

IN THE SUPREME COURT OF NEW ZEALAND

**SC 70/2005
[2006] NZSC 2**

MALCOLM ALAN FRANCIS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: B S Yeoman for Appellant
K B F Hastie for Crown

Judgment: 13 February 2006

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

REASONS

[1] Malcolm Alan Francis was found guilty of manslaughter by a jury in the High Court at Wellington. His appeal to the Court of Appeal was dismissed.¹ He now seeks leave to appeal to this Court.

[2] No question of law arises on his proposed grounds. Nor is there on any basis any question of general or public importance. We have considered the factual matters raised in support of the proposition that a substantial miscarriage of justice

¹ CA186/03 judgment 7 July 2004 (McGrath, Paterson and Doogue JJ).

may have occurred or may occur unless the proposed appeal is heard. Counsel's submissions put the intended matters on which that proposition is based cogently and succinctly. These matters include allegations of prosecutorial misconduct, counsel incompetence, the effect of the appellant's failure to give evidence, failure of counsel in the Court of Appeal to follow instructions and failure on the part of the trial Judge to give a fair and balanced summing-up. In addition, there are suggestions that photographic evidence was doctored and dna analysis was misleading.

[3] The Court of Appeal fully investigated the primary complaint in that Court which related to trial counsel's conduct in the context of the appellant not having given evidence. The appellant seeks to raise the same points in this Court and others which were obviously of lesser moment in the Court of Appeal and indeed some which are not addressed in the Court of Appeal's judgment, seemingly because they were not raised or pressed in that Court. Neither singly nor cumulatively do the matters raised provide any tenable basis for concluding that a substantial miscarriage of justice may have occurred in this case or may occur if leave is declined.

[4] The appellant has failed to raise any matter justifying the grant of leave for a second appeal. His application must therefore be declined.

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