IN THE SUPREME COURT OF NEW ZEALAND

SC 74/2006
[2006] NZSC 101

RICARDO GENOVESE

v

THE QUEEN

Court: Blanchard, McGrath and Anderson JJ

Counsel: P T R Heaslip for Appellant
A Markham for Crown

Judgment: 28 November 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal against conviction in respect of an aggravated robbery and the theft of a motorcycle, and against sentence on those counts and several other counts of theft, aggravated robbery and unlawful possession of a firearm. The applicant was tried and sentenced and had an appeal to the Court of Appeal dismissed in 1999. His appeal to the Court of Appeal was reheard following the decision of the Privy Council in *R v Taito* [2003] 3 NZLR 577, and was again dismissed in a judgment given in September 2005. This application was

filed on 13 September 2006, 11 months later than the time for applying stipulated by r 11(1) of the Supreme Court Rules. Notwithstanding its lateness we have considered the substance of the leave application.

[2] The first ground advanced by counsel for the applicant is that the trial Judge erred in refusing or limiting leave for the applicant to continue cross-examination or call witnesses, and failed appropriately to oversee the applicant, who was self-represented for much of the trial. That ground falls to be examined in circumstances where, as the Court of Appeal found after hearing evidence from the applicant and from counsel who represented him for part of the trial, the applicant deliberately engineered the dismissal of his counsel in order to bring about a mistrial. That conclusion is supported by other conduct on the part of the applicant in respect of a substituted counsel, whose instructions led to his seeking, and obtaining, leave to withdraw. These instructions included calling up to 35 witnesses, apparently for the purpose of dragging out the trial for a further month because it would then coincide with an APEC conference. Why the applicant should seek that coincidence is a matter of speculation but could only be for an improper, collateral purpose.

[3] Several of the grounds advanced on behalf of the applicant fall to be assessed in light of his cynical manipulation of the trial process. They include complaints relating to the disadvantage of self-representation, which are factually unsubstantiated in any event. The applicant also complains that the High Court erred in allowing one of the prosecuting counsel to continue acting when he had represented the applicant in other charges, including aggravated robbery, 13 years and more previously. This matter was first raised five days into the trial. No explanation is given for, nor any attempt made to justify, what is said to be the applicant's belief that he was prejudiced by prosecuting counsel's prior association. Moreover the trial Judge ruled that such counsel had never acted for the applicant. This point was not raised in the Court of Appeal. We see no merit in it now.

[4] The applicant complains about non-discovery of certain security video tapes on the basis that they may have shown one of the Crown witnesses at the site of the aggravated robbery of an art gallery. This speculative assertion is wholly irrelevant to the applicant's case that the robbery was committed by some other person

altogether. Another complaint is that the summing up was unbalanced. This ground was not raised in the Court of Appeal and it is not a matter of such general or public importance as to warrant consideration by this Court.

[5] The only submission made in respect of sentencing is that the High Court erred in failing to ensure that the applicant was represented at his sentencing. That predated s 30 of the Sentencing Act 2002 and it is not a matter of any present general or public importance. It was not raised as an issue in the Court of Appeal and is not apt for consideration by this Court.

[6] We have not been persuaded that any ground or any combination of grounds raises a matter of general or public importance, nor that a substantial miscarriage of justice has or may have occurred. The application is dismissed.

Solicitors:
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