

COLYN DAVID STOVES

v

THE QUEEN

Court: Tipping J and McGrath J

Counsel: Appellant in person  
B J Horsley for Crown

Judgment: 22 September 2005

---

JUDGMENT OF THE COURT

---

**Leave to appeal is refused.**

**REASONS**

[1] The appellant, Mr Stoves, was convicted on one count of refusing a request for a blood sample. He had pleaded guilty to that charge. He was sentenced to 250 hours community work and disqualified from driving for 12 months. Mr Stoves appealed to the Court of Appeal against both conviction and sentence, the former despite his plea of guilty. His appeal was heard on the papers in accordance with s 392B of the Crimes Act 1961 and was dismissed.

[2] He now seeks leave to appeal to this Court on three grounds. A further ground, foreshadowed in his application, was abandoned in written submissions. The three grounds upon which he seeks leave to appeal to this Court are, in short:

1. that the Court of Appeal failed adequately to address the effect of undue delay “in the hearing of [the] charge”;
2. that the Court of Appeal failed adequately to take into consideration what the sentence might have been had the delays not occurred; and
3. that the Court of Appeal failed to address the effect of the quashing of the earlier conviction and the ordering of a rehearing from the point of view of the continuation of the conviction and sentence that had earlier been imposed.

[3] As can be seen, these grounds are capable of bearing on both conviction and sentence, and we have considered them in that context. None of the grounds raise any clear issue of law, let alone any issue of law which might be thought to be of general or public importance. Although the application for leave was not articulated in this form, we have considered whether it might reasonably be said that, in the light of all the matters which Mr Stoves has raised, a substantial miscarriage of justice may have occurred or may occur if leave to appeal is not granted. In our view this has not been established.

[4] The jurisdiction of this Court is dependent on the appellant satisfying us that it is necessary in the interests of justice for leave to be granted. We are not satisfied that this is so. The proposed appeal does not involve any matter of general or public importance nor can it reasonably be said that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard. In these circumstances s 13 of the Supreme Court Act 2003 requires us to decline leave to appeal.

[5] We add, for completeness, that having read the written submissions of the parties we did not consider it necessary to direct an oral hearing of the application.

Solicitors:  
Crown Law Office, Wellington