

IN THE SUPREME COURT OF NEW ZEALAND

**SC 22/2005
[2005] NZSC 40**

GRAHAM THOMAS ROWE

v

THE QUEEN

Court: Gault J and Keith J
Counsel: A W Belcher for Applicant
J C Pike for Crown
Judgment: 23 June 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed

REASONS

[1] The applicant was convicted in the District Court at Dunedin of the offence defined in s 4(1)(a) of the Summary Offences Act 1981 of behaving in an offensive manner in, or within view of, any public place. He appealed to the High Court by way of general appeal under s 115 of the Summary Proceedings Act 1957. The conviction was upheld. The applicant sought and was granted leave to appeal to the Court of Appeal on a question of law.

[2] In the Court of Appeal the question of law for determination was re-formulated as whether the applicant's conduct, in all the circumstances, was, as a

matter of law, capable of amounting to offensive behaviour. The Court, by majority, answered that question in the affirmative. It is against that determination that the applicant seeks leave to appeal to this Court by way of a third appeal.

[3] Section 144A(c) of the Summary Proceedings Act provides for an appeal to the Supreme Court with leave. Section 13 of the Supreme Court Act sets out the criteria for the grant of leave. After considering the written submissions, which adequately address the issues without the need for oral amplification, we are satisfied the criteria are not met in this case.

[4] The question of law determined by the Court of Appeal was expressly limited to “all the circumstances of the case”. Those circumstances are unusual and encompass the particular conduct of the applicant. They do not extend, as the submissions contend, to a broad range of everyday activities. The case therefore cannot be said to raise any matter of general, public or commercial importance.

[5] As the Court of Appeal judgment recorded, counsel were in broad agreement as to the test to be applied to an offensive behaviour prosecution. This case involved the application of that test to the particular facts of this case. The objective assessment of the time, place and circumstances in issue is not appropriate for a further appeal.

[6] Accordingly we are not persuaded that the interests of justice require leave to appeal.

Solicitors:
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