

IN THE SUPREME COURT OF NEW ZEALAND

**SC 86/2008
[2009] NZSC 27**

FRANK ONYEBU AROH

v

THE QUEEN

Court: Elias CJ, McGrath and Wilson JJ

Counsel: R M Mansfield for Applicant
M D Downs for Crown

Judgment: 30 March 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted on charges of importing cocaine and heroin and trying to export heroin. He seeks leave to appeal on various grounds advanced in submissions made by his counsel and earlier submissions he had prepared himself.

[2] The first ground is that the trial Judge misdirected the jury in relation to proof of the applicant's knowledge that certain packages he collected contained class A drugs. The direction indicated that the applicant could be convicted if it was proved that he was "wilfully blind" to that fact. The Court of Appeal accepted that the

Judge's direction was inadequate but was satisfied that this had not resulted in a miscarriage of justice. The evidence of actual knowledge on the part of the applicant had been overwhelming. It is sufficient for us to say of this proposed ground of appeal that we are satisfied that it was properly rejected on this basis by the Court of Appeal and that accordingly no miscarriage of justice arises which would warrant a second appeal on the point to this Court.

[3] A second ground advanced by counsel concerns an email sent to the applicant by a third party complaining that another person has not been paid what was owing by the applicant in an unspecified transaction. The email was hearsay but that was not noticed by counsel or the Judge at the trial and it became part of the evidence. The Court of Appeal decided that in the context of the extensive properly admitted evidence of intercepted conversations and emails before the jury, there was no concern that this particular email would have given rise to a miscarriage of justice. We too are satisfied that it is not arguable that the admission of the email could have led to a substantial miscarriage of justice that would justify a second appeal, this being the test in s 13 of the Supreme Court Act 2003.

[4] Various other matters concerning the trial were raised in the applicant's own earlier submissions but we are also satisfied that none of these factors would amount to a miscarriage of justice or otherwise make it necessary in the interests of justice that the Court give leave for a further appeal.

[5] The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington