

GEOFFREY MARTIN SMITH

v

THE QUEEN

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: D G Hayes for Applicant
S J Mount for Crown

Judgment: 12 December 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal¹ dismissing his appeal against his conviction on 94 counts of failing to file income tax and GST returns and pay PAYE. He wishes to advance on appeal the propositions of law that:

- conviction on charges of not filing income tax returns requires proof of the amount of tax owed;

¹ [2008] NZCA 371.

- conviction on charges of misappropriation of PAYE payments requires proof of the amount of PAYE payable;
- s 109 of the Tax Administration Act 1994 does not mean what it says – the section states, in material part, that except as provided in the Act, “no disputable decision may be disputed in a Court ... on any ground whatsoever”.

[2] The first issue turns on the construction of s 143B(1)(f) of the Tax Administration Act which requires that there be proved, in addition to the failure to file a return, an intention “to evade the assessment or payment of tax by the person or any other person under a tax law”. These words do not require, expressly or by implication, proof that a specific amount of tax is owed; all that must be established is an intention to evade assessment or payment.

[3] The second question arises out of s 143A(1)(d) of the Act, which makes it an offence to apply PAYE “for any purpose other than in payment to the Commissioner”. Again, there is no possible basis for reading into these words the requirement that a specific amount of PAYE has been misappropriated.

[4] The third proposed argument is equally hopeless. There is no justification for giving the words of s 109 other than their plain meaning.

[5] In summary, the applicant seeks leave to advance three arguments, all of which are untenable. There is no appearance of a miscarriage. The application is therefore dismissed.

Solicitors:
Brook Law, Hamilton for Applicant
Crown Law, Wellington