IN THE SUPREME COURT OF NEW ZEALAND

SC 76/2010
[2010] NZSC 130

SIALOFI NEE AH KEE PATEA

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: Applicant in person
K A L Bicknell for Crown

Judgment: 3 November 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty by a jury of assault with intent to injure. The primary defence, necessarily rejected by the jury, was that the applicant had acted in self-defence. A subsequent appeal to the Court of Appeal was dismissed. [1]

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1 *Patea v R* [2010] NZCA 338.

[2] The applicant's partner at the time of the alleged assault was Mr David Young. He had previously been the partner of the complainant. Mr Young has assisted the applicant in relation to the appeal to the Court of Appeal. Before the hearing, Mr Young contended that two members of the panel scheduled to hear the case should disqualify themselves on the basis that they "have in the past neglected to observe everyone's rights, obligations or interests as is provided by law". In the case of one of the Judges, Mr Young also noted that he had a current complaint with the Judicial Conduct Commissioner. The presiding Judge responded with a minute which recorded that these grounds did not justify disqualification and would not have done so even if Mr Young was a party to the case, which of course he was not.

[3] When the case was called there was no appearance for Ms Patea. Because she did not participate in the hearing of the appeal, the Court of Appeal was required to deal with the case on the basis of what was in the notice of appeal and submissions advanced by the Crown.

[4] The formal application for leave to appeal to this Court was based simply on the contention that the two Judges in question ought not to have heard the appeal. No adequate basis for this contention was revealed in the material filed on behalf of the applicant and we see nothing in this point.

[5] In the submissions lodged in support of the application for leave to appeal, the applicant has raised other possible grounds of appeal, as to the way in which the Judge summed up to the jury on self-defence, what the applicant claims were factual errors in the Court of Appeal judgment and a very generalised attack on the way in which defence counsel addressed the jury (asserting that he failed to highlight the relevant circumstances as the applicant believed them to be).

[6] The submissions mis-describe the way in which the Judge summed up to the jury. As well, they proceed on the incorrect legal assumption that the right to use force in self-defence is not subject to constraints of reasonableness. We see no tenable complaint as to the summing up.

[7] It is true that in some respects the judgment of the Court of Appeal contains what are, or may be, factual errors. By way of example, the judgment indicates that the incident which was the subject of the charge occurred outside the applicant's home. In fact, it occurred outside a workshop which Mr Young used. Other alleged errors relate to whether the applicant was living with Mr Young at the time and as to the detail of the custodial arrangements between Mr Young and the complainant. In context, nothing turns on these actual or alleged errors.

[8] The jury had heard evidence from the complainant, the applicant and an independent witness and also had the advantage of seeing and hearing the applicant's video interview with the police on the day of the incident. As a result of all that material and the addresses of counsel, the jury could have been under no misapprehension as to what the applicant claimed as to the relevant circumstances. There is nothing in this proposed ground of appeal.

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