IN THE SUPREME COURT OF NEW ZEALAND

SC 69/2017 [2017] NZSC 147

BETWEEN STANLEY ALLEN GILMOUR

Applicant

AND CHIEF EXECUTIVE OF THE

DEPARTMENT OF CORRECTIONS

Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: W G C Templeton and T A Chubb for Applicant

D J Perkins and M J McKillop for Respondent

Judgment: 3 October 2017

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] The applicant seeks a recall of our judgment of 4 September 2017 dismissing his application for leave to appeal from a judgment of the Court of Appeal. In issue is a parole assessment report provided to the Parole Board under s 43 (1) of the Parole Act 2002 by the Department of Corrections. His complaint is that a contribution which he, as a probation officer, had prepared in respect of a particular offender was not included in the final parole assessment report. In our judgment we said the offender's principal case manager who finalised the report in the sense of signing and submitting "was entitled to form a judgment as to what should be included". 2

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Gilmour v Chief Executive of the Department of Corrections [2017] NZSC 133.

² At [6].

[2] The basis of the recall application is that there was no evidence of such

"entitlement" nor of any right of "veto" vested in the principal case manager. The

application was supported with a mass of evidential material as to how the parole

assessment reports are prepared.

[3] The application for recall is misconceived and the material relied on in

support of it beside the point. The Court of Appeal held that the contents of the

report are for the Department to determine and in particular that it "was open to the

Department to view the information [in question] ... as not relevant to the Board's

task".³ This is the same approach as we took, save that we personalised the process

by treating the principal case manager as the Departmental decision-maker. This

personalisation was immaterial to the outcome of the application for leave to appeal.

This is because the question which the applicant wished to raise on appeal (namely

that the Department was required to include his contribution) did not depend on the

identity of the person who decided that it should not be included. To the extent that

the applicant's complaint is that the Department was not entitled to exclude his

contribution, this is just a re-run of the argument already addressed in the leave

judgment.

[4] Accordingly, the application for recall is dismissed.

Solicitors:

Sellar Bone and Partners, Auckland for Applicant

Crown Law Office, Wellington for Respondent

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Gilmour v Chief Executive of the Department of Corrections [2017] NZCA 250 (Harrison, Winkelmann and Asher JJ).