

WENDY MAREE EGEN

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: Applicant in person  
A Markham for Crown

Judgment: 11 March 2013

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant wishes to challenge her conviction by a jury on charges involving three incidents of assaults on her teenage daughter. Her appeal to the Court of Appeal<sup>1</sup> was dismissed and she sought leave to appeal to this Court on the basis that she had wanted to testify at her trial but was discouraged from doing so by her lawyer. This argument was not advanced to the Court of Appeal.

[2] Her written submissions in support of her application for leave to appeal were due on 24 November 2011. On 1 December 2011 the Registrar wrote to her telling

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<sup>1</sup> *Egen v R* [2011] NZCA 372.

her to file submissions by 5 December 2011 at the latest. They were not to hand by 16 December 2011<sup>2</sup> and the Court, on that day, dismissed her application.

[3] The applicant then attempted to file a further application for leave to appeal which was rejected as a repetition of the application which had been dismissed. She responded by saying that she had not received the letters from the Court which identified when the submissions were to be filed. The Registry invited her to file her submissions which she duly did (on 10 May 2012) and a Judge directed that they be served on the Crown which was to file submissions in response. These submissions were received on 31 May 2012. Unfortunately, the Crown submissions were not referred on to the Judges with the result that the application was not reconsidered in a timely way.

[4] If we were persuaded that leave should be granted, we would recall the 16 December 2011 judgment and reissue a judgment granting leave. As it turns out, however, we are not so persuaded. Accordingly, we propose simply to dismiss the second leave application.

[5] The submissions filed by the applicant reiterate her complaint about not giving evidence. She had given a detailed statement to the police but considers that if she had given evidence she would have provided more detail. She says that her counsel advised her not to give evidence because it was thought that she would become too emotional. That is as far as her submissions on this point go and they add nothing of substance to the material which was before the Court in December 2011.

[6] The applicant also advanced other arguments which seemed largely to be by way of repetition of the arguments which were addressed to the Court of Appeal. They are all factual in nature, addressing issues which were considered by the jury at trial and reconsidered by the Court of Appeal.

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<sup>2</sup> *Egen v R* [2011] NZSC 156.

[7] There is no appearance of a miscarriage of justice and nothing has been advanced which would warrant leave to appeal being granted.

Solicitors:  
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