

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 13/2020
[2020] NZSC 112

BETWEEN DAVID SIMON BARTON
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person

Judgment: 16 October 2020

JUDGMENT OF THE COURT

The second application for recall of this Court’s judgment of 21 August 2020 (*Barton v R* [2020] NZSC 84) is dismissed.

REASONS

[1] On 31 August 2020, this Court dismissed Mr Barton’s application for recall of this Court’s leave judgment of 21 August 2020.¹

[2] Mr Barton now applies for recall of both the recall and leave judgments.

[3] Mr Barton effectively repeats his submissions he made earlier that were rejected. They do not, therefore, provide a ground for recall.²

[4] There was one new submission raised: Mr Barton’s request for a determination on s 17 of the Crimes Act 1961, which provides that no offender shall be sentenced to

¹ *Barton v R* [2020] NZSC 87 (Glazebrook, Ellen France and Williams JJ); and *Barton v R* [2020] NZSC 84 (Glazebrook, Ellen France and Williams JJ).

² *Uhrle v R* [2020] NZSC 62 at [29].

solitary confinement. Mr Barton says he spent ten weeks from 25 March 2020 in solitary confinement due to Covid-19 restrictions. Mr Barton was not, however, sentenced to solitary confinement. He was sentenced to three years, two months and two weeks' imprisonment.³ Failure of his counsel to draw the Court's attention to s 17 of the Crimes Act 1961 therefore does not provide a ground for recall.

[5] The second application for recall of this Court's judgment of 21 August 2020 is therefore dismissed.

[6] We direct the Registrar to reject any further application for recall of the leave judgment of 21 August 2020 and for the recall of the recall judgments, including this judgment.

³ *R v Barton* [2018] NZDC 17502 at [46]. Conditions of imprisonment including related to Covid-19 restrictions may be relevant in other contexts.