

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV 2018-404-0936
[2019] NZHC 175**

BETWEEN PETER RICHARD PRESCOTT
 Applicant

AND NEW ZEALAND POLICE
 First respondent

Hearing: 15 February 2019

Appearances: Applicant in person
 G M Taylor for the first respondent

Judgment: 15 February 2019

ORAL JUDGMENT OF JAGOSE J

Solicitors:
Crown Law, Wellington

Copy to:
The Applicant

Background

[1] By this proceeding, Mr Prescott seeks judicial review of Judge L Tremewan's 21 March 2018 dismissal of his appeal in the District Court at Waitakere. He was appealing against the decision of two Justices of the Peace he pay a fine of \$80 and court costs of \$30 in relation to a speeding infringement. Mr Prescott seeks this Court's review of Judge Tremewan's decision on eleven grounds, each styled a "count of bias".

Strike out application

[2] The first respondent, the New Zealand Police, here seek to strike out Mr Prescott's claim and the proceeding itself.¹ The criteria for such is well established.

[3] The police say, given Mr Prescott has not exercised his right to seek leave to appeal against Judge Tremewan's decision,² his application for judicial review is an abuse of process as "a collateral attack on concluded criminal proceedings where an offence was found to be proved". They also say particular of Mr Prescott's grounds for review are not reasonably arguable, and cannot be cured by repleading as an application for leave to appeal, or in any event to cross the threshold for such leave. (The second respondent appropriately abides this Court's decision.)

[4] Mr Prescott responds his application for review is his entitlement under s 27(2) of the New Zealand Bill of Rights Act 1990, and otherwise asserts the correctness of his challenges to Judge Tremewan's decision.

Discussion

[5] Section 27(2) of the 1990 Act provides:

Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

¹ HCR 15.1.

² Criminal Procedure Act 2011, s 237.

Mr Prescott is such a person, and has exercised that right. But it is a “right to apply” – then, “in accordance with law” – and not an untrammelled right to review in itself. Applications for review are as susceptible to strike out as any other proceeding.³

[6] Attempted resort to judicial review as a collateral attack on convictions is a familiar ground for strike out,⁴ as “an abuse of the process of the court”.⁵ That is particularly the case when (as here) the applicable legislation itself provides circumscribed appeal rights.⁶ Judicial review on grounds open to being raised in support of an application for leave to appeal would undermine the statutory process.

[7] Mr Prescott says his grounds for review assert “human rights breaches”, of “legal and constitutional” significance, in violation of his rights to justice. If so – as matters of general or public importance, or miscarriages of justice – they are precisely grounds for leave for a second appeal to be granted.⁷ Thus Mr Prescott’s application for review should be struck out in its entirety as an abuse of process.

[8] The question remains whether the proceeding itself should be dismissed. Such turns on whether there is any prospect the claim may sustainably be repleaded. In the present circumstances, that is to ask if Mr Prescott’s grounds for review may be argued in support of an application for leave to bring a second appeal (albeit far out of time).

[9] None of Mr Prescott’s grounds comes close to establishing the qualifying importance or miscarriage thresholds. The Judge had jurisdiction to consider Mr Prescott’s first appeal.⁸ Mr Prescott is subject to the provisions of New Zealand legislation,⁹ which include the Land Transport Act 1998. The Judge was justified in holding the Justices of the Peace had foundation for their determination of Mr

³ *New Zealand Maori Council v Attorney-General* [1996] 3 NZLR 140 (CA) at 167; *Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA) at 63.

⁴ *Nottingham v District Court at Auckland* [2018] NZCA 75 at [10]; *S (CA34/2015) v Auckland District Court* [2015] NZCA 110 at [9].

⁵ HCR 15.1(d).

⁶ *Ortmann v District Court at North Shore* [2018] NZCA 233, [2018] 3 NZLR 475 at [311].

⁷ Criminal Procedure Act 2011, s 237(2)(a) and (b).

⁸ Section 219(1)(a).

⁹ *Prescott v New Zealand Police* [2018] NZSC 43 at [2]. I do not engage with Mr Prescott’s ‘dual personhood’ claims, which lack any legal foundation.

Prescott's liability: they had the New Zealand Police's credible allegation, which he did not deny. Mr Prescott's proceeding is not capable of resurrection in any form.

Result

[10] I strike out Mr Prescott's application for review, and dismiss this proceeding.

Costs

[11] I award the New Zealand Police costs at 1B and allowable disbursements, as nothing in this straightforward proceeding reasonably required other than a normal amount of time.

—Jagose J