissed by the Parole Board on 17 January 2012. The Board considered that, in the absence of a "viable release proposal to consider" the Board had to "view Mr Harriman as being an undue risk to the safety of the community".¹ An application for review of that decision was dismissed on 12 March 2012.²

[4] Mr Harriman issued proceedings for judicial review of certain actions of the Department of Corrections and the Parole Board in relation to his 2012 parole application. He also made other claims but these were severed from the judicial review and will be dealt with later.³

[5] There was a subsequent parole hearing on 7 August 2012 (before the High Court hearing on the judicial review application). There have now been two subsequent hearings in July 2013 and June 2014. Parole was refused. Mr Harriman would not participate in the hearing process until his judicial review proceedings were determined.⁴

[6] The application for judicial review was dismissed by Goddard J on 21 June 2013.⁵ While the Court of Appeal disagreed with aspects of the High Court decision, it dismissed Mr Harriman's appeal.⁶ Mr Harriman was ordered to pay costs (equal to the security for costs).⁷

[7] In a postscript to its judgment, the Court of Appeal urged all parties "to break the impasse that is causing the merits of Mr Harriman's parole position to remain unresolved".⁸ The Court suggested various measures that could be taken in this

¹ See *Harriman v Attorney-General* [2014] NZCA 544 (O'Regan P, Lang and Clifford JJ) at [23].

² At [24].

³ At [1].

⁴ At [28].

⁵ *Harriman v Attorney-General* [2013] NZHC 1516.

⁶ *Harriman v Attorney-General*, above n 1.

⁷ At [113].

⁸ At [114].

regard. The Court also urged Mr Harriman to attend the next parole hearing so that he could engage directly with Board members.⁹

[8] In February 2015 Mr Harriman applied for an early parole hearing under s 26 of the Parole Act 2002. That application was declined on 5 March 2015 and Mr Harriman is to be considered for parole in the week of 18 May 2015. According to a memorandum of the Department of Corrections filed in response to a minute from the Court on 23 March 2015, the Department of Corrections is attempting to find a means of resolving the impasse in terms of the addendum to the Court of Appeal decision.

The application for leave

[9] Mr Harriman seeks leave to appeal against the Court of Appeal decision, including the costs award.

[10] It may be that there is an issue of public importance raised in the proposed appeal as to the procedures required by the Parole Board and how an impasse such as has arisen in the present case might properly be managed. However, given that there is to be a parole hearing in May 2015 and the Department of Corrections is attempting to find a solution to the impasse, we do not consider that any useful purpose¹⁰ would be served in hearing an appeal which is essentially historical in nature, relating as it does to the first parole hearing in January 2012.

[11] Leave to appeal is therefore declined. In the circumstances, we make no order for costs.

Solicitors:
Crown Law Office, Wellington for the First Respondent
Vicki Owen, Wellington for the Second Respondent

⁹ See [114]–[118].

¹⁰ See *LFDB v SM* [2014] NZSC 197 at [19].