

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF
COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE
ACT 1985.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 79/2012
[2012] NZSC 111**

Y (SC79/2012)

v

THE QUEEN

Court: Elias CJ, McGrath and Chambers JJ

Counsel: M M Wilkinson-Smith for Applicant
M D Downs for Crown

Judgment: 20 December 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, during the course of his trial, applied successfully for a discharge under s 347 of the Crimes Act 1961. The Crown successfully appealed using the case stated procedure prescribed by s 381A of the Crimes Act 1961. The Court of Appeal ordered a new trial.¹ The applicant has sought leave to appeal.

¹ *R v Y (CA321/2012)* [2012] NZCA 458.

[2] We have considerable reservations as to whether we have jurisdiction to entertain an application for leave to appeal from a decision given under ss 381A and 382. Even if we have, however, we are not satisfied it is in the interests of justice to hear the proposed appeal at this stage. A new trial is scheduled for next month. We consider the interests of justice lie in favour of that trial continuing. The applicant may be acquitted. If the applicant is convicted at his new trial, then he will have rights of appeal and the case may eventually find its way to this Court by that conventional route. If it did, we would have a firm factual base from which to analyse the legal position.

[3] We dismiss the application for leave to appeal.

Solicitors:
Crown Law Office, Wellington, for Applicant