

ROGER LINDSAY BLICK

v

THE QUEEN

Court: McGrath, William Young and Chambers JJ

Counsel: R A Moodie for Applicant
A Markham for Crown

Judgment: 28 November 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] In 2001 the Court of Appeal dismissed an appeal by Mr Blick against his conviction in 2000 on charges of theft of computer equipment and documentation and of wilful damage of computer hardware.¹ We have been informed by his counsel, Mr Moodie, that in 2007 Mr Blick applied under s 406 of the Crimes Act 1961 for the reference of his conviction to the Court of Appeal, but that the application was declined.

¹ *R v Blick* CA 26/01, 4 September 2001.

[2] In 2012 Mr Blick applied to the Court of Appeal for recall of the Court's 2001 judgment and quashing of his convictions, relying on what he submitted was newly discovered evidence. The Court of Appeal dismissed the application.² He now seeks leave to appeal against that judgment and orders quashing his convictions.

[3] In *de Mey v R*,³ this Court held that it had no jurisdiction to hear appeals against the Court of Appeal's refusal to recall a judgment in a criminal appeal. The Court said:

[3] The jurisdiction of this Court is entirely statutory. In criminal cases involving jury trials s 10 of the Supreme Court Act 2003 authorises the Court to hear and determine appeals only where authorised by Part XIII or s 406A of the Crimes Act 1961. In relation to conviction appeals, s 383A enables the Court to hear an appeal against a decision of the Court of Appeal on appeal under s 383. ...

[4] A decision "on appeal under section 383" means the decision in which the Court of Appeal determines the appeal under s 383, in this case by dismissing the conviction appeal. By contrast, a decision of the Court of Appeal refusing to reopen its appeal decision is not a decision of that character. It is no more than a decision that the Court of Appeal will not reconsider its decision on appeal. It can be described as a preliminary decision which, if it had been made in favour of the applicant, would have led to another decision on appeal, namely either a decision confirming the original decision to dismiss the appeal or a decision to allow the appeal.

[4] Counsel for Mr Blick sought to distinguish the present case from *de Mey*. He pointed out that in this case the applicant has also sought orders quashing the original convictions. He seeks such relief, however, by application for leave to appeal against the recall judgment for which this Court has no jurisdiction. We do not accept that the present application is authorised by the Crimes Act for the reasons given in *de Mey*.

[5] This Court would have jurisdiction to consider an application for leave to appeal against the 2001 judgment if the Crown consented to that course.⁴ Unless

² *Blick v R* [2012] NZCA 373.

³ *de Mey v R* [2005] NZSC 27.

⁴ Supreme Court Act 2003, s 51(2)(d).

such consent is given, however, the only available route by which Mr Blick can challenge his conviction is to petition the Privy Council.

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