

IN THE SUPREME COURT OF NEW ZEALAND

**SC 43/2005
[2005] NZSC 64**

DAVID FRUEAN

v

THE QUEEN

Court: Tipping J and McGrath J

Counsel: A G V Rogers and J G Ussher for Appellant
M D Downs for Crown

Judgment: 7 September 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Fruean's appeal against conviction was dismissed by the Court of Appeal. The Court did not accept his contention that the trial Judge had failed to direct sufficiently on the use the jury could make of a mixed statement which he had made to the police. The statement was mixed in that it contained both inculpatory and exculpatory aspects. The Court of Appeal was of the view that the Judge's directions were sufficient in the circumstances of this case, particularly as the appellant had given evidence at his trial. The Court was also of the view that the additional direction which the appellant contended for would, if anything, have done him more harm than good.

[2] There is nothing in this case which can be said to raise a point of general or public importance;¹ nor is there any basis for concluding that a substantial miscarriage of justice would or might occur if the proposed appeal is not heard.² The principles which govern the directions required in relation to mixed statements are sufficiently settled, at least in general terms, and there is nothing in the circumstances of this case which persuades us that it is necessary in the interests of justice³ for this Court to re-examine the way in which the Court of Appeal dealt with this aspect of Mr Fruean's appeal against conviction.

[3] Having considered the written submissions filed by the parties we have not found it necessary to direct an oral hearing. The appellant's proposed appeal does not satisfy the statutory criteria for leave and hence his application is dismissed.

Solicitors:
Crown Law Office, Wellington

¹ Section 13(2)(a) of the Supreme Court Act 2003.
² Section 13(2)(b) of the Supreme Court Act 2003.
³ Section 13(1) of the Supreme Court Act 2003.