

COURTNEY PAULINE CHURCHWARD

v

THE QUEEN

Court: Elias CJ, Blanchard and William Young JJ

Counsel: C J Tennet for Applicant
L C Preston for Crown

Judgment: 5 April 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal¹ dismissing her appeal against her conviction for murder.

[2] At the time of the offending she was 17 years of age. The substance of the proposed appeal is that the Judge should have given the jury a direction as to the significance of her age when assessing whether she acted with murderous intent.

¹ *Churchward v R* [2011] NZCA 531.

The Judge had not addressed this in his summing up otherwise than by way of paraphrase of the closing addresses of counsel.

[3] At trial there had been no expert evidence as to the possible significance of the age of the applicant and her co-defendant (who was appreciably younger than the applicant). Expert evidence was later admitted before the Court of Appeal as to, inter alia, the way in which adolescents assess risk. In the case of the applicant, that evidence came from a psychiatrist, Dr David Chaplow, who observed:²

What distinguishes adolescents from adults in this regard then is not the fact that teens are less knowledgeable about risks, but rather that they attach different values to the rewards that risk taking provides.

In company with the Court of Appeal, we consider that evidence along those lines would not have been of material assistance to the applicant if given at trial.

[4] We are of the view that the proposed appeal is insufficiently arguable to warrant the granting of leave to appeal. This is for the following reasons:

- (a) There is no basis for thinking that the jury did not understand what had to be established before they could find the applicant guilty of murder;
- (b) Given the severity of the attack, the level of violence, and the age of the victim, it was always probable that a jury would infer that the applicant had acted with either an intent to kill or recklessness;
- (c) The youth of the defendant was before the jury, albeit not heavily emphasised by counsel for the applicant, perhaps, because she was appreciably older than her co-defendant;
- (d) In the absence of expert evidence there was not much that the Judge could have added to what counsel had said and there is no occasion to think that the applicant was prejudiced by the absence of judicial comment; and

² At page 3 of Dr Chaplow's affidavit.

- (e) The applicant was not prejudiced by the failure to call at trial evidence along the lines of that later provided by Dr Chaplow.

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