

MARK STAFFORD FEARY (AKA ALL MEANS ALL)

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Applicant in person
F Sinclair for Crown

Judgment: 19 August 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed

REASONS

[1] The applicant complains that the Court of Appeal¹ proceeded with its hearing in his absence in circumstances where he had returned to the Court all correspondence in which he was advised of the date of the fixture and of the things that he needed to do in connection with it. The Court considered that he must have opened the letters in question as one of them was not returned in the same envelope in which it had been sent to him. He alleges that in coming to this conclusion the Court has fabricated facts. Notably, however, he does not explain how the matter to which the Court averted could have occurred if the letters were never opened. So

¹ *Feary v R* [2011] NZCA 235.

what he is actually suggesting is that the Court acted on a basis which its members knew to be untrue. The suggestion is improper and we reject it out of hand.

[2] As to the substance of the case: the applicant was convicted of twelve counts of threatening to do grievous bodily harm and two counts of threatening to kill. His actions related to letters sent to a variety of people. He admitted at his trial that he had sent the letters. The issue for the jury was really whether he had meant his words to be taken seriously by those to whom the letters were sent. As the Court of Appeal said,² it was entirely open to the jury on the evidence to conclude that the essential elements of the charges were established beyond reasonable doubt. A further appeal to this Court on the substance of the matter would have no hope of succeeding. The same can be said about the sentence appeal which relates to fines imposed in a total of \$20,000. That sentence was fully justified in circumstances where a police officer had warned the applicant about his behaviour and advised him that it was an offence to threaten to cause grievous bodily harm to a person or to threaten to kill them, and he proceeded to ignore that warning by sending the further letters which were the subject of the charges.

[3] The criteria for leave are not met.

Solicitors:
Crown Law Office, Wellington

² At [14].