

ROBERT FRANK TERRY

v

THE QUEEN

Coram: Elias CJ
Blanchard J

Counsel: Applicant representing himself
J C Pike for Crown

Judgment: 15 July 2004

JUDGMENT OF THE COURT

[1] Mr Terry has represented himself and has not sought legal aid. He seeks leave to appeal to this Court against a decision of the Court of Appeal on 6 April 2004 dismissing his appeal against conviction on a charge of threatening to kill. The appeal was by way of rehearing after an earlier ex parte dismissal.

[2] We have not been satisfied that this is a case in which it is necessary in the interests of justice for the Court to hear and determine the proposed appeal: s13(1) of the Supreme Court Act 2003. Section 13 therefore requires that leave should not be given. No matter of public or general importance is put forward and we are far from persuaded that a substantial miscarriage of justice has occurred.

[3] The central factual question at the trial and upon the appeal to the Court of Appeal was whether it was proven to the criminal standard that Mr Terry made the threat to kill as charged. That was a matter for the jury to determine on the basis of the whole of the evidence. As the Court of Appeal said, there was evidence that, if the jury accepted it, could establish to the requisite standard that there was a telephone conversation of the character alleged in which a threat to kill the complainant, Mr Isaacs, was made by Mr Terry on the day alleged by the Crown.

[4] The other proposed ground relates to an error in the initial information which mis-stated the date of the offending and the section in the Crimes Act under which it was intended to charge Mr Terry. (The same slip concerning the date appears in one paragraph of the Court of Appeal's judgment but from other references it is clear that the Court correctly understood the date.)

[5] Both errors were corrected by the laying of a further information. Importantly, the indictment upon which Mr Terry was convicted correctly stated both the date and the section. In his submissions Mr Terry himself says that he was "in no way misled or prejudiced, and right from the outset he understood precisely the nature of the charge against him".

[6] The application for leave to appeal is dismissed.

Solicitors:
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