

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 31/2006  
[2006] NZSC 43**

**BRIAN RAYMOND TERRY**

v

**THE QUEEN**

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Appellant in Person  
M D Downs for Crown

Judgment: 14 June 2006

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] Brian Raymond Terry appealed to the Court of Appeal against his conviction by a jury on 24 May 1996 on a charge of assault with intent to injure. The appeal was dismissed by the Court of Appeal in a judgment of 23 March 2003. In the Court of Appeal, the applicant took four points: he criticised the Judge's summing-up; he raised a question of coercion of a Crown witness; he suggested that new evidence raised a doubt about the validity of the conviction; and he complained that ESR evidence should have been obtained by the police of a T-shirt exhibit or opportunity should have been provided to the defence to obtain such testing.

[2] On application for leave to appeal to this court, the applicant no longer suggests error in the summing-up. He maintains the assertion that ESR testing should have been obtained of the T-shirt but does not indicate why the Court of Appeal's disposal of the point is wrong. It held that the Crown could not be directed to obtain such testing and that any testing Mr Terry might choose to undertake was not likely to be material. On the "new evidence" point Mr Terry takes issue with the determination of the Court of Appeal that the "evidence was not fresh and was hearsay and was inadmissible and irrelevant." Again, no basis for the assertion that the Court of Appeal was wrong in this conclusion is advanced in the application for leave. In the application for leave to appeal to this Court Mr Terry asserts that there is a *prima facie* risk of a miscarriage of justice. He does not indicate error in the reasoning of the Court of Appeal such as gives rise to any apprehension of miscarriage of justice. He raises no error of law. The Court of Appeal applied established principles to the facts in concluding that all appeal points were misconceived. The grounds for granting leave under s 13 of the Supreme Court Act are not made out. No point of public interest or importance arises. There is no indication of any miscarriage of justice. The application for leave is dismissed.

Solicitors:  
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