IN THE SUPREME COURT OF NEW ZEALAND

SC 53/2011
[2011] NZSC 60

SHANE ANDREW ELLIS

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: T Ellis for Applicant
M F Laracy and B F Fenton for Respondent

Judgment: 2 June 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted after a jury trial in the High Court at Wellington in 2009 of offences involving importation of methamphetamine. He lived in Featherston, although it seems that some at least of the offending occurred in Wellington.

[2] The only ground on which he wishes to pursue an appeal to this Court against the Court of Appeal's dismissal of his appeal against conviction[1] is that his trial was unfair "as it was conducted contrary to s 25 of the New Zealand Bill of Rights Act 1990 and Magna Carta (1297)" and three statutory re-enactments thereof, the

1 *Ellis v R* [2011] NZCA 90.

Statutes of Westminster the First 1275, as well as arts 14 and 20 of the International Covenant on Civil and Political Rights.

[3] It is submitted that the jury was "unrepresentative of the population" and not a jury of the applicant's peers. This is said to be because Featherston is some 64 kilometres from Wellington. The jury pool was, in accordance with s 5(3) of the Juries Act 1981, drawn from a district which included "all places within 30 kilometres by the most practicable route from the courthouse" in Wellington.[2] It is said that 53 per cent of the population live more than 30 kilometres from the nearest High Court.[3]

[4] The applicant's complaint is that no one from Featherston could have been on his jury, which he says was therefore not a jury of his peers. As the Court of Appeal said, however, that is to misunderstand the term "peers". In the context of Chapter 29 of Magna Carta it referred to a person's social equals.[4]

[5] The applicant says his trial was unfair because of the composition of the jury but nothing further is put forward in support of this proposition. The proposed argument has no prospect of succeeding in the face of the plain terms of the legislation. The jury was assembled and chosen as the Juries Act requires. No challenge is made to the way in which the Act was complied with.

[6] There is no attempt to link the exclusion of potential jurors to any discriminatory effect in relation to an economic, gender or racial class. The complaint is simply about s 5(3) of the legislation, without raising an issue of how it might possibly be interpreted and implemented to achieve a different result. In the absence of such a ground the invocation of the Bill of Rights Act and the International Covenant does not assist the applicant.

[7] The cases to which Mr Ellis, of counsel, referred the Court, which are comprehensively discussed by the Court of Appeal in what amounted to an extensive

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2 As from 4 October 2010 the area has been extended to 45 kilometres.

3 Of the remainder, who are not excluded, it is said that 66 per cent are excused under s 15 of the Act and a further 15 per cent do not answer their jury summons. Nothing is made of this in the submissions of counsel.

4 At [34], citing Law Commission *Juries in Criminal Trials* (NZLC R69, 2001) at [265].

advisory opinion on the legislation[5] (it having already concluded that in the face of the legislation the argument about the composition of the jury panel must fail), were decided in other jurisdictions in entirely different constitutional settings and involved issues of impermissible discrimination, such as the absence of women from the jury pool. They provide no support for the applicant's argument concerning the Juries Act.

[8] There being no suggestion that the trial was unfair for any other reason, the application for leave must be dismissed.

Solicitors:
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5 At [10]–[73].