

GRAHAM ASHLEY ROBERT PALMER

v

THE QUEEN

Coram: Elias CJ
Tipping J

Counsel: R A A Weir for Applicant

Judgment: 12 October 2004

JUDGMENT OF THE COURT

[1] Mr Palmer has applied for leave to appeal from a judgment of the Court of Appeal delivered on 16 August 2004. That judgment refused Mr Palmer's application for leave to withdraw a notice of abandonment of an appeal which he had earlier filed in the Court of Appeal. The consequence of the Court of Appeal's decision is that the dismissal of Mr Palmer's appeal to that Court, pursuant to the abandonment, remains in force.

[2] The first question which arises on the present application is whether this Court has jurisdiction to entertain the proposed appeal. We have considered Mr Weir's submissions on that subject. The statutory foundation for an appeal to this Court in a criminal proceeding is s10(a) of the Supreme Court Act 2003 which incorporates Part 13 of the Crimes Act 1961. This Court has no inherent jurisdiction

to entertain an appeal. The relevant section in Part 13 is s383A which empowers this Court to hear an appeal against a decision of the Court of Appeal “on appeal” under s383. The expression “on appeal” is materially the same as the expression “on an appeal” which appears in s144A(1)(c) of the Summary Proceedings Act 1957. This Court has recently decided a parallel issue under that provision adversely to an applicant for leave: see *Simpson v Kawerau District Council* SC CRI 12/2004, 5 October 2004.

[3] Mr Weir’s argument was that Mr Palmer’s proposed appeal in substance came squarely within Part 13 in that he was seeking to continue with his appeal in the Court of Appeal. We cannot agree with that proposition. When the Court of Appeal refused to permit Mr Palmer to withdraw his abandonment or, more accurately, refused to regard the abandonment as a nullity, it was not making a decision on appeal under s383 of the Crimes Act. It was determining that no such appeal was extant. Unless the abandonment had been found to be a nullity, there was no appeal under s383 in respect of which the Court of Appeal could have made a decision under that section.

[4] We are therefore of the view that leave to appeal should be declined for want of jurisdiction in this Court to entertain the proposed appeal. We refuse leave accordingly. This does not imply that leave might otherwise have been given.