

IN THE SUPREME COURT OF NEW ZEALAND

SC 80/2015  
[2015] NZSC 136

BETWEEN                      ALAN GREER  
   Applicant

AND                              RAY SMITH  
   First Respondent

   JACK HARRISON  
   Second Respondent

Court:                          Glazebrook, Arnold and O'Regan JJ

Counsel:                      Applicant in person  
   A M Powell for Respondents

Judgment:                      21 September 2015

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] Mr Greer was found guilty, after a jury trial, of various offences. On 26 September 2014, he was sentenced to preventive detention.<sup>1</sup>

[2] Prior to sentencing, on 19 August 2014, Williams J refused to issue a writ of habeas corpus.<sup>2</sup> Post-sentencing, on 20 October 2014, Goddard J declined a further application by Mr Greer for a writ of habeas corpus.<sup>3</sup> In her minute, Goddard J stated that Mr Greer was “lawfully detained by a Court of law and no writ of habeas

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<sup>1</sup> *R v Greer* [2014] NZHC 2364.

<sup>2</sup> *Greer v Rimutaka Prison Manager* [2014] NZHC 1957.

<sup>3</sup> *Greer v Chief Executive, Department of Corrections* HC Wellington, 20 October 2014 (Minute of Goddard J).

corpus will lie”.<sup>4</sup> Goddard J went on to add “furthermore, Mr Greer’s application is couched in abusive and offensive language and for that reason would not be received by the Court”.<sup>5</sup>

[3] Mr Greer sought to appeal to the Court of Appeal against Goddard J’s refusal of his application for habeas corpus. On 10 November 2014, Harrison J issued a minute refusing to accept Mr Greer’s appeal stating that, given Goddard J had directed “the application was so defective that the Court should not receive” it, “there is no judgment against which an appeal would lie”.<sup>6</sup>

[4] On 26 February 2015, Mr Greer applied again for a writ of habeas corpus in the High Court. Mander J, in a judgment of 2 March 2015, dismissed the application because it breached s 15(1) of the Habeas Corpus Act 2001 on the basis that Goddard J had already held that Mr Greer was lawfully detained following his conviction and sentence.<sup>7</sup>

[5] Mr Greer then attempted to appeal against Mander J’s judgment to the Court of Appeal. On 18 March 2015, a Deputy Registrar of the Court of Appeal rejected Mr Greer’s notice of appeal on the basis that there had been no decision in the High Court. Later, by letter of 9 April 2015, the Registrar of the Court of Appeal clarified that there was no ability to appeal under the Habeas Corpus Act as Mander J had not heard the application for habeas corpus. The Registrar said, however, that Mr Greer could, after completing the correct Notice of Appeal and either paying the filing fee or applying for a waiver, appeal against Mander J’s decision under the Court of Appeal (Civil) Rules 2005.

[6] Thus the Registrar of the Court of Appeal has indicated that Mr Greer can file an appeal to that Court against Mander J’s judgment (albeit not under the Habeas Corpus Act).

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<sup>4</sup> At [3].

<sup>5</sup> At [4].

<sup>6</sup> *Greer v R* CA653/2014, 10 November 2014 (Minute of Harrison J).

<sup>7</sup> *Greer v Smith* [2015] NZHC 326 at [27].

### **Application to this Court**

[7] On 28 July 2015, Mr Greer filed an application for leave to appeal to this Court against the judgment of Mander J.

[8] Mr Greer's application for leave to appeal appears to be based on two grounds:

- (a) first, that Mander J erred in law by refusing to accept his application on the basis of s 15(1) of the Habeas Corpus Act; and
- (b) secondly, that the prison authorities have failed to provide Mr Greer with appropriate facilities, in particular to allow him to challenge the legality of his detention.

### **Our assessment**

[9] Nothing raised by Mr Greer in his application satisfies us that there are exceptional circumstances that justify an appeal directly to this Court against Mander J's decision.<sup>8</sup>

[10] The application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondents

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<sup>8</sup> Section 14 of the Supreme Court Act 2003. The relationship between ss 14(1A) and 15(1) of the Habeas Corpus Act can be dealt with by the Court of Appeal, should Mr Greer file an appeal in correct form before that Court: see at [6] above.