

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA285/2024  
[2025] NZCA 192

BETWEEN NAVJOT SINGH  
Appellant  
AND THE KING  
Respondent

Hearing: 13 May 2025  
Court: Woolford, Jagose and Powell JJ  
Counsel: S Brickell for Appellant  
L J Sullivan for Respondent  
Judgment: 27 May 2025 at 11 am

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**JUDGMENT OF THE COURT**

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**The appeal is dismissed for want of jurisdiction.**

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**REASONS OF THE COURT**

(Given by Woolford J)

[1] On 16 November 2023, Navjot Singh was found guilty by a jury of one charge of common assault.<sup>1</sup> He was sentenced to 80 hours' community work.<sup>2</sup> He now appeals against conviction.

[2] There is, however, doubt whether this Court has jurisdiction to hear the appeal. We therefore heard argument on the jurisdiction issue only on 13 May 2025.

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<sup>1</sup> Crimes Act 1961, s 196 (maximum penalty — one years' imprisonment).

<sup>2</sup> *Police v Singh* [2024] NZDC 8123 [sentencing notes].

## **Prosecution process**

[3] On 15 December 2022, Mr Singh was charged with two counts of assault with intent to injure, a category 3 offence.<sup>3</sup> He was jointly charged with three other defendants.

[4] Section 50 of the Criminal Procedure Act 2011 provides that a defendant charged with a category 3 offence may elect trial by jury. One of Mr Singh's co-defendants elected trial by jury. Mr Singh was therefore remanded for a jury trial with his co-defendants even though he himself had not elected trial by jury.<sup>4</sup>

[5] By the time of trial in November 2023, the charges against Mr Singh had been downgraded from assault with intent to injure to common assault, a category 2 offence. At trial, Mr Singh and one of his co-defendants, Jobanjit Singh, were each found guilty of one charge of common assault. The jury found the defendants not guilty on all other charges, including the remaining category 3 charges.

## **Criminal Procedure Act**

[6] Section 230 of the Criminal Procedure Act defines the first appeal court for appeals against conviction. It provides:

### **230 First appeal courts**

- (1) The first appeal court for an appeal under this subpart is—
  - (a) the District Court presided over by a District Court Judge, if the appeal is against a conviction entered by the District Court presided over by 1 or more Community Magistrates or 1 or more Justices of the Peace; or
  - (b) the High Court, if the appeal is against a conviction entered by the District Court presided over by a District Court Judge, other than a conviction for—

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<sup>3</sup> Crimes Act, s 193 (maximum penalty — three years' imprisonment).

<sup>4</sup> In accordance with s 139(2)(a) of the Criminal Procedure Act 2011.

- (i) a category 3 offence after the convicted person elected a jury trial; or
  - (ii) a category 4 offence; or
  - (c) either the Court of Appeal or the Supreme Court, in any other case.
- (2) For the purposes of subsection (1), if a convicted person elected a jury trial but subsequently withdrew his or her election before trial, the convicted person must be treated as if he or she had not elected a jury trial.

[7] The effect of this section is that, in general, appeals against convictions entered by the District Court presided over by a District Court Judge are heard in the High Court. The exceptions are for convictions for category 3 offences after a jury trial election and convictions for category 4 offences.

### **Parties' submissions**

[8] Counsel for the Crown, Ms Sullivan, submits that this Court does not have jurisdiction because Mr Singh's conviction was for a category 2 offence.

[9] In his written submissions Mr Brickell, counsel for Mr Singh, pointed to the general proposition that the appeal pathways are structured to maintain this Court's supervisory jurisdiction over jury trials.<sup>5</sup> Counsel also referred to the case of *Gorgus v R*.<sup>6</sup> Mr Gorgus had filed an appeal against a pre-trial ruling when he was facing a category 3 charge, which by the time of the hearing of his appeal had been downgraded to a category 2 charge. The Court determined it had jurisdiction under s 219 of the Criminal Procedure Act, stating: "The key determinant is the nature of the proceeding at the time of the decision being appealed."<sup>7</sup>

[10] Finally, counsel raised the prospect of some defendants having a right of appeal to this Court, whilst others to the High Court. As co-defendants often have common appeal grounds, it was submitted that difficulties would inevitably arise from having different appeal pathways.

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<sup>5</sup> Citing Matthew Downs (ed) *Adams on Criminal Law — Criminal Procedure* (online looseleaf ed, Thomson Reuters) at [CPA230.01].

<sup>6</sup> *Gorgus v R* [2022] NZCA 492.

<sup>7</sup> At [8].

[11] In his oral submissions, however, Mr Brickell accepted that the Crown's interpretation of s 230 was to be preferred. The plain meaning of the section is to the effect that any appeal against conviction by Mr Singh should be filed in the High Court.

### **Decision**

[12] We agree with the Crown. This Court lacks jurisdiction to hear Mr Singh's appeal. Although Mr Singh was tried by a jury, he was convicted of a category 2 offence. Because his conviction was entered in the District Court presided over by a District Court Judge and neither sub-paras (i) or (ii) of s 230(1)(b) apply, the plain meaning of s 230(1)(b) is that the first appeal court in Mr Singh's case is the High Court.

[13] The case of *Gorgus* can be distinguished. First, in *Gorgus* this Court undoubtedly had jurisdiction when the appeal was first filed. The charge was only downgraded after the appeal was filed.

[14] Secondly, the first appeal court for pre-trial appeals is defined in s 219 of the Criminal Procedure Act, which provides that this Court has jurisdiction over proceedings for a category 3 offence after the defendant elected a jury trial. That is different from s 230 which provides this Court has jurisdiction over convictions for a category 3 offence after a defendant elected a jury trial. At the very least, the proceeding in *Gorgus* at one time involved a category 3 offence, but in this case there has never been a conviction for a category 3 offence.

[15] Our conclusion raises the possibility that co-defendants in future appeals will have rights of appeal to different courts. Although there would be obvious inefficiencies the issue is not dealt with by ss 320 and 321 of the Criminal Procedure Act, which provide that related rights of appeal are all to be heard by this Court. Section 321(2) specifies that only related rights of appeal by "the convicted person" from which this Court's jurisdiction derives are covered. But it is not necessary to confront that situation here, given there was no conviction for a category 3 offence for any defendant.

[16] It is not appropriate for this Court to reconstitute as the High Court for the purpose of this appeal: “[Reconstitution] is reserved for cases involving unique jurisdictional difficulties or that are otherwise exceptional.”<sup>8</sup>

[17] Mr Singh should file an appeal in the High Court which will be treated as an application for an extension of time.<sup>9</sup>

## **Result**

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

Solicitors:

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

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<sup>8</sup> *Halse v Employment Court of New Zealand* [2025] NZCA 11 at [51]. See also, in a criminal context, *Tobin v R* [2022] NZCA 226 at [16]–[18].

<sup>9</sup> Criminal Procedure Rules 2012, r 8.5.