

IN THE SUPREME COURT OF NEW ZEALAND

**SC 30/2007
[2007] NZSC 57**

BRIAN JOHNSON MANKELOW

v

THE QUEEN

Court: Tipping, McGrath and Anderson JJ

Counsel: C Tennet for Applicant
M F Laracy for Crown

Judgment: 20 July 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Mankelow seeks leave to appeal from the dismissal by the Court of Appeal of his appeal against conviction on four charges relating to the Class A controlled drug methamphetamine. The first of the proposed grounds derives from the fact that the Court of Appeal allowed the appeal of a co-appellant, Mr Su'a. We consider this ground to be unarguable. There was a clear evidentiary distinction between the case against Mr Su'a and that on which Mr Mankelow was found guilty. The fact that the Court of Appeal considered the evidence in Mr Su'a's case to be insufficient does not give rise to any inconsistency or miscarriage of justice by

reason of the Court concluding that the evidence against Mr Mankelow was sufficient. Nor is there any force in the suggestion that the Court of Appeal abdicated its responsibilities in considering Mr Mankelow's case.

[2] The applicant's second main point raises a question of admissibility. It suffers from the immediate difficulty that, despite there having been an opportunity to do so, the point was not raised in the Court of Appeal again on the conviction appeal. This Court will rarely entertain points on second appeal which were not raised on first appeal. In any event, we do not consider the applicant's admissibility point to be of any general importance so as to qualify for leave to appeal to this Court. No significant question of law or principle arises.

[3] The various allied points made in the application for leave are also no more than an attempt to have this Court conduct a second general appeal. Nothing has been raised which suggests that any substantial miscarriage of justice may occur if this Court does not entertain the proposed appeal. For these reasons the application is dismissed.

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