

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 115/2009  
[2010] NZSC 2**

**GARY MAUI ISHERWOOD**

v

**THE QUEEN**

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: T Ellis and N B Dunning for Applicant  
M D Downs for Crown

Judgment: 9 February 2010

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**JUDGMENT OF THE COURT**

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

**REASONS**

[1] The application for leave to appeal is some four and a half years out of time and brought almost a year after the tendered affidavits were available.

[2] The affidavits present an incomplete picture. As the Crown points out, there is nothing from the appellant, who now wishes to complain of the conduct of the trial by his counsel, about the instructions given to counsel concerning the calling of evidence from the deponents.

[3] No attempt has been made to explain the very lengthy delay. Mr Ellis says only that it would have been impossible to put together the affidavits in the appeal period.

[4] We are simply in no position to make an assessment of the possible merits of the proposed appeal on the basis of the material before us. It is not a situation which can adequately be addressed by a second level appeal. An application to the Governor-General for reference back to the Court of Appeal would be more suitable vehicle, although we should not be taken to expressing any view on its outcome.

[5] The s 13 criteria are not met.

[6] Included in the application is a sentence appeal which, as Mr Ellis concedes, must be treated as an application for a leapfrog appeal from the High Court as there has never been any appeal to the Court of Appeal against the sentence of preventive detention. We can see no good reason why an application should not be made in the first instance to the Court of Appeal and decline leave also on this aspect of the matter. Again we are expressing no view as to merits.

Solicitors:  
Tony Ellis, Wellington for Applicant  
Crown Law Office, Wellington