

IN THE SUPREME COURT OF NEW ZEALAND

**SC 10/2007
[2007] NZSC 29**

PAUL BRUCE EMIRALI

v

THE QUEEN

Court: Blanchard, Tipping and Anderson JJ

Counsel: R M Lithgow for Applicant
M D Downs for Crown

Judgment: 2 May 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal from a decision of the Court of Appeal declining to hold manifestly excessive a sentence of seven years imprisonment passed upon him in the High Court for conspiring to supply the Class A controlled drug cocaine. According to counsel for the applicant the point of general importance said to arise in this case is that the Court of Appeal held that “sentencing for a Class A conspiracy is done by reference to Class A completed offences, notwithstanding the vast disparity in maximum sentence”. We take this as suggesting that the Court of Appeal failed to have regard or proper regard to the provisions of s 8(b) of the

Sentencing Act 2000. The applicant also contends that moral culpability should be regarded as irrelevant in this kind of offending. This proposition is advanced as a rejoinder to the Court of Appeal's observation that "in broad moral terms [the appellant's] culpability is effectively that of someone found guilty of possession for supply".

[2] The applicant's counsel seeks an oral hearing of the application if it is not to be granted on the papers. We decline that request, being satisfied that the application can properly be dealt with on the papers.

[3] Having considered the circumstances of this case and the submissions on both sides, we are of the view that there is no realistic prospect of the proposed appeal succeeding. The sentence of seven years imprisonment was clearly within an appropriate range. Albeit the Court of Appeal did not expressly refer to s 8(b) we can discern nothing in its reasons or in the way its reasons were expressed to justify the grant of leave for a further review of this applicant's sentence.

[4] No material matter of general or public importance has been identified, nor is there any appearance of a substantial miscarriage of justice. For these reasons the application must be dismissed.

Solicitors:
Crown Law Office, Wellington