

IN THE SUPREME COURT OF NEW ZEALAND

**SC 34/2008
[2009] NZSC 25**

JONATHAN JOHN EDWARD BELCHER

v

THE QUEEN

Court: Tipping, McGrath and Wilson JJ

Counsel: Applicant (written submissions)
K A L Bicknell for Crown
G King as Amicus Curiae

Judgment: 27 March 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Because of the applicant's uncertain mental state, Mr King was appointed as amicus curiae. The Court is grateful to him for his inquiries and the submissions which he filed to assist us.

[2] The applicant has expressed concerns that a person he had previously encountered served on the jury at his trial. It is clear that the applicant's contact with the juror can, at best, be described as minimal. Indeed it seems probable that he may

never have actually spoken to the juror. The Court of Appeal was satisfied that there was no risk of a miscarriage of justice on this account and we consider that this conclusion was undoubtedly correct. The point does not give rise to any qualifying ground of appeal to this Court.

[3] The second point the applicant raises is a contention that he is innocent of the charges on which the jury found him guilty. No point of general or public importance arises in this respect and, again, we do not consider that there is any risk of a miscarriage. Hence the ground raised does not qualify for leave.

[4] The third point, and it is a point identified by Mr King, concerns an exchange which took place in front of the jury when the applicant's trial counsel indicated he was not going to give evidence. Counsel's cross-examination of certain witnesses had foreshadowed that the applicant would be giving evidence. We are bound to say that the exchange between the Judge and counsel on this issue, which took place in front of the jury, was not very well handled by the Judge. It was potentially prejudicial to the applicant. We are satisfied, however, that the Judge cured any problem that might have arisen in that respect in the summing-up. The situation was such that the Judge might have been justified in commenting on the fact that the accused had not given evidence. He did not do so. This ground does not raise a point of general or public importance and, all in all, we are satisfied, on the material before us, that there is no risk of a miscarriage of justice.

[5] For these reasons the application for leave to appeal must be dismissed.