

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF THE NATURE OF THE RELATIONSHIP BETWEEN THE APPELLANT AND COMPLAINANTS REMAINS IN FORCE: [2021] NZDC 11152.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA515/2021
[2024] NZCA 66**

| | |
|---------|--------------------------------------|
| BETWEEN | KEVIN GEORGE WISHNOWSKY Appellant |
| AND | THE KING Respondent |

Hearing: 6 March 2024
Court: Ellis, Gault and Cull JJ
Counsel: P I Pati for Appellant
I S Auld for Respondent
Judgment: 20 March 2024 at 3.30 pm

JUDGMENT OF THE COURT

The appeal is dismissed for want of jurisdiction.

REASONS OF THE COURT

(Given by Ellis J)

[1] Further to the hearing on 6 March 2024, a fundamental problem has been identified.

[2] Mr Wishnowsky's trial in the District Court was by Judge alone. This Court therefore has no jurisdiction in relation to his appeal, which should have been filed in the High Court.¹

[3] Regrettably, this is not a difficulty that is capable of remedy by this Court. If Mr Wishnowsky wishes to pursue the matter, he will need to file a fresh appeal, together with an application for an extension of time, in the High Court. In that event, counsel may wish to consider whether it is possible to proceed in that Court on the basis of the transcript of the evidence heard on 6 March.

[4] Mr Wishnowsky's convictions were for sexual offending against two young persons, and they are entitled to automatic suppression of their names and identifying particulars under s 203 of the Criminal Procedure Act 2011. The District Court also made an order under s 205 of that Act suppressing the nature of the relationship between Mr Wishnowsky and any of the complainants. That order continues.

[5] The appeal is dismissed for want of jurisdiction.

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

¹ Pursuant to s 230(1)(b) and s 230(2) of the Criminal Procedure Act 2011.