



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

**14 December 2015**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**TREVOR JOHN MOMO WILSON v THE QUEEN**

**(SC 4/2015) [2015] NZSC 189**

**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](http://www.courtsofnz.govt.nz)**

The appellant was charged with five counts relating to the possession, supply and sale of certain drugs. He was one of 21 defendants facing charges arising from an extensive police investigation into the activities of a gang known as the Red Devils. The police investigation involved the use of undercover officers. In the course of the undercover operation, the police used a bogus search warrant and undertook a bogus prosecution of an undercover officer (“the scenario”). The police apparently advised the Chief District Court Judge, the late Russell Johnson, of the bogus prosecution. The Crown accepts that the scenario involved serious misconduct by the police.

The defendants sought a stay of prosecution on the ground that to put them on trial in the face of such police misconduct would undermine the integrity of the justice system. That application was heard by Simon France J.

On 30 July 2012, when the stay application was part heard, the appellant sought a sentence indication and entered a plea of guilty to all charges against him. He was sentenced to an effective term of two and a half years’ imprisonment. Subsequently, Simon France J delivered a judgment on the stay application in which he found that the police conduct amounted to an abuse of process sufficient to justify staying the prosecution of the remaining defendants.

The appellant then appealed to the Court of Appeal against both conviction and sentence. He sought to vacate his guilty plea in light of Simon France J's decision. Before his appeal was heard however, the Court of Appeal issued its judgment in *R v Antonievic* [2013] NZCA 483, [2013] 3 NZLR 806, in which it allowed the Crown's appeal against Simon France J's decision and quashed the order for a stay. In light of that decision, the appellant did not pursue his conviction appeal but proceeded only with his appeal against sentence. The Court of Appeal allowed that appeal and substituted a sentence of home detention. Following that, the appellant filed an application for leave to appeal to this Court against conviction, challenging the correctness of the Court of Appeal's decision in *R v Antonievic*. The appellant sought the quashing of his convictions and granting of a stay.

Before this Court had determined the appellant's leave application, the High Court heard and determined applications by the other defendants for the exclusion of evidence obtained as a result of the scenario under s 30 of the Evidence Act 2006. Collins J dealt with those applications in two decisions, in February and March 2015. In the first, Collins J found that evidence obtained as a result of the scenario aspect of the investigation relating to charges which were not "serious" should be excluded. He did so on the basis of what he described as new factual information about the impact of the scenario on the investigation that was not before Simon France J or the Court of Appeal. Following this decision, there was insufficient evidence for the police to proceed with the non-serious charges. In the second judgment, Collins J identified the charges which were "serious". Then, on 21 May 2015, Collins J delivered a judgment granting a stay of trial of the "serious" charges on abuse of process grounds.

On 26 May 2015, this Court granted the appellant's application for leave to appeal on the questions whether the Court of Appeal's decision in *R v Antonievic* was correctly decided, and if not, whether this warranted the quashing of the appellant's convictions.

The Supreme Court has decided to allow the appeal and quash the appellant's convictions. No retrial has been ordered.

A majority of the Court, comprising William Young, Glazebrook, Arnold and Blanchard JJ, has decided that when considering whether or not to grant a stay in a case where it is alleged that there is state misconduct that will undermine public confidence in the justice system if the trial is allowed to proceed, the court must weigh the public interest in maintaining the integrity of the justice system against the public interest in having those accused of offending stand trial. In weighing those competing interests, the court will have to consider the particular circumstances of the case. Factors of the type listed in s 30(3) of the Evidence Act (relating to whether to exclude improperly obtained evidence) will be relevant to that assessment, including whether there are any alternative remedies sufficient to dissociate the justice system from the impugned conduct. The court's assessment must be conducted

against the background that a stay in such a case is an extreme remedy which will only be given in the clearest of cases.

The majority determined that the Court of Appeal was correct in deciding that no stay should have been granted and considered that Collins J did not have a proper basis for not following the Court of Appeal's decision. The majority considered that although the police misconduct was serious, the particular circumstances of the case indicated that this was not one of those exceptional cases in which a stay was required.

However, because the Crown has not appealed the decision of Collins J granting the stay, prosecutions have been stayed against virtually all of the defendants except the appellant. Given this unusual circumstance, the majority of the Court has decided that it would be unfair, and a miscarriage of justice, to allow the appellant's convictions to stand. The majority also considered that no retrial should be ordered.

Elias CJ has written a separate judgment. The Chief Justice agrees that the appellant's convictions should be quashed and that there should be no order for a retrial. However, the Chief Justice considers, in disagreement with the majority, that the prosecutions were properly stayed by Simon France J, and that the Court of Appeal in *R v Antonievic* was wrong to overturn his decision.

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