

CHRISTIAN PAUL CLIFTON

v

THE QUEEN

Court: Gault J and Tipping J
Counsel: P F Chambers for Applicant
J C Pike for Crown
Judgment: 17 February 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] We have decided that this application can fairly be dealt with on the papers. Christian Paul Clifton seeks leave to appeal from the decision of the Court of Appeal dismissing his appeal against conviction. The decision of the Court of Appeal also declined the applicant's application for leave to adduce further evidence. He seeks to put that decision in issue in this Court. At the same time as it dismissed the appeal against conviction, the Court of Appeal allowed an appeal by Mr Clifton against the total term of imprisonment imposed on him. The Court reduced the term from one of eight years three months to one of six years ten months. Mr Clifton seeks leave to

appeal from the reduced sentence on the basis that it remains “manifestly excessive” in relation to the offending in question and his participation in it.

[2] Mr Clifton was found guilty by a jury in the District Court of conspiring to import amphetamine, importing amphetamine, possession of amphetamine for supply, conspiring to manufacture methamphetamine, and related possession and precursor offences.

[3] We note also that the applicant wishes to challenge two further aspects of the Court of Appeal’s handling of his appeal. First, he seeks to put in issue the decision made by Anderson P on behalf of the Court refusing to give him leave to be present at the hearing of his appeal. Secondly, he seeks to make something of the fact that the Court of Appeal took four months and 24 days to deliver its decision upon the various matters which he had put in issue in that Court.

[4] The detailed grounds upon which leave is sought to appeal to this Court are all matters which relate to the particular circumstances of the applicant’s case. For example, there are several continued complaints about the summing-up. The fresh evidence matters which Mr Clifton seeks to ventilate in this Court likewise involve the specifics of his case rather than any matters of general principle. Indeed, the submissions which have been filed in support of the grant of leave do not in any aspect seek to identify how the point in issue satisfies any of the criteria for leave set out in s 13 of the Supreme Court Act 2003.

[5] In no respect is it suggested, let alone established, that the proposed appeal involves a matter of general or public importance. For that to be so, this Court must be satisfied that the proposed appeal involves a point of general principle or a point having general importance in the administration of the criminal law. Unless a qualifying point can be identified this Court cannot find that it is necessary in the interests of justice for it to hear the proposed appeal. Indeed the Act states that this Court must not give leave to appeal unless it is satisfied that it is necessary in the interests of justice, as defined, for it to hear and determine the proposed appeal.

[6] We have considered whether, even though no matter of general or public importance can be identified, there is nevertheless a reasonable argument that a substantial miscarriage of justice may have occurred or may occur unless the proposed appeal is heard. The applicant's submissions do not expressly allege that to be so. Nor, therefore, do they identify wherein any substantial miscarriage of justice may lie. It is clear that the Court of Appeal gave all the applicant's points detailed and careful consideration, and applied established principles to them. The time the Court took in doing so is, ironically, raised as a ground for further appeal in itself, seemingly as a reason why this Court should embark upon a review of the strength of the evidence. That is not the role of a final court.

[7] Having carefully considered the circumstances of this case we are not persuaded that the application for leave should be granted on miscarriage of justice grounds. The present case is a good example of the futility of applications for leave to appeal to this Court in a criminal matter which, in substance, seek further review of discretionary rulings and the application of established legal principles to the facts of particular cases. It is essential that criminal applicants who wish to avail themselves of a second appeal identify grounds of appeal that qualify for leave in terms of s 13. Counsel have a duty both to applicants and to this Court to frame their submissions accordingly.

[8] The present application falls well short of satisfying the statutory criteria and is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington