IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2014-404-67
[2014] NZHC 598

BETWEEN	TEINA PORA Applicant
AND	THE QUEEN Respondent

Hearing: 18 March 2014

Appearances: J G Krebs and I Squire for Applicant
M D Downs and Z Hamill for Respondent

Judgment: 28 March 2014

JUDGMENT OF LANG J
[on application for bail]

This judgment was delivered by me on 28 March 2014 at 2 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date……

[1] Mr Pora is currently serving a sentence of life imprisonment in respect of the rape and murder in March 1992 of Ms Susan Burdett. He was originally convicted on those charges following a trial in 1994, but the Court of Appeal subsequently quashed those convictions in 1999.[1] Mr Pora was convicted again following a retrial in 2000. His appeal against those convictions was dismissed on 12 October 2000.[2] Mr Pora has now been in custody for just over 21 years apart from a brief period when he was granted bail pending the re-trial in 2000,

[2] On 28 January 2014, the Privy Council granted Mr Pora leave to appeal against the decision of the Court of Appeal delivered in 2000. It is likely that the Privy Council will hear the appeal in the latter part of this year. Mr Pora now seeks to be released on bail pending the hearing of the appeal.

Jurisdiction

[3] Counsel for the Crown raises a preliminary issue as to whether this Court has the necessary jurisdiction to grant Mr Pora's application. It is obviously necessary to resolve this issue before proceeding further.

[4] It is common ground that Mr Pora does not have a statutory right to apply for bail pending determination of his appeal by the Privy Council. His position is therefore in marked contrast to that of an appellant who has appealed against conviction or sentence to the New Zealand Court of Appeal or Supreme Court. Section 55 of the Bail Act 2000 ("the Act") permits any person who has lodged an appeal to those courts to be granted bail pending disposition of the appeal. The Act does not contain a similar or corresponding provision in respect of appeals to the Privy Council.

[5] Counsel for the Crown points out that, with two exceptions,[3] New Zealand legislation makes no reference at all to criminal appeals to the Privy Council. This may reflect the fact that such appeals exist by virtue of Her Majesty's prerogative to

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1 *R v Pora* CA447/98, 18 October 1999.
2 *R v Pora* CA 225/00, 12 October 2000.
3 Supreme Court Act 2003, ss 42 and 50.

review the decisions of courts within the countries that have not abolished the ability to appeal to the Privy Council. In *Arnold v The King-Emperor*,[4] the Privy Council observed that its jurisdiction to hear appeals from decisions of courts within the then English Empire existed through the power of the Sovereign "under … Royal authority to review proceedings of a criminal nature".

[6] The lack of any statutory basis for an appellant in the present context to obtain bail prompts counsel for the Crown to submit that jurisdiction may not exist for bail to be granted. He stops short, however, of submitting that jurisdiction does not exist. Instead, he submits that the statutory scheme and the nature of appeals to the Privy Council may exclude the inherent jurisdiction to award bail by necessary implication. The essence of his submission is that because Parliament has seen fit to legislate for bail when convictions are the subject of appeal to other courts, it must view appeals to the Privy Council as being different. It implies that Parliament does not intend bail to be available when a person appeals to the Privy Council. The fact that appeals to the Privy Council are in exercise of the Sovereign's authority rather than the exercise of a substantive statutory right by an appellant reinforces this conclusion.

Zaoui v Attorney-General

[7] Counsel for Mr Pora relies upon the decision of the Supreme Court in *Zaoui v Attorney-General*[5] as confirming that the High Court has an inherent jurisdiction to grant bail even where the application for bail is not ancillary to some other process already before the Court. In *Zaoui,* the Supreme Court said:[6]

> [30] We consider that the High Court does have a jurisdiction to grant bail on a direct application which is not ancillary to some other process already before that Court. We do not share the doubts expressed in *R v Secretary of State for the Home Department, ex parte Turkoglu* and repeated in *R (Sezek) v Secretary of State for Home Department* as to whether the jurisdiction can be invoked by the High Court *in vacuo*, when the High Court is not already

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4 *Arnold v King-Emperor* [1914] AC 644 (PC).

5 *Zaoui v Attorney-General* [2005] 1 NZLR 577 (SC).

6 The distinction between inherent jurisdiction and inherent powers discussed at [35] of the extract is helpfully explained in Rosara Joseph "Inherent Jurisdiction and Inherent Powers in new Zealand" (2005) Canta LR 220.The reference to 3 Edw I c 15 at [37] is a reference to Chapter 15 of the Statute of Westminster 1275. This was the first legislative attempt to regulate the granting of bail. However, as noted in the passage the Statute was addressed the powers of sheriffs, and thus did not limit the jurisdiction of the Court of King's Bench.

seized of a challenge to the detention. In neither case was there extensive consideration of authority or the history of the inherent jurisdiction to grant bail. And in neither case was the court considering the supervisory jurisdiction of the superior courts.

[31] Unless excluded by statute, the inherent jurisdiction of the High Court to grant bail may be directly invoked whenever someone is detained under any enactment pending trial, sentence, appeal, determination of legal status, or (in immigration cases) removal or deportation from New Zealand. The jurisdiction can be exercised whether or not the High Court is seized of proceedings challenging the lawfulness of the detention. Thus, before the Bail Act provided in criminal cases for a statutory right of appeal from the District Court, the High Court commonly granted bail in its original inherent jurisdiction after bail had been declined by a District Court.

[32] Detention must be by authority of law. The exercise by inferior courts or officials of a statutory authority to detain falls within the supervisory responsibilities of the High Court. It is mistaken to regard the inherent jurisdiction to grant bail as "stand alone" or *in vacuo*.

[33] In the present case, the statute permits detention only by judicial warrant. That imports judicial oversight — first in exercise of the statutory power by a District Court and secondly by the High Court through its general supervisory jurisdiction.

[34] The power of the High Court to grant bail to someone detained is an ancient common law jurisdiction exercised by the superior courts of England in civil and criminal cases. The common law jurisdiction became part of New Zealand law in 1840. The powers of the English superior courts have devolved in New Zealand on the High Court. The power inheres in the Court itself as an independent common law jurisdiction, rather than as an incidental power ancillary to other jurisdiction (as are many procedural powers described as "inherent" or "implied").

[35] Some confusion may arise because the term "inherent jurisdiction" is applied both to substantive and procedural powers. The ancillary inherent powers of courts to regulate their own procedure arise equally in relation to their statutory and common law substantive jurisdictions. Courts which do not possess an inherent substantive jurisdiction (as is the case where their substantive powers are entirely statutory) nevertheless have inherent or implied procedural powers necessary to enable them to give effect to their statutory substantive jurisdiction.

[36] Both the substantive and procedural inherent jurisdiction can be displaced by legislation. Thus, the procedural mechanisms adopted by the courts to bring bail applications before them may be affected by legislation, as for example through the changes to the exercise of the supervisory jurisdiction over inferior courts brought about by the Judicature Amendment Act 1972.

[37] Similarly, the inherent substantive jurisdiction of the High Court to grant bail can be excluded by statute, provided the statutory purpose is plain. It was made clear in *R v Spilsbury* by Lord Russell CJ of Killowen and Kennedy J that there is a presumption against erosion of what Kennedy J called "the ancient and important jurisdiction of this Court to admit to bail". In that case the defendant had failed in his challenge to an order for his

return to Tangier under the Fugitive Offenders Act 1881 (UK). The Act contained no power to grant bail pending the fugitive's return. Lord Russell CJ held that the inherent jurisdiction to grant bail could be invoked:

> Now arises a question of some difficulty. Failing the application to set aside the order for the return of the defendant, he asks that he may be admitted to bail until the time when he is to be returned. So far as I know this is the first occasion on which this question has arisen for decision. It is necessary to consider first how the question is to be viewed. Was Mr Sutton right in saying that the defendant was bound to shew that power is given to admit to bail under the Fugitive Offenders Act, 1881, or, in other words, is the onus of shewing that the power to admit to bail exists cast on the defendant? I think not. This Court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore the case ought to be looked at in this way: does the Act of Parliament, either expressly or by necessary implication, deprive the Court of that power? The law relating to this subject is well stated in 1 Chitty's Criminal Law, 2" d ed. p97, as follows: "The Court of King's Bench, or any judge thereof in vacation, not being restrained or affected by the statute 3 Edw. 1, c.15(1) in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution. Thus they may bail for high treason, murder, manslaughter, forgery, rapes, horse-stealing, libels, and for all felonies and offences whatever."

[38] Despite admitting "some difficulty ... in working out the procedure", Lord Russell CJ came to the conclusion that the provisions of the statute were consistent with recognition of the power to bail in the inherent jurisdiction pending return:

> This inherent power to admit to bail is historical, and has long been exercised by the Court, and if the Legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment.

(Footnotes omitted)

[8] Counsel for Mr Pora points to the fact that, although the Bail Act 2000 does not provide Mr Pora with a right to apply for bail, it does not expressly exclude this Court from granting bail. He therefore relies upon the observations of the Supreme Court at [31] and [37] of *Zaoui* as confirming this Court's ability to exercise its inherent jurisdiction to grant bail to his client.

[9] Counsel for the Crown submits that the Supreme Court was dealing with a significantly different factual situation in *Zaoui*, and that the Court's observations need to be viewed in context.

[10] I accept that, read literally, the wording used by the Supreme Court at [31] and [37] of *Zaoui* suggests that, unless the ability to exercise the relevant jurisdiction is expressly excluded by statute, this Court may consider an application for bail by any person held in custody pending disposition of an appeal. The Bail Act 2000 does not expressly exclude the jurisdiction to grant bail pending determination of an appeal to the Privy Council. I also agree, however, with the Crown's submission that it is important to consider the Supreme Court's observations in light of the particular context in which they were made.

[11] It is reasonably clear that in the passages set out above at [7], the Supreme Court was endeavouring to summarise the law as it then stood generally as to when the High Court may exercise its inherent jurisdiction to grant bail. In *Zaoui* the Supreme Court was determining whether the High Court had inherent jurisdiction to grant bail to a person who was detained under a warrant issued by the District Court. This explains why the Court referred at [30] and [33] to the High Court's supervisory jurisdiction in respect of decisions of courts such as the District Court. Those considerations do not arise in the present case, because the High Court does not have a comparable supervisory jurisdiction in respect of its own decisions.

[12] It is necessary in the present case to narrow the focus of the enquiry. The first issue to be determined is whether the observations of the Supreme Court in *Zaoui* accurately reflect recognised common law principles regarding the ambit of the High Court's inherent jurisdiction. More particularly, it is necessary to decide whether, prior to *Zaoui*, the common law recognised the ability of a court of general jurisdiction to grant bail to a sentenced prisoner pending disposition of an appeal. If it did not, it will be necessary to determine whether the Supreme Court intended its observations to alter the existing law in this area.

Did the common law prior to Zaoui recognise the ability of a court of general jurisdiction to exercise its inherent jurisdiction to grant bail to a sentenced prisoner?

The position in New Zealand

[13] The New Zealand Court of Appeal confronted this issue in *Re Brown v Attorney-General*.[7] The applicant in that case had been convicted and sentenced to two years imprisonment. Her appeal to the Court of Appeal was unsuccessful, but she obtained leave to appeal to the Privy Council against the decision of the Court of Appeal. The applicant then applied to the Court of Appeal for orders suspending execution of her sentence, and for bail pending disposition of her appeal to the Privy Council. The Court of Appeal dismissed both applications, holding that neither the Court of Appeal nor the Supreme Court (as the High Court was then called) had jurisdiction to make the orders sought. The reasons given by the Court are not particularly illuminating, because the judgment of the Court in its entirety reads as follows:

> PRENDERGAST C.J.: -
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> We have considered the question brought before us for our consideration, and we are clearly of opinion, and in fact it was admitted, that we have no jurisdiction under the Criminal Code to do what is asked. We were invited to consider whether the Supreme Court has power. We have considered that, and we are all of opinion that the Supreme Court has no power to respite the judgment or suspend the execution of the sentence.

[14] Neither counsel was able to refer me to any other case in which bail had been sought by or granted to a sentenced prisoner whose appeal was awaiting hearing in the Privy Council. Interestingly, however, the report of the Criminal Law Reform Committee on bail in 1982 contains the following passage:[8]

> Cases where no Court has Jurisdiction
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> 29. There appear to be two circumstances in which there is no jurisdiction to grant bail notwithstanding that a case has not been finally disposed of in the courts:
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> (i) Should there be a petition for special leave to appeal to the Privy Council neither the High Court nor the Court of Appeal has power to grant bail, even after the Privy Council has

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7 *Re Brown v Attorney-General* (1897) 15 NZLR 165 (CA).

8 Criminal Law Reform Committee *Report on Bail* (1982) at 29.

> granted special leave.[9] Probably the Privy Council has no such jurisdiction either, and in any event its practice is to refuse to consider any such application.[10]

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[15] This passage suggests that between 1897 and 1982 the law in New Zealand did not recognise that the High Court had inherent jurisdiction to grant bail to a sentenced prisoner even where the Privy Council had granted an appellant leave to appeal.

The position in England

[16] The leading authority in this area in England is *R v Spilsbury*, the case cited by the Supreme Court in *Zaoui*.[11] In that case Lord Russell of Killowen said:[12]

> This court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore the case ought to be looked at in this way : does the Act of Parliament, either expressly or by necessary implication, deprive the court of that power? The law relating to this subject is well stated in I Chitty's Criminal Law, 2nd ed., p. 97 as follows:
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> > The Court of King's Bench, or any judge thereof in vacation, not being restrained or affected by the statute 3 Edw. I, c. 15(4), in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, *and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution.*
> >
> > (Emphasis added)

[17] The important feature of this passage for present purposes is that Lord Russell identified two situations in which the inherent jurisdiction to grant bail will not be available. The first of these was where the applicant was in custody for contempt. The second was where the applicant was committed to prison "in execution". Lord Russell did not define what he meant by that phrase, but subsequent English cases make it clear that it applies to the situation where a person who has been convicted of an offence is serving a lawfully imposed sentence of

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9 *Re Brown v Attorney General*, above n 7.
10 *Lala Jairam Das v The King-Emporer* (1945) 61 TLR 245 (PC).
11 *Zaoui v Attorney General*, above n 4 at [37].
12 *R v Spilsbury* [1898] 2 QB 615 at 620.

imprisonment. Cases confirming this include the judgments of Hallett J in *Ex parte Blyth*[13] and *Re Lyttleton,*[14] and that of Lynskey J in *Ex parte Speculand.*[15]

[18] In *Ex parte Blyth,* Hallett J drew a distinction between a grant of bail prior to conviction, and a grant of bail following conviction.[16] He then went on to say:[17]

> It was contended by the applicant's solicitor that I have an inherent jurisdiction as judge in chambers to grant bail to the applicant pending the determination of his appeal by way of case stated. On the other side, it is argued that I have no such jurisdiction. In the first place, a clear distinction must be drawn between granting bail before conviction and granting it after conviction. In Chitty's Treatise on the Criminal Law, 2nd ed., I826, vol. I, p. 93, the learned author says: "by the ancient common law, all felonies were bailable, till murder was excepted by statute; so that persons might be admitted to bail before conviction in almost every case." By the Statute of Westminster (3 Edw. I, c. 15), the power of justices of the peace to grant bail in certain cases was removed. That statute has now been repealed by the Sheriffs Act, 1887, s 39, but even before it was repealed – I read from Chitty, p 97: "The court of King's Bench, or any judge thereof, in vacation, not being restrained or affected by the statute 3 Edw. I c.15, in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, *and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution*." *I draw attention to the exception there "where the commitment is in execution" because it emphasizes the distinction to which I have referred.*
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> (Emphasis added)

[19] In each of these cases the court held that it had no power to grant bail to a person serving a sentence of imprisonment following conviction because the imprisonment was "in execution" of a lawfully imposed sentence.

[20] In *Lala Jairam Das v The King-Emperor,*[18] the appellant had been convicted and sentenced to a term of imprisonment. The Privy Council subsequently granted him leave to appeal against his conviction. The appellant then unsuccessfully sought bail from the High Court at Lahore, a court in India possessing general jurisdiction. The appellant subsequently appealed to the Privy Council against the refusal of the

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13 *Ex parte Blyth* [1944] KB 532.
14 *Re Lyttleton* [1945] WN 24.
15 *Ex parte Speculand* [1946] KB 48.
16 *Ex parte Blyth*, above n 13 at 533.
17 At 534.
18 *Lala Jairam Das v The King-Emporer*, above n 10.

High Court to grant him bail. The Privy Council observed that Hallett J had determined in *Ex parte Blyth* that the High Court in England had no inherent jurisdiction to grant bail to a sentenced prisoner, and held that the High Court at Lahore was in the same position.[19]

The position in Australia

[21] The issue has been considered in a number of Australian cases. In *Chamberlain v R,* the High Court of Australia also noted Hallett J's conclusion in *Ex parte Blyth* that a court of general jurisdiction has no inherent jurisdiction at common law to grant bail pending an appeal by a person serving a custodial sentence following conviction.[20] It then observed that the same conclusion had been reached at State Supreme Court level in Australia in *Re Edwards*[21] and *Ex parte Rundle.*[22] The High Court of Australia held that the Court's power "to grant bail to a prisoner committed in execution of a sentence pending his appeal or application for leave to appeal must find a statutory foundation."

Conclusion

[22] These cases persuade me that the position at common law prior to *Zaoui* was that a court of general jurisdiction could not exercise its inherent jurisdiction to grant bail pending determination of an appeal to a person serving a sentence of imprisonment following conviction. This might seem to be at odds with the observation in *Zaoui* that: [23]

> …before the Bail Act provided in criminal cases for a statutory right of appeal from the District Court, the High Court commonly granted bail in its original inherent jurisdiction after bail had been declined by a District Court.

[23] It is not clear, however, whether the Supreme Court was referring in this passage to situations where an appeal is lodged before or after conviction and sentence. It is possible that the Supreme Court was referring to cases in which bail

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19 At 247.
20 *Chamberlain v R* (1983) 153 CLR 514 at 517.
21 *Re Edwards* (1975) WAR 16.
22 *Ex parte Rundle* (1982) 30 SASR 282.
23 *Zaoui v Attorney-General,* above n 5 at [31].

had been declined prior to conviction and sentence. If so, the Court's observations would obviously be consistent with the authorities to which I have referred.

[24] I therefore proceed on the basis that, prior to *Zaoui*, this Court did not have a recognised inherent jurisdiction to grant bail to a person in Mr Pora's position. This leads to the next issue, which is whether the Supreme Court in *Zaoui* intended to alter the common law position.

Did the Supreme Court in* Zaoui *intend to alter the common law position?

[25] Three factors are important in determining this issue. First, the factual basis for Mr Pora's application is fundamentally different to that in *Zaoui*. In the present case, Mr Pora remains in custody as a result of the sentence imposed upon him by this Court in 2000. The basis for his detention is therefore quite different to that in *Zaoui*. As I have already observed, Mr Zaoui was not a sentenced prisoner. Instead, he had been detained under a warrant of commitment issued by a District Court Judge pursuant to the provisions of the Immigration Act 1987. Part 4A of that Act mandates special procedures in the case of persons in respect of whom security concerns are held. The issue of whether the High Court had inherent jurisdiction to grant bail to a sentenced prisoner did not arise on the facts of *Zaoui*.

[26] Second, the Supreme Court did not expressly refer to the issue at all. Nor, with one exception, did it refer to any of the authorities in which the issue has been considered. Had the Supreme Court wished to alter or extend the common law, it would no doubt have explained why it considered the principles established by those authorities should no longer be applied in New Zealand.

[27] Third, the Supreme Court cited[24] the passage from *R v Spilsbury* set out above at [14]. In doing so, the Court did not refer to the exception identified in that passage in respect of persons committed to prison in execution of a sentence of imprisonment. If the Supreme Court had intended its earlier comments to extend to that category of detainee, I have no doubt that it would have expressly referred to that fact.

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[24] *Zaoui v Attorney-General* above n 5 at [37].

[28] These factors persuade me that the Supreme Court did not intend its comments to extend to applications for bail by sentenced prisoners.

[29] In reaching this conclusion, I acknowledge that I am taking a different approach to that taken by Priestley J in *Lyon v Manager of Hawkes Bay Prison*.[25] In that case, a prisoner sought bail pending determination of an application for judicial review of a decision by the New Zealand Parole Board that he should not be permitted to serve his sentence by way of home detention. Priestley J held that the Supreme Court's analysis of the High Court's inherent jurisdiction in *Zaoui* "makes it patently clear this Court's inherent jurisdiction to grant bail is unrestricted and will continue as a substantive common law jurisdiction unless abrogated by statute".[26] He also considered that it would be wrong for this Court "to accept any statutory restriction on this vital and ancient power short of an express statutory ouster".[27] On the facts, however, Priestley J did not consider a grant of bail was warranted.

[30] I take a different approach because it appears that Priestley J was not referred to the authorities to which I have referred above. As a result, he did not have the opportunity to consider the effect of *Zaoui* in light of those authorities. As I have already indicated, I consider that the principles expressed in those cases remain the law in New Zealand at present notwithstanding the breadth of the observations of the Supreme Court in *Zaoui*.

[31] I leave open the possibility that the Court may need to review the position in the future in the event that the facts of a particular case require that to be done. It is possible to imagine a situation arising where it would be manifestly unjust and patently wrong for a sentenced prisoner to remain in custody until his or her appeal could be heard by the Privy Council. If no other practical solution could be found, this Court might need to reconsider whether it should resort to its inherent jurisdiction to ensure that an injustice is not perpetuated. The present case does not come close, however, to justifying that step being taken.

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25 *Lyon v Manager of Hawkes Bay Prison* HC Auckland CIV-2006-404-6680, 24 November 2006.
26 At [13].
27 At [18].

Is the lack of any statutory right to appeal due to Parliamentary oversight?

[32] During argument, counsel for Mr Pora also submitted that the lack of any right to apply for bail pending determination of an appeal to the Privy Council was a matter of Parliamentary oversight. He submitted that this fact warranted this Court using its inherent jurisdiction to remedy the oversight.

[33] In this context the Criminal Law Reform Committee's report on bail in 1982 is significant for two reasons. The first is that, as noted above,[28] it observed that the High Court had no jurisdiction to grant bail in circumstances where leave is sought to appeal to the Privy Council. The second is that the report made the following recommendation: [29]

> In two cases the present law does not give any court such a power - when a defendant petitions the Privy Council for special leave to appeal, and when a defendant convicted after a summary hearing in a District Court seeks leave to appeal from the High Court to the Court of Appeal (see paragraph 29). Neither case is very common but giving the power to grant bail to the court from which the defendant seeks to appeal would reduce the risk of injustice, and the grant of such bail could avoid the problem of compensating a successful appellant for what later turns out to have been an unjustified imprisonment.

[34] Parliament subsequently had two opportunities to establish a statutory right of appeal for persons whose appeals are awaiting hearing by the Privy Council. It had the opportunity to do so when it initially enacted the Bail Act 2000. Parliament would have been well aware of the recommendations made by the Criminal Law Reform Committee when it enacted the Bail Act 2000, but elected not to adopt the recommendations relating to appellants whose cases are awaiting hearing before the Privy Council.

[35] Parliament then had a further opportunity to address this issue in 2003 when it passed the legislation establishing the Supreme Court. Parliament clearly turned its mind to the issue of ongoing appeals to the Privy Council at that time, because s 50 of the Supreme Court Act 2003 expressly preserved the ability of the Privy Council to hear and determine certain specified civil and criminal appeals.

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[28] At [14].

[29] Criminal Law Reform Committee *Report on Bail*, above n 8 at [63].

[36] As a consequence of the passage of the Supreme Court Act 2003, Parliament also amended s 55 of the Bail Act 2000 so as to permit the Court of Appeal and Supreme Court to grant bail to appellants whose appeals were to be heard by those Courts. Parliament did not, however, enact a corresponding provision in relation to appellants whose appeals were to be heard by the Privy Council.

[37] When it passed and then amended the Bail Act 2000, Parliament must have been aware that it was not treating appellants whose appeals were to be heard by the Privy Council in the same way as those whose appeals were to be heard by the Court of Appeal and Supreme Court. It must also be taken to have been known that New Zealand's bail legislation has never contained any provision entitling sentenced prisoners to be granted bail pending determination of an appeal to the Privy Council.

[38] Given that background, the omission of any statutory provision permitting bail to be granted to a person in Mr Pora's position cannot realistically have occurred through oversight. Rather, I consider that Parliament elected to retain the status quo in relation to appellants whose appeals were awaiting hearing before the Privy Council. It decided that such persons should not have the ability to seek or be granted bail.

Result

[39] The application for bail is dismissed.

Lang J

Solicitors:
Gifford Devine, Hastings
Crown Law, Wellington
Counsel:
J Krebs, Napier