

**DANIEL GEOFFREY BRAZENDALE
EMILY-JADE BRAZENDALE
NICKI EVA BRAZENDALE
MICHELLE GWENDOLYN BRAZENDALE**

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: P J Kaye for Applicants
B F Fenton for Crown

Judgment: 5 December 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The proposed appeal concerns an order for forfeiture of a house, where Mr Brazendale lived, used for cannabis cultivation. It does not raise any point of public or general importance. The issues are essentially factual: whether the cultivation was for a commercial purpose (on which the applicants' argument is quite hopeless); whether forfeiture would cause undue hardship to Mr Brazendale or to his daughters (on which the argument is weak because he owns another house and the daughters' connection with the house is now somewhat distant); and that total forfeiture was a disproportionate response.

[2] This last argument would have to overcome the fact that because there was a forfeiture of the house, Mr Brazendale totally escaped imprisonment for a not insubstantial commercial cultivation of cannabis. Between the sentencing and the decision of the Court of Appeal,¹ that Court had decided in *Elliot* that the legislation enacted in 2009 altered the previous law and enabled a forfeiture of part of the property.² The Court accordingly considered whether it should substitute partial forfeiture for total forfeiture and decided against it. That was, again, based on its factual assessment rather than any legal principle. We are not persuaded that further review of this aspect of the Court of Appeal's decision is required. There is no appearance of any substantial miscarriage of justice in the level of forfeiture, when the value of the unencumbered property is considered against its unlawful use by Mr Brazendale and the fact that he is suffering no penalty other than the forfeiture.

Solicitors:
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¹ *Brazendale v R* [2011] NZCA 494.

² *Elliot v R* [2011] NZCA 386.