

RAMON DIRK JOHANNES DE MEY

v

THE QUEEN

Court: Gault J and Blanchard J

Counsel: Appellant in Person

Judgment: 20 May 2005

JUDGMENT OF THE COURT

The application for leave to appeal is refused.

REASONS

[1] The applicant, Mr de Mey, has sought leave to appeal to this Court against a decision of the Court of Appeal on 28 April 2005 declining his application to re-open his appeal against conviction for common assault. The Court of Appeal had dismissed Mr de Mey's appeal against conviction on 17 December 2004.

[2] The applicant was invited by a Minute of this Court to make written submissions on the Court's jurisdiction to hear his proposed appeal. Having received and considered his submissions in which he emphasised that his application related to the refusal to re-open the appeal and not to the conviction appeal itself, we are satisfied that it is unnecessary to have an oral hearing as the Court lacks jurisdiction.

[3] The jurisdiction of this Court is entirely statutory. In criminal cases involving jury trials s 10 of the Supreme Court Act 2003 authorises the Court to hear and determine appeals only where authorised by Part XIII or s 406A of the Crimes Act 1961. In relation to conviction appeals, s 383A enables the Court to hear an appeal against a decision of the Court of Appeal on appeal under s 383. So Mr de May could have sought leave to appeal against the dismissal of his conviction appeal by the Court of Appeal's judgment of 17 December 2004, if he had made his application within the prescribed time, although we are bound to say that he would then appear to have had considerable difficulty in meeting the criteria for leave specified in s 13 of the Supreme Court Act.

[4] A decision "on appeal under section 383" means the decision in which the Court of Appeal determines the appeal under s 383, in this case by dismissing the conviction appeal. By contrast, a decision of the Court of Appeal refusing to reopen its appeal decision is not a decision of that character. It is no more than a decision that the Court of Appeal will not re-consider its decision on appeal. It can be described as a preliminary decision which, if it had been made in favour of the applicant, would have led to another decision on appeal, namely either a decision confirming the original decision to dismiss the appeal or a decision to allow the appeal.

[5] The Court accordingly lacks jurisdiction and Mr de Mey's application for leave to appeal is dismissed.