

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME
OR IDENTIFYING PARTICULARS OF AJN REMAINS IN FORCE.**

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA578/2018
[2021] NZCA 636**

BETWEEN TODD AARON MARTELEY
Applicant

AND THE QUEEN
Respondent

Hearing: 10 November 2021
Court: Collins, Duffy and Dunningham JJ
Counsel: Applicant in person
S N B Wimsett as Counsel assisting
J E Mildenhall for Respondent
Judgment: 30 November 2021 at 9.30 am

JUDGMENT OF THE COURT

- A The application for leave to withdraw the notice of abandonment of appeal against conviction is declined.**
- B The substituted application for recall of *Marteley v R* [2018] NZCA 92 is declined.**
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REASONS OF THE COURT

(Given by Collins J)

Introduction

[1] Mr Marteley has filed what purports to be an application for leave to withdraw a notice of abandonment of appeal against his conviction for murder. He pleaded guilty to the murder in 2010 and his appeal against conviction was abandoned in 2016. Mr Marteley's application to withdraw his abandonment of appeal against conviction was declined by this Court in 2018 (the 2018 judgment).¹ No application for leave to appeal the 2018 judgment has been sought from the Supreme Court.

[2] In the circumstances of this case we think there is no jurisdiction to consider a second application for leave to withdraw Mr Marteley's notice of abandonment of his appeal against conviction. We will, however, treat his application as one seeking recall of the 2018 judgment.

Background

[3] Mr Marteley was charged together with AJN, Ivan Manukau and Moana Heremaia with having murdered Piki Kingi at Hamilton on 10 June 2009. In August and September 2010, AJN, Mr Manukau and Mr Marteley pleaded guilty to the murder charge. Ms Heremaia pleaded guilty to a substituted charge of manslaughter.

[4] Mr Manukau was sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 12 years. AJN was sentenced to life imprisonment with an MPI of 10 years. Ms Heremaia was sentenced to a term of three years and nine months' imprisonment. Several weeks after his co-accused had been sentenced, Mr Marteley was sentenced by Heath J to life imprisonment with an MPI of 14 years.²

¹ *Marteley v R* [2018] NZCA 92 [2018 judgment].

² *R v Marteley* HC Hamilton CRI-2009-019-9786, 5 November 2010 [Sentencing notes].

[5] The summary of facts which Mr Marteley accepted when he pleaded guilty records:

- (a) Mr Kingi was a well-known dealer in methamphetamine.
- (b) Mr Marteley and Ms Heremaia had been in a long-term relationship. All four accused knew Mr Kingi through their involvement in the Hamilton drug scene.
- (c) Mr Marteley and Mr Kingi had planned to steal a chemical that could be used in the manufacture of methamphetamine. Mr Marteley subsequently formed the view that he had been excluded from the deal by Mr Kingi. Mr Manukau also had issues with the quality of the methamphetamine he had received from Mr Kingi.
- (d) In early June 2009, the four accused met at Mr Manukau's home where they discussed the grievances they had with Mr Kingi and how to extract retribution.
- (e) A plan was devised, which involved Mr Kingi being lured to the home where Mr Marteley and Ms Heremaia lived. There, Mr Kingi would be attacked and robbed of any drugs and money that he was carrying. It was agreed that Mr Marteley and AJN would carry out the assault while Mr Manukau and Ms Heremaia acted as lookouts from a nearby park.
- (f) On 7 June 2009 Mr Marteley sent Mr Kingi a text message saying that he had recently sold a boat and had a large sum of money with which to purchase methamphetamine. The transaction was to take place at Mr Marteley's home on 10 June 2009.
- (g) On the morning of 10 June 2009, AJN and Mr Manukau went as planned to the home where Mr Marteley and Ms Heremaia lived. Mr Manukau and Ms Heremaia then went to their lookout positions to await the arrival of Mr Kingi.

- (h) Mr Marteley and AJN waited in the house armed with a cricket bat and a tomahawk, which Mr Marteley sharpened while he and AJN waited for Mr Kingi.
- (i) Mr Kingi arrived at Mr Marteley's home at about 11.39 am. Inside the house AJN struck Mr Kingi in the head with the cricket bat. Thereafter, Mr Kingi was struck on multiple occasions with both the cricket bat and the tomahawk. He died in the house.
- (j) Following his death, Mr Kingi's body was wrapped in bed clothes and placed in the rear of his motor vehicle. Mr Marteley and AJN then drove Mr Kingi's car with the deceased in the back seat to a street where it was abandoned. Ms Heremaia and Mr Manukau left the scene on foot. All four accused later met up at Mr Manukau's address.
- (k) The tomahawk was found with Mr Kingi's body. Mr Marteley's palm print was found on the bloodstained handle of that weapon. The cricket bat was found in a compost heap at the rear of the house where Mr Marteley and Ms Heremaia lived.

[6] Mr Marteley was interviewed several times before he was charged with Mr Kingi's murder. He gave a number of conflicting accounts but ultimately accepted he had arranged for Mr Kingi to come to his home for a "hiding". He maintained it was AJN who attacked Mr Kingi with the tomahawk and the cricket bat. Mr Marteley admitted he had assisted with disposing of Mr Kingi's body.

[7] Mr Marteley was assessed by a psychiatrist before he was sentenced. He had been diagnosed with schizophrenia when he was a teenager. The psychiatrist said in her report that Mr Marteley suffered from an anti-social personality disorder and psychopathological personality traits and that his addiction to cannabis was relevant to his criminal offending. Mr Marteley was assessed as being fit to stand trial. There was no issue about Mr Marteley's sanity at the time of the offending.³

³ These conclusions were consistent with those subsequently reached by Dr Shaw, a neuropsychologist, who assessed Mr Marteley in 2014.

[8] The events leading up to Mr Marteley's sentencing were:

- (a) In February 2010, Ms Heremaia's counsel, Mr Laybourn, indicated to the Crown that Ms Heremaia would be willing to plead guilty to manslaughter. She did not do so at that time.
- (b) On 11 August 2010, AJN pleaded guilty to having murdered Mr Kingi.
- (c) On 18 August 2010, the Crown Solicitor spoke with Mr Robb, who at that stage was acting for Mr Marteley.
- (d) On 19 August 2010, Mr Robb wrote to Mr Marteley saying the Crown Solicitor would accept a plea of guilty to manslaughter from Ms Heremaia if Mr Marteley pleaded guilty to murder.
- (e) On 3 September 2010, Mr Marteley and Mr Manukau pleaded guilty to murder. Ms Heremaia pleaded guilty to manslaughter. Sentencing for all defendants was scheduled for 30 September 2010.
- (f) Mr Robb informed the Court that Mr Marteley wished to vacate his guilty plea and instruct new counsel.
- (g) Mr Morgan QC agreed to represent Mr Marteley at his sentencing. In a memorandum dated 7 October 2010, Mr Morgan advised the Court that "Mr Marteley recognises he does not have a defence to the charge of murder". Mr Marteley maintained his guilty plea and proceeded to sentencing.

[9] The sentencing notes of Heath J showed that Mr Morgan submitted Mr Marteley was not "the perpetrator of all things that happened to Mr Kingi", a proposition the Judge agreed with when he said that if all four offenders gave evidence at a trial "it would ... be difficult to establish exactly who did what to whom and when".⁴

⁴ Sentencing notes, above n 2, at [19].

[10] Nevertheless, the Judge was satisfied Mr Marteley played a key role in the murder of Mr Kingi. Heath J observed the murder:⁵

- (a) was the result of a calculated plan and that Mr Marteley was instrumental in developing the plan;
- (b) was carried out with a high level of brutality, cruelty and callousness; and
- (c) involved an attempt to subvert the course of justice when Mr Marteley and AJN drove the deceased's body to a location some distance from where the crime occurred.

[11] The Judge adopted a 17-year starting point for the MPI.⁶ That starting point was reduced by three years to reflect the fact Mr Marteley had maintained his guilty plea and to reflect his personal circumstances.⁷

Subsequent procedural history

[12] On 23 August 2011, Mr Marteley lodged an application to appeal, out of time, his conviction and sentence. At that time, Mr Marteley was represented by Mr Ellis. An application was made for legal aid. The grant that was made covered only Mr Marteley's proposed appeal against sentence.

[13] Mr Marteley commenced civil proceedings in which he challenged the decision of the legal aid authorities not to grant him legal aid to appeal his conviction. That challenge resulted in a series of decisions culminating in a judgment of the Supreme Court, which determined Mr Marteley should receive legal aid to cover his conviction appeal.⁸ We will return to that judgment at [27] to [28].

[14] On 22 December 2015, Mr Ellis advised the Registry that Mr Marteley intended to abandon the appeal against conviction but continue with his appeal against

⁵ At [21].

⁶ At [20].

⁷ At [23]–[26].

⁸ *Marteley v Legal Services Commissioner* [2015] NZSC 127, [2016] 1 NZLR 633.

sentence. On 11 January 2016, Mr Ellis informed the Registry that he had been dismissed by Mr Marteley. Mr Fairbrother QC was then assigned by legal aid services to act for Mr Marteley.

[15] On 5 August 2016, a notice of abandonment of appeal against conviction signed by Mr Marteley and Mr Fairbrother was received by this Court. Mr Marteley's appeal against sentence was then heard by three permanent members of this Court. Mr Marteley's application to extend time to pursue his sentence appeal was granted, but his appeal against sentence was dismissed.⁹

[16] Mr Marteley, who was by this stage acting without the assistance of counsel, then applied to the Supreme Court for leave to appeal his conviction and sentence. That application was declined by the Supreme Court on 13 March 2017.¹⁰

- (a) In relation to the proposed appeal against conviction, the Supreme Court said the appropriate procedural course was for Mr Marteley to apply to this Court for leave to withdraw his notice of abandonment of his appeal against conviction.¹¹
- (b) The Supreme Court declined leave to appeal against sentence because that aspect of the proposed appeal raised no issues that warranted consideration by the Supreme Court.¹²

[17] Two applications seeking to have the Supreme Court recall its decision were declined by that Court.¹³

[18] On 18 April 2017, Mr Marteley filed in this Court an application for leave to withdraw the notice of abandonment of his appeal against conviction. Mr Tennet was by this time acting for Mr Marteley. Mr Marteley filed two affidavits in support of his application. The essence of his proposed appeal was that:

⁹ *Marteley v R* [2016] NZCA 480.

¹⁰ *Marteley v R* [2017] NZSC 31.

¹¹ At [6].

¹² At [7].

¹³ *Marteley v R* [2017] NZSC 72; and *Marteley v R* [2017] NZSC 83.

- (a) He had not been at the house when Mr Kingi was murdered and he had no involvement in the murder.
- (b) He had made statements implicating himself in order to protect Ms Heremaia.
- (c) He had been pressured into pleading guilty.
- (d) He did not recall signing the notice of abandonment of appeal dated 5 August 2016 because he was not wearing glasses when signing documents.

Mr Marteley was cross-examined.

[19] Mr Fairbrother also gave evidence. He explained that he had advised Mr Marteley that:

- (a) his conviction appeal had little if any chance of success; and
- (b) it would not assist Mr Marteley's sentence appeal if the Court's attention focused upon the details of Mr Marteley's involvement in Mr Kingi's murder.

[20] Mr Fairbrother confirmed Mr Marteley had accepted his advice and that, in addition to signing the notice of abandonment of his appeal against conviction, Mr Marteley gave Mr Fairbrother a letter in which he said he knew "in his heart of hearts" that Mr Fairbrother had provided correct advice when he encouraged Mr Marteley to abandon his attempt to appeal his conviction.

[21] Mr Marteley's application for leave to withdraw his notice of abandonment of the conviction appeal was declined by a Divisional Court on 16 April 2018.¹⁴ That is the decision we have referred to as the 2018 judgment.

¹⁴ 2018 judgment, above n 1.

[22] On 24 September 2018 Mr Marteley, who by this time was again acting for himself, filed a “notice of appeal against conviction and sentence”. On 22 February 2019, Mr Dufty, who was by this stage acting for Mr Marteley, filed a notice of abandonment of the notice of appeal against conviction and sentence dated 24 September 2018. Mr Dufty then ceased acting for Mr Marteley.

[23] On 14 February 2020, Mr Marteley applied for “leave to appeal ... against conviction and sentence on the grounds of fresh evidence and substantial grounds of ‘perjury’”. It is that application that we are now required to determine.

Submissions

[24] Conscious of the fact Mr Marteley was no longer represented by counsel, this Court appointed Mr Wimsett to assist the Court so as to ensure that everything that could be said in favour of Mr Marteley’s case was placed before the Court. The submissions we have received from Mr Wimsett supplement the affidavit evidence and letters we have received from Mr Marteley. Initially, Mr Wimsett treated Mr Marteley’s application for leave to appeal as an application for “leave to withdraw his notice of abandonment of his appeal against conviction and reinstate the appeal against conviction”.

[25] The essence of Mr Marteley’s case is as follows:

- (a) Mr Marteley acknowledges he was “a willing part of a plan that involved robbing [Mr Kingi] and giving him a hiding. But that plan only ever involved fists, not weapons”. As Mr Wimsett explains, “[i]f a jury accepted that Mr Marteley was involved on a ‘fists only’ basis and was not aware that a co-defendant might use weapons against Mr Kingi, then a defence existed”.
- (b) Mr Marteley was improperly induced to plead guilty to murder. The alleged inducement arose through an arrangement said to have been put forward by the Crown whereby the charge against Ms Heremaia would be reduced to manslaughter if Mr Marteley pleaded guilty to murder.

[26] Part of the argument we have summarised at [25(b)] is underpinned by the contention that at the time he pleaded guilty Mr Marteley had been in custody for close to a year. His relationship with Ms Heremaia was very significant. They had been together for 13 years and supported each other emotionally and financially.

[27] The Supreme Court referred to the possibility that Mr Marteley's guilty plea might have been made in questionable circumstances when it concluded that Mr Marteley's convictions should be funded by legal aid. The majority said in their judgment:¹⁵

The appellant's decision to plead guilty was substantially contributed to by the indication from the prosecutor that if he did so the prosecution would not seek a murder conviction against his partner and an effective threat that, in the absence of such a plea, a murder conviction against his partner would be sought.

[28] In her concurring judgment, Elias CJ said:

[106] It was important background to the guilty plea that it may have been induced by the reduced charge offered to Mr Marteley's partner. The impact of any such inducement and the circumstances in which it was offered (including possible prosecutorial impropriety and the adequacy of the legal advice received by Mr Marteley) would need to be properly investigated and assessed on an appeal. So too would it be necessary to consider Mr Marteley's capacity to process advice in circumstances where there are indications of some cognitive deficiency on his part.

[107] For the purposes of assessing the grounds of the appeal, it is however significant that there is an evidential basis for the inducement alleged and the role of the Crown solicitor in offering it, although it is possible that the contemporaneous letter of Mr Marteley's counsel reporting the offer is in error ...

[29] For the Crown, Ms Mildenhall emphasised the following points:

- (a) Mr Marteley has no tenable defence. "Over a period of years, several experienced counsel have looked closely at Mr Marteley's prospects of a successful conviction appeal. All have advised him against seeking to pursue an appeal ...".

¹⁵ *Marteley v Legal Services Commissioner*, above n 8, at [64(c)].

- (b) The summary of facts that Mr Marteley pleaded guilty to demonstrated his “patent culpability”. There has never been any justification for him to seek to vacate his guilty plea.
- (c) It was counsel for Ms Heremaia who indicated in February 2010 that she was prepared to plead guilty to manslaughter. This proposal was put forward on the basis that Ms Heremaia was unaware of the level of violence intended by her co-accused.
- (d) Resolution discussions became more formalised after AJN pleaded guilty on 11 August 2010 to murdering Mr Kingi.
- (e) On 18 August 2010, the Crown Solicitor indicated to Mr Robb that the Crown would accept a guilty plea from Mr Marteley to murder under s 168(1)(a) of the Crimes Act 1961.
- (f) A letter written by Mr Robb to Mr Marteley on 19 August 2010, which suggests Mr Marteley would have to plead guilty to murder before Ms Heremaia’s charge would be amended to manslaughter, was plainly incorrect. There had not been any unsolicited offer from the Crown along those lines.

Analysis

[30] As we have noted at [24], Mr Wimsett initially treated Mr Marteley’s extant application as one for leave to withdraw his notice of abandonment of his appeal against conviction. The multiple applications made by Mr Marteley have laid a foundation to significant confusion over the correct procedural pathways available to him.

[31] As we have explained, however, Mr Marteley’s application for leave to withdraw his abandonment of his appeal against conviction was declined in the 2018 judgment. Thereafter, the procedural options available to Mr Marteley were limited to:

- (a) applying to the Supreme Court for leave to appeal the 2018 judgment;
or
- (b) applying to this Court to recall the 2018 judgment.

Neither course has been followed.

[32] We believe the interests of justice are best served if we decline to consider Mr Marteley's application for leave to withdraw his notice of abandonment of appeal on the grounds we do not have jurisdiction to consider such an application. We will, however, treat his application as a request for this Court to recall the 2018 judgment and to reinstate his appeal against conviction.

[33] There is, in any event, a high degree of overlap between the criteria that an applicant must satisfy when seeking to withdraw a notice of abandonment of appeal and when seeking to have a court recall one of its judgments.

[34] In *R v Cramp*,¹⁶ this Court identified two grounds upon which leave might be granted to withdraw a notice of abandonment of appeal:

- (a) if the notice of abandonment of appeal was null and void because it was not the result of a deliberate and informed decision; or
- (b) if, in exceptional circumstances, the interests of justice require a Court to, in effect, set aside a notice of abandonment of appeal.

[35] Similarly, in *Uhrle v R*, when explaining the jurisdiction to recall a criminal judgment, the Supreme Court said:¹⁷

... the decision to reopen an appeal is an exceptional step, but also to ensure the court remains able to respond to the wide variety of circumstances that may necessitate that step in order to avoid injustice. We are content that these concepts are sufficiently captured within the three grounds for recall

¹⁶ *R v Cramp* [2009] NZCA 90 at [26].

¹⁷ *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29] (footnotes added).

articulated in *Horowhenua County*¹⁸ and approved in *Saxmere (No 2)*,¹⁹ and in particular in the third ground: whether for any very special reason justice requires the judgment to be recalled. It is the third ground that is likely to be the most relevant in the criminal jurisdiction.

[36] The criteria for both procedures emphasise that granting leave to withdraw a notice of abandonment of an appeal and recall of a judgment are exceptional measures that may be invoked when required by the interests of justice. This approach reflects the inherent power this Court has to “maintain its character as a court of justice”.²⁰

[37] Factors that may influence a court’s decision to reinstate an appeal either through recall or by granting leave to withdraw a notice of abandonment of an appeal include:²¹

- (a) Whether the applicant can point to a clear and material error of fact or law in the court’s earlier judgment or the applicant’s decision to abandon his or her appeal.
- (b) The importance of finality in criminal proceedings. This is underpinned by concerns about the interests of victims (including the family and friends of a deceased victim), witnesses, and the integrity of the court’s processes which are put at risk if appeals are allowed to be reactivated after years of delay. It is also important not to deny other litigants from accessing the court’s finite resources through the court needlessly revisiting earlier decisions.
- (c) The nature of any advice the applicant has previously received concerning the merits of the proposed reinstated appeal.

A material error of fact or law?

[38] Mr Marteley contends that he thought Mr Kingi would be subjected to a “hiding” and that he and AJN would be using their fists. From this proposition he

¹⁸ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

¹⁹ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76.

²⁰ *R v Smith* [2003] 3 NZLR 617 (CA) at [36].

²¹ See *R v Cramp*, above n 16; *Uhrle v R*, above n 17; and *R v Smith*, above n 20.

argues that AJN engaged in a completely different act from that which he contemplated and that, as a consequence, he could at most have been convicted of manslaughter under s 66(1) of the Crimes Act. Alternatively, he argues that he might have been acquitted outright on the basis that Mr Kingi's homicide was not committed "in the prosecution of the common purpose" under s 66(2) or was not foreseen by Mr Marteley as a "probable consequence" of prosecuting the common purpose.

[39] We are satisfied Mr Marteley has not demonstrated any material error of fact or law when he pleaded guilty or when this Court delivered its 2018 judgment. Our reasons for this conclusion are:

- (a) Mr Marteley's most recent explanation of his understanding of the nature of the "hiding" that was to be inflicted on Mr Kingi is not supported by any independent verifiable evidence.
- (b) Mr Marteley's explanation is at complete odds with the summary of facts that he agreed to when he pleaded guilty after receiving legal advice from Mr Robb and Mr Morgan. In particular, Mr Marteley's most recent explanation conflicts with his early acknowledgment that while waiting for Mr Kingi to arrive at Mr Marteley's home he sharpened the tomahawk that was used in the attack on Mr Kingi and that AJN used the cricket bat during the attack.
- (c) Mr Marteley's current explanation conflicts with his earlier statement to this Court that he was not present at his home when Mr Kingi was murdered.
- (d) It is difficult to reconcile Mr Marteley's most recent account of the murder of Mr Kingi with his acknowledgment to Mr Fairbrother that in his "heart of hearts" he knew he should abandon his attempt to appeal his conviction.

[40] When dismissing Mr Marteley's sentence appeal in 2016, this Court said:²²

[38] The fact is that Mr Marteley was involved in the murder of Mr Kingi from beginning to end. He was instrumental in luring Mr Kingi to his house. He was in the house when Mr Kingi entered and was attacked. He had brought one of the weapons (the cricket bat) used to attack Mr Kingi to his house. The other weapon (the tomahawk) was his and he had sharpened it shortly before the attack. He and AJN were the two who bundled Mr Kingi's body into Mr Kingi's car and drove it to the place where it was abandoned. Of the four offenders, we consider he was the most culpable because of his central involvement in every aspect of the criminal enterprise that resulted in Mr Kingi's death ...

[41] Similarly, in the 2018 judgment this Court made clear that Mr Marteley murdered Mr Kingi in the circumstances outlined in the agreed summary of facts.²³

[42] Nothing placed before us today causes us to doubt in any way the conclusions this Court has reached on two occasions about Mr Marteley's role in the murder of Mr Kingi.

[43] When the Supreme Court tentatively raised the question as to whether or not Mr Marteley had been improperly induced into pleading guilty to murder by an impermissible offer from the Crown Solicitor, it did so without the benefit of all relevant information. In particular, it is now clear that discussions between Ms Heremaia's lawyer and the Crown in which it was suggested she would plead guilty to manslaughter commenced many months before Mr Marteley entered his guilty plea. The steps taken in relation to Ms Heremaia included the Solicitor General's consent being granted for Ms Heremaia to plead guilty to manslaughter before Mr Marteley pleaded guilty to murder.

[44] In any event, following the Supreme Court judgment, legal aid was granted to Mr Marteley to enable first Mr Ellis, and then Mr Fairbrother, to investigate whether there was any basis upon which Mr Marteley could pursue his appeal against conviction. They independently concluded that Mr Marteley had no prospect of successfully pursuing that course of action, a conclusion he acknowledged when he signed the notice abandoning his appeal against conviction and when he wrote to

²² *Marteley v R*, above n 9 (footnotes omitted).

²³ 2018 judgment, above n 1.

Mr Fairbrother acknowledging the futility of his desire to appeal his conviction. That acknowledgment was endorsed by this Court when, after hearing evidence from Mr Marteley and Mr Fairbrother, it concluded there was no basis upon which leave should be granted to allow Mr Marteley to withdraw his notice of abandonment of his appeal against conviction.²⁴

[45] Our conclusions about the absence of any basis for concluding that material errors of fact or law have led to Mr Marteley's current circumstances render it unnecessary to refer to the other factors we have identified at [37] other than to observe Mr Marteley has, by our calculations, received the benefit of legal advice from at least five experienced lawyers. All have advised him that there is no merit to his proposed appeal against conviction.

[46] Our decision brings to an end Mr Marteley's proceedings in this Court. We understand he wishes to place his case before the Criminal Cases Review Commission, but before he can do so he must demonstrate that he has exhausted his appeal options. Those options now appear to be limited to seeking the leave of the Supreme Court to appeal this judgment and/or the 2018 judgment.

Result

[47] The application for leave to withdraw the notice of abandonment of appeal against conviction is declined.

[48] The substituted application for recall of *Marteley v R* [2018] NZCA 92 is declined.

Solicitors:
Crown Law Office, Wellington for Respondent

²⁴ 2018 judgment, above n 1.