

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME
OR IDENTIFYING PARTICULARS OF AJN REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 134/2016
[2017] NZSC 31**

BETWEEN TODD AARON MARTELEY
 Applicant

AND THE QUEEN
 Respondent

Court: William Young, Arnold and Ellen France JJ

Counsel: Applicant in person
 C A Brook and A B Richards for Respondent

Judgment: 13 March 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Marteley, was one of four people charged in the death of a methamphetamine dealer, Mr Kingi, who was killed in June 2009. One of the accused, AJN, entered a plea of guilty to murder in August 2010. In early September 2010, Mr Marteley and another accused entered guilty pleas to a charge of murder and the fourth person pleaded guilty to a charge of manslaughter.

[2] However, before he was sentenced, Mr Marteley indicated an intention to seek leave to withdraw his guilty plea. At the time he was represented by David Jones QC. Ultimately, Mr Marteley advised the Court, through counsel, that

he did not wish to pursue his application to vacate his guilty plea and was sentenced to life imprisonment with a minimum period of imprisonment of 14 years.¹

[3] Later, about eight months out of time, Mr Marteley filed a notice of appeal against both conviction and sentence. Before the appeal was heard, Mr Marteley, who was by this stage represented by Russell Fairbrother QC, filed a notice of abandonment of his appeal against conviction. The Court of Appeal granted an extension of time in relation to the sentence appeal, but dismissed it.²

[4] Mr Marteley has now applied to appeal against his conviction directly to this Court (well out of time) and also seeks leave to appeal against his sentence. In support of his application, he has filed voluminous written submissions and has sought the appointment of an amicus. His position appears to be that this Court should hear evidence that would have been called at trial if there had been one.

[5] Section 14 of the Supreme Court Act 2003 provided for direct or “leapfrog” appeals.³ Under it, the Court may not give leave for such an appeal unless (in addition to the usual requirements in s 13) it is satisfied that there are exceptional circumstances which justify taking the appeal directly to the Court.

[6] We see no exceptional circumstances here. Because Mr Marteley abandoned his conviction appeal, none of the matters which he wishes to raise on appeal to this Court have been addressed by the Court of Appeal. They are not appropriately considered for the first time in this Court. If Mr Marteley wishes to pursue an appeal against his conviction, the appropriate course is that he applies to the Court of Appeal for leave to withdraw his notice of abandonment and to reinstate his appeal.⁴

[7] As to the proposed sentence appeal, it raises no point of principle, nor do we think there is any risk of a substantial miscarriage of justice.

¹ *R v Marteley* HC Hamilton CRI-2009-019-9786, 5 November 2010.

² *Marteley v R* [2016] NZCA 480.

³ This Act was repealed by the Senior Courts Act 2016 but continues to apply to this application by virtue of the transitional provisions.

⁴ See *Makanesi v R* [2015] NZSC 137 at [4].

[8] In the result, then, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent