

IN THE SUPREME COURT OF NEW ZEALAND

**SC 77/2006
[2006] NZSC 106**

BETWEEN	PAUL DANIEL BICKNELL Appellant
AND	TAURANGA DISTRICT COURT First Respondent
AND	RODNEY ALAN CAVERHILL Second Respondent

Court: Elias CJ, McGrath and Anderson JJ

Counsel: Appellant in person
E M Thomas for First Respondent
R O Gowing for Second Respondent

Judgment: 8 December 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal against the judgment of the Court of Appeal on a case stated in the course of a criminal trial.

[2] Mr Bicknell brought a private prosecution for theft, acting himself as the prosecutor. In the course of the trial he asked the Judge to issue warrants for the arrest of people whom he wished to call as witnesses. There is power to do so under s 351(1) of the Crimes Act 1961. The Judge declined that application. He stated a case on the question whether he was right to decline to issue arrest warrants.

[3] Mr Bicknell then sought an adjournment so that he could again issue witness summonses. The Judge refused that request. Mr Bicknell said he did not wish to carry on in those circumstances and walked out. The Judge directed the jury to acquit.

[4] There is provision in s 181 of the Summary Proceedings Act 1957 for the serving of notices, in the course of preliminary hearings, to potential witnesses. Such notices have the effect of a witness summons. The form of notice prescribed in a schedule to that Act states that the person served is to attend court "...at such time and on such day or days as are notified to you in writing by a constable".

[5] Mr Bicknell asked the court staff to notify the intended witnesses of the appropriate time and date but he could not support his request for arrest warrants with proof that notification in writing was given by a constable. Because there was no proof of the necessary written notification the Judge declined to issue arrest warrants. In such circumstances the Judge could not properly cause the arrest and detention of the intended witnesses.

[6] It is clear from the District Court transcript that the question of law reserved by the Judge related to that particular decision declining the issue of warrants. However Mr Bicknell made other applications for the issue of warrants, those pursuant to s 20(4) of the Summary Proceedings Act 1957 which provides:

(4) If any District Court Judge or Registrar is satisfied that any person whose evidence at the hearing is required by either the informant or the defendant will not attend to give evidence without being compelled to do so, then, whether or not a summons has been issued or served, he may, if he thinks fit, issue a warrant in the prescribed form for the attendance of that person at the hearing.

[7] The power is discretionary. In the exercise of his discretion the Judge declined, for reasons which included the disruptive effect on the trial and that Mr Bicknell could not expect special treatment just because he was a private prosecutor. This Court would not be prepared to grant special leave to appeal against discretionary procedural decisions in the course of trial, especially those which raise no issue of general or public importance. In any event, those decisions were not the subject of reservation for the purposes of an appeal.

[8] Mr Bicknell's submissions to this Court and to the Court of Appeal include a reference to s 368(1) of the Crimes Act. That concerns the power of a court to adjourn a trial on the application of an accused who has been taken by surprise. It is not open to this Court to address those matters because they do not form part of the case stated. A prosecutor has no general right of appeal, only an appeal by way of a case stated on a question of law. The appellate court's consideration is confined to that question of law. In any event s 368(1) of the Crimes Act can have no relevance as it provides only for application by an accused.

[9] Whatever the merits of Mr Bicknell's prosecution, on which we express no view, the fact that he prosecuted as a private citizen gives him no greater authority, entitlement or indulgence than a police or crown prosecutor. A mistake occurred which may have been disadvantageous to the prosecution but that will have to be accepted by Mr Bicknell as it would by any other prosecutor. Nor does the fact that Mr Bicknell is self represented excuse the intemperate and highly improper remarks about the judiciary in his written submissions.

[10] Ultimately, the application concerns an unremarkable procedural decision. No question of general or public importance is raised and we are not satisfied that any substantial miscarriage of justice has occurred. The application is dismissed.

Solicitors:
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