IN THE SUPREME COURT OF NEW ZEALAND

SC 8/2009
[2009] NZSC 21

ARSHAD MAHMOOD CHATHA

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: T Ellis for Applicant
N P Chisnall for Crown

Judgment: 24 March 2009

JUDGMENT OF THE COURT

A The application for leave to amend the grounds of appeal is dismissed.

B The application for leave to appeal is dismissed.

REASONS

[1] The history of this case demonstrates that Mr Chatha was throughout trying to manipulate the Crown's attempt to bring him to trial on charges relating to immigration fraud, on which he was eventually convicted in the High Court. The Court of Appeal has given his complaints careful consideration in a lengthy judgment and has dismissed his appeal both against conviction and sentence. It obviously did not accept, for good reason, Mr Chatha's assertions concerning the

conditions of his imprisonment during the trial. This is the only matter relating to the conduct of the trial which is the subject of any submission, as opposed to bare assertion, in the present application. The Court of Appeal did not accept that Mr Chatha was unable to arrange for his wife or parents to bring his medication or documentation to Wellington. Mr Chatha's statements do not appear to be the subject of any supporting evidence. In view of the history of Mr Chatha's behaviour, the Court of Appeal was entitled to reject Mr Chatha's claims. His factual assertions are obviously unsuited to a second appeal.

[2] The argument about the failure of MacKenzie J to deal with a recusal application must also fail. The Court of Appeal rightly said that a failure to deal with such an application does not invalidate the ensuing trial in the absence of a proper basis for recusal and, significantly, Mr Ellis did not seek to argue in the Court of Appeal that his client's application in the High Court should have succeeded.

[3] The proposed argument concerning jury vetting is now overtaken by the dismissal by this Court of the appeal in *R v Gordon-Smith*.[1]

[4] The bulk of the written submissions is taken up with the advancing of arguments concerning the quite hopeless applications for recusal of members of the Court of Appeal which were made in that Court and properly rejected. Some of these deal with the procedures adopted in the particular case by the Court of Appeal. We need refer only to the core argument that Miller J should not have sat on the appeal because both he and the trial Judge are based in Wellington. It is not, however, a seriously arguable proposition that a High Court Judge sitting in the Court of Appeal would fail to approach his or her task independently and would unconsciously be biased against reversing the result of a trial presided over by another High Court Judge because they would encounter one another in the High Court common room. The hypothetical observer, whose perception is used to test questions of apparent bias, would be aware of the terms of the judicial oath and of the fact that High Court Judges are frequently called upon to evaluate the work of

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1 [2009] NZSC 21.

their peers when sitting on appeal and on other occasions. The proposed argument is novel and unsupported by any evidence suggesting such a tendency on the part of High Court Judges sitting as members of the Court of Appeal as specifically authorised by the Judicature Act 1908.

[5] Counsel also seeks to renew untenable arguments previously made by him and rejected both by the Court of Appeal and by this Court in *R v Jessop*[2] and precluded by s 58G of the Judicature Act.

[6] The sentence appeal is without merit for the reasons given by the Court of Appeal.

[7] The applicant sought leave to amend the grounds of appeal. The additional proposed grounds relate to errors of law said to have been made by the Court of Appeal in not rejecting an argument that the applicant's counsel was pursuing a personal campaign and that the Court's failure to do so tacitly encouraged a further such argument in the Crown's written submissions in this Court. However, the matter raised by counsel plainly has had no bearing on the result in the Court of Appeal. Nor does it influence this Court. The application therefore concerns a matter which, if it has any basis, is collateral only and cannot justify a second appeal which is devoid of merit. It too is dismissed.

Solicitors:
Crown Law Office, Wellington

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2 [2006] NZSC 14.