

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 10/2005  
[2005] NZSC 36**

**FA'AFETE TAITO**

v

**THE QUEEN**

Court: Elias CJ and Tipping J

Counsel: T Ellis for Appellant  
J C Pike for Crown

Judgment: 17 June 2005

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] Mr Taito's appeal against conviction was re-heard following the determination of the Privy Council in *R v Taito* [2003] 2 NZLR 577. His appeal was dismissed a second time by the Court of Appeal in a detailed judgment delivered on 1 March 2005 and he seeks leave to appeal to this Court.

[2] The appeal to the Court of Appeal raised questions concerning delay, absence of a copy of the summing-up, empanelling of the jury and incompetence of counsel.

[3] The application for leave to appeal appears to put all these matters in issue again. However, the submissions do not appear to raise any question of counsel incompetence. This issue could not, in present circumstances, raise a qualifying point for a second appeal in any event.

[4] Nor do we consider there is anything in the jury selection issue which justifies an appeal to this Court.

[5] The Court of Appeal dealt with the point concerning the absence of a record of the summing-up by applying settled law to the subject. No complaint was made about the summing-up on the first appeal, when the trial was relatively recent. In the event, nothing more than speculation supports the suggestion that there may have been some error or omission in the summing-up. We are not persuaded that any point of general or public importance arises on the issue nor do we consider a substantial miscarriage of justice may have occurred or may occur unless this point is considered in this Court. There is no tenable basis for finding that Mr Taito's conviction should be quashed simply because no copy of the summing-up was available.

[6] The final matter is delay. In this respect we note that the Privy Council rejected the submission that Mr Taito's conviction should be quashed on account of delay. Their Lordships also expressed themselves as satisfied "that the Court of Appeal should not be troubled" with the delay point on the re-hearing. A fortiori there is no basis whatever for the point to be ventilated again in this Court.

[7] Overall we are not satisfied that it is necessary in the interests of justice to grant leave and, for that reason, the application is dismissed.

Solicitors:  
Crown Law Office, Wellington