

IN THE SUPREME COURT OF NEW ZEALAND

**SC 7/2005
[2005] NZSC 24**

BERNARD JOHN PAVITT

v

THE QUEEN

Court: Gault J and Blanchard J
Counsel: C J Tennet for Applicant
N M Crutchley for Respondent
Judgment: 10 May 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal from a decision of the Court of Appeal dismissing Mr Pavitt's appeal against conviction on a count of aggravated robbery. Having considered the written submissions, we are satisfied that it is unnecessary to hear from counsel orally and that this application for leave should be dismissed.

[2] The only ground raised in the Court of Appeal was that the Judge should not have told the jury that the two men who accompanied the applicant to the home of the complainant had been charged. Like the Court of Appeal, we can see no

possibility of a miscarriage of justice arising from that response to the jury's inquiry. It does not give rise to any issue of general or public importance.

[3] The applicant also seeks to advance grounds of appeal not put before the Court of Appeal, namely that the verdict was unreasonable and not supported by the evidence; that the evidence of one witness, the wife of the complainant, was inadmissible; and that the defence of colour of right was not properly put before the jury.

[4] It would be unusual for this Court to permit a second appeal to be brought on grounds not raised in the Court of Appeal. It would not allow this to occur unless convinced that there was a real possibility that it could be demonstrated by reference to those grounds that there had been a miscarriage of justice at the trial which therefore went uncorrected on the first appeal.

[5] We are not persuaded that this has occurred in the present case. None of the matters sought to be raised involves any matter of general or public importance or gives rise for concern that there has been a miscarriage of justice. The guilty verdict was open to the jury on the totality of the evidence. The testimony of the wife of the complainant was plainly admissible. Criticisms which could be made of it went to the weight to be given to her evidence and were a matter for the jury. The questions from the jury concerning colour of right demonstrate that it had been made well aware of the significance of that matter to the defence case.

Solicitors:
Crown Law, Wellington