IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 16/2019
[2019] NZSC 137

BETWEEN	MATTHEW JOHN YOUNG Applicant
AND	THE QUEEN Respondent

Court:	Winkelmann CJ, O'Regan and Ellen France JJ
Counsel:	Applicant in person E J Hoskin for Respondent
Judgment:	6 December 2019

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant pleaded guilty to 13 charges of fraud and dishonesty. After a disputed facts hearing, he was sentenced to a term of imprisonment of four years and 11 months.[1]

[2] He appealed to the Court of Appeal against both his convictions and sentence but the appeals were dismissed.[2] His application for leave to appeal to this Court was filed on 8 February 2019. He applied for and was granted extensions of time to file submissions in support of his application until 10 May 2019, then 9 August 2019, then 5 October 2019 and finally 20 November 2019.

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1 *R v Young* [2017] NZDC 24911 (Judge Cocurullo).
2 *Young v R* [2018] NZCA 604 (Brown, Courtney and Katz JJ) [*Young* (CA)].

[3] The last extension was given on the basis that if submissions were not filed by 20 November 2019, the Court would seek submissions from the respondent and deal with the application on the basis of the material before it. The applicant did not file submissions and we now deal with the application on that basis.

[4] In his application for leave to appeal, the applicant specified the following grounds of his proposed appeal:

> (a) Was it permissible or in the interests of justice for the District Court judge to require any pre-trial application to first seek leave?
>
> (b) Was it fair or in the interests of justice to admit 503 pages of new (and previously undisclosed) evidence at the disputed fact hearing and then not grant an adjournment?
>
> (c) Was it fair to strike out the defendants application to vacate his plea when the Crown had broken a written agreement which had been filed with the Court.
>
> (d) There was evidence available and in the court record by way of affidavit which supported the appeal.

[5] The first three of these points were in issue in the Court of Appeal.[3] We set out below how the Court of Appeal dealt with each point (where applicable) and our analysis.

Ground (a)

[6] The Court of Appeal recorded that the order requiring leave to be obtained for pre-trial applications was made after there had been two trial dates vacated and there were six pre-trial applications outstanding.[4] The Court found that the trial Judge had power to make such an order as part of his inherent jurisdiction to regulate the proceedings in the circumstances where numerous pre-trial applications had been made.[5] The Court also found that no prejudice resulted from the order because the applicant continued to make applications and the Judge continued to deal with them

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3 There were other grounds pursued in the Court of Appeal that are not raised in the application to this Court. For example, the applicant argued in the Court of Appeal that the Judge's refusal to adjourn the fourth scheduled trial date to give new counsel time to prepare and refusal to grant bail between a disputed facts hearing and sentencing led to a miscarriage. He also appealed against his sentence in the Court of Appeal.

4 *Young* (CA), above n 2, at [21].

5 At [22].

fairly and appropriately.[6] Nothing in the material before us indicates any appearance of a miscarriage arising from that finding, and nor does any point of public importance arise.

Ground (b)

[7] The Court noted that, although the Judge did not adjourn the disputed facts hearing after the late disclosure of 500 pages of documents, he did defer the hearing for two days.[7] The Court noted that the applicant had not identified any prejudice and there was no evidence from his counsel indicating that he was hampered in his preparation for the disputed facts hearing. Moreover, the trial Judge considered that the additional documents did not alter the case against the applicant. In the absence of anything indicating any error in relation to any of those findings, we see no concern that a miscarriage arose, nor is any matter of public importance placed in issue.

Ground (c)

[8] The applicant applied to vacate his guilty pleas and sought a stay of proceedings. The grounds were that the pleas had been induced by the Judge's requirement that the applicant obtain leave for pre-trial applications, the Crown had resiled from an agreement not to oppose bail pending sentence, late disclosure of the material referred to above and the fact that the Court had failed to deal with a previous stay application before the trial. All of this was carefully evaluated by the Court of Appeal, which concluded that there was no error in the Judge's decision to decline the application. The Court observed that it was "quite clear" that there were no grounds on which leave could have been granted to vacate the guilty pleas.[8] No appearance of miscarriage arises, and given the Court was applying well-established principles as to the circumstances in which a plea may be withdrawn, no point of public importance arises.

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6 At [22].
7 At [24].
8 At [41].

Ground (d)

[9] There is nothing in the Court of Appeal judgment to indicate that this point arose in that Court and, in the absence of any specification of the evidence, there is nothing more we can say about this point.

[10] There is nothing in the material before the Court to indicate that the leave criteria are met in this case.[9] The application for leave to appeal is therefore dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

9 Supreme Court Act 2003, s 13; and Senior Courts Act 2016, s 74.