IN THE SUPREME COURT OF NEW ZEALAND

SC 62/2016
[2016] NZSC 116

BETWEEN	LEIDEN CHEYNE O'SULLIVAN Applicant
AND	THE QUEEN Respondent

Court: William Young, Arnold and Ellen France JJ

Counsel: F C Deliu for Applicant
M L Wong for Respondent

Judgment: 2 September 2016

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed.

REASONS

[1] In May 2008, the applicant, Mr O'Sullivan, entered pleas of guilty to two charges of arson and was sentenced in the High Court to six months home detention and was ordered to pay $1,000 by way of reparation.[1] In January 2016, he filed a notice of appeal against conviction, which the Court of Appeal treated as an application for an extension of time to appeal. The Court refused to extend time to appeal, both because of the delay and the lack of merit in the appeal.[2]

[2] Mr O'Sullivan now makes two applications to this Court, in the alternative. First, he applies for leave to appeal against the Court of Appeal's decision refusing his application to extend time to appeal; second, he applies for a "leap frog" appeal directly from the High Court's decision.

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1 *R v O'Sullivan* HC Whangarei CRI-2007-088-5182, 19 August 2008 (Harrison J).
2 *O'Sullivan v R* [2016] NZCA 204 (Randerson, Stevens and French JJ) [*O'Sullivan* (CA)].

[3] In relation to Mr O'Sullivan's application for leave to appeal against the Court of Appeal's decision declining to extend time to appeal, this Court has no jurisdiction to hear such an appeal, as it has said on numerous occasions. In *Penman v R* the Court said:[3]

> Our jurisdiction in criminal cases is provided for by s 10 of the Supreme Court Act 2003 in terms which do not encompass appeals against decisions determining extension applications. So there is no jurisdiction to entertain an appeal from the Court of Appeal decision refusing an extension of time for the conviction appeal. It follows that if we were to hear a challenge to the conviction, it would have to be by way of direct appeal from the District Court. The jurisdiction to grant leave for such an appeal is circumscribed by s 14 of the Supreme Court Act, in that leave may not be granted unless we are satisfied that there are "exceptional circumstances" which warrant the taking of an appeal directly to this Court.

[4] On behalf of Mr O'Sullivan, Mr Deliu submits that the Court should reconsider its position and that an oral hearing be granted for that purpose. We do not accept these submissions. The position as to jurisdiction is clear.

[5] In relation to the application for a "leap frog" appeal, there must be, as the foregoing extract from *Penman* notes, "exceptional circumstances" to justify leave being given. This is in addition to the requirements in s 13 that the proposed appeal must either raise a point of general or public importance or involve the risk of a substantial miscarriage of justice.

[6] We are satisfied that the proposed appeal does not raise any issue of general or public importance nor does it involve the risk of a substantial miscarriage of justice. We note that the Court of Appeal received affidavit evidence from Mr O'Sullivan, his mother and two sisters, as well as from Mr Watson and Mr Fairley, who represented Mr O'Sullivan at different stages of the process. In light of the affidavit and other material before it, the Court of Appeal was satisfied that the merits of Mr O'Sullivan's appeal were "weak".[4] On the basis of the material before us (including the further submissions made by Mr Deliu), there is no reason to doubt the Court of Appeal's assessment.

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3 *Penman v R* [2016] NZSC 96 at [5].
4 *O'Sullivan* (CA), above n 2, at [27].

[7] Accordingly, the applications for leave to appeal are dismissed.

Solicitors:
R Zhao, Auckland for Applicant
Crown Law Office, Wellington for Respondent