



SUMMONS (SUPERVISORY JURISDICTION)

1 May 2023

COURT DETAILS

Court: Supreme Court of New South Wales, **Court of Appeal**
Registry: Queen's Square Sydney NSW
Case No: 2023/00147395

TITLE OF PROCEEDINGS

Applicant: PETER FREDERICK CLARK
1st Respondent: ATTORNEY GENERAL FOR NEW SOUTH WALES
2nd Respondent: SUPREME COURT OF NEW SOUTH WALES

PROCEEDINGS IN THE COURT BELOW

Title below: Peter Frederick CLARK v Attorney-General for NSW & Anor
Court below: Supreme Court of NSW
Case numbers below: 2022 / 318414 and 2023 / 5335
Hearing Date(s): On the papers
Material date: 27 April 2023
Decision of: Sweeney J

FILING DETAILS

Filed for: Peter Frederick CLARK (Applicant)
Filed in relation to: The part of the decision that relates to SC No. 2023 / 5335
Legal representative: In person
Contact details:

HEARING DETAILS

This summons is listed for hearing: 22May2023 09:00 AM

TYPE OF CLAIM

Appeal – Administrative Decision, Sweeney J, Supreme Court of New South Wales

ORDERS SOUGHT

- 1.) This Summons (Supervisory Jurisdiction) dated 1 May 2023 be expedited.
- 2.) Any Court fees, including filing fees, be waived see s 307 *Criminal Procedures Act* 1986.
- 3.) In accordance with s 110 *Supreme Court Act* 1970¹ the Chief Justice or President refer the Summons (Supervisory Jurisdiction) to the Full Court before a panel of fresh judges unconnected with any of the previous proceedings which can include Campbell and Rothman JJ.
- 4.) The decision of Sweeney J (“the primary judge”) given on 27 April 2023 at [26] to refuse to consider or otherwise deal with the Applicant’s Part 7 Application with respect to the “Count 12” conviction in the Applicant’s 2009 trial, be set aside.
- 5.) The Court refer the Applicant’s “Count 12” Part 7 Application back to the Supreme Court for a proper determination according to law; with a recommendation that an inquiry be conducted into the Count 12 conviction and the other 2009 convictions.
- 6.) Any other order this Court deems fit and proper.
- 7.) Costs.

DETAILS OF DECISION

- [I] The decision maker was Sweeney J.
- [II] The part of the decision to be reviewed by the primary judge can be found at:
- [26] “Therefore I refuse to consider or otherwise deal with his application in respect of Count 12 in his 2009 trial.”
- [III] The applicant seeks relief from only that part of the decision.

Cont’d

¹ **110 Disqualification of Judge of Appeal**

(1) A Judge of Appeal, or a Judge appointed or nominated under section 36 to act as an additional Judge of Appeal, **shall not sit on the hearing of an appeal from a judgment given or an order made by himself or herself.**

(2) Subsection (1) does not apply to a judgment given or order made pro forma by consent of the parties.

FOUNDATIONS

- 1.) The reasoning of the primary judge at [15] exposed the very same fundamental error all the previous judicial officers had made, in that, his Honour concerned himself with whether, as a question of law, there was evidence to support Count 12 rather than making his own independent assessment of the whole of the evidence² that proved beyond a shadow of a doubt that the evidence never supported Count 12; AKA:
 - a.) No Case to Answer (Count 12) see *Doney v R* (1990) 171 CLR 207; and
 - b.) No Evidence Rule (Count 12) ; and
 - c.) Insufficient Evidence Ground (Count 12); and
 - d.) Prosecution failed to discharge its Evidential Burden with respect to Count 12.
- 2.) At [17] the primary judge erred, in that, his Honour could not have considered the evidence and not rule in the Applicant's favour if the whole of the evidence identified never supported Count 12.
- 3.) In refusing to consider or otherwise deal with the application with respect to Count 12 at [26] the primary judge made a *House* error³, in that, the evidence identified by the Applicant was absolute it proved beyond a shadow of a doubt that the evidence never supported Count 12 and that that conviction was unsafe.
- 4.) Jurisdictional error in that substantial arguments identified by the Applicant namely fraud and the special facts or special circumstances, were not addressed or not adequately addressed by the primary judge which amounted to a denial of procedural fairness as such a constructive failure to exercise the jurisdiction, see *Buttrose v Attorney General of New South Wales* [2015] NSWCA 221 at [25].
- 5.) The primary judge actuating that the evidence of SB and his father supported the Count 12 guilty verdict and that the previous judicial officers had examined the whole of the evidence, when in fact the evidence on the face of the record that the Crown had in their possession at trial never supported that verdict was a "fraudulent" misrepresentation⁴ of the truth, in those circumstances the decision is a nullity, no decision at all calling into question the other guilty verdicts⁵ and decisions.
- 6.) By proceeding, on misapprehensions of fact, and law, which were material the primary judge erred.
- 7.) The decision of the primary judge according to the facts; was unreasonable; and plainly unjust; and failed to give adequate weight to relevant considerations; and was a failure to exercise the discretion actually entrusted to his Honour⁶.

SIGNATURE OF APPLICANT IF NOT LEGALLY REPRESENTED

The Applicant acknowledges that court fees will (may) be payable during these proceedings. These fees may include a hearing allocation fee.



Peter Frederick Clark (Applicant)

² *SKA v The Queen* [2011] HCA 13 at [25].

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³ *House v The King* [1936] HCA 40; 55 CLR 499

⁴ *DPP v Moseley* [2013] NTSC 8 at [62].

⁵ *SKA v The Queen* [2011] HCA 13 pars [21] to [25].

⁶ *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [110].