IN THE SUPREME COURT OF NEW ZEALAND

SC CRI 15/2004

YUAN YING ZHANG

v

THE QUEEN

Court: Keith J and Blanchard JJ

Counsel: P T R Heaslip for the Appellant
B J Horsley for the Crown

Hearing: 3 February 2005

Judgment: 3 February 2005

JUDGMENT OF THE COURT

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[1] This application for leave to appeal against a conviction under s257 of the Crimes Act 1961 (as it stood prior to the amendments to the Crimes Act made in 2003) was filed out of time. In the circumstances, as explained by applicant's counsel, we grant leave to file out of time.

[2] We do not however grant leave to appeal. We are not satisfied that it is necessary in the interests of justice to hear and determine the appeal. The proposed appeal does not involve a matter of general or public importance or a possible substantial miscarriage of justice, the grounds set out in s13 of the Supreme Court Act invoked in this case. We give our brief reasons for that conclusion.

[3] The first issue which the application raises is the Court of Appeal ruling that it had no jurisdiction to hear the appeal. The Crown accepts, as do we, that the Court erred in saying that. The Court did however go on and deal with the substantive arguments before it. No general or public issue of importance remains and no miscarriage of justice could have occurred.

[4] The second proposed issue arises from the fact that the statutory provision under which the prosecution was brought had been repealed at the point when the indictment was amended to rely on that provision. (The amendment was a consequence of the judgment of the Court of Appeal in *R v Armstrong* [2004] 1 NZLR 442.) The provision was in force at the time of the alleged offending. The contention is that the charges could not be brought or the indictment amended after the repeal. But s19(2)(b) of the Interpretation Act 1999 provides a complete answer. The repealed provision continues to have effect as if it had not been repealed for the purpose of commencing or completing proceedings for the offence. That provision is comprehensive in a temporal sense.

[5] The third proposed issue is that the amendment to the indictment should not have been accepted, s257 not being applicable to the facts. This argument would require the decision of the Court of Appeal in *R v Walters* [1993] 1 NZLR 533 to be distinguished. But, as the judgment of the Court of Appeal in this case shows, that is not possible. We also see no basis for a different interpretation of s257 (as in force at the time of the alleged offending) resulting from *R v Armstrong*. Furthermore, the provision has been repealed and no matter of continuing importance can be identified.

[6] The final proposed point concerns the lack of any application in respect of the change of plea to guilty. But the applicant changed her plea on advice and there was no application to vacate it. We see no basis for contending that on that account there was a miscarriage of justice.

[7] Accordingly, the application is dismissed.

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