

IN THE SUPREME COURT OF NEW ZEALAND

**SC 12/2009
[2009] NZSC 17**

TE INGOA TURAKI

v

THE QUEEN

Court: Elias CJ, McGrath and Wilson JJ

Counsel: C W J Stevenson for Applicant
N P Chisnall for Crown

Judgment: 9 March 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

[1] The applicant was convicted of murder at his third trial. He had previously been convicted twice, at separate trials, but the verdicts in each case were set aside on appeal by the Court of Appeal on the ground of misdirection by the trial Judge.

[2] The appeal to the Court of Appeal against conviction at his third trial was dismissed and the applicant now seeks leave to appeal to this Court.

[3] The ground for the proposed appeal is that the Judge did not adequately deal with the question of murderous intent. In particular counsel says that a statement by

the applicant that he had been aiming at the victim's back, when he delivered two blows to his head with a steering wheel lock, was not reflected in the summing up.

[4] This argument was put to the Court of Appeal which held that the applicant's defence of lack of murderous intent was sufficiently addressed in summing up through the trial Judge's emphasis on the fact that Mr Turaki had said the victim was moving when Mr Turaki struck him. We see no arguable basis for saying that this passage in the summing up failed to adequately identify and remind the jury of this defence.

[5] The Court of Appeal has fully dealt with this and other points of appeal raised in that Court. In those circumstances the application raises no point of public importance or possible miscarriage of justice which would warrant granting leave for an appeal to this Court.

[6] The application is accordingly dismissed.

Solicitors:
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