

ABDUL SALEEM HUSSEIN

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: P T Eastwood for Applicant
S B Edwards for Crown

Judgment: 12 August 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, who owns a car parts business, seeks leave to appeal against a Court of Appeal judgment¹ upholding his conviction on six charges of receiving stolen vehicles.

[2] The background to the charges is that the police executed a search warrant at the applicant's business premises and workshop. In the yard they found six vehicles or portions of vehicles, four of which had been stolen earlier in the month. Their combined value was \$104,000. The applicant's explanation for their presence was

¹ *Hussein v R* [2011] NZCA 58.

that he had purchased the vehicles from two men whom he only knew by their first names, paying cash for them. He did not keep records of any such purchases or from whom they were made.

[3] On the advice of his counsel, the applicant pleaded guilty on arraignment in the District Court to six of the seven charges laid by the police. The Crown agreed to drop one charge.

[4] Subsequently the applicant applied to the District Court to vacate his guilty pleas on the ground he had been deficiently advised. Judge Blackie heard evidence including from his now former counsel, who was cross-examined on behalf of the applicant. The Judge was satisfied the applicant had been competently advised at the time he entered pleas and that no tenable defence was available to him. The Judge refused to allow the applicant to vacate his pleas. He then sentenced him to six months' community detention, 300 hours of community work and to pay reparation of \$18,500.

[5] The Court of Appeal was satisfied that the applicant's evidence in the District Court provided very limited support for any form of defence. In particular there was no evidence of steps ever being taken to check whether vehicles offered to the applicant had been stolen. The applicant had failed to demonstrate that any miscarriage of justice had occurred. It dismissed the appeal.

[6] In this Court the applicant wishes to argue a number of matters of which the main one is that the miscarriage of justice test applied by the Court of Appeal was too stringent. His counsel also argued that regard should be given to the applicant's reasonably prompt move to vacate the pleas.

[7] The circumstances in which the pleas were entered have been closely examined by two Courts. Sound grounds would have to be made out before it would be appropriate for this Court to undertake a third hearing on the merits of the applicant's complaints. The principles applied by the lower Courts in deciding the case (which are summarised in *Adams on Criminal Law* at 385.17) are orthodox ones. We are of the view that the particular circumstances of this case do not make it

a suitable case for this Court to hear an appeal on the test to be applied when guilty pleas are vacated.

[8] Overall, we are satisfied that no question of the interests of justice is raised by the appeal and accordingly we refuse the application for leave to appeal.

Solicitors:
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