



**Supreme Court of New Zealand
Te Kōti Mana Nui**

21 August 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**TODD AARON MARTELEY v THE LEGAL SERVICES
COMMISSIONER**

(SC 61/2014) [2015] NZSC 127

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

In September 2010 Mr Marteley pleaded guilty to a charge of murder. He was sentenced to life imprisonment with a minimum period of imprisonment of 14 years. Mr Marteley’s partner had been charged with murder but pleaded guilty to manslaughter in connection with the same homicide.

Mr Marteley sought to appeal against his conviction and sentence. There followed a dispute with the Legal Services Agency and, later, the Legal Services Commissioner over legal aid for the purposes of his appeal. Legal aid funding decisions for criminal appeals are made under s 8 of the Legal Services Act 2011. The Commissioner was prepared to fund an appeal against sentence but not conviction under s 8; this for a perceived lack of merit. The Commissioner’s decision was upheld on review by the Legal Aid Tribunal.

Mr Marteley appealed the Tribunal’s decision to the High Court, where Collins J allowed the appeal. The Judge considered that the merits or otherwise of the proposed appeal for which aid was sought were of no moment where, as here, the grounds of appeal, if made out, would be capable of resulting in the appeal being allowed. The Commissioner appealed this decision to the Court of Appeal. No stay of the High Court judgment was sought, and counsel for the Commissioner advised that

funding for Mr Marteley's appeal against conviction would continue regardless of the outcome in the Court of Appeal. For this reason the Court of Appeal did not formally address the merits of the Tribunal's decision. The Court held that Collins J's approach to the issue of the relevance of the merits of a proposed appeal to a legal aid funding decision was incorrect in law and on this basis, and despite not directly addressing the merits of the Tribunal's decision, the Court made an order that the appeal should be allowed. The Court of Appeal's judgment did, however, give the distinct impression that the Tribunal's decision had been incorrect.

The Supreme Court granted leave to Mr Marteley to appeal with respect to both the relevance of merits to the decision to grant or refuse legal aid, and as to costs. Counsel for Mr Marteley submitted that Collins J's approach to the relevance of merits was largely correct. Counsel for the Commissioner submitted that the degree of merit of proposed appeal grounds required to justify a grant of aid under s 8 depended on the other factors relevant to the legislative test.

In a unanimous decision the Supreme Court has allowed the appeal and restored the order made in the High Court that Mr Marteley receive legal aid for his conviction appeal. A majority of the Court considers that it is open to the Commissioner to have regard to the apparent merits of an appeal and, depending on other factors specified in the legislation, to refuse to grant legal aid for an appeal on the basis that it lacks merit. An affirmative conclusion that an appeal has some merit is not, however, a prerequisite to a grant of legal aid. Moreover, the ability to grant legal aid in circumstances where no merit is apparent is not confined to exceptional cases as was previously held to be the case under legislation that preceded the 2011 Act. There is a statutory right to appeal against criminal convictions, and the function of the legal aid system is not to indirectly filter this right in respect of impecunious appellants.

In the present case, a grant of aid to fund an appeal against conviction was required under s 8. Material before the Court indicates the possibility that Mr Marteley's decision to plead guilty was substantially contributed to by an indication from the prosecutor that, should he do so, the prosecution would not seek a murder conviction against his partner. This was apparently coupled with an effective threat that, in the absence of such a plea, a murder conviction against his partner would be sought. Thus, although there was every likelihood that Mr Marteley would have been found guilty of murder at a trial, and his legal advice to this effect prior to pleading guilty had been accurate, the proposed appeal still had sufficient potential merit to warrant a grant of legal aid on any conceivable approach to the proper application of s 8.

The Chief Justice in a concurring opinion takes the view that consideration of the "grounds of appeal" is limited to a preliminary threshold check of the adequacy of the grounds in setting up an arguable basis for appeal. Beyond this, assessment of the merits of an appeal is for the court.

The Court has also made costs awards in favour of Mr Marteley.

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