



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

14 SEPTEMBER 2020

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SHAY O’CARROLL v THE QUEEN

(SC 129/2019) [2020] NZSC 92

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

A High Court order prohibiting publication of the name of the complainant remains in force.

Background

Mr O’Carroll, a New Zealander, pleaded guilty to indecent assault, an offence under the Cook Islands Crimes Act 1969, for offending in the Cook Islands. But Mr O’Carroll was not convicted in the Cook Islands. He was instead prosecuted, convicted and sentenced in New Zealand, pursuant to s 155 of the Cook Islands Act 1915 (an Act of the New Zealand Parliament).

The High Court considered that a sentence of home detention would be most appropriate for Mr O’Carroll. But the Court considered that it could not impose home detention, since Cook Islands law does not provide for home detention. The Court considered it had no choice but to sentence Mr O’Carroll to a term of imprisonment.

Mr O'Carroll then appealed unsuccessfully to the Court of Appeal. The Court of Appeal held that it had no jurisdiction to hear the appeal. But in any case, it agreed with the High Court that home detention was not available.

The Supreme Court granted Mr O'Carroll leave to appeal against the Court of Appeal's decision. The issues were:

- (1) whether the Court of Appeal had jurisdiction to hear the appeal; and
- (2) whether the High Court had the power to impose home detention.

These issues turned on the interpretation of s 155 of the Cook Islands Act.

Unusually, both parties in this case agreed that the Court of Appeal decision was wrong. Both made submissions in this Court to that effect.

The Supreme Court's decision

The Supreme Court has unanimously allowed Mr O'Carroll's appeal.

On the first issue, the Court held that the Court of Appeal did have jurisdiction to hear the appeal. Section 155(1) provides that the High Court may exercise its jurisdiction over offences committed in the Cook Islands "in the same manner" as if the offence had been committed here. That must mean it exercises its jurisdiction subject to the appeal rights that would ordinarily apply. This is also consistent with the New Zealand Bill of Rights Act 1990 and the International Covenant on Civil and Political Rights, which both recognise a convicted person's right to appeal against their sentence.

On the second issue, the Court held that the High Court could impose home detention. The language of s 155(4) indicates that it was intended to limit only the maximum sentence for which an offender may be liable.

The Court quashed Mr O'Carroll's sentence of 22 months' imprisonment and substituted a sentence of 10 months' home detention.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921