

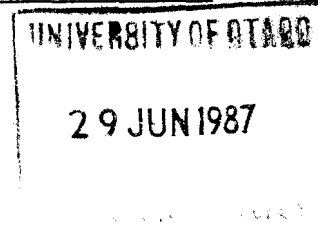
THE QUEEN

v.

ALAN COWLEY

Coram: Cooke P.  
McMullin J  
Casey J.

Judgment: 30 April 1987



---

JUDGEMENT OF THE COURT DELIVERED BY COOKE P.

---

This application by Alan Cowley, formerly known as Alan Francis Convery, is in terms an application for leave to appeal against a sentence of seven years' imprisonment imposed in the Auckland High Court on 16 December 1986 for a crime of attempting to commit sodomy on a six year old boy.

It further purports to be an application for leave to appeal against recall to serve a life sentence. That part of the application relates to a decision given on 4 December 1986 in the same Court by a different High Court Judge.

The applicant is a man whose criminal history is regrettably well-known to the Courts. The recall was under a sentence for murder of which crime the applicant was convicted on 15 September 1967. He was released on parole on 1 April 1985.

Under the current procedure introduced by the Criminal Justice Act 1985 the jurisdiction to direct recall is vested

in a High Court Judge upon application by the Secretary for Justice, that procedure having replaced the former one under which it was a matter for Ministerial decision.

In correspondence with the applicant's solicitors, attention was drawn by the office of this Court to the fact that there appeared to be no right of appeal from the direction for recall. Nothing has been put before us to suggest that that view is incorrect. There does appear to be no right of appeal, and for that reason alone that part of the application would have to be dismissed. We record, however, that we have nevertheless considered the reasons given by the Judge in directing recall, which were in essence that this step was necessary for the protection of the public. We are satisfied that he took all relevant considerations into account and that the order made by him was entirely proper.

As to the other part of the application, which undoubtedly can be made to this Court, namely that concerning the sentence imposed by the other Judge, we have considered certain written submissions sent in by the applicant himself, his writing being dated 7 April 1987. Notwithstanding everything that he says we are equally satisfied that this sentence is not one with which this Court should rightly interfere. That application is accordingly also dismissed.

R. B. Scott P.