



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

**7 July 2015**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**MAX JOHN BECKHAM v THE QUEEN**

**(SC 18/2013) [2015] NZSC 98**

**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, Mr Beckham, appeals against a decision of the Court of Appeal in which his appeal against conviction for serious drug dealing and money laundering was dismissed. A Crown appeal against sentence was allowed. His sentence was increased to a term of imprisonment of 18 years.

Mr Beckham was arrested in 2008 and charged with serious drug offences. While in custody on remand, he used a prison phone to make calls to a number of people, including his partner, son, and his trial lawyer, Mr Murray Gibson. The phone was monitored by the Corrections Department, who recorded all of the calls Mr Beckham made, including those to Mr Gibson.

Also while Mr Beckham was on remand, the police began a second investigation, this time on the basis of information he was planning a prison escape and making threats against a police officer. As a part of this investigation, the police collected and listened to the recorded prison calls. Amongst these were the calls to Mr Gibson. The police did not listen to these calls beyond identifying that they were to Mr Beckham’s lawyer. The calls were not passed on to the squad investigating the drug charges.

Mr Beckham was eventually granted bail to enable him to prepare for his trial free from any constraint in communicating with his lawyer.

Mr Beckham was convicted of the charges of drug dealing and money laundering. While the trial was occurring he made two applications for a stay of proceedings on the basis that his right to instruct a lawyer had been infringed and this constituted an abuse of process. These applications were dismissed. Mr Beckham appealed against the conviction on the basis that the proceedings should have been stayed and against sentence. He claimed that he should obtain a sentence reduction as a remedy for the breach of his right to consult and instruct a lawyer under the New Zealand Bill of Rights Act 1990. The Court of Appeal dismissed his appeal.

Mr Beckham appealed to the Supreme Court. He was granted leave on the question of whether he should have received a reduction in sentence for the breach of his rights under the Bill of Rights Act.

Shortly before the scheduled hearing, counsel for Mr Beckham filed a memorandum seeking leave to file further submissions related to additional alleged breaches of privilege by the police. These related to recorded conversations between Mr Beckham and his partner and son, which involved conversations related to his trial strategy, actual and possible defence witnesses and possible defence evidence, and therefore were, he claimed, subject to litigation privilege under s 54 of the Evidence Act 2006. On this basis, Mr Beckham made a new application for leave to appeal to the Supreme Court, this time challenging his convictions on the grounds that the prosecution were informed of his trial strategy, and therefore the trial was an abuse of process and proceedings should have been stayed. He was granted leave to file further submissions and the Court heard full argument in relation to the convictions.

The Supreme Court has dismissed the appeal against sentence and dismissed the further application for leave to appeal against conviction.

On the application for leave to appeal against conviction, the Court held that the calls allegedly relevant to Mr Beckham's trial strategy did not attract litigation privilege under s 54 of the Evidence Act. The nature of the conversations, which were intermingled with various personal and other topics as well as defence-related topics, and the fact that the defence-related topics only formed a small amount of the total call time in each instance, meant that the calls were not made for the dominant purpose of preparing for litigation. The Court also held that the calls were not made in circumstances of confidentiality. The Court also found there was no solicitor/client privilege in the calls in terms of s 56 of the Evidence Act. The Court finally held that even if the calls attracted privilege, it would not be enough to create a presumption of an abuse of process. Accordingly, the Court dismissed Mr Beckham's application for leave to appeal his conviction.

On the sentence reduction issue, counsel for Mr Beckham made a number of submissions, including that the breaches of the Bill of Rights were serious and reckless, they were relevant to Mr Beckham's treatment by the justice system, and there were no other effective remedies available to him.

The Court found that there should be no reduction in sentence for the breach of the Bill of Rights Act. The Court found that there was no connection between the rights breach and the proposed remedy. The breaches resulted in no prejudice to Mr Beckham, and he had received a remedy in the form of a granting of bail at the time the breaches occurred. In those circumstances the granting of a sentence reduction would be a windfall to Mr Beckham rather than a vindication of his rights.

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