



SUPREME COURT OF NEW ZEALAND | TE KŌTI MANA NUI O AOTEAROA

31 JULY 2020

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DERMOT GREGORY NOTTINGHAM v R

(SC 83/2019) [2020] NZSC 74

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Suppression

The High Court order in [2014] NZHC 550 prohibiting the publication of names or identifying particulars of the defendants in [2014] NZHC 550 and [2014] NZHC 1848 remains in force.

The District Court order in [2018] NZDC 15368 prohibiting the publication of names or identifying particulars of T, C, H, B and M remains in force.

Decision

Mr Nottingham was convicted of publishing information in breach of suppression orders and criminal harassment. On 26 July 2018, he was sentenced in the District Court to a term of 12 months’ home detention. Mr Nottingham appealed against conviction and sentence to the Court of Appeal and the Solicitor-General appealed against sentence. By the time the Court of Appeal heard the appeal, Mr Nottingham had served three and a half months of his sentence of home detention.

The Court of Appeal dismissed Mr Nottingham's appeal against conviction and sentence. The Court allowed the Solicitor-General's appeal, quashing the original sentence and imposing a new sentence of 12 months' home detention.

Mr Nottingham was granted leave to appeal to the Supreme Court against sentence. The only issue on appeal was whether the Court of Appeal erred in imposing a term of home detention which would mean that, in total, Mr Nottingham would serve 15 and a half months of home detention. The issue arose because s 80A(3) of the Sentencing Act 2002 provides that the maximum term of a sentence of home detention is 12 months.

Mr Nottingham submitted that he could not lawfully be required to serve more than 12 months' home detention as this was the statutory maximum in s 80A(3). The Solicitor-General submitted that the sentence imposed by the Court of Appeal was permissible because the Court had imposed a new sentence. In these circumstances, the Solicitor-General argued that the old sentence ceased to exist and that the new Court of Appeal sentence started on the day it was imposed.

The Supreme Court has unanimously allowed Mr Nottingham's appeal. The Court held that s 80A(3) was clear that the maximum term of home detention that can be imposed in relation to an offence is 12 months. Therefore, the Court of Appeal did not have jurisdiction to impose a sentence of 12 months' home detention in circumstances where Mr Nottingham had already served some time on home detention. The practical effect of the Court of Appeal's decision was that Mr Nottingham would have to serve more than 12 months' home detention, contrary to the maximum in s 80A(3).

In order to get to a position where Mr Nottingham's sentence did not exceed the statutory maximum, the Supreme Court exercised its powers to vary sentences under the Criminal Procedure Act 2011. It did so by varying the sentence imposed by the Court of Appeal to a sentence of eight and a half months' home detention with a backdated start date of 30 July 2019.

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