

PETER MORRISON PETRYSZICK

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: E Orlov for Applicant
T Epati for Respondent

Judgment: 20 April 2010

JUDGMENT OF THE COURT

**Leave to appeal is granted on the question whether
the applicant was denied his right to appeal.**

REASONS

[1] Peter Morrison Petryszick has applied for leave to appeal against a decision of the Court of Appeal given on 27 October 2009 dismissing his appeal against his conviction in the Whangarei District Court before a jury on 3 April 2008 on a charge of assault with a weapon under s 202C of the Crimes Act 1961. Although, in lengthy traverse of the background to the offending, Mr Petryszick raises a number of complaints about his conviction (including the conduct of his counsel and Crown counsel) these matters were not determined by the Court of Appeal. It dismissed the appeal after Mr Petryszick failed to comply with Court timetables as to the filing of

his submissions on appeal and his request for adjournment of the appeal was turned down.

[2] Mr Petryszick's appeal in the Court of Appeal had been considerably delayed due to his failure to comply with timetable orders aimed at eliciting the basis for appeal. He was at a late stage given a limited grant of legal aid in order to investigate whether he had valid appeal grounds. Counsel instructed reported to the Court of Appeal that there appeared to be two points which might have merit and could justify a final adjournment. The Court of Appeal concluded that neither point had merit and refused the adjournment. That was the basis on which it dismissed the appeal. Mr Petryszick, who had been seeking an adjournment, was not present when the appeal was dismissed and was not heard on the merits.

[3] It is inappropriate for this Court to grant leave to appeal in respect of the matters of complaint about the District Court hearing because they are not the subject of determination in the court of Appeal. Rather, the issue for this Court is whether the course adopted by the Court of Appeal, in dismissing the appeal on what counsel for the respondent accepts to have been "procedural grounds", afforded Mr Petryszick the right of appeal to which he is entitled pursuant to s 25(h) of the New Zealand Bill of Rights Act 1990. The impression that the merits were not considered is consistent with the concluding remarks of the Court of Appeal which were that "if Mr Petryszick feels he has not been heard on the appeal, he has only himself to blame."

[4] The course followed on the appeal raises a matter of general and public importance under s 25(h) of the New Zealand Bill of Rights Act 1990. Leave is accordingly granted on the sole question whether the course adopted by the Court of Appeal denied Mr Petryszick his right to appeal.

[5] Given the history of the matter, the Court will be assisted by the appointment of an amicus to argue that Mr Petryszick was not afforded his right of appeal. The appointment of the amicus does not preclude Mr Petryszick making his own submissions but they must be confined to the point on which leave has been granted. The Registrar is directed therefore to appoint counsel to assist the Court.

Solicitors:
Botany Law, Manukau for Applicant
Crown Law Office, for Respondent