

**In the Court of Appeal**  
**Te Kōti Pira o Aotearoa**

No: CRI-2021-004-006374; CRI-2023-404-000490 - CA45/2024

In the matter of the appeal against the Auckland District Court and High Court

Joel Tiller v The King

Filed by Joel Tiller – Self-representing Appellant

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**Notice of Appeal against decisions to deny Discharge Without Conviction – Final Submission**

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May it please His Honour Wylie,

I appeal the judgements handed down by judge Kirsten Lummis in the Auckland District Court on Wednesday 6 September 2023 and in the High Court by judge O’Gorman J on 15 December 2023. Specifically, I appeal the decisions to deny my applications for a Discharge without Conviction. I strongly believe that this Court of Appeal, appeal, is a matter of the public interest.

Central to my belief that this appeal is a matter of public interest, is the issue of significant inconsistencies in judicial decision making at District Court level with regards to granting Discharges without Convictions. I specifically draw Your Honour’s attention to three recent examples, in no particular order:

- The professional UFC athlete Israel Mobolaji Temitayo Odunayo Oluwafemi Owolabi Adesanya, commonly known as Israel Adesanya. Granted a Discharge without Conviction on 10 January this year at the Auckland District Court after he was found guilty of driving under the influence of alcohol over the prescribed limit.  
I quote from the NZ Herald Your Honour: Judge Winter stated: I’m sure you have learned from this,” Judge Winter told the sportsman as he sat in the courtroom dock. “You would not want to be placed in this position again, as you realise.”  
I can very, very, sincerely say that sentiment very much applies to me as well.
- A young man, granted name suppression, dubbed the Posie Parker protestor by the NZ Herald, was granted a Discharge without Conviction by His Honour Judge Glubb in the Auckland District Court on 4 March this year. He had been found guilty of assaulting a 71-year-old woman at a public protest event. The Herald have written that the 20-year-old man was filmed punching the 71-year-old woman in the head, during the protest. His lawyer is quoted stating that the offender had pleaded guilty to common assault.

- The father of a deceased five-year-old boy whom he accidentally killed by reversing over him in his van. He was found guilty of careless driving causing death. The man had repeatedly allowed his five-year-old son to ride on the rear bumper of his van, on multiple occasions. On this day as he did chores outside his home – putting rubbish in a skip bin with his son helping, and riding on the rear bumper – he failed to notice that his son did not jump off the rear bumper in the manner that he usually did. As the father reversed into his driveway he ran over his son, resulting in his extremely tragic death.  
He was granted a Discharge without Conviction on 17 May this year in the Hutt Valley District Court by judge Barbara Morris and granted permanent name suppression.

My belief, Your Honour, is that my offending is of significantly less severity than each of these three examples. I am also extremely remorseful.

My offending behaviour involved words and phone calls without swearing, which breached two protection orders and caused emotional harm. I have repeatedly stated that I regret these breaches very much and the emotional harm that I caused the two victims. I always will.

Drink driving is considered a very serious offence as it can lead to people being killed. And it sometimes does.

I was not charged or convicted with punching anyone. Which can also cause serious injury or death.

I was not involved in a careless driving incident that can, and very tragically did, cause a human death.

I have not threatened to kill anyone or made any explicit threat to carry out any particular action and I do not have a history of violent behaviour, Your Honour.

I am extremely remorseful for the emotional harm caused to the two victims, as I again expressed during the recent application to discharge protection order hearing, held in March. I have previously, prior to sentencing, offered to participate in a Restorative Justice conference with both women. I would still go through with that process, if I am asked.

Based on these examples, which I believe are very much in the public interest, I note that these three District Court judges have chosen to make very compassionate and kind decisions, in the interests of allowing these three offenders to move on with their lives.

I respectfully ask the same of the Court of Appeal. A Discharge without Conviction will have an enormously positive influence on my career prospects, my quality of life, my future wellbeing in-general. I have admitted remorse and I have demonstrated that I have experienced significant punishment in advance of the sentencing last September. I am highly, highly, motivated to never re-offend.

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#### Time spent on Bail

I was on standard bail from 19 August 2021 until 17 March 2022. The conditions were: curfew, no alcohol, reside at an address in Northland. I lived there on my own until I was allowed to return to Auckland in late October 2021 for a Family Court hearing.

From 17 March – 10 June I was incarcerated and held on remand at Mt Eden Prison. Eighty five days on remand. Denied bail four times. I was incarcerated for sending two emails to a family member that were

considered a breach of bail. Neither email contained threats. Neither email contained swearing. At the worst, those two emails could be described as sarcastic but not sarcastic about, or towards, the recipient.

Upon release from remand, from 10 June 2022 – 6 February 2023, I was on electric monitoring bail in Tauranga. Bail with curfew and a specified address continued (without the electronic bracelet) from 6 February until 6 September 2023.

The no alcohol condition was removed in late 2022 after a successful application.

I was living under bail restrictions for a long period of time (19 August 2021 until 6 September 2023). A total of 760 days on bail.

I believe that all this time on bail, in addition to the time imprisoned on remand, constitutes a very significant punishment in advance of sentencing, Your Honour. It has also had a massively disruptive impact on my access (90 minutes supervised custody, fortnightly) to my only child, my ten-year-old Daughter, and my employment prospects.

#### Prior Criminal Record

Prior to sentencing I had a clean criminal record. There were two convictions concealed by the Clean Slate Act for minor driving offences back in 2001. That was 22 years ago. I am now 42 years old. No repeat offending.

#### Restorative Justice

I was prepared to do Restorative Justice with both female victims. I made that clear to my lawyer Vernon Tava, repeatedly. I made that clear to the Restorative Justice facilitator Francesca Wotton. Both female victims (2x protection order breaches) declined to undertake the Restorative Justice process with me. I had not changed my mind with regards to participating. I would still participate, if I am asked.

#### Expression of remorse for offending

From the Corrections PAC report: "When asked about how he felt about the situations now, Mr Tiller said, "[I] have to be careful with what I say, but if there is a Protection Order in place, then it is important to stick to the conditions." Mr Tiller wanted the court to know the huge impact the current matters have had on his life and that there is a lot of regret and sadness on his end.

I have repeated and I have intensified my feelings of remorse and disappointment with myself, during my most recent family court hearing in March. I told judge Partridge that I "wholeheartedly regret my offending and I will always regret the emotional harm that I caused her. I wish her all the best for the future."

#### Men's Non-Violence Programme – completed

I completed the Men's non-violence programme with Ngāti Ranginui Iwi Society in Tauranga. Sixteen group meetings. The facilitator who conducted the final interview said it was "a pleasure" to have me in their group.

My basis for appeal: in the public interest – consistency and compassion

With all due respect, my understanding Your Honour is that the basis for ruling in favour of application to discharge without conviction is as follows: a judge must ask themselves three things: How serious is the offence? What are the direct and indirect consequences of a conviction? And finally, are the direct and indirect consequences of a conviction out of all proportion to the seriousness of the offence?

My opinion is that the consequences / repercussions of these two family violence convictions for phone calls are out of proportion with the seriousness of the offending.

Neither woman was threatened with any kind of explicit threat. There was no swearing during either phone call. Neither woman was threatened with actions via the text messages they received.

The offending is now very historic – according to the Crown law disclosure 14 July 2021 (Lisa Raymond) and 18 August 2021 (Jaime Campbell). There has been no repeat offending in almost three years.

These family violence convictions would be undeniably extremely damaging to my career, and quality of life, for the rest of my life. The very words "family violence" give off a very intimidating connotation to people. The implication – the conclusion that many, many, people will jump to – is that I have been physically violent to family members. Which is extremely misleading. Employers nearly always conduct a criminal background check on short-listed potential new employees and most will jump to the conclusion that I have been physically violent to family members. This will be a massive 'red-flag' with regards to hiring, particularly during a competitive hiring process, which is usually the case in my industry (copywriting / MarComs) and is very much the case in so many industries at present. Not just marketing and e-commerce.

It is also an indisputable reality of my chosen career field that it is a profession very largely dominated by women. Men are very much in the minority. That is a significant fact to be considered as well.

That will also weigh against me in the decision making of HR practitioners and Managers when they read the words "family violence." But not just in the field of marketing and e-commerce, in any field.

The words "breach of protection order" and "family violence" as my convictions read on my Criminal Record, will end my career. They will destroy my career prospects.

I have been unable to gain employment in my chosen field since my last MarComs role / job, with Harvey Norman which I resigned from in January 2022. My ability to obtain any kind of suitable job has been massively diminished since police involvement began.

Your Honour, to summarise: this police / Crown investigation and prosecution has been extremely damaging to my career and job prospects in general over the last three years. These convictions will now destroy my career prospects going forwards. I have been rejected for in excess of at least thirty jobs now. I will provide evidence of this via screenshots of rejection emails.

This disadvantage will at least halve my earning capacity / salary going forwards.

Along with the public interest / consistency issue, this is why I am appealing the two decisions to deny my application to discharge without conviction. My view is that the consequences / repercussions of these family violence convictions are out of proportion with the seriousness of the offending and the demonstrable harm done.

Also, very significantly I believe, there are serious inconsistency issues when compared to the compassionate decisions made by District Court judges Winter, Glubb and Morris over the last six months.

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Yours sincerely,

Joel Tiller 23.5.24