

IN THE SUPREME COURT OF NEW ZEALAND

**SC 94/2006
[2007] NZSC 5**

BETWEEN JOSKO SESTAN
 Applicant

AND THE DIRECTOR OF AREA MENTAL
 HEALTH SERVICES WAITEMATA
 DISTRICT HEALTH BOARD
 Respondent

Hearing: 14 February 2007

Court: Blanchard, Tipping and McGrath JJ

Counsel: T Ellis and A Rossiter for Applicant
 M R Heron and D Marshall for Respondent

Judgment: 14 February 2007

Reasons: 15 February 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant sought leave to appeal against a decision of the Court of Appeal dismissing his appeal from the High Court's refusal to issue a writ of habeas corpus in relation to his detention under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Since the filing of the application in this Court, however, the applicant has been released into the community subject to a Community Treatment Order. His counsel, Mr Ellis, did not seek to advance any argument that in these circumstances there can be said to be a continuing detention. Accordingly, there is now no basis upon which a writ of habeas corpus could be issued.

[2] The questions which the applicant wished to raise, having expanded considerably in the Court of Appeal and again in the present application to this Court, are more appropriately addressed by way of a judicial review proceeding which counsel has indicated as the likely course.

[3] We record that the Solicitor-General, Mr Collins QC, had given notice of application by the Attorney-General for leave to intervene if we were minded to grant the leave application and was in Court for that purpose, but, as leave has not been granted, that application lapses.

Solicitors:
T Ellis, Wellington, for Applicant
Meredith Connell, Auckland for Respondent