

IN THE SUPREME COURT OF NEW ZEALAND

**SC 8/2006
[2006] NZSC 14**

EMELYSIFA JESSOP

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: T Ellis for Appellant
M D Downs for Crown

Judgment: 27 March 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Ms Jessop seeks leave to appeal against the dismissal by the Court of Appeal of her appeal against conviction and sentence of four years eight months' imprisonment on a charge of aggravated robbery. Her counsel seeks to raise a large number of grounds but he has failed to persuade us that any of them involves a question of principle or a possible miscarriage of justice. Mr Ellis makes a very general appeal to the International Convention on the Rights of the Child and to international jurisprudence on the Convention but it is not apparent how, if there had been any breach of the Convention, it could have led to unfairness in the trial in the particular case. That was certainly not demonstrated in relation to the grounds

advanced in support of the proposed appeal which, in essence, repeated those convincingly rejected by the Court of Appeal upon the facts of the case.

[2] As the Court of Appeal said, the identification process was not really an issue at the trial. There is no evidential basis for the assertion that Ms Jessop was unlawfully arrested. She herself agreed in her video interview that she was told that she was not obliged to accompany the detective to the police station and that she was free to leave. The allegation of inadequate or inappropriate performance by Ms Jessop's mother as a nominated person under s 222(4) of the Children, Young Persons and Their Families Act 1989 failed on the facts even on the basis of additional evidence permitted to be introduced in the Court of Appeal.

[3] It is also sought to argue that there has been undue delay in the hearing of the appeal. The position was unusual in that the matter involved a rehearing resulting from the Privy Council's decision in *R v Taito* [2003] 2 NZLR 577. By the time that decision was delivered Ms Jessop had completed most of the custodial portion of her sentence which had been imposed in December 1999. After that time there was a further delay until the re-hearing in the Court of Appeal at the end of last year but much the greater part of that delay was caused by the unavailability of Mr Ellis. More importantly, no prejudice has been shown to have resulted from the delay in hearing the appeal. It is simply not arguable that a remedy should be provided by way of a quashing of the conviction in the present circumstances. The Privy Council itself said in *Taito* that the Court of Appeal should not be troubled by such an argument upon a rehearing. Obviously if a reduction in sentence might in some circumstances be an appropriate remedy – a matter which we leave open – that would be of no benefit to Ms Jessop.

[4] Mr Ellis was disposed to renew in this Court the challenge he made to the membership of the division of the Court of Appeal which sat on the rehearing of the appeal. He would contend that the appointment of a High Court Judge to sit on the appeal was unlawful. This contention is hopeless in the face of the statutory authorisation in s 58A of the Judicature Act 1908 for the assignment of High Court Judges to divisions of the Court of Appeal and the statement in s 58G of that Act that the fact that a Judge of the High Court acts as a Judge of the Court of Appeal is

conclusive evidence of the Judge's authority to do so and that no judgment or determination given or made by the Court of Appeal while the Judge so acts may be questioned on the ground that the occasion for the Judge so acting had not arisen or had ceased to exist. It should also be noted that since the judgment below was given the Privy Council has in a devolution appeal from Scotland rejected the view that the use of temporary Judges is contrary to the European Convention requirement for an independent and impartial tribunal.¹

Solicitors:
Crown Law Office, Wellington

¹ *Kearney v Her Majesty's Advocate* [2006] UKPC D1.