

IN THE SUPREME COURT OF NEW ZEALAND

**SC 100/2009
[2010] NZSC 4**

WEI FENG PAN

v

THE QUEEN

Court: Blanchard, McGrath and Wilson JJ

Counsel: M J Dyhrberg for Applicant
S B Edwards for Crown

Judgment: 9 February 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has sought leave to appeal against dismissal by the Court of Appeal of his appeal against conviction and sentence on charges of importing and selling methamphetamine and pseudoephedrine.

[2] In relation to his proposed conviction appeal the applicant wishes to argue that the reasoning process which the jury was encouraged to adopt was flawed because it involved in part the drawing of inferences using the process of deduction sometimes known as the presumption of continuance and that the Court of Appeal

erred in giving its approval of that use in this case. Like the Court of Appeal, we see no reason why the jury should not have been able to conclude that the applicant's guilt was established relying in part upon this method of reasoning. It involved proof of the fact that the earlier drug shipments of goods must have contained drugs based on the fact that later similar shipments did so. Once the jury was satisfied as to that factual conclusion it could then properly reason from it that the connection between Mr Pan and the earlier drug shipments continued when the later shipments were imported. There was a good deal of other evidence pointing to the same conclusions.

[3] The Court of Appeal was satisfied that it was open to the jury to convict Mr Pan based on the totality of the evidence and we are not persuaded that the contrary view is arguable.

[4] The argument that there has been confusion or conflation concerning the approach taken below to the elements necessary to establish guilt as a party is equally unconvincing.

[5] No question of general or public importance arises and there is no appearance of any miscarriage of justice.

[6] Nor has the applicant shown a sufficient basis for a second appeal in relation to the sentence of life imprisonment. The offending was, on any view, very serious. The sentence was arrived at after an appropriately exercised sentencing assessment which has been confirmed by the review conducted by the Court of Appeal.

Solicitors:
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