

IN THE SUPREME COURT OF NEW ZEALAND

SC 101/2014  
[2015] NZSC 6

BETWEEN                      ELVIS HEREMIA TEDDY  
   Applicant  
  
AND                              NEW ZEALAND POLICE  
   Respondent

Court:                          McGrath, Glazebrook and O'Regan JJ  
  
Counsel:                      R M Mansfield, M Heard and D A C Bullock for Applicant  
   B J Horsley and K Laurenson for Respondent  
  
Judgment:                      17 February 2015

---

**JUDGMENT OF THE COURT**

---

**The application for leave to appeal is dismissed.**

---

**REASONS**

[1] Mr Teddy was charged with two offences resulting from protest activity close to the site of proposed oil exploration activity outside New Zealand's territorial waters. He was the master of a protest ship. He was charged under s 65(1)(a) of the Maritime Transport Act 1994 (MTA) with operating that ship in a manner that caused unnecessary risk to the oil exploration vessel. He was also charged under s 23(a) of the Summary Offences Act 1981 (SOA) with resisting a constable in the execution of his or her duty.

[2] The District Court Judge held that the Court did not have jurisdiction in respect of the charges because neither s 65 of the MTA nor s 23 of the SOA had extraterritorial effect.<sup>1</sup> That decision was reversed on appeal to the High Court.<sup>2</sup>

---

<sup>1</sup> *R v Teddy* DC Tauranga CRI-2011-070-2669, 26 July 2012 (Judge Treston).

The High Court decision was upheld by the Court of Appeal, though for reasons that differed from those of the High Court.<sup>3</sup>

[3] The essential difference between the High Court and the Court of Appeal related to the effect of s 413 of the MTA, which provides:

**413 Place where offences deemed to be committed**

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

[4] The Court of Appeal found that s 413 gave extraterritorial effect to s 65 of the MTA.<sup>4</sup> Both the District Court and the High Court had found that it did not. But the High Court found that s 65 had extraterritorial effect for other reasons.

[5] In the High Court, Woolford J found s 65 had extraterritorial effect for the following different reasons:

- (a) By virtue of the decision in *Sellers v Maritime Safety Inspector*<sup>5</sup> and arts 92 and 97 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), New Zealand has exclusive jurisdiction over New Zealand ships on the high seas.
- (b) Under art 94 of UNCLOS New Zealand is required to exercise its jurisdiction by taking such measures for ships flying its flag as are necessary to ensure safety at sea with regard to the prevention of collisions.
- (c) While New Zealand ships were not part of New Zealand Territory, and there is no express wording in the MTA conferring extraterritorial jurisdiction, the MTA applies by necessary implication to New

---

<sup>2</sup> *New Zealand Police v Teddy* [2013] NZHC 432, [2013] NZAR 299 (Woolford J) [High Court judgment].

<sup>3</sup> *Teddy v Police* [2014] NZCA 422 (Stevens, White and French JJ) [Court of Appeal judgment].

<sup>4</sup> At [58].

<sup>5</sup> *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA).

Zealand ships beyond the territorial sea because of both the statutory context and New Zealand's international law obligations.<sup>6</sup>

[6] Woolford J also decided that the Court had jurisdiction in respect of the charge under s 23(a) of the SOA because:

- (a) The power of the Police under s 317 of the Crimes Act 1961 to enter premises to arrest an offender authorised the Police to board the San Pietro to arrest Mr Teddy because a vessel is within the expression "premises" and they had witnessed him breaking the law. This power applied extraterritorially by virtue of s 5(1) of the Crimes Act.
- (b) The power of the Police to arrest Mr Teddy without a warrant came from ss 31 and 315 rather than s 317A of the Crimes Act. Sections 31 and 315 applied because Mr Teddy was liable under s 65(1) of the MTA to a term of imprisonment of up to one year and s 5(1) of the Crimes Act gave them extraterritorial effect. Section 317A did not apply because a vessel is not a "vehicle".
- (c) The offence of resisting arrest under s 23(a) of the SOA must apply extraterritorially as a necessary corollary of the extraterritorial application of the power to arrest.

[7] The Court of Appeal said that on its face s 413 does appear to give jurisdiction under the MTA by deeming every offence to have been committed either where it was committed or "in any place in which the offender may be". The latter is intended to extend the Court's jurisdiction in respect of any offence under the MTA to the place where the offender is, even if that is not where the offence was in fact committed. This interpretation would mean that a person in New Zealand who is alleged to have committed an offence under the MTA outside the territorial

---

<sup>6</sup> The language of "necessary implication" comes from the decision of the Court in *Poynter v Commerce Commission* [2010] NZSC 38, [2010] 3 NZLR 300, which sets out the general proposition that legislation does not have extra-territorial effect except for express statutory wording or necessary implication.

jurisdiction of the New Zealand Courts may nonetheless be tried for that offence in New Zealand.<sup>7</sup>

[8] The Court of Appeal considered that the decision in *R v Hinde*<sup>8</sup> supported this approach to the interpretation of a predecessor to s 413. The Court held that the High Court was wrong to hold that *R v Hinde* did not apply and should have followed it, despite the views of certain commentators doubting *Hinde*.<sup>9</sup> The Court of Appeal considered whether it should depart from its own previous decision in *Hinde* and decided that it should not do so.

[9] The Court of Appeal held that, based on the decision in *Hinde*, s 413 does expressly confer extraterritorial jurisdiction on a New Zealand Court in respect of offences under s 65. Alternatively the jurisdiction arises by necessary implication from the text of s 413.

[10] The Court held that the arrest powers provided by the Crimes Act empower the New Zealand Police to stop and board vessels and to arrest offenders extraterritorially. The Court agreed with Woolford J that by virtue of s 5(1) of the Crimes Act, the police were able to arrest Mr Teddy without a warrant pursuant to ss 31, 315 and 317 of that Act and that as a necessary corollary of this the offence of resisting arrest under s 23(a) of the SOA must also apply extraterritorially.<sup>10</sup>

[11] The MTA was amended with effect from October 2013. The amending legislation removes any doubt about the extraterritorial effect of s 65 of the MTA.<sup>11</sup> There are also now new offence and enforcement provisions in the Crown Minerals Act 1991 dealing with conduct interfering with structures or ships engaged in mining activity in the territorial sea, in the exclusive economic zone or above the continental

---

<sup>7</sup> Court of Appeal judgment, above n 3, at [48].

<sup>8</sup> *R v Hinde* (1902) 22 NZLR 436 (CA).

<sup>9</sup> Court of Appeal, above n 3, at [52]–[53].

<sup>10</sup> At [76].

<sup>11</sup> Maritime Transport Amendment Act 2013, ss 6 and 81. Section 6 adds a new s 4(4) to the MTA which says: “Except where the context otherwise requires, where this Act applies to ships, it applies to New Zealand ships wherever they may be.”

shelf.<sup>12</sup> The effect of these amendments is that any decision in the present case will have no ongoing significance.

[12] The present application does not therefore meet the criterion in s 13(2)(a) of the Supreme Court Act 2003 for the granting of leave: no point of general or public importance arises.<sup>13</sup> So the application falls for consideration under s 13(2)(b) of the Act: has there been a substantial miscarriage of justice or could there be one if the proposed appeal is not heard by this Court?

[13] We accept that there is room for argument about the effect of s 413. But, in order to establish a substantial miscarriage of justice, the applicant would need to establish that the reasons given by both the Court of Appeal and the High Court were incorrect. Having carefully considered the reasoning of both Courts and the submissions made by both parties in this Court, we are not persuaded that the applicant has satisfied that criterion.

[14] Leave to appeal is therefore refused.

Solicitors:  
Lee Salmon Long, Auckland for Applicant  
Crown Law Office, Wellington for Respondent

---

<sup>12</sup> Crown Minerals Act 1991, ss 101A–101C (inserted by the Crown Minerals Amendment Act 2013).

<sup>13</sup> See *New Zealand Post Ltd v Postal Workers Union of Aotearoa Inc* [2013] NZSC 15; and *Kain v Wynn Williams & Co* [2013] NZSC 26.