

MARCELL SYDNEY GEROS

v

THE QUEEN

Court: Elias CJ, Tipping and William Young JJ

Counsel: Applicant in person
M E Ball for Crown

Judgment: 16 September 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant pleaded guilty to charges of wounding with intent to cause grievous bodily harm, burglary and theft (two charges). He was sentenced to seven years three months imprisonment. He subsequently appealed, out of time, against both conviction and sentence. The conviction appeal was not prosecuted and his challenge to his sentence was dismissed by the Court of Appeal.

[2] He now seeks leave to appeal in respect of both conviction and sentence.

[3] As to conviction, his counsel had filed what purported to be an abandonment, albeit that it did not fully comply with the relevant rules. At the hearing in the Court

of Appeal, there was no challenge to the conviction and the Court deal with the appeal on the basis upon which it was apparently argued, that is, as addressed only to sentence. There may be an irregularity as the way in which the abandonment was treated or in the failure of the Court of Appeal to dismiss, formally, the conviction appeal. But if the applicant wishes to resuscitate his conviction appeal (and we express no opinion as to whether this is possible), he should do this in the Court of Appeal. In the circumstances, it would be wrong to grant leave to appeal against conviction on a leap-frog basis.

[4] The issues as to his sentence were fully reviewed in the Court of Appeal. The application for leave to appeal in relation to sentence does not meet the relevant criteria and should be dismissed.

Solicitors:
Crown Law Office, Wellington