

ALBERT WAYNE HUNTER

v

THE QUEEN

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: M J Kidd for Applicant
M H Cooke for Respondent

Judgment: 26 February 2013

JUDGMENT OF THE COURT

- A The application for leave to adduce fresh evidence is dismissed.**
 - B The application for leave to appeal against conviction is dismissed.**
 - C The application to appeal directly to this Court against his sentence is dismissed.**
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REASONS OF THE COURT

[1] Mr Hunter was convicted of nine counts of drug offending following trial in the Auckland District Court. He was sentenced to six years imprisonment on

31 August 2011.¹ His appeal was dismissed by the Court of Appeal on 17 April 2012.² Mr Hunter seeks leave to appeal against that judgment.

[2] Mr Hunter in his notice of appeal also seeks leave to appeal directly to this Court against the sentence imposed by the District Court. He claims that the fact that he is due for consideration for parole soon constitutes exceptional circumstances.³

[3] The application to appeal against the conviction and the sentencing decisions are both out of time. Mr Hunter therefore seeks leave to appeal out of time.⁴ The application relating to Mr Hunter's sentence is approximately 13 months out of time. The application relating to Mr Hunter's conviction is approximately six and a half months out of time.

[4] As to the proposed appeal against his sentence, the fact that Mr Hunter may soon be released on parole cannot meet the test for an appeal from the District Court directly to this Court. In any event, no explanation has been given for the delay in attempting to appeal against his sentence. Nor were any submissions filed with regard to the proposed sentence appeal. The application must be dismissed.

[5] As to the proposed appeal against conviction, Mr Hunter's complaint is that the trial judge did not interview two jurors, with whom Mr Hunter claims he was acquainted. In his notice of appeal, Mr Hunter also claims that his lawyer inadequately represented him at trial and was conflicted.

[6] The juror matter was raised by Mr Hunter's counsel at the conclusion of the Crown case (which had taken about two weeks). Mr Hunter identified the jurors by their position in the jury box (and not by name). He claimed at trial that he had socialised in a sports bar on a regular basis with one of the jurors. He said that the other juror would have seen him at the "pokie machines" at a casino and that the juror may have harboured feelings of jealousy because Mr Hunter won money.

¹ *R v Hunter* DC Auckland CRI-2010-404-94, 31 August 2011.

² *Hunter v R* [2012] NZCA 147.

³ Supreme Court Act 2003, s 14.

⁴ Supreme Court Rules, s 1(4).

[7] Judge Perkins, the trial judge, considered whether to make enquiries of the jurors in question but decided there was not enough substance in the complaint to do so. The Court of Appeal concluded that there was no realistic suspicion that the claimed connections could have influenced the verdict. In addition, the claimed connections were only raised some two weeks into the trial.⁵

[8] Mr Hunter also seeks leave to adduce further evidence. He now says that, at the end of the second or third week of trial and while he was on bail, he attended a sports bar in Albert St in the city. He claims he saw two middle aged male members of the jury playing the poker machines near him. Mr Hunter won a \$500 jackpot and thinks the jurors would have noticed and been prejudiced against him.

[9] Even if there had been the level of contact with the jurors claimed by Mr Hunter at trial and in his proposed further evidence, there is no realistic basis for suspicion of bias or prejudice on the part of the jurors. There is thus no risk of a miscarriage of justice.

[10] Mr Hunter's claims regarding his legal representation at trial also fail to meet the threshold for granting leave. Mr Hunter states that his lawyer failed to advise him that he ought to have filed an affidavit in relation to the jury matter. As we have discussed, Mr Hunter's version of events, even if accepted, creates no risk of a miscarriage of justice. We also reject Mr Hunter's claims that his lawyer was conflicted and did not act in his best interests. No evidence has been submitted to substantiate this claim and Mr Hunter's written submissions did not address the point.

[11] The application to adduce further evidence must be declined, as must the application for leave to appeal against the Court of Appeal judgment.

Solicitors:
M J Kidd, Auckland
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⁵ At [16].