

JOHN WHAREMAKO GILLIES

v

THE QUEEN

Court: Tipping, McGrath and Anderson JJ

Counsel: N Levy for Appellant
B J Horsley for Crown

Judgment: 20 July 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Gillies seeks leave to appeal from the dismissal by the Court of Appeal of his appeal against several convictions.¹ He raises two proposed grounds relating primarily to the convictions for possession of Class A drugs for supply. The first concerns the failure of his trial counsel to apply for a change of venue. The second asserts that the present is a case which justifies this Court differing from the Court of Appeal in the application of the general principle that the disavowal by an accused

¹ *R v Gillies* CA252/05 28 March 2006.

person of a particular line of defence does not relieve the trial Judge of the obligation to direct the jury on it, if it fairly arises from the evidence.

[2] We are satisfied that neither of these proposed grounds raises any matter which qualifies for leave in terms of s 13 of the Supreme Court Act 2003. We do not consider it fairly arguable in the circumstances of this case that the lack of an application for change of venue gave rise to a miscarriage of justice. We do not consider the Court of Appeal's treatment of this ground can fairly be taken as requiring trial Courts to read down s 322(1) of the Crimes Act 1961.

[3] Nor do we consider that the decision of the Court of Appeal in the present case occasioned any material conflict of authority on the second issue. The Court of Appeal dealt with the appellant's case on an evidential basis, not on any basis of principle. It is not necessary in the interests of justice for this Court to re-examine the Court's decision in this respect. We are satisfied that the trial Judge fairly put to the jury the elements of the appellant's defence as lawfully open on the evidence.

[4] In short, no point of public or general importance arises out of the Court of Appeal's decision, nor has anything been advanced from which it could be said that a substantial miscarriage of justice has occurred or may occur unless this Court addresses the matters which the appellant wishes to raise. For these reasons the application is dismissed.

Solicitors:
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