



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

25 JULY 2024

MEDIA RELEASE

DAMON JOHN EXLEY V NZME PUBLISHING LIMITED AND ANOTHER

(SC 76/2023)

W v THE KING

(SC 60/2023)

MARK JOSEPH HOGGART v THE KING

(SC 77/2023)

Hearing in the Supreme Court Tuesday 6 August – Wednesday 7 August 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.

NOTE: INTERIM ORDER SUPPRESSING THE NAME OF W AND ANY IDENTIFYING PARTICULARS MADE ON 9 JUNE 2023 IS TO CONTINUE UNTIL FURTHER ORDER.

Introduction

This sitting involves two appeals combined in the same hearing. Both appeals concern media take down orders — when a court makes an order for a person or organisation to take down prejudicial news stories or internet materials about a defendant in order to protect the defendant’s right to a fair trial. The second appeal, *W v R* and *Hoggart v R* also contains a second issue of the whether the jury verdict was reasonable given the existence of evidence of the potential culpability of another suspect.

Background

In the first appeal, Mr Exley faced a range of charges for offences committed while escaped from prison in February 2022. Included in these were charges of assault with a weapon, sexual connection and sexual violation by rape, as well as other offences related to his escape to which he had pleaded guilty.

The second appeal arises from the aggravated robbery of the Red Fox Tavern and the murder of its bar manager in Maramarua over 30 years ago. The Police conducted an investigation at the time, and again in 1999, but found insufficient evidence to charge anyone. Then, in 2016 a further review of the evidence led to Mr W and Mr Hoggart being charged. On 7 May 2021, they were found guilty by a jury in the High Court and each sentenced to life imprisonment.

First issue — takedown orders

Mr Exley

Before his trial, Mr Exley applied to the High Court for name suppression as well as take down orders in relation to online articles about his previous convictions and general character. He argued there was a real risk of prejudice to a fair trial if the jury became aware of this information.

The High Court granted Mr Exley name suppression until the outcome of the trial, and ordered that all articles, websites and other online material referring to his previous convictions or character be removed from the internet until the day after the jury delivered its verdict.

NZME Publishing Limited, a media company, appealed to the Court of Appeal. The Crown supported NZME's appeal. The Court quashed the takedown orders and amended the name suppression order so that it only lasted until after the jury was formed.

In July 2023, a few days before his trial was due to begin, Mr Exley appealed the issue of the take down order to the Supreme Court. There was not enough time to deal with the leave application before the start of the trial. Instead, the Court partially suspended the Court of Appeal's order quashing the High Court take down order until the application could be dealt with. This meant a list of 35 articles were taken down until the outcome of the trial.

At trial, Mr Exley was found guilty on all charges and sentenced to preventive detention with a minimum period of nine years' imprisonment. Although the trial had already concluded, the Supreme Court still granted Mr Exley's leave to appeal the take down order as it raised a point of public importance.

Mr W and Mr Hoggart

The second appeal, by Mr W and Mr Hoggart, also concerns take down orders. Before the High Court trial, the Judge had refused to make an order requiring media to take down news articles relating to Mr W's previous convictions to prevent jurors finding prejudicial information about him on the internet. The Court of Appeal upheld that decision.

Approved questions

The issues for this Court are whether the Court of Appeal was correct to quash the media take down order in relation to Mr Exley, and to conclude that an order was not required in Mr W's circumstances. Because take down orders are a matter of interest to the New Zealand media, the Court also granted leave for Stuff Limited to intervene. They will make submissions but are not a party.

Second issue — unreasonableness of jury verdict

The remaining issue relates only to the second appeal. During the trial in the High Court, Mr W and Mr Hoggart unsuccessfully argued that Lester Hamilton (another suspect, who has since died) was in fact responsible for the offending. On appeal, the Court of Appeal

relied on the police's findings regarding Mr Hamilton's motives and movements to conclude that he was not one of the offenders.

Approved question

The question for this Court is whether the Court of Appeal was right to conclude that the jury verdicts were reasonable in light of admissible evidence relating to the potential culpability of Mr Hamilton.

Viewing of hearing

The courtroom is open to the public.

The panel

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
---------------------	----------------------------	-------------------------------------	--------------------------	------------------------

Judges as seen from the public gallery

Counsel

- Damon John Exley (Appellant in SC 76/2023): *L C Ord and E T Blincoe*
- NZME Publishing Limited (First Respondent in SC 76/2023): *T C Goatley and K M Wilson*
- The King (Second Respondent in SC 76/2023): *M J Lillico and W J Harvey*
- W (Appellant in SC 60/2023): *C W J Stevenson KC, E A Hall and O H Frederickson*
- Mark Joseph Hoggart (Appellant in SC 77/2023): *Q Duff, S L McColgan and G T Duff*
- The King (Respondent in SC 60/2023 and SC 77/2023): *C A Brook and O A Jessop Boivin*
- Stuff Limited (Intervener in SC 60/2023 and SC 77/2023): *E D Nilsson*

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 decisions: Not available as interim suppression orders apply
Supreme Court leave decisions:

- *Exley v NZME Publishing Ltd* [2023] NZSC 136 (19 October 2023)
- *W v R and Hoggart v R* [2023] NZSC 164 (14 December 2023)