

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 20/2020  
[2020] NZSC 32

BETWEEN ASHOR CHRISTIAN GORGUS  
Applicant

AND THE QUEEN  
Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person  
J M Irwin for Respondent

Judgment: 9 April 2020

---

**JUDGMENT OF THE COURT**

---

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

---

**REASONS**

[1] In November 2018 the applicant was arrested and charged with burglary. A backpack he had been carrying was found to contain items belonging to the address that had been burgled. The applicant elected trial by jury and challenged the admissibility of evidence obtained from the backpack.

[2] In a pre-trial ruling, Chief Judge Taumaunu in the District Court held that the evidence was admissible.<sup>1</sup> The applicant applied for leave to appeal to the Court of Appeal against that ruling.<sup>2</sup>

[3] Before the appeal was heard, the applicant entered a plea of guilty to an amended charge of receiving. He was sentenced on that charge to 18 months'

---

<sup>1</sup> *R v Gorgus* [2019] NZDC 24941.

<sup>2</sup> Under s 217 of the Criminal Procedure Act 2011.

imprisonment.<sup>3</sup> Nevertheless, the applicant continued to pursue his application for leave to appeal against the pre-trial admissibility ruling.

[4] The Court of Appeal declined leave, considering it no longer had jurisdiction to entertain the appeal because the applicant's guilty plea meant the admissibility issue was moot. The Court noted that the applicant had two options to contest liability: vacate his guilty plea or lodge an appeal against conviction. Both would require him to provide evidence explaining why he entered his guilty plea.<sup>4</sup>

[5] The applicant seeks leave to appeal that decision to this Court.

[6] This Court does not have jurisdiction to entertain an application for leave to appeal the Court of Appeal's refusal of leave.<sup>5</sup> Nor would it help the applicant to treat this as an application for leave to appeal directly from the District Court ruling, as there are no exceptional circumstances as required by s 75(b) of the Senior Courts Act 2016.<sup>6</sup> Further, as the respondent submits, there can be no possibility of a miscarriage of justice<sup>7</sup> in relation to the question of admissibility where the applicant has accepted responsibility for the offending and his plea has not been vacated.

[7] It is understood that an appeal against conviction has now been lodged in the Court of Appeal. Any matters in relation to the plea itself may be ventilated there.

[8] The application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent

---

<sup>3</sup> *R v Gorgus* [2019] NZDC 26079 at [15]. He was also concurrently sentenced to 12 months for a separate charge of theft of a vehicle.

<sup>4</sup> *Gorgus v R* [2020] NZCA 46 (Collins, Simon France and Lang JJ) at [4]–[5].

<sup>5</sup> Criminal Procedure Act, s 213(3).

<sup>6</sup> Where the Court of Appeal has refused leave to appeal to that Court, only a rare and exceptional case would justify the grant of leave to appeal to this Court directly from the trial court: *Sena v New Zealand Police* [2018] NZSC 92 at [4]; *Burke v Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560 at [4]; and *White v Auckland District Health Board* [2007] NZSC 64, (2007) 18 PRNZ 698 at [5]–[6].

<sup>7</sup> Senior Courts Act 2016, s 74(2)(b).