

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 52/2009
SC 53/2009
[2020] NZSC 34

BETWEEN JOHN KENNETH SLAVICH
Applicant
AND THE QUEEN
Respondent

Court: Winkelmann CJ, William Young, Glazebrook, O'Regan and
Ellen France JJ
Counsel: Applicant in person
Judgment: 16 April 2020

JUDGMENT OF THE COURT

- A The decision of the Registrar not to accept the correction application is confirmed.**
- B The memorandum of contempt should not be accepted for filing as it is an abuse of process.**
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REASONS

[1] Mr Slavich was found guilty by Heath J (sitting alone) on a number of fraud charges.¹ In his later challenges to his convictions, Mr Slavich has focussed on the evidence of Ms Carolyn Calder. She had been unable to give evidence in person at the trial and, for this reason, her evidence came before the Court in the form of two documents: a brief of evidence and the transcript of a telephone conference during which she was asked, and answered, questions.

¹ *R v Slavich* HC Hamilton CRI-2006-419-89, 12 October 2006 [HC judgment].

[2] When Mr Slavich’s appeal against conviction came before the Court of Appeal, his primary complaint was that the evidence (including the transcript) ought not to have been considered by Heath J as it was unsworn.² This argument (which appears to have at least assumed that the Judge had, or at least might have, taken the transcript into account) was dismissed by the Court of Appeal.³

[3] In 2009, the Supreme Court refused leave to appeal against the Court of Appeal judgment.⁴

[4] Mr Slavich’s current position is that the transcript was not considered by Heath J.

[5] In a judgment of 13 September 2011 delivered by Blanchard and McGrath JJ, the Court dismissed an application by Mr Slavich to recall the 2009 judgment.⁵ At [3] of the judgment, the Court observed of both aspects of the evidence:

It was all before the Court of Appeal which was satisfied that the Judge considered the content of both documents. That conclusion is hardly surprising as the Judge directly and expressly referred to both in his Reasons for Verdict.⁶ He expressly refers to the answers given by the witness, which is clearly a reference to answers given to questions put during the conference.

[6] In a judgment of 9 August 2016, the Court dismissed what were the sixth and seventh recall applications addressed to the Court’s 2009 judgment refusing leave to appeal against the Court of Appeal judgment.⁷ In doing so, it directed the Registrar to “not accept any further applications by Mr Slavich which directly or indirectly challenge his convictions”.⁸

[7] By application of 5 March 2020, Mr Slavich applied for “a correction (via the assumed correct process of Recall)” of the 13 September 2011 judgment. His position essentially is that the 13 September 2011 judgment contains two errors which should be corrected – the assertions that the Court of Appeal was “satisfied” that Heath J had

² *R v Slavich* [2009] NZCA 188 at [5].

³ At [27].

⁴ *Slavich v R* [2009] NZSC 87.

⁵ *Slavich v R* [2011] NZSC 103.

⁶ HC judgment, above n 1, at [15]–[17].

⁷ *Slavich v R* [2016] NZSC 99.

⁸ At [3(b)].

considered the content of both documents and that what Heath J said in his Reasons for Verdict referred to answers recorded in the teleconference transcript. The application invites the Court to identify a passage in the Court of Appeal judgment which establishes that it was satisfied that Heath J had considered the content of both documents.

[8] The Registrar saw the correction application as a challenge to the judgment of 13 September 2011 and thus, at least indirectly, to Mr Slavich's convictions. For this reason, the Registrar declined to accept it.

[9] Mr Slavich has subsequently sought to review the Registrar's decision, attempted to file a contempt of court application against the Registrar and written to the Chief Justice.

[10] In refusing to accept the correction application, the Registrar was acting under judicial direction and, for this reason, the statutory rights of review under the Senior Courts Act 2016 are not engaged. However, the Court has a general supervisory jurisdiction in respect of the actions of the Registrar which is not confined to the statutory jurisdictions conferred by the Senior Courts Act.⁹

[11] The Registrar was right not to accept the correction application. This is because that application is premised on the contention that the passage we have cited from the 13 September 2011 judgment is wrong. If the judgment is "corrected" as Mr Slavich suggests, the result arrived at by Blanchard and McGrath JJ would have no reasons. The application is thus a challenge to the correctness of that judgment and, indirectly, to the convictions.

⁹ *Greer v Smith* [2015] NZSC 196, (2015) 22 PRNZ 785 at [6].

[12] In the exercise of the Court's general supervisory jurisdiction, we:

- (a) confirm the decision of the Registrar not to accept the correction application; and
- (b) direct that the memorandum of contempt not be accepted for filing as it is an abuse of process.