

**JULE PATRICK BURNS**

v

**THE QUEEN**

Court: McGrath, Anderson and Wilson JJ

Counsel: D J Taffs for Applicant  
F E Guy Kidd for Crown

Judgment: 5 March 2008

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] Having unsuccessfully appealed to the Court of Appeal against his conviction on a charge of murder, the applicant seeks leave to appeal to this Court on two grounds.

[2] First, the applicant claims, the verdict was unreasonable or cannot be supported by the evidence. The Court of Appeal concluded however that there was a “more than adequate” evidential basis for the verdict, including an alleged admission by the applicant. The submissions for the applicant simply restate those made to the

Court of Appeal. They go no way to demonstrating that that Court erred in its conclusion.

[3] Secondly, the applicant contends that DNA evidence linking him to the victim was wrongly admitted. There are major difficulties in the way of this submission. Defence counsel at trial gave evidence to the Court of Appeal that the applicant had consistently wanted the Police to have a DNA sample from him to clarify whether the prostitute he admitted to having sex with that evening was the deceased. He was able to derive some support from the result of the DNA analysis by portraying himself as co-operating with the Police.

[4] Even if the applicant had refused a second sample, after the wrong consent form had been used when the first sample was obtained, the Police would in all probability have obtained a sample compulsorily.

[5] In reality, the applicant is asking this Court to entertain a second general appeal. As has been made clear in decisions such as *Mankelow v R* [2007] NZSC 57, the Court will not do so unless it appears that a miscarriage of justice has occurred, which is not the position here.

[6] The application does not raise any question of general or public importance.

[7] Having failed to meet any of the criteria prescribed in s 13(2) of the Supreme Court Act 2003, the application is therefore dismissed.

Solicitors:  
Crown Law, Wellington