

CHRISTOPHER IAN FREAKLEY

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: Applicant in person
M D Downs for Crown

Judgment: 7 March 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the dismissal by the Court of Appeal of his sentence appeal.¹ The sentence in question was imposed for offences which involved the presentation of a firearm at the home of his former partner and in respect of which the applicant had been found guilty by a jury. He had been found not guilty on an associated charge of aggravated burglary in relation to the home. In sentencing the applicant, the trial Judge found as a fact that the applicant had taken the firearm to the house and treated this as an aggravating factor. The applicant wishes to argue that the Judge's finding was inconsistent with the verdict of not guilty on the aggravated burglary charge and, in any event, wrong.

¹ *Freakley v R* [2010] NZCA 497.

[2] When sentencing the applicant, the trial Judge explained why his finding that the applicant had taken the gun to the house was not inconsistent with his acquittal on the aggravated burglary count:²

I am satisfied that the jury acquitted you on the first charge because they must have been unsure about whether or not you had permission to enter and that was a perfectly reasonable view for them to take on the evidence before the Court.

There is nothing in the applicant's submissions to suggest that this view was not properly open to the Judge.

[3] The argument that the finding was wrong is based on a statement to the police by a person who saw the applicant enter the complainant's house as to the type of bag he was carrying (which she described as a "blue cooler bag") and a blue chiller bag found at the victim's address after the incident. The applicant maintains that this latter bag is too small to contain the firearm. The person who made the statement has not been asked at the time to say whether the blue chiller bag in question was the bag she saw. She did not give evidence and neither did the appellant. On the other hand there was an evidential basis for the conclusion of the trial judge (based on what the complainant said at trial). This issue was closely examined by the Court of Appeal and its reasons for dismissing the argument³ are unassailable.

Solicitors:
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² *R v Freakley* DC Hamilton CRI-2008-070-2070, 18 December 2009 at [5].

³ See [12]–[19].