

IN THE SUPREME COURT OF NEW ZEALAND

**SC 87/2008
[2009] NZSC 8**

KENNY LESLIE MCMILLAN

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: D L Stevens QC for Applicant
G H Allan for Crown

Judgment: 5 February 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant is one of several people convicted in relation to a conspiracy to supply and the actual supply of methamphetamine. The applicant accepted that there was a conspiracy to supply a drug and that supplies were made but his defence was that the subject drug was in fact cannabis. The Court of Appeal dismissed his appeal against conviction.

[2] His proposed appeal to this Court concerns illegitimate prejudice he says he suffered at trial because of the admission of certain statements and a text message by

two of his co-accused. They were admitted against the co-accused only and the jury was directed accordingly not to take them into account against the applicant. He says, however, that such was the extent of the prejudice that the directions could not have been adequate to overcome it.

[3] The Court of Appeal rejected an argument along these lines and we consider it was entitled to do so on the facts of this case. We are not persuaded that it is reasonably arguable the Court of Appeal has misapplied the applicable law. No point of general principle is involved. Nor can there be any concern in the instant case that there may have been a miscarriage of justice.

Solicitors:
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