

IN THE SUPREME COURT OF NEW ZEALAND

SC 50/2006
[2006] NZSC 74

RONALD GERALD CLARK

v

THE QUEEN

Court: Tipping, McGrath and Anderson JJ

Counsel: C Mitchell for Applicant
A M Powell for Crown

Judgment: 26 September 2006

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Clark, has unsuccessfully appealed his breath alcohol conviction both to the High Court and then to the Court of Appeal. He seeks leave to appeal to this Court.

[2] The issue concerns the admissibility of the evidential breath test evidence. Mr Clark was handcuffed while being taken from the scene to the Takapuna Police Station. He has argued that the handcuffing constituted an arrest and was in breach of s 23(5) of the New Zealand Bill of Rights Act 1990.

[3] The District Court found there was no arrest and that the handcuffing was done for good reason. The evidence was admitted. The Judge also found that even if there had been a breach of the Bill of Rights, the evidence should nevertheless be admitted.

[4] In the High Court the Judge found that there had been an arrest but the evidence was nevertheless properly admitted. Leave was granted by the High Court to appeal to the Court of Appeal which dealt with the case by assuming, in Mr Clark's favour, that there had been an arrest. On that premise the Court found that the evidence was rightly admitted on the basis of the factual findings below that there was no connection between the breach of Mr Clark's rights and his decision to undergo the evidential breath test.

[5] Mr Clark wishes to raise in this Court effectively the same issue as that raised below. The case must, however, be regarded as concluded against him by dint of the concurrent findings of all three Courts below that there was no causative link between the availability of the impugned evidence and the (assumed) breach of the Bill of Rights.

[6] No issue of general or public importance arises and it cannot be argued that unless leave is granted a substantial miscarriage of justice may occur. It is clear that Mr Clark was handcuffed for good reason. There is no arguable ground for holding that the evidential breath test evidence should have been excluded. Mr Clark was undoubtedly driving with a breath alcohol level of 701 micrograms.

[7] His application for leave to appeal must be dismissed in terms of s 13 of the Supreme Court Act 2003.

Solicitors:
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