

**NOTE: HIGH COURT ORDER GRANTING PERMANENT NAME  
SUPPRESSION TO THE WITNESS REFERRED TO AS W29 REMAINS IN  
FORCE.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 20/2014  
[2014] NZSC 45**

BETWEEN                      KARL TEANGIOTAU NUKU  
Applicant

AND                              THE QUEEN  
Respondent

Court:                          Elias CJ, McGrath and William Young JJ

Counsel:                      Applicant in person  
D J Boldt for Respondent

Judgment:                    1 May 2014

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1]     This application for leave to appeal arises out of a trial at which the applicant and Mikhail Pandey-Johnson were convicted of murder. Their appeals to the Court of Appeal were dismissed<sup>1</sup> and Pandey-Johnson's application for leave to appeal to this Court was also dismissed.<sup>2</sup> The applicant's proposed grounds of appeal involve the causation issues addressed in that leave decision.

[2]     The allegation against the applicant was that he had struck the deceased on the head at least six times with a hammer. After the attack but before his death, a person referred to as W29 injected 20 milligrams of morphine into the deceased. At

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<sup>1</sup> *Pandey-Johnson v R* [2012] NZCA 595.

<sup>2</sup> *Pandey-Johnson v R* [2013] NZSC 135.

trial, there was no challenge to the Crown contention that the hammer blows to the deceased's head were a substantial and operating cause of death. Instead, the defence case was that these hammer blows had been delivered by W29 and that she then injected the deceased with morphine to finish him off.

[3] In the Court of Appeal, Pandey-Johnson and the applicant challenged causation but this challenge was not directed at the toxicology results.<sup>3</sup> In contrast, the applicant's proposed appeal to this Court is primarily concerned with the evidence given by the toxicologist. He says that at, or perhaps just before, the trial he declined to sign an admission of facts in relation to the toxicology results derived by the toxicologist. The upshot was that the evidence of the toxicologist was read to the jury by the registrar. This must have been with the consent of counsel and in the presence of the applicant. There is no indication of any contemporaneous complaint by the applicant, although he now says that he had earlier insisted on the toxicologist giving evidence in person and being cross-examined.

[4] According to the material supplied by the applicant to this Court, he had asked counsel appearing for him in the Court of Appeal to pursue, as a ground of appeal, the contention that trial counsel had wrongly given consent to the reading of the evidence of the toxicologist. He says that on 16 September 2012 he sent his counsel a declaration outlining his complaints on this issue but that counsel later told him that he had decided not to advance this as a ground of appeal. The applicant's affidavit for the appeal, in which he made other complaints about his trial counsel but which does not mention this issue, was sworn on 25 September 2012. So presumably his counsel had by this stage made it clear that he was not going to pursue any issue as to the evidence of the toxicologist being read by consent. By swearing the affidavit in the form that he did, the applicant would appear to have gone along with the course proposed by counsel.

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<sup>3</sup> It was common ground that W29 injected about 20 milligrams of liquid morphine into the deceased. In the Court of Appeal judgment, reference was made to the toxicology findings of the toxicologist and it was not in dispute that the morphine injection was capable of causing death.

[5] In his submissions, the applicant also sought to advance broadly the same causation argument which was directly addressed by this Court when it refused Pandey-Johnson leave to appeal.

[6] There is no indication in the applicant's submissions of any benefit which he might have derived if the toxicologist had been called to give evidence. Importantly, there is nothing to suggest that either the toxicology results or their interpretation by the toxicologist were wrong. More generally, a perusal of the judgments of the Court of Appeal dismissing the conviction appeals and of this Court refusing Pandey-Johnson leave to appeal makes it clear that the causation argument was not credible.

[7] There is therefore no point of public or general importance in the appeal and no appearance of a miscarriage of justice.

Solicitors:  
Crown Law Office, Wellington for Respondent