IN THE SUPREME COURT OF NEW ZEALAND

SC 57/2006
[2006] NZSC 80

NIGEL NIA NIA WILSON

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: T M Petherick for Applicant
M Downs for Crown

Judgment: 2 October 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Wilson applies for leave to appeal against the dismissal by the Court of Appeal of his appeal to that Court against his conviction by a jury in the District Court on a blood alcohol charge. The circumstances were that evidence was given of blood level tests, by an ESR scientist and by a private analyst engaged on behalf of Mr Wilson. Their tests had produced different results. The ESR test reading was 127 milligrams of alcohol per 100 millilitres of blood and that of the private analyst 149 milligrams. In those circumstances the reliability of the test results was in issue. The trial Judge took the view that the applicant had not sufficiently met an

evidentiary threshold for the question of reliability to be put to the jury. The Court of Appeal disagreed, deciding that the jury should have been directed to decide whether the Crown had proved that the proportion of alcohol in Mr Wilson's blood exceeded the legal limit of 80 milligrams. The Court of Appeal then applied the proviso under s 385(1) of the Crimes Act and decided it was satisfied that the jury would have undoubtedly convicted the accused if the issue had been left to them. The appeal was consequently dismissed.

[2] Mr Wilson wishes to raise in this Court the question of whether the Court of Appeal should have applied the proviso. He argues that application of the proviso in this case circumvents the right of the accused to challenge the blood analysis result. He also contends that a matter of public importance is involved because of the large number of excess breath or blood alcohol matters that are dealt with by the criminal justice system. He finally submits that there may be a substantial miscarriage of justice in that there is no way of ascertaining whether either or both of the results were correct or that the evidence against him was reliable.

[3] In our view the Court of Appeal was right to conclude that the notion that both results were unreliable was speculative and unsupported by the evidence. Contrary to the submission advanced for Mr Wilson, it was highly relevant to the questions before the Court of Appeal and in particular to whether a miscarriage of justice may have occurred that both sets of test results were significantly above the legal limit. There is no sufficient prospect of success of Mr Wilson's contention that the proviso should not have been applied to warrant a further appeal to this Court. Nor do we accept that an issue of general or public importance arises in this case.

[4] The application for leave to appeal must accordingly be dismissed.

Solicitors:
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