IN THE SUPREME COURT OF NEW ZEALAND

SC 92/2006
[2007] NZSC 13

CHRISTOPHER JOHN MANAWATU

v

THE QUEEN

Court: Elias CJ, McGrath and Anderson JJ

Counsel: T Ellis for Applicant
B J Horsley for Crown

Judgment: 8 March 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Manawatu seeks leave to appeal against a judgment of the Court of Appeal delivered on 10 November 2006 which dismissed his appeal against two sentences of imprisonment imposed in the High Court in 1995 and 1998. The former sentence was to three years' imprisonment for aggravated robbery with a concurrent term of six months' imprisonment for driving while disqualified. The latter sentence was to eight years' imprisonment for manslaughter, with concurrent terms of four

years' imprisonment for reckless driving and three months' imprisonment for excess blood alcohol.

[2] The Court of Appeal dismissed appeals against these sentences in 1996 and 1999, deciding them under the procedure found to be invalid by the Privy Council in *R v Taito*.[1] Mr Manawatu became entitled to, and requested, a fresh hearing of his appeals on 29 March 2005. That hearing took place on 31 July 2006 and resulted in the judgment delivered on 10 November 2006.

[3] Mr Manawatu seeks leave to appeal to this Court on five grounds. Three of them involve complaints concerning the system for addressing criminal appeals in the Court of Appeal. The first concerns s 398 of the Crimes Act 1961 which restricts the delivery of separate judgments, and thus dissenting judgments, in criminal appeals in the Court of Appeal. The Court of Appeal is said to have refused to make a declaration concerning the inconsistency of this provision with ss 14, 25(a) and 25(h) of the New Zealand Bill of Rights Act and arts 14(1), 19(2) and 26 of the International Covenant on Civil and Political Rights. In essence the point is that s 398 is inconsistent with freedom of expression, the right to a fair hearing by an independent and impartial court, and the right to appeal against sentence.

[4] The second complaint concerns the regime for determination of criminal appeals. Counsel's written submissions focus on the way the Criminal Appeal Division of the Court of Appeal operates. In that Division a permanent Judge of the Court of Appeal will generally sit with two High Court Judges to determine allocated criminal appeals. The criticism of s 398 of the Crimes Act is joined in with this ground.

[5] Another complaint concerns what is said to be a discriminatory approach to criminal appeals in the Court of Appeal. It relies on the very small number of dissenting judgments in criminal cases in relation to those in civil cases. Obviously it is linked with the complaint concerning s 398.

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1 [2003] 3 NZLR 577.

[6] None of these grounds relates to the appropriateness of the sentences imposed on Mr Manawatu in 1995 and 1998. The application rather seeks to bring a systemic challenge to aspects of the system for determining criminal appeals in the Court of Appeal. The challenge is concerned with the policy of the legislation, in particular in relation to the Criminal Appeal Division and present restrictions on delivery of separate judgments in the Court. It is not suggested that it is open to the Court to interpret the legislation in a way that would be more consistent with rights protected by the Bill of Rights and the Covenant. Nor is it suggested that the Court of Appeal is acting outside of what the legislation mandates.

[7] In these circumstances the grounds concerned do not invoke the jurisdiction of this Court. We do not consider that it is necessary in the interests of justice for this Court to hear and determine the appeal in respect of these three grounds.

[8] Another ground of appeal is said to raise an issue concerning the independence and partiality of the Court which decided Mr Manawatu's appeal in 2006. A member of the Court indicated, during the hearing, that he had sought an amendment to the Crimes Act which would remove the restrictions in s 398. The applicant's complaint appears to be that this action was not disclosed to the applicant's counsel prior to the hearing. It is suggested that the Court effectively suspended s 398. We see no possible basis for the contention that what the Judge did affected the appellate process in any manner detrimental to the applicant. There is accordingly no basis for giving leave to appeal on this ground.

[9] That leaves the final ground for which leave is sought. It is that the Court of Appeal should have reduced the sentence on Mr Manawatu on account of undue delay in the hearing of his appeal. The ground of appeal is based on a decision of the Privy Council in *Mills v Her Majesty's Advocate*.[2]

[10] The Court of Appeal accepted that a reduction in sentence might be an appropriate remedy for a breach of rights in the determination of a criminal appeal. It decided, however, that it did not need to determine the point in the instant case because it was satisfied that there was no proper basis for granting that remedy to

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2 [2002] UKPC D2.

Mr Manawatu. There was no evidence of any prejudice to him arising from the delay in the hearing of the appeal, a factor which distinguished his case from that of Mr Mills.

[11] The particular delay in this case is that between the request for a fresh hearing on 29 March 2005 and the determination of the appeal on 10 November 2006. That delay must, however, be considered having regard to the lengthy earlier history of the case, including the fact that the original appeals were brought in 1995 and 1998.

[12] The Court of Appeal recognised that, in an appropriate case, delay in the determination of an appeal might have prejudicial consequences for an appellant which had a bearing on whether an otherwise appropriate sentence should be reduced. Importantly for present purposes, however, there were no such consequences in this case. Nothing in the submissions made to us persuades us that it is arguable that this conclusion was incorrect. It is not suggested that the delay has impacted adversely on Mr Manawatu. We are satisfied that there is no proper basis of fact to raise the issue of whether justice requires the sentences imposed in 1995 and 1998 to be reduced on account of delay.

[13] For these reasons it is not necessary in the interests of justice for the Court to hear and determine the appeal and the application for leave to appeal is dismissed.

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