

ALEX KWONG WONG

v

THE QUEEN

Court: Tipping, McGrath and William Young JJ

Counsel: F C Deliu for Applicant
M D Downs for Crown

Judgment: 11 March 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal directly to this Court against convictions entered in the High Court on drugs charges following his retrial on those charges in March 2009. An appeal to the Court of Appeal following the retrial was dismissed by that Court.¹ The applicant's subsequent application for leave to appeal against the Court of Appeal's judgment was dismissed by this Court.²

[2] The present application to this Court is based on a different ground to those addressed in the earlier appeals. The applicant's contention is that he was not

¹ *R v Wong* [2009] NZCA 440.

² *Wong v R* [2010] NZSC 14.

provided with proper interpretation assistance at his retrial. He wishes to raise questions concerning the qualifications of the interpreter allocated to him, the failure to interpret large parts of the trial and failure to provide a simultaneous interpretation of other parts. The applicant has filed an affidavit in support of these contentions in which he also gives reasons for the delay in advancing this ground of appeal.

[3] Counsel for the applicant, Mr Deliu, also seeks from the Court an order for the release of an audio recording of the retrial. We are informed this record is in the possession of the High Court but that applications for its release have been refused by the Judge who presided at the retrial.

[4] Counsel submits that the applicant cannot be expected to make a further request of the High Court for the audio recording. He also submits that the Court of Appeal is functus officio. We do not accept that the latter proposition is correct, although the applicant would have to persuade the Court of Appeal that the case falls within the inherent power of the Court of Appeal to revisit its decisions in exceptional circumstances when required by the interests of justice.³ It may also be the case that the decision to refuse the applicant the recording of the trial may be challenged on appeal, although we have not been made aware sufficiently of the circumstances of the refusal of that request to express an opinion on that matter.

[5] It is, however, plain that the application for leave to appeal is not properly brought before this Court as a direct appeal from the High Court as there are no exceptional circumstances that would justify that course in terms of s 14 of the Supreme Court Act 2003.

[6] The application for leave to appeal and the interlocutory application are accordingly both dismissed.

Solicitors:
Crown Law Office, Wellington

³ *R v Smith* [2003] 3 NZLR 617 (CA).