

DUANE CHARLES BRENDAN PAUL BURGESS

v

THE QUEEN

Court: Elias CJ, McGrath and Wilson JJ

Counsel: R G Glover for Applicant
S B Edwards for Crown

Judgment: 14 October 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant appealed unsuccessfully to the Court of Appeal¹ against his conviction, after being found guilty by a jury, on charges of detaining the complainant without her consent with intent to have sexual connection and sexual violation by unlawful sexual connection. He now seeks leave to appeal to this Court on the grounds that the verdict was unreasonable and has resulted in a miscarriage of justice.

¹ [2007] NZCA 274.

[2] The applicant has attempted to establish these grounds by an analysis of the evidence at trial, supplemented by inquiries by his present counsel (not his trial counsel), which purports to demonstrate that the applicant could not have been at the scene of the offending at the time of the offending.

[3] The analysis does not demonstrate that proposition. It relies on the evidence of the police officer in charge of the prosecution that it took him 12 minutes to walk between the tavern at which the applicant had been filmed on security cameras and the bus stop where the offending had occurred, and the assertion of counsel that it had taken him 16 minutes to walk that route “at a brisk pace”. The complainant did however give evidence that the offender had run from the scene and, if the applicant were the attacker, he could obviously have run all or part of the way to the tavern and reached it much more quickly than if walking.

[4] Whether the applicant could have been and was the offender were very much issues for the jury. It was entitled to conclude that he was. It is not the role of a final Court to embark upon a review of the strength of the evidence when the Court of Appeal has already given the issues careful consideration.²

[5] It follows that the verdict was not unreasonable and it does not appear that a miscarriage of justice has occurred. The application for leave to appeal is therefore dismissed.

Solicitors:
Crown Law, Wellington

² *Clifton v R* [2005] NZSC 3.