



R v Samsudeen – Summary of court engagement

5 September 2021

High Court matters

- On 29 June 2018, Mr Ahamed Aathill Mohamed Samsudeen pleaded guilty in the High Court to five charges, namely using a document for pecuniary advantage (x 2), knowingly distributing restricted material (x 2) and failing to assist Police in their exercise of a search power (x 1). Mr Samsudeen had been held in custody to that point for a period of some 13 months. It was common ground at the hearing on 26 June 2018 that any sentence to be imposed on the charges to which Mr Samsudeen had pleaded guilty would not exceed 13 months. On Mr Samsudeen’s application, Justice Wylie granted Mr Samsudeen bail pending sentence, on conditions. Those conditions included restrictions on and monitoring of his online activity and electronic devices. A link to Justice Wylie’s bail decision is [available here](#) (PDF, 126 KB). Mr Samsudeen had been refused bail on two earlier occasions when he was facing more serious charges. These bail decisions are [available here](#) (Courtney J) (PDF, 156 KB) , and [here](#) (Venning J) (PDF, 140 KB).
- Mr Samsudeen had been granted refugee status by immigration officials on 20 December 2013. On 31 May 2018, the Refugee Status Branch served Mr Samsudeen with notice of intention to cancel his refugee status. On 3 July 2018, Justice Wylie heard Mr Samsudeen’s application for suppression of his name and other identifying details, pending resolution of his refugee status. Justice Wylie granted the application and suppressed Mr Samsudeen’s name, address, occupation and any identifying particulars, on the basis there was a real and appreciable possibility that in the event Mr Samsudeen’s refugee status was revoked and he was deported to Sri Lanka, his safety could be in danger. That suppression was to remain in place until Mr Samsudeen’s refugee status was finally determined. A link to Justice Wylie’s suppression orders is [available here](#) (PDF, 215 KB).
- Mr Samsudeen was sentenced by Justice Wylie on 19 September 2018. Given Mr Samsudeen’s prior remand in custody pending sentence, Justice Wylie concluded that a custodial sentence could not be imposed and proposed to sentence Mr Samsudeen to one year of supervision, with conditions. Both the Crown and counsel for Mr Samsudeen agreed that such a sentence was appropriate. Justice Wylie accordingly sentenced Mr Samsudeen to one year of supervision, subject to a number of conditions,



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largely related to the monitoring of Mr Samsudeen's online activity, as well as attending any directed psychological assessments. A link to Justice Wylie's sentencing notes is [available here](#) (PDF, 194 KB).

- In parallel, and while on bail pending being sentenced by Justice Wylie, Mr Samsudeen had been charged with further alleged offending (including possession of objectionable material and possession of a knife in a public place). Mr Samsudeen was remanded in custody on those charges. Accordingly, at the conclusion of Justice Wylie's sentencing, Mr Samsudeen remained in custody.
- Mr Samsudeen's trial on the new charges was due to commence in mid-2020, but was adjourned due to the COVID-19 lockdown.
- In mid-2020, the Crown applied to the High Court to also charge Mr Samsudeen under s 6A of the Terrorism Suppression Act 2002. The charge would have alleged that Mr Samsudeen, on or about 9 August 2018, planned or otherwise prepared to cause death or serious bodily injury. Justice Downs heard the Crown's application 9 July 2020. On 16 July 2020, the Judge concluded the charge could not be sustained because the proposed offence did not exist in law. Justice Downs directed the Crown to provide a copy of the judgment to the Attorney-General, Solicitor-General and Law Commission. A copy of Justice Downs' judgment is [available here](#) (PDF, 244 KB)
- Mr Samsudeen's trial before Justice Fitzgerald and a jury commenced on 17 May 2021. Mr Samsudeen faced charges of knowingly possessing objectionable material without reasonable cause (x 3), possession of a knife in a public place without reasonable excuse (x 1) and failing to assist a police officer exercise a search power (x 1). The objectionable material related to ISIS propaganda. Mr Samsudeen had originally faced two additional charges alleging possession of an offensive weapon. They were dismissed by Venning J following a pre-trial hearing on 12 November 2020 as on the evidence a properly-directed jury could not reasonably have convicted Mr Samsudeen on those charges. That decision is [available here](#) (PDF, 203 KB)
- On 27 May 2021, the jury found Mr Samsudeen guilty on two of the three possession of objectionable material charges, and the charge of failing to assist a police officer exercise a search power. The jury found Mr Samsudeen not guilty of possession of a knife in a public place and of the remaining charge of possession of objectionable material.
- Justice Fitzgerald sentenced Mr Samsudeen on 6 July 2021. By that time, Mr Samsudeen had been in custody for approximately three years. The Crown proposed a starting point of six months' imprisonment for the two charges of possession of



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objectionable material, with a one month uplift for failing to assist police exercise a search power. Justice Fitzgerald accepted the Crown's suggested starting point and uplift. Given Mr Samsudeen's remand in custody to that point, a custodial sentence could not be imposed. Justice Fitzgerald sentenced Mr Samsudeen to one year of supervision, again subject to conditions relating to monitoring of Mr Samsudeen's online activity and engaging in rehabilitative assessments. A link to Justice Fitzgerald's sentencing notes is [available here](#) (PDF, 208 KB).

- The suppression orders made by Justice Wylie in 2018 continued to have effect.
- Separately, Mr Samsudeen had been charged in relation to alleged assaults while in custody. The District Court had remanded Mr Samsudeen in custody on those charges. At the conclusion of his High Court sentencing in July 2021, Mr Samsudeen therefore remained in custody. He was granted bail by the District Court on 13 July.
- Following the events at the New Lynn Mall on 3 September 2021, the Crown filed an urgent application seeking orders rescinding Justice Wylie's 2018 suppression orders. A hearing before Justice Wylie was held on the evening of 3 September 2021. Justice Wylie granted the Crown's application and rescinded the 2018 suppression orders. The Judge made a further order, however, that the order rescinding suppression was not to take effect for 24 hours (until 11pm, 4 September 2021), in the event Mr Samsudeen's family made a fresh application for suppression. A copy of Justice Wylie's ruling of 3 September 2021 is [available here](#) (PDF, 1.1 MB)
- A further hearing was convened before Justice Wylie at 4pm on 4 September 2021 to consider the application of s 151 of the Immigration Act 2009 to previous minutes and judgments of the Court. Section 151 imposes statutory confidentiality of details concerning persons applying for and granted refugee status, and related matters. After hearing from counsel for the Crown, Mr Samsudeen's family and the media, Justice Wylie ruled that the statutory confidentiality obligations pursuant to s 151 no longer apply. The Judge declined an application made on behalf of Mr Samsudeen's family that the effect of the ruling be extended for a further 12 hours. Justice Wylie ordered that his ruling take effect as of 11pm, 4 September 2021, that is, the same time as his ruling of 3 September 2021. A link to Justice Wylie's ruling of 4 September 2021 is [available here](#) (PDF, 613 KB)

District Court matters

- One charge of injuring with reckless disregard (single complainant), and another charge of assault with intent to injure (different complainant) at Mt Eden on 23 June 2020 were both filed in the District Court against Mr Samsudeen on 5 September 2020. Mr Samsudeen pleaded not guilty and was remanded in custody. He was granted bail by



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Judge Peter Winter in the Auckland District Court on 13 July 2021. Judge Winter granted bail after receiving and considering a “Joint Memorandum in respect of Admission to Bail” filed by Crown and defence counsel.

- On 16 July 2021, Judge Winter varied the bail conditions at the request of counsel. This decision is [available here](#) (PDF, 116 KB). Mr Samsudeen was due to appear again in the District Court for call-over of his judge-alone trial on 21 October 2021. Judge Winter directed that the terms and conditions of bail were to be reviewed on 21 October 2021.
- Orders made by the District Court relating to suppression are available [here](#) (PDF, 112 KB) and [here](#) (PDF, 101 KB)