

IN THE SUPREME COURT OF NEW ZEALAND

**SC 63/2009
[2009] NZSC 94**

KOBINA BERTUM DADZIE

v

THE QUEEN

Court: Blanchard, Tipping and Wilson JJ

Counsel: P T R Heaslip for Applicant

Judgment: 26 August 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was unrepresented in the Court of Appeal where his appeal against convictions for driving while disqualified and refusing to give a blood specimen contrary to s 60 of the Land Transport Act 1998 was dismissed.

[2] The only grounds advanced in seeking leave to appeal to this Court concern alleged breaches of the New Zealand Bill of Rights Act 1990 relating to that absence of representation. In another case it may be appropriate for this Court to consider issues of the kind now sought to be raised. It will rarely be appropriate, however, for the Court to embark on the determination of legal issues in the absence of a realistic substratum of fact. In this case it is quite apparent from the trial transcript that the

appeal to the Court of Appeal never had any prospect of success and it is therefore understandable that legal aid was not forthcoming for a futile appeal.

[3] The Crown case at trial was extremely strong. The defence was that all the Crown witnesses were untruthful and/or that the applicant had been mistaken for another man who, it was said, was actually the driver of the vehicle in which the applicant was found by the police asleep and in an intoxicated state. That other man did give defence evidence in which he said that he was the driver but his testimony was obviously disbelieved by the jury, and understandably so. The account he gave was implausible, as was that given by the applicant. Significantly, the police inspector who came to the scene testified that the applicant admitted to him that he had driven the vehicle in question. Neither the police inspector nor the other Crown witnesses had seen any other man.

Solicitors:
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