

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 17/2024
[2024] NZSC 61

BETWEEN DAVID IAN HENDERSON
 Applicant

AND ATTORNEY-GENERAL OF NEW
 ZEALAND
 Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: J Moss for Applicant
 E J Watt and L E Kenner for Respondent

Judgment: 29 May 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

Background

[1] In 2015 and 2016 Mr Henderson was charged with three offences under the Insolvency Act 2006. On 6 April 2020, shortly after the COVID-19 lockdown began, the Deputy Solicitor-General stayed the prosecution on the basis that, by the time the charges could proceed to trial, the delay would be undue.

[2] Mr Henderson sought judicial review of the Deputy Solicitor-General's decision, claiming he has the right to be tried in order to clear his name. His application for judicial review was dismissed by the High Court.¹ That decision was upheld by the Court of Appeal.²

Application for leave to appeal

[3] Mr Henderson seeks leave to appeal against the Court of Appeal decision. He relies on s 25(a) of the New Zealand Bill of Rights Act 1990 (Bill of Rights). He also says that the Deputy Solicitor-General failed to have regard to his individual interests when considering the stay (as against general public interest factors). For the first time Mr Henderson now seeks to rely on tikanga principles.

Court of Appeal decision

[4] The Attorney-General accepted that the decision to enter a stay under s 176 of the Criminal Procedure Act 2011 is amenable to judicial review but said that restraint should be exercised in relation to the scope and standard of review.³

[5] As to s 25(a) of the Bill of Rights, the Court noted that s 25 rights apply to the determination of charges, and the stay means that there is nothing to be determined.⁴ The Solicitor-General has undertaken that the charges will not be revived. There are thus no extant charges and s 25 is no longer engaged.⁵ The Court held that the discretion to order a stay must be exercised in the public interest and the discretion is wide.⁶ The Court said that it may be appropriate to consider the individual interests of a particular defendant, but these individual interests will not "of themselves" be a mandatory consideration.⁷

¹ *Henderson v Attorney-General of New Zealand* [2022] NZHC 816, [2022] NZAR 292 (Edwards J).

² *Henderson v Attorney-General of New Zealand* [2024] NZCA 9 (Courtney, Katz and Wylie JJ).

³ This concession was noted by the Court at [43]. The Court said that it considered the concession appropriate at [44].

⁴ At [49].

⁵ At [50].

⁶ At [62].

⁷ At [68].

[6] The Court noted that a District Court Judge and the Deputy Solicitor-General concluded there was sufficient evidence on which a properly directed jury could convict. The issues were, in summary, the delay (including the impact of the delay on Mr Henderson), the intervention of COVID-19, and the relatively trivial nature of the charges. These were all matters properly taken into account.⁸

Our assessment

[7] We do not consider the criteria for leave are met.⁹ The application relates to the particular facts of this case and thus raises no issues of general or public importance.¹⁰ The case has already been considered by two Courts. Nothing raised suggests that the decisions below were in error in the particular circumstances of this case. There is thus no risk of a miscarriage of justice.¹¹

Result

[8] The application for leave to appeal is dismissed.

[9] The applicant must pay the respondent costs of \$2,500.

Solicitors:

Canterbury Legal, Christchurch for Applicant

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

⁸ At [69].

⁹ Senior Courts Act 2016, s 74.

¹⁰ Section 74(2)(a).

¹¹ Section 74(2)(c).