

IN THE SUPREME COURT OF NEW ZEALAND

SC 29/2013
[2013] NZSC 64

BETWEEN GRACE RIANA BOAGEY
Applicant

AND THE QUEEN
Respondent

Court: Elias CJ, William Young and Glazebrook JJ

Counsel: Applicant in person
M J Lillico for Respondent

Judgment: 2 July 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The Court of Appeal allowed the applicant's appeal against conviction on two charges of assault with a weapon and further charges of intentional damage, aggravated assault and refusing to permit a blood sample to be taken.¹

[2] She had pleaded guilty to these charges on the basis of a sentencing indication that she would not be disqualified from driving. In giving this indication the District Court Judge had overlooked the provisions of s 65 of the Land Transport Act 1998 which required that a fresh and indefinite disqualification be imposed upon the applicant given her prior convictions.²

[3] The applicant subsequently appealed to the Court of Appeal against conviction and sentence. The Crown's position was that her conviction appeal in relation to the charge of refusing to permit a blood sample to be taken had to be

¹ *Boagey v R* [2013] NZCA 30.

² *R v Boagey* DC Manukau CRI-2010-092-3698, 13 March 2012.

upheld and returned to the District Court for retrial (given the problem regarding sentence) and, as well, did not argue strongly that the Court should not quash her other convictions.

[4] The Court quashed the convictions and remitted the case to the District Court at Manukau for the applicant to replead and, if necessary, be retried. The applicant was dissatisfied with that direction and applied for leave to appeal to this Court.

[5] The basis of the proposed appeal is difficult to discern from the material filed by the applicant. There are complaints about what happened in the District Court which are now irrelevant given the judgment of the Court of Appeal. She also complained that she is being required to replead to a charge which no longer exists.³ As well, she is concerned that she will not receive a fair trial in the District Court at Manukau. Having considered that material, we are satisfied that the proposed appeal does not raise issues of general or public importance and that there is no appearance of a miscarriage of justice.

[6] Accordingly the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington

³ As far as we can tell, her contention is that the Court of Appeal stated that she had been convicted in April 2009 for an offence which was relevant to the sentence to be imposed on the refusing a blood sample charge but that the charge in respect of that earlier offence had been withdrawn. If there is an issue as to this, it is best resolved in the District Court.