

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA344/2023  
[2024] NZCA 84**

BETWEEN                      PREETAM PRAKASH MAID  
   Applicant  
  
AND                                THE KING  
   Respondent

Court:                              Wylie, Edwards and Hinton JJ

Counsel:                         Applicant in person  
   T Simpson for Respondent

Judgment:                        27 March 2024 at 12 pm  
(On the papers)

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**JUDGMENT OF THE COURT**

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**The proposed appeal is dismissed for want of jurisdiction.**

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**REASONS OF THE COURT**

(Given by Hinton J)

[1]     Mr Preetam Maid seeks to appeal a decision of Judge Turner on 27 April 2023 in the District Court at Dunedin dismissing his application to commute a sentence of imprisonment to home detention.<sup>1</sup> In the same notice, Mr Maid also seeks to appeal Dunningham J's refusal to entertain his appeal of Judge Turner's decision.<sup>2</sup>

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<sup>1</sup>     *R v Maid* DC Dunedin CRI-2019-012-975, 27 April 2023 (Minute of Judge Turner).

<sup>2</sup>     *R v Maid* HC Dunedin CRI-2023-412-37, 21 June 2023 (Minute of Dunningham J).

[2] A preliminary question has arisen as to whether this Court has jurisdiction to determine the proposed appeal. The Crown submits we do not. For the reasons discussed below, we agree.

### **Procedural history**

[3] It is necessary to set out the procedural history in some detail.

[4] On 18 November 2020, Mr Maid was convicted of taking an imitation explosive device into Dunedin International Airport.<sup>3</sup> On 27 January 2021, he was sentenced to three years' imprisonment by Judge Crosbie.<sup>4</sup> Mr Maid appealed his conviction and sentence.

[5] On 10 September 2021, this Court dismissed Mr Maid's appeal against conviction. It however allowed his sentence appeal and substituted a sentence of 17 months' imprisonment.<sup>5</sup> In allowing the sentence appeal, the Court reserved leave for Mr Maid to apply to the District Court for his sentence of imprisonment to be substituted for one of home detention, noting advice to the Court that a proposed home detention address was not suitable.<sup>6</sup>

[6] Mr Maid was soon to be eligible for release and, on 6 October 2021, he was released from prison. Between 10 September 2021 and 6 October 2021 he did not apply for his sentence to be substituted.

[7] Mr Maid then sought leave to appeal his conviction to the Supreme Court. Leave was declined on 4 April 2022.<sup>7</sup>

[8] The next day, on 5 April 2022, Mr Maid filed a document entitled "request for leave to appeal by person convicted" in this Court. The document was treated as being an application by Mr Maid for recall of its decision of 10 September 2021 dismissing the appeal against conviction. The application was founded on the basis that there was

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<sup>3</sup> Aviation Crimes Act 1972, s 11 (maximum penalty of five years' imprisonment).

<sup>4</sup> *R v Maid* [2021] NZDC 1547.

<sup>5</sup> *R v Maid* [2021] NZCA 456.

<sup>6</sup> At [72].

<sup>7</sup> *Maid v R* [2022] NZSC 39.

a “very special reason” why justice required recall. This Court disagreed. It said Mr Maid’s application was largely an attempt to relitigate his unsuccessful conviction appeal.<sup>8</sup> Recall was declined.<sup>9</sup>

[9] Mr Maid says he subsequently discovered that his proposed address had in fact been deemed suitable prior to the hearing of his sentence appeal. He says, and the Crown acknowledges, a report to that effect had been before the District Court Judge at the time of sentencing but had not been included in the case on appeal.

[10] Mr Maid applied (a second time) for recall of this Court’s 10 September 2021 decision — this time on the basis that it contained an “incorrect fact” concerning the suitability of his proposed home detention address. On 30 March 2023, Clifford J declined the application. He held “[t]his is not a circumstance in which our earlier judgment should be recalled. Nor is any further response from this Court appropriate.”<sup>10</sup> Clifford J directed that the report on the suitability of the proposed address could be used by Mr Maid “should the need arise”.<sup>11</sup>

[11] One week later, on 6 April 2023, Mr Maid filed his application in the District Court to commute his sentence of imprisonment to one of home detention “as per leave granted by the Court of Appeal in its original decision”. This was, in effect, an application to commute a sentence of imprisonment to one of home detention under s 80K of the Sentencing Act 2002.

### **Decisions Mr Maid seeks to appeal**

[12] As noted above, on 27 April 2023, Judge Turner held that he had no jurisdiction to entertain Mr Maid’s application.<sup>12</sup> The Judge first noted that when this Court’s decision regarding Mr Maid’s sentence appeal was released, Mr Maid had approximately 25 days to serve before he was due for statutory release and that Mr Maid did not apply for a substituted sentence of home detention before he was released. As a result, by the time Mr Maid filed his application in the District Court,

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<sup>8</sup> *Maid v R* [2022] NZCA 344 at [10].

<sup>9</sup> At [12].

<sup>10</sup> *Maid v R* CA68/2021, 30 March 2023 (Minute of Clifford J) at [6].

<sup>11</sup> At [5].

<sup>12</sup> Minute of Judge Turner, above n 1, at [4].

his sentence had been served. The Judge reasoned that Mr Maid's conviction history was accurate, his sentence had already been served, the District Court had no jurisdiction to change Mr Maid's criminal record and that it would be wrong to do so, because Mr Maid had not applied for home detention. The application was dismissed.<sup>13</sup>

[13] Mr Maid sought to appeal Judge Turner's decision to the High Court. The issue of the appropriate appellate court came before Dunningham J and, by minute dated 21 June 2023, the Judge held that because she considered Mr Maid's appeal was an appeal against sentence following a jury trial, the first appeal court is this Court, pursuant to s 247 of the Criminal Procedure Act 2011. The High Court therefore had no jurisdiction.<sup>14</sup> She directed that if Mr Maid wished to pursue his appeal, he was to do so in this Court.<sup>15</sup>

[14] Mr Maid lodged his notice of appeal in this Court against both Judge Turner's and Dunningham J's respective findings on 28 June 2023.

[15] On 12 October 2023, Mallon J directed the parties to make submissions if they wished on the issue of whether this Court has jurisdiction to hear Mr Maid's appeal against Judge Turner's decision. Submissions were duly made.

[16] Mr Maid filed his notice of appeal in this Court out of time. Mallon J directed that an application for extension of time be dealt with separately. In light of our conclusion that issue falls away.

### **Submissions**

[17] Mr Maid says this Court has the necessary jurisdiction to hear the appeal, to correct erroneous judgments in the interests of justice and to make retrospective changes to sentence, consistent with New Zealand's domestic and international obligations. One of Mr Maid's grounds of appeal is that, were he sentenced to home

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<sup>13</sup> Minute of Judge Turner, above n 1, at [4].

<sup>14</sup> Minute of Dunningham J, above n 2, at [3].

<sup>15</sup> At [7].

detention, he would be able to benefit from the Criminal Records (Clean Slate) Act 2004.

[18] The Crown submits there is no jurisdiction for this Court to hear Mr Maid's appeal. There is no clear appeal pathway and none of the provisions relating to orders made under s 80K of the Sentencing Act apply. There is no jurisdiction for this Court to hear a further appeal against the sentence imposed. Further, the application is not sufficiently or closely linked to the determination of the proceedings to be heard under s 296 of the Criminal Procedure Act.

### **Analysis**

[19] The principal issue for determination is whether this Court has jurisdiction to hear the proposed appeal.

[20] Mr Maid's application before Judge Turner was an application under s 80K of the Sentencing Act to substitute a sentence of imprisonment with one of home detention.

[21] Section 80K provides, relevantly:

**80K Application for cancellation of sentence of imprisonment and substitution of sentence of home detention**

(1) An offender who is subject to a short-term sentence of imprisonment and who has leave to apply for cancellation of a sentence of imprisonment and substitution of a sentence of home detention under section 80I may apply to the court at any time.

...

(7) If the court does not substitute a sentence of home detention, the court—

(a) must reconsider the issue of leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention; and

(b) may make a further order granting the offender leave to apply to the court at any time for cancellation of the sentence of imprisonment and substitution of a sentence of home detention.

[22] There are two appeal routes following the determination of a s 80K application. If a s 80K application is successful, s 80M provides a right to appeal. If an application is unsuccessful and a court fails to grant leave to re-apply, s 80J provides an appeal pathway. However, neither section assists Mr Maid here. The Judge made no determination under s 80K as he held that s 80K was not applicable.

[23] The only alternative potential appeal route would be under s 296 of the Criminal Procedure Act. That section allows a defendant, with leave of the first appeal court, to appeal a ruling by a trial court on a question of law.<sup>16</sup> Questions of law in the context of s 296 must raise a misdirection of law apparent in the decision; oversight of a relevant matter or consideration of an irrelevant matter; a factual finding unsupported by any evidence, or an omission to draw an inference of fact which is the only one reasonably possible on the evidence.<sup>17</sup> Judge Turner's decision is not a ruling by a trial court on a question of law for the purposes of s 296.

[24] Even if such a question was engaged by Mr Maid's proposed appeal, leave to appeal from this Court would be required.<sup>18</sup> Leave has not been sought. Had it been sought, we would have declined leave for the following reasons.

[25] We consider Judge Turner was right to decline to hear Mr Maid's application. Section 80K(1) states that an offender who *is subject to* a short-term sentence of imprisonment may apply for an order under that section. The use of the word "is" and the language of the section overall, make it plain that s 80K is directed at those *actively* serving a short-term sentence of imprisonment. Under the Parole Act 2002, an offender is no longer subject to a sentence after a sentence expiry date.<sup>19</sup> Mr Maid, at the time of his application, had completed his sentence. He was not subject to a short-term sentence of imprisonment. There was no jurisdiction to hear his application.

[26] We note this is not a case where Mr Maid has been left without recourse to the courts, nor one where he has suffered true injustice. Most obviously, Mr Maid could

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<sup>16</sup> Criminal Procedure Act 2011, s 296(2).

<sup>17</sup> *Brown v R* [2015] NZCA 325, (2015) 30 FRNZ 471 at [16].

<sup>18</sup> Criminal Procedure Act, s 296.

<sup>19</sup> Parole Act 2002, s 4(1) definition of "sentence expiry date".

have availed himself of the leave granted by this Court and applied for a substitution of his sentence under s 80K while he was still serving his sentence. He did not do so.

[27] Further, a large proportion of Mr Maid's submissions were directed at the fact the report identifying his home address as suitable for home detention was not before this Court on his appeal against sentence. However, that point was determined by this Court on the second recall application.

[28] This Court has no jurisdiction to hear a second appeal in relation to the sentence imposed on Mr Maid.

[29] While we do not agree with Dunningham J that Mr Maid's proposed appeal is a sentence appeal, for the reasons discussed above, nothing turns on her minute given the conclusion we have reached.

## **Result**

[30] The proposed appeal is dismissed for want of jurisdiction.

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