

IN THE SUPREME COURT OF NEW ZEALAND

SC 65/2015  
[2015] NZSC 142

BETWEEN ROBERT GEORGE KEEN  
Applicant

AND THE QUEEN  
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: A J Bailey for Applicant  
M J Lillico for Respondent

Judgment: 13 October 2015

---

**JUDGMENT OF THE COURT**

---

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

---

**REASONS**

[1] The applicant was found guilty of possessing methamphetamine for supply. When located, the methamphetamine in question was found in a plastic shopping bag that also contained \$43,170 in cash under the mobile home in which the applicant lived. In the District Court, forfeiture of this money was ordered on the basis that it was “a float intended to fund future purchases of methamphetamine”.<sup>1</sup> This finding of fact justified forfeiture under s 32(3) of the Misuse of Drugs Act 1975 (as it meant that the money was held “for the purpose of facilitating the commission” of offences against that Act). Forfeiture was upheld on appeal to the Court of Appeal.<sup>2</sup> The Court of Appeal considered it sufficient that the money was held for the purpose of being available if needed, and to the extent required, for future drug purchases and

---

<sup>1</sup> *R v Keen* DC Christchurch CRI-2011-042-3369, 6 August 2014 (Judge Garland) at [11].

<sup>2</sup> *R v Keen* [2015] NZCA 221 (French, Simon France and Clifford JJ).

that it was thus irrelevant that the applicant might or might not have used some of the money for other purposes such as everyday living.<sup>3</sup>

[2] The District Court Judge seems to have proceeded on the basis that all the money was to be used for future drug purchases. The burden of the applicant's argument is that the Judge's approach was wrong on the facts and that the Court of Appeal was only able to uphold the forfeiture by taking a relaxed approach to s 32(3). The complaint is that all the money was forfeited in circumstances where it was probable that only some of it would have been used for future drug purchases.

[3] To succeed on the appeal, the applicant would have to persuade the Court that (a) the trial Judge's finding of fact was wrong; and (b) the Court of Appeal's approach to s 32(3) was incorrect.

[4] The Crown submissions are that there was an adequate evidential foundation for the finding of fact and we would not normally grant leave to allow such a finding to be challenged. As well, what was required was an assessment of the applicant's purpose in holding the money at the time of seizure rather than an accurate prediction of how the money would be used in the future.

[5] Against that background we are of the view that the proposed appeal does not raise any issue of public or general importance and we see no appearance of a miscarriage.

Solicitors:  
Crown Law Office, Wellington for Respondent

---

<sup>3</sup> At [16]–[17].