

IN THE SUPREME COURT OF NEW ZEALAND

**SC 106/2013
[2013] NZSC 103**

BETWEEN WILLIAM VICTOR GEORGE CONWAY
 Applicant

AND THE QUEEN
 Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: A D Banbrook for Applicant
 J M Jelas and A R van Echten for Respondent

Judgment: 24 October 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Conway, was convicted in the District Court by a jury in September 2009 of offences under the Resource Management Act 1991 involving discharges of contaminants during his operation of a scrap metal dealing business owned by his partner. He was sentenced to six and a half months imprisonment.¹ The applicant filed a notice of appeal to the Court of Appeal on 21 December 2009 but, for reasons which are not apparent in that Court's judgment, the appeal was not heard until 9 September 2013. The Court of Appeal dismissed the appeal against both conviction and the sentence on 24 September 2013.²

¹ His associate in the operation of the business, Ms Down, was also convicted. See *Down v R* [2012] 2 NZLR 585 (SC).

² *Conway v R* [2013] NZCA 438.

[2] The applicant, who has been on bail since his sentence was imposed, now seeks leave to appeal to this Court, raising four grounds. He wishes first to contend that it was not established at his trial that he was operating the scrap metal business when the breaches of enforcement orders occurred. Secondly, he contends that a statement he made in the course of civil proceedings was wrongly admitted at his trial and misled the Court of Appeal as to the applicant's role in the day to day running of the scrap metal side of the business. Thirdly, he argues that it was necessary for the prosecution to show that there was a real risk that contamination would occur and that the Court of Appeal wrongly held that proof of contaminants entering a stream was not required. Finally, the applicant contends that the convictions are unsafe, because the jury did not understand alternative counts in the indictment.

[3] The Court of Appeal examined the evidence concerning the breach of the enforcement orders, which had required that relevant activities at two sites cease, and concluded that it was overwhelming. We are satisfied that Court's consideration of the evidence provided a sound basis for its conclusion that it was open to the jury to infer the applicant was fully aware of, and even actually directed, the relevant operations on the property.

[4] In relation to the applicant's complaint about admission of a prior statement concerning his responsibility for the day to day running of the business, the Court of Appeal decided that even if the statement was not admissible there was ample evidence that the applicant had responsibility for the day to day operations of the business. We agree: the applicant's previous statement was supported by evidence from at least three other witnesses.

[5] We are also satisfied that it is plain beyond argument that an offence under the Resource Management Act can be committed in respect of discharges which do not actually enter water but which may have that result.

[6] In these circumstances we are satisfied that this application does not come within the criteria for a grant of leave under s 13 of the Supreme Court Act 2003.

There is no point of general principle involved in any of the grounds. Nor is there any appearance of a substantial miscarriage of justice in the jury's verdicts.

[7] For these reasons the application for leave to appeal is dismissed. The associated application for bail accordingly lapses. The Court of Appeal's order that the applicant surrender to the Registrar of the District Court at Auckland on 27 September 2013 to commence his sentence has not yet been complied with. It continues in force.

Solicitors:
C K Lyon for Applicant
Crown Law Office for Respondent