IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 52/2009
SC 53/2009
[2024] NZSC 72

BETWEEN	JOHN KENNETH SLAVICH Applicant
AND	THE KING Respondent

Court: Winkelmann CJ and Ellen France J

Counsel: Applicant in person

Judgment: 21 June 2024

JUDGMENT OF THE COURT

The application for recall of this Court's judgment of 16 April 2020 (*Slavich v R* [2020] NZSC 34) is dismissed.

REASONS

Introduction

[1] In a judgment delivered on 16 April 2020, this Court confirmed the decision of the Registrar not to accept a correction application made by Mr Slavich.[1] The Court also determined that a memorandum of contempt should not be accepted for filing as it was an abuse of process. Mr Slavich has filed an application under r 43A(1)(a) of the Supreme Court Rules 2004 for correction of an accidental slip or omission in the judgment.[2] He describes this as an application for recall.

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1 *Slavich v R* [2020] NZSC 34 (Winkelmann CJ, William Young, Glazebrook, O'Regan and Ellen France JJ) [SC judgment].

2 Reference is also made to r 1.6 of the Criminal Procedure Rules 2012.

[2] The application was initially not accepted for filing by the Registrar, on the basis that it came within the Court's earlier direction that the Registrar "not accept any further applications by Mr Slavich which directly or indirectly challenge his convictions".[3] The Registrar subsequently referred the application to a panel for consideration in the exercise of the Court's general supervisory jurisdiction in relation to the Registrar's actions.[4]

Background

[3] The present application relates to three aspects of the Court's judgment of 16 April 2020.

[4] The first of these relates to paragraph [1] of the judgment. After noting that, in his later challenges to convictions on a number of fraud charges, Mr Slavich had focussed on the evidence of a witness unable to give evidence in person, the judgment records "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".

[5] The second and third matters to which the correction application relates are found in paragraph [2] of the judgment. In this paragraph, the Court records that in his 2009 conviction appeal in the Court of Appeal, Mr Slavich's "primary complaint" related to the fact the trial Judge had considered unsworn evidence.[5] The paragraph continues, "[t]his 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". The judgment goes on to note "Mr Slavich's current position is that the transcript was not considered by" the trial Judge.[6]

The application for recall

[6] Mr Slavich says paragraph [1] should be amended by inserting the words "the 2009 Court of Appeal ruled" before the passage beginning "her evidence came before

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3 *Slavich v R* [2016] NZSC 99 at [3(b)].
4 See *Greer v Smith* [2015] NZSC 196, (2015) 22 PRNZ 785 at [6].
5 The judgment of the Court of Appeal on the conviction appeal is *R v Slavich* [2009] NZCA 188.
6 SC judgment, above n 1, at [4].

the Court". Mr Slavich's submission is that more recent documentation filed in this Court on another application confirms the prosecution did not tender the transcript into evidence at trial. In relation to paragraph [2], Mr Slavich states that the words "his primary complaint" and the observation beginning "which appears" are not supported by the approach taken in the Court of Appeal. He says there were two primary complaints about the evidence and it was not suggested to the 2009 Court of Appeal that the Judge may have taken the transcript into account.

[7] We assume, without deciding, that the present application is not a collateral challenge to the convictions. Having considered the material provided by Mr Slavich in support of the application, we do not consider any of the matters raised provide a basis for recall of the earlier judgment.[7] The process by which the transcript came into evidence is described in the 2009 judgment of the Court of Appeal and the phraseology used in paragraph [1] is consistent with that.[8] As to paragraph [2], this Court made an assessment of the weight attached to the complaints addressed by the 2009 Court of Appeal and as to the implications of the argument made. Nothing raised by Mr Slavich suggests errors in that assessment that constitute some very special reason requiring recall of the judgment.

Result

[8] The application for recall of this Court's judgment of 16 April 2020 (*Slavich v R* [2020] NZSC 34) is dismissed.

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7 See generally *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76; and *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

8 *R v Slavich*, above n 5, at [16].