

IN THE SUPREME COURT OF NEW ZEALAND

SC 63/2014
[2014] NZSC 127

BETWEEN COLIN GEOFFREY HAYBALL
Applicant
AND THE QUEEN
Respondent

Court: McGrath, William Young and Arnold JJ
Counsel: Applicant in Person
S K Barr and Y N Moinfar for Respondent
Judgment: 18 September 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted by a jury on five counts of arson and sentenced to seven years' imprisonment on each count to be served concurrently.¹ He had earlier pleaded guilty to firearms charges for which he was sentenced to a cumulative term of six months' imprisonment. The Court of Appeal dismissed the applicant's appeal against his conviction and sentence.²

[2] The arson charges related to a series of fires that had been lit in a forest near Nelson on three days in February, March and April 2012. In total there were five fire scenes involving 36 actual or intended fires. Incendiary devices, which were timed to ignite at different times, were set on either side of access ways.

¹ *R v Hayball* [2013] NZHC 2543 (Simon France J) (sentencing).

² *R v Hayball* [2014] NZCA 237 (O'Regan, Courtney and Clifford JJ).

[3] The case against the applicant at trial was a circumstantial one. It included photographic and video evidence showing that the applicant's vehicle had been in the forest where the April fire occurred on the day it was lit. Witnesses also gave evidence of sightings of a similar vehicle, in relation to the February and April fires, driven by a person described in terms that were consistent with his being the applicant. Items were found at the applicant's home and in his vehicle that bore some similarity to materials that had been used in the incendiary devices. There was also CCTV footage showing the applicant obtaining items of the kind used in the devices on the day before the April fires. As well, the applicant's DNA had been found on a plastic shopping bag at the scene of one fire.

[4] The applicant seeks leave to appeal to this Court against his conviction and sentence. The primary grounds for his conviction appeal are that the case against him at trial was not proved beyond reasonable doubt and that the Court of Appeal was not impartial in hearing and determining his appeal.

[5] In relation to the first ground, the applicant says that he was not given assistance as to what was required by the Court of Appeal, and that, at the hearing of the appeal, one member of the Court interrupted him and made comments in a way that demonstrated a lack of impartiality. Nothing raised by the applicant persuades us that he has an arguable case of apparent or actual bias meeting the statutory threshold for a further appeal on this ground.

[6] In relation to the second ground, the applicant challenges the reliance placed on the evidence that he and his vehicle were in the area of the April fires. He says that the only reasons he was in the area where the fires occurred were to look at a property for sale, and to harvest his marijuana crop. The camera that recorded his vehicle in the area was several kilometres from the fire scene. He says that none of the prosecution witnesses positively identified him or his vehicle. As well, the applicant contends that his possession of the items that the Crown said were linked to the incendiary devices was explicable on other, everyday grounds and that some of these items could not have been used to light fires because they remained in his possession after the fires occurred.

[7] The applicant also says that a police officer gave false evidence at trial and there is a possibility that evidence was tampered with. He also contends that that the summing up of the High Court Judge was not impartial, the Judge allowed evidence to be admitted that he had previously decided was inadmissible, and the jury should have been directed that it was not safe to convict.

[8] In relation to his sentence, the applicant points to what he says are much lesser sentences imposed on other arsonists in relation to fires causing more damage than the fires concerned in this case.

[9] None of these matters raise any question of law or question of general or public importance either in relation to conviction or sentence. The applicant is seeking to bring a second general challenge to whether the quality of the Crown's evidence was such that it proved beyond reasonable doubt that he had committed the arsons. That was a matter for the jury to decide at his trial. On appeal, the Court of Appeal carefully considered each of the applicant's points and dismissed his appeal against conviction and sentence. Nothing has been raised by the applicant to indicate that as a result there has been a substantial miscarriage of justice or that for any other reason the interests of justice require another appeal to this Court.

[10] The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent