IN THE SUPREME COURT OF NEW ZEALAND

SC 24/2012
[2012] NZSC 45

GARETH JOHN NEEDHAM

v

THE QUEEN

Court: Elias CJ, William Young and Chambers JJ

Counsel: A G V Rogers for Applicant
S B Edwards for Crown

Judgment: 14 June 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant police officer was found guilty by a jury on two counts of assault committed during the course of his arrest of the complainant. The first count was in relation to a blow to the head of the complainant while the complainant was being handcuffed on the ground. (The applicant admitted hitting the complainant but said that the force used was justified in effecting the arrest, a defence provided for by s 39 of the Crimes Act 1961.) The second count related to a blow to the complainant's face after he had been raised to his feet, having been handcuffed. (The applicant denied he had struck this blow.)

[2] The applicant appealed to the Court of Appeal against conviction on grounds which included incompetence by defence counsel, the failure of the Judge to separate the first count into two alternative counts (depending on whether or not the complainant was hand-cuffed at the time of the assault), alleged prosecutorial misconduct and fresh evidence. The Court of Appeal dismissed the appeal.[1]

[3] The applicant now seeks leave to appeal, raising again most of the points unsuccessfully argued in the Court of Appeal. The Court of Appeal carefully considered all the criticisms of the applicant's trial counsel and rejected them. We have reconsidered those criticisms. We are not persuaded it is arguable the Court of Appeal's assessment of those matters was wrong.

[4] The Court of Appeal did not accept the first count should have been divided into two separate counts. The Crown presented its case on the first count on the basis that the applicant had struck the blow while the complainant was being handcuffed on the ground, not after he was handcuffed. In light of that, there is nothing in the severance point.

[5] The Court of Appeal also rejected assertions of prosecutorial misconduct. They carefully weighed the new evidence proffered but concluded none of it would have assisted the applicant.

[6] We are satisfied that the Court of Appeal was correct on all the points argued before it. The applicant has not persuaded us that any of the grounds of appeal are arguable. The proposed appeal does not involve a matter of general or public importance. We are far from satisfied a miscarriage of justice may have occurred.

Solicitors:
Craig Griffin & Lord, Auckland for Applicant
Crown Law Office, Wellington

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1 *Needham v R* [2012] NZCA 95.