



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

3 July 2024

MEDIA RELEASE

DAMIN PETER COOK v THE KING

(SC 120/2023)

Hearing in the Supreme Court Tuesday 23 July – Wednesday 24 July 2024

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF THE COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

Background

The key issue in this appeal is the difference between the defences of sane automatism and insane automatism. Broadly, both defences deny criminal responsibility on the basis the defendant lacked control during the offending. Where this lack of control is caused by a “disease of the mind” (per s 23 of the Crimes Act 1961), the defence is insane automatism. Where it is caused by something else, the defence is sane automatism. For sane automatism, the defendant only needs to provide an evidential foundation that the defence applies. Then the Crown must exclude the reasonable possibility that the defendant acted without conscious volition. However, for insane automatism the defendant must prove all the elements of the defence on the balance of probabilities.

In this case, the appellant was charged with two sexual offences. At trial, he argued that he had sexsomnia (meaning he committed the offences in his sleep). The appellant wanted the trial Judge to rule that his defence was sane automatism. However, the Judge ruled that the defence was insane automatism, applying the decision of *Cameron v R* [2021] NZCA 80 (where sexsomnia was classified as a form of insane automatism on the evidence in that case). The appellant was convicted of both offences.

The appellant appealed to the Court of Appeal against his conviction and sentence. On 4 August 2023, the Court of Appeal reduced the appellant’s sentence but dismissed his appeal against conviction. The Court found there was no reason to depart from *Cameron*. The appellant appealed this decision to the Supreme Court.

This appeal

On 19 February 2024, the Supreme Court granted the appellant's leave to appeal. The approved question is whether the Court of Appeal was correct to treat the appellant's defence as insane automatism.

Viewing of hearing

This hearing of the appeal will be livestreamed. Details about access to the livestream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice O'Regan
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Judges as seen from the public gallery

Counsel

- Damin Peter Cook (Appellant): *R E Harrison KC and A J McKenzie*
- The King (Respondent): *Z R Hamill*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 342](#) (4 August 2023)

Supreme Court leave decision: [\[2024\] NZSC 12](#) (19 February 2024)