

SHANNON RICHARD ANDREWS

v

THE QUEEN

Court: Blanchard, William Young and Chambers JJ

Counsel: Applicant in person
J E Mildenhall for Crown

Judgment: 24 May 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a decision of the Court of Appeal¹ dismissing his challenge to sentences totalling six years imprisonment and a minimum period of three years imprisonment imposed in the District Court² on five counts (three of receiving, one of conspiracy to receive and one of burglary) to which he had pleaded guilty. In his submissions in support of his application for leave to appeal, the applicant indicates that he wished in the District Court to challenge the Crown contentions as to the value of the property involved in the various charges, that he had in fact sought a disputed facts hearing but that no such

¹ *Andrews v R* [2012] NZCA 61.

² *R v Andrews* DC Napier CRI-2009-020-3923, 24 June 2011.

hearing was afforded to him and he was, in the end, sentenced on what he claims were exaggerated figures. He also made some other complaints about the process and outcome but these are of no materiality in the present context as they could not justify a grant of leave to appeal.

[2] The charges to which the applicant pleaded guilty were and, where relevant, the associated contentions of the Crown as to the value and extent of the offending are as follows:

- (a) Receiving camera equipment, a Phillips 37 inch LCD television, an X-box 360 gaming machine with controllers and games, a playstation 2 gaming machine with controllers and a game, an ipod, a backgammon board and a bag of soccer gear. These were estimated by the Crown to be worth “many thousands of dollars”.
- (b) Receiving a Landrover Discovery motor vehicle. The estimate of value was \$7,000.
- (c) Receiving four firearms, a 40 or 42 inch Samsung television, a laptop, a camera, assorted hunting gear and hunting boots. The estimate of value was \$12,000.
- (d) Conspiracy to receive stolen property. The Crown’s position was that while the exact value of the property concerned was not known, it was high and “would be likely to be measured at over \$100,000”.
- (e) An unrelated charge of burglary committed while on bail and shortly before he was to appear for trial on the other counts just mentioned.

[3] Before the pleas of guilty, there was a sentence indication hearing (which, in the end did not result in an indicated sentence). There is no evidence that the applicant (either then or subsequently) disputed the summary of facts (which did not provide estimates of value but indicated extensive offending). He also acknowledged what was abundantly clear, that the property involved in the

conspiracy count was “significant”. The applicant, however, did not accept as accurate the estimations of value advanced by the Crown. He also, after the pleas of guilty, wrote to the District Court seeking a disputed facts hearing. It is clear that no such hearing took place.

[4] To address the possibility that the applicant may have been sentenced on factual assumptions which were in dispute, we have examined the case on appeal which was prepared for the Court of Appeal hearing and we also called for further submissions from the Crown which we duly received.³

[5] We are satisfied that leave to appeal is not warranted. The applicant was represented at the sentencing hearing and the request for a disputed facts hearing was not pursued. The estimates relied on by the Crown were based substantially on an analysis of the applicant’s text messages over the period covered by the charges and tables summarising the property which he mentioned in those messages.

[6] In his sentencing remarks the Judge did not make findings as to the value of the property involved but rather referred to the estimates. As well, there is the reality that the conspiracy count encompassed property stolen from no less than 27 burglaries, items from each of which were located at the house of the applicant’s co-offender. The conspiracy count covered a period of less than two months and involved the applicant acting as a professional fence. What was important for sentencing purposes was not the precise value of the property involved but rather the overall scope and significance of his offending, which was considerable to say the least. As well, there were other aggravating factors, not least the commission of the burglary while on bail and just before his scheduled trial.

[7] On that basis we are satisfied that the applicant has no legitimate complaint as to the process or outcome and that there is no appearance of a miscarriage of justice.

Solicitors:
Crown Law Office, Wellington

³ In a Minute by William Young J of 8 May 2012.