

IN THE SUPREME COURT OF NEW ZEALAND

SC 6/2017
[2017] NZSC 46

BETWEEN DAVID KEITH SILBY
 Applicant

AND NEW ZEALAND POLICE
 Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
 C A Brook and S K Jameson for Respondent

Judgment: 7 April 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant challenges a judgment of the Court of Appeal¹ refusing him leave to appeal against a High Court judgment² which dismissed his appeal against his convictions and the sentences imposed on charges of driving too close behind another vehicle and using a mobile phone while driving.³ He also, in the alternative, seeks leave to appeal directly from the High Court judgment.

[2] The police officer who witnessed the offending and stopped the applicant was a detective who was not in uniform. Basing himself on ss 113 and 114(1) of the Land Transport Act 1998, the applicant maintains that the detective had not been entitled to stop him. As the High Court and Court of Appeal judgments point out,

¹ *Silby v New Zealand Police* [2016] NZCA 592 (Cooper, Brewer and Peters JJ) [*Silby* (CA)].

² *Silby v New Zealand Police* [2016] NZHC 162 (Venning J) [*Silby* (HC)].

³ *New Zealand Police v Silby* [2016] NZDC 25869 (Judge Becroft).

this argument overlooks s 114(2) which authorised the course the detective took.⁴
There is thus no substance in his complaints.

[3] Under s 213(3) of the Criminal Procedure Act 2011, the judgment of the Court of Appeal dismissing the application for leave to appeal is “final” which precludes an appeal to this Court from that decision. We are not prepared to grant leave for a leap-frog appeal (that is direct from the High Court judgment) given its lack of substance and the non-satisfaction of the criteria in s 14 of the Supreme Court Act 2003.⁵

[4] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁴ *Silby* (CA), above n 1, at [15]–[20]; and *Silby* (HC), above n 2, at [16]–[22].

⁵ This provision applies to this application despite the repeal of that Act: Senior Courts Act 2016, sch 5 cl 10.