**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 7/2016**
**[2016] NZSC 42**

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| BETWEEN | DOUGLAS JOHN WILLIAMSON<br>Applicant |
| AND | THE QUEEN<br>Respondent |

**SC 8/2016**

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| BETWEEN | JOHN BLACKWOOD WILLIAMSON<br>Applicant |
| AND | THE QUEEN<br>Respondent |

Court: Elias CJ, Arnold and O'Regan JJ

Counsel: T W Fournier and E Huda for Applicants
M H Cooke for Respondent

Judgment: 26 April 2016

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**JUDGMENT OF THE COURT**

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**The applications for leave to appeal are dismissed.**

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**REASONS**

[1] The applicants pleaded guilty part-way through trial (after conclusion of the Crown case and rejection of their application for discharge without conviction). Their guilty pleas were to 12 charges under provisions of the Animal Welfare Act 1999 of ill-treating horses or failing to ensure their physical health. The applicants were discharged on six other similar charges withdrawn by the prosecution. After convictions had been entered, the applicants applied to the District Court for leave to vacate their guilty pleas. The grounds of the application

were failure by defence counsel to identify that the Crown expert witness had not excluded iron toxicity, rather than neglect, as the cause of the condition of the horses. The application was declined in the District Court.[1]

[2] On appeal to the Court of Appeal, the applicants sought to introduce expert evidence that there was "a case for supporting iron toxicity" in support of the ground of appeal that the Crown evidence did not exclude iron toxicity as the cause of the condition of the horses.[2] The application to adduce further evidence was dismissed on the basis that the evidence was neither new nor cogent.[3] The Court of Appeal upheld the decision of the District Court Judge that the alternative explanation of iron toxicity was in any event not plausible given the evidence of the condition of the horses (which were severely infested with parasites) and the evidence of persistent neglect by the applicants.[4] The applicants also argued in the Court of Appeal that the Crown's evidence did not support the six counts based on s 28(1)(c) of the Animal Welfare Act because the expert evidence for the Crown did not support the requirement relied on that the "pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering". The Court dismissed this ground on the basis that the effect of the evidence as a whole was that the deterioration of the horses was irrecoverable and the decision to destroy them was a humane response.[5] The Court of Appeal also rejected a contention of counsel error in advancing an application for discharge following the Crown closing, without instructions to do so.[6] It considered that the making of the application was immaterial to the entering of the guilty pleas.

[3] On application for leave to appeal to this Court, the applicants no longer pursue the claim that the condition of the horses was caused by iron toxicity rather than neglect and that counsel's failure to identify this answer should have led to the guilty pleas being vacated. Rather, they seek to argue two points. First, they raise again counsel misconduct in advancing the s 347 discharge application without instructions. Secondly, they seek to pursue the failure to identify as a defence to the

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1 *R v Williamson* DC Christchurch CRI-2012-009-010644, 17 June 2014 (Judge Saunders).
2 *Williamson v R* [2015] NZCA 621 (Kós, Fogarty and Mallon JJ) at [56].
3 At [59]–[64].
4 At [61]–[63].
5 At [69].
6 At [48].

six s 28(1)(c) charges that the horses were not put down because that course was necessary to end their suffering. In support of the second contention, the applicants seek to call a veterinary surgeon who was consulted when the horses were put down, to say that with "structured" feeding and treatment it should have been possible to save the horses (although their development would have been stunted).

[4] We are satisfied that neither of the proposed grounds of appeal against the refusal to allow the guilty pleas to be vacated fulfil the criteria for leave to appeal under s 13 of the Supreme Court Act 2003. The decision of counsel to advance the s 347 application, even without instructions, has not been shown to bear on the question of vacation of the guilty pleas, as the Court of Appeal rightly held. On the second ground of appeal, the additional evidence of the veterinary surgeon is not fresh evidence, given that the veterinary surgeon participated in the decision that the horses should be destroyed, and is not compelling. The question whether the suffering of the horses made it necessary for them to be destroyed was a question of fact, for evaluative judgment. No basis on which it would be appropriate for this Court to reconsider the matter again is made out. No question of general or public importance arises. Nor is there any basis to think that a substantial miscarriage of justice may have occurred. We are therefore not satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.

Solicitors:
Crown Law Office, Wellington for Respondent