

IN THE SUPREME COURT OF NEW ZEALAND

SC 78/2013
[2013] NZSC 106

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| BETWEEN | PHILIP JOHN GASH Appellant |
| AND | THE QUEEN Respondent |

Court: McGrath, William Young and Arnold JJ

Counsel: A J McKenzie for Applicant
J E Mildenhall for Respondent

Judgment: 4 November 2013

JUDGMENT OF THE COURT

The application for leave is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal which dismissed his appeal against conviction on a number of charges of violent offending.¹ The applicant was convicted of wounding with intent to cause grievous bodily harm, assault with intent to injure, assaulting a female, and aggravated burglary in relation to an incident when he entered a caravan occupied by his estranged wife and another man. The applicant was also convicted of threatening on an earlier occasion to kill, or to cause his wife grievous bodily harm.

[2] The trial Judge had, on the Crown's application during the trial, amended the indictment to add wounding with intent as an alternative to a charge of causing grievous bodily harm with intent. The Crown had sought that amendment because

¹ *Gash v R* [2013] NZCA 309.

an issue had arisen as to whether the wound caused to the male victim amounted to grievous bodily harm. The jury convicted the applicant on the wounding charge and not on that of causing grievous bodily harm.

[3] The applicant wishes to contend on a further appeal that the trial Judge should not have allowed the amendment to the indictment. Alternatively, on account of the lateness of the amendment, a discount should have been given in the sentence imposed. The applicant also points out that, in making the amendment, the Judge referred to s 345D of the Crimes Act 1961 (which concerns amendments prior to trial), rather than s 335.

[4] No question warranting a further appeal arises from the reference to the wrong statutory provision. Overall, we regard the decisions of the Judge and Court of Appeal as turning on the particular circumstances. We are not persuaded that allowing the amendment was unfair or prejudicial to the conduct of the defence. No point of law of general or public importance arises from the Judge's procedural decision. Nor is there any appearance of miscarriage of justice.

[5] In these circumstances the applicant has not satisfied us that it is necessary in the interests of justice, under the Supreme Court Act 2003, for this Court to give leave to appeal. The application for leave is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent