IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 35/2024
[2024] NZSC 86

BETWEEN		PREETAM PRAKASH MAID Applicant
AND		THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
M R L Davie for Respondent

Judgment: 31 July 2024

JUDGMENT OF THE COURT

A The application for extension of time to apply for leave to appeal *Maid v R* [2021] NZCA 456 is dismissed.

B The application for leave to appeal *Maid v R* [2024] NZCA 84 is dismissed.

REASONS

[1] The applicant, Mr Maid, was an aviation security officer employed at Dunedin International Airport. On 17 March 2019, two days after the Christchurch Mosque attacks, he assembled an imitation improvised explosive device which he carried around public and secure areas of the airport before depositing it near a small runway building. He then photographed it and reported the presence of a foreign object to his supervisor, air traffic control and five different media outlets. As the Court of Appeal observed:[1]

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1 *Maid v R* [2021] NZCA 456 (Clifford, Thomas and Muir JJ) [2021 CA judgment] at [14].

> On the Crown case, Mr Maid's scheme was intended to highlight security failings which he had earlier repeatedly raised at the airport. The Crown also suggested an associated financial benefit to Mr Maid in terms of the longer hours of work that may result from additional screening.

[2] Following a defended jury trial, in which he denied placing the object by the runway building, the applicant was convicted of taking a prohibited item into a security enhanced area, contrary to s 11(1A) of the Aviation Crimes Act 1972. He was sentenced to three-years' imprisonment.[2]

[3] On 10 September 2021 the Court of Appeal dismissed his appeal against conviction, but reduced his sentence to 17 months' imprisonment and gave him leave to apply to the District Court for home detention under s 80K of the Sentencing Act 2002.[3] The Court did not appear to have appreciated that the applicant already had an address which was suitable for home detention.[4] The Department of Corrections report confirming that fact had been omitted from the case on appeal.

[4] Despite leave to apply for home detention being granted, the applicant did not make that application. On 6 October 2021, after serving half his sentence, he was released from prison.[5]

[5] An application for leave to appeal the decision of the Court of Appeal dismissing his appeal against *conviction* was dismissed in 2022.[6] In 2023, the applicant applied unsuccessfully to the District Court for cancellation of the sentence of imprisonment—an application dismissed for want of jurisdiction.[7] Leave to appeal to the Court of Appeal was declined in 2024, again on jurisdictional grounds.[8]

[6] The application before us is for extension of time to seek leave to appeal the 2021 sentence decision of the Court of Appeal, and for leave to appeal the 2024 decision. The applicant contends a question of public importance is engaged, and a

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2 *R v Maid* [2021] NZDC 1547 (Judge Crosbie) [Sentencing notes].
3 2021 CA judgment, above n 1.
4 See at [72].
5 See Parole Act 2002, s 86(1).
6 *Maid v R* [2022] NZSC 39.
7 *R v Maid* DC Dunedin CRI-2019-012-000975, 27 April 2023 (Minute of Judge Turner).
8 *Maid v R* [2024] NZCA 84 (Wylie, Edwards and Hinton JJ) [2024 CA judgment]; and see *Maid v R* HC Dunedin CRI-2023-412-37, 21 June 2023 (Minute of Dunningham J).

substantial miscarriage of justice has occurred.[9] His essential argument is that the failure of the Court of Appeal to substitute a sentence of home detention (having overlooked the availability of a suitable address) meant that he has not benefited from a lesser penalty as required by s 6 of the Sentencing Act, constituting a breach of s 25(g) of the New Zealand Bill of Rights Act 1990.

Our assessment

[7] The criteria for leave cannot be made out here. In reaching that conclusion we note the following background matters.

[8] First, the District Court was in possession of the Corrections report confirming the suitability of the applicant's address for home detention, and that report had been sent to defence counsel. There is no evidence to the contrary. Defence counsel referred to the suitability of the address in her submissions. The sentencing Judge also referred to it, but because of the length of sentence then imposed, it was beside the point.[10] Had the applicant been seeking substitution of home detention in his sentence appeal, the report should have been included in the case on appeal.

[9] Secondly, the applicant did not however seek substitution of home detention in his sentence appeal. What he sought was a simple reduction in the term of imprisonment so that he would be released immediately on a time-served basis. It does not seem to have occurred to the applicant or his appellate counsel to seek a substituted sentence of home detention.[11]

[10] Thirdly, in substituting a reduced sentence which would not permit immediate release, the Court of Appeal nonetheless granted the applicant leave to apply for cancellation of the sentence of imprisonment altogether, and the substitution of a sentence of home detention. Despite that, and the submission now made, the applicant did not make that application for eighteen months, long after his release from prison. While he had only 17 working days before early release at the time the Court of Appeal

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9 See Senior Courts Act 2016, ss 74(2)(a) and (b).
10 Sentencing notes, above n 2, at [17].
11 See 2021 CA judgment, above n 1, at [53].

judgment was delivered, what he now seeks could only be achieved by making an application before his sentence of imprisonment was completed.[12]

[11] As to the 2021 judgment of the Court of Appeal, we see no apparent error in the approach taken by the Court, and nor any substantial prospect of a miscarriage of justice.[13] Because the report had been omitted from the case on appeal (presumably because the sentence appeal did not seek a substituted sentence of home detention) the Court could do no more than reserve leave to apply below.[14] That course was by no means unusual. The non-substitution of home detention was the product of the applicant's own appeal strategy, and his failure to take up the opportunity to apply reserved by the judgment. There is no evident miscarriage of justice and, in those circumstances, extension of time to apply for leave to appeal must be denied.

[12] As to the application for leave to appeal the 2024 judgment, that involves an argument that s 80K of the Sentencing Act may be engaged after a sentence of imprisonment has been completed. That contention was rejected by the Court of Appeal and we do not discern an arguable error of law in that conclusion.[15] Nor do we consider s 296 of the Criminal Procedure Act 2011 is either engaged, or able to be engaged, on these facts. It follows that we consider the respondent correct in its submission that there is no jurisdiction to consider an appeal from the 2024 judgment declining leave to appeal. The application therefore raises no matter of general or public importance or potential substantial miscarriage of justice.[16] Accordingly, we do not consider it necessary in the interests of justice for the Court to hear and determine the proposed appeal.[17]

Result

[13] The application for extension of time to apply for leave to appeal *Maid v R* [2021] NZCA 456 is dismissed.

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12 See below at [12].
13 Senior Courts Act, s 74(2)(b).
14 Sentencing Act 2002, s 80A(2)(a)(i).
15 2024 CA judgment, above n 8.
16 Senior Courts Act, s 74(2)(a) and (b).
17 Section 74(1).

[14] The application for leave to appeal *Maid v R* [2024] NZCA 84 is dismissed.

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