

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

CRI 2009-404-0095

IN THE MATTER OF an appeal against a judgment of the District
Court at Auckland given on 25 March 2009
in CRI 2007-044-003654

BETWEEN LLEWELLYN BURCHELL
Appellant

AND TELEVISION NEW ZEALAND
Respondent

Hearing: 2 April 2009

Appearances: Appellant in person
Helen Wild for Respondent
Kirsten Lummis for Crown (interested party)

Judgment: 2 April 2009

JUDGMENT OF HARRISON J

SOLICITORS

Television New Zealand (Auckland) for Respondent
Meredith Connell (Auckland) for Crown (Interested Party)
(copy to Appellant in person)

[1] Mr Llewellyn Burchell was convicted in the District Court at Auckland on 29 January 2009 on one charge of injuring with intent following a summary trial before Judge Anne Kiernan. Mr Burchell was remanded in custody for sentencing on 25 March 2009. However, the sentencing date was adjourned until 10 am tomorrow, 3 April 2009.

[2] The cause of the adjournment was an application made to the District Court on 10 February 2009 by Television New Zealand in the name of Mr Simon Mercep for permission to film the sentencing hearing. TVNZ applied under the In-Court Media Coverage Guidelines. Mr Burchell opposed. TVNZ was represented by Ms Helen Wild. The Crown took a neutral stance.

[3] TVNZ's defended application (described inappropriately as a pre-trial application) was heard on 25 March. Mr Burchell, who had been represented by counsel at trial, appeared for himself. The transcript of evidence on the application runs to 46 pages. A cursory review illustrates that the hearing was preoccupied with diversionary issues raised by Mr Burchell which were unrelated to the primary question of whether or not TVNZ should be allowed permission to film the sentencing hearing.

[4] Judge Kiernan delivered a lengthy oral judgment. She extensively (perhaps too extensively) recited the arguments both by Mr Burchell and Ms Wild. She then addressed the discretionary issue of whether or not leave should be granted. After considering para 2 of the In-Court Media Coverage Guidelines, the Judge concluded that it was in the interests of open justice that the sentencing hearing be recorded.

[5] Today, one week after Judge Kiernan delivered her decision and less than 24 hours before the sentencing hearing, Mr Burchell has filed what is described as a 'notice of appeal and stay of execution'. His document sets out five grounds in support. He has expanded on those grounds in oral submissions. The essence of his argument appears to be that the Judge erred in concluding that there was a public interest in reporting on the sentencing hearing. He says that TVNZ, or more particularly Mr Mercep personally, are the only interested parties, and that

Mr Mercep has generated whatever interest exists for his own personal reasons to pursue a private vendetta.

[6] I have requested Mr Burchell to identify this Court's jurisdiction to hear his appeal. He says he has not had the time or resources to prepare a developed argument or access to a lawyer (I note, though, that Mr Burchell has dismissed his previous counsel).

[7] The constraints of time have not allowed me to review the legal position in any detail. However, the weight of authority in this Court is overwhelmingly to the effect that Mr Burchell has no right of appeal. I refer to the decisions of Lang J in *Felise & Vela v Police* HC AK CRI 2007-404-242 4 September 2007 at [4]-[5]; Heath J in *TP v Police* HC AK CRI 2007-092-5673 24 April 2008 at [46]-[47]; and Woodhouse J in *Al Amery v NZPA & Ors* HC AK CRI 2008-404-0273 5 September 2008 at [5]-[6]. With respect, I agree with their conclusions. Mr Burchell is not challenging a judicial decision relating to his criminal liability, thereby engaging his statutory rights of appeal: Summary Proceedings Act 1957. Instead he is challenging the Court's exercise of an ancillary power related to the criminal process: see *Mafart v Television New Zealand* [2006] 3 NZLR 18 (SC).

[8] This issue was quintessentially within the inherent jurisdiction or power vested in the Judge to control the District Court's proceedings. Any possible avenue of challenge would be by way of application for judicial review. Even then, no error has been identified. The governing principle in this area, as the Judge properly recognised, is that of open justice and the public interest in fair and balanced reporting by the news media.

[9] Accordingly, Mr Burchell's appeal is dismissed.

Rhys Harrison J