

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 58/2020
[2020] NZSC 90**

BETWEEN JASON DAVID SIGNAL
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: C B Hirschfeld for Applicant
 A Markham for Respondent

Judgment: 9 September 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant is charged, along with four others, with murder of one person and assault with intent to cause grievous bodily harm to another person, as well as three associated charges. He applied to the High Court for bail but his application was dismissed.¹ He appealed to the Court of Appeal, but his appeal was dismissed.² He now seeks leave to appeal to this Court against the decision of the Court of Appeal.

[2] The application for leave was said to be made under s 223 of the Criminal Procedure Act 2011 and ss 74 and 75 of the Senior Courts Act 2016. However, as counsel for the respondent pointed out in her submissions, s 223 of the Criminal Procedure Act deals with second appeals against certain pre-trial decisions, not

¹ *Signal v R* [2020] NZHC 67 (Simon France J).

² *Signal v R* [2020] NZCA 284 (Brown, Dobson and Brewer JJ).

including decisions relating to the grant or refusal of bail. So it does not provide for an appeal to this Court against a decision of the Court of Appeal dealing with a bail appeal to that Court. Sections 74 and 75 of the Senior Courts Act set out the criteria for the grant of leave, but are not provisions conferring jurisdiction on this Court.

[3] The applicant's appeal to the Court of Appeal was advanced under s 42 of the Bail Act 2000. That section provides for a single appeal to an "appeal court" against a decision refusing to grant bail. Because the decision to refuse bail was made in the High Court in this case, the appeal under s 42 was to the Court of Appeal.³ Section 43(3) provides that every decision of the appeal court on an appeal under s 42 is final. The respondent therefore submitted this Court had no jurisdiction to hear and determine an appeal against the decision of the Court of Appeal in this case.

[4] After the Court received the respondent's submissions, we requested further submissions from counsel for the applicant on the issue of jurisdiction. Counsel for the applicant argued that, although s 43(3) of the Bail Act says the decision of the appeal court under s 42 is final, it should not be read as preventing an appeal to this Court against a decision of the Court of Appeal under s 42. He said s 68 of the Senior Courts Act preserves a right of appeal where this Court considers at the leave stage that the decision of the Court of Appeal contains an error which vitiates the decision to the extent that it cannot be said to be "final".

[5] Section 68 of the Senior Courts Act provides:

68 Appeals against decisions of Court of Appeal in civil proceedings

The Supreme Court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against a decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

³ Bail Act 2000, ss 42(1) and 41(c).

[6] The definition of “civil proceeding” in s 65 includes a proceeding under the Bail Act. However, s 68(a) makes it clear that the jurisdiction to hear and determine an appeal under s 68 does not apply where an enactment other than the Senior Courts Act provides that there is no right of appeal. As s 43(3) of the Bail Act does exactly that, this means that this Court does not have jurisdiction to hear and determine an appeal against the decision of the Court of Appeal dismissing the applicant’s appeal to that Court.

[7] We do not consider that there is any proper basis for this Court to assert jurisdiction in the present circumstances on the basis that the Court of Appeal decision contains an error which vitiates it to the extent that it cannot be said to be “final”. Section 43(3) does not allow for any exception to the finality of the decision of an appeal court in relation to an appeal under s 42 of the Bail Act.

[8] We conclude that the Court does not have jurisdiction to hear and determine an appeal against the decision of the Court of Appeal in this case. We therefore dismiss the applicant’s application for leave to appeal.

Solicitors:
Crown Law Office, Wellington for Respondent