

IN THE SUPREME COURT OF NEW ZEALAND

SC 140/2014
[2015] NZSC 32

BETWEEN MICHAEL CHRISTOPHER
 CRUICKSHANK
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: E J Forster for Applicant
 P D Marshall for Respondent

Judgment: 31 March 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Following a jury trial, the applicant was found guilty of one count of dishonestly and without claim of right using a document, contrary to s 228(b) of the Crimes Act 1961. On 21 July 2010, Judge Perkins entered a conviction, sentenced the applicant to four months home detention and ordered him to pay reparation of \$5,000.¹

[2] Some four years later, the applicant sought an extension of time to appeal to the Court of Appeal against both conviction and sentence. In a fully reasoned decision, the Court of Appeal dismissed his applications.² In doing so, the Court considered the merits of the proposed appeals:

¹ *R v Cruickshank* DC Auckland CRI-2007-044-4958, 21 July 2010 [Sentencing Notes].

² *Cruikshank v R* [2014] NZCA 574.

- (a) In relation to the appeal against conviction, the Court was satisfied, having analysed the grounds advanced, that it was without merit.³ Furthermore, the Court concluded that the applicant’s explanations for the delay in filing the appeal were unconvincing.⁴
- (b) In relation to the appeal against sentence, the applicant challenged the District Court’s jurisdiction to order reparation in the circumstances. The Court of Appeal considered that the point was moot – the applicant had not been required to pay the reparation, and it had been cleared, so that a decision on the point would have had no financial benefit for the applicant.⁵ The Court reiterated that no adequate explanation for the delay in filing the appeal had been given.⁶

[3] The applicant seeks leave to appeal to this Court against his conviction on two of the grounds dealt with by the Court of Appeal. He also seeks leave to appeal against the reparation order, on the ground that there was an insufficient evidential basis for it to be made.

[4] The Crown has raised a jurisdictional point. It says that in relation to criminal appeals, where an extension of time to appeal is required, the appeal is not properly constituted until the extension is granted.⁷ Accordingly, as an extension of time was declined, there has been no “appeal” in the Court of Appeal from which an appeal to this Court can be brought.

[5] The present application does not seek leave to appeal against the Court of Appeal’s refusal to grant an extension of time but against the applicant’s conviction and sentence. Given that, as the Crown contends, there has been no properly constituted “appeal” in the Court of Appeal, the present application must, presumably, be an application for a “leap-frog” appeal under s 14 of the Supreme Court Act 2003, which requires “exceptional circumstances” in addition to the usual grounds identified in s 13.

³ At [16]–[37].

⁴ At [39].

⁵ At [42]–[44].

⁶ At [45].

⁷ *Petryszick v R* [2010] NZSC 105, [2011] 1 NZLR 153 at [26].

[6] It is not necessary that we determine the jurisdiction point. We are satisfied that it not necessary in the interests of justice that we hear and determine the appeal against conviction or sentence. In light of the Court of Appeal's analysis, we do not consider that any issue of general or public importance is raised, nor do we accept that there is any risk of a substantial miscarriage of justice.

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

Solicitors:
Crown Law Office, Wellington for Respondent