

KERRY JOHN WILLIAMS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: H D M Lawry for Applicant
L C Preston for Crown

Judgment: 9 June 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This application for leave to appeal against a conviction for drug offending is brought many years out of time. The Court of Appeal decision was delivered on 19 May 2005.¹ No satisfactory explanation is given for the delay. Moreover, the proposed appeal is lacking in merit. It is directed to the circumstance that the applicant's trial counsel withdrew late in the trial and he was thereafter unrepresented. He seeks to take advantage of this Court's decision in *R v Condon*.² As it happens, however, the applicant's case was one of those examined by this Court

¹ *R v Pue* CA78/04, 19 May 2005.

² *R v Condon* [2006] NZSC 62, [2007] 1 NZLR 300.

in *Condon*³ and the Court saw nothing wrong with the way in which the Court of Appeal had disposed of the matter.

[2] The circumstance in which trial counsel withdrew was that through counsel, who said he had written instructions on the point, Mr Williams advised the Court that he had decided to plead guilty to one of the charges. As his defence was entirely that he had not been the person speaking on interception tapes recording conversations about what was undoubtedly drug dealing, it seemed to his counsel that by indicating a plea of guilty he was acknowledging the voice to be his. Because the only defence was the same for all charges he was really acknowledging guilt on all charges. But then when the Court next sat Mr Williams had decided that he would not plead guilty. Counsel felt that he could not carry on in these circumstances. Nor was the Judge willing to grant more than a fairly short adjournment because of the disruption this would cause to the trial arising out of a situation which Mr Williams had created. (When the trial went ahead he did not cross-examine the remaining Crown witnesses, no doubt, as the Court of Appeal said, because he did not want the jury to hear his voice).

[3] There is no appearance of any unfairness or other substantial miscarriage of justice and we do not grant leave to appeal out of time.

Solicitors:
Duff Lawry Richmond Lawyers Ltd, Auckland for Applicant
Crown Law Office, Wellington

³ At [72] and [80].