

**LOW
PRIORITY**

IN THE COURT OF APPEAL OF NEW ZEALAND

21/10
C.A. 55/94

JOHN POMEROY

1602

v.

INLAND REVENUE DEPARTMENT

Coram: Eichelbaum CJ
Casey J
Thorp J

Hearing: 29 September 1994 (at Wellington)

Counsel: Applicant in Person
M T Lennard for Respondent

Judgment: 14 October 1994

JUDGMENT OF THE COURT DELIVERED BY THORP J

This is an application for special leave under s144(3) Summary Proceedings Act 1957 to appeal against the dismissal by Neazor J on 21 November 1990 of an appeal by the applicant, Mr Pomeroy, against his conviction in the District Court at Lower Hutt on 27 October 1989 of two counts of failing to file returns of income tax for the years ending 31 March 1987 and 31 March 1988.

The application was filed out of time. However, the record indicates that the delay in filing was, at least in part, for reasons outside Mr Pomeroy's control, and the time point was not taken by the respondent.

The application therefore falls to be determined according to the provisions of s144(3). That section specifically provides that leave for a second appeal to this Court can only be granted if the proposed appeal raises a question of law of general or public importance.

Mr Pomeroy, who presented lengthy submissions on his own behalf, set out in his application for leave those "questions of law" which he hoped might justify the grant of leave, the application stating that Neazor J "erred in law -

- (i) When he elected to ignore the terms of an IRD amnesty; and
- (ii) When he failed to examine an envelope that had forwarded a tax amnesty pamphlet to Mr Pomeroy and a letter written to Mr Pomeroy confirming the significance of the amnesty."

It is critical to Mr Pomeroy's application for special leave that he be able to establish both that the proposed appeal does raise those questions, and that at least one such question is of general or public importance.

It was apparent from Mr Pomeroy's submissions that one of his principal concerns has been his belief that the judges who have previously considered this case did not admit, or fully consider, documentary evidence in his possession which tended to establish that an amnesty had been pronounced, and that he had applied to come within its terms. No doubt for that reason his "questions of law" were plainly directed to ensuring that the Court did accept the fact of an amnesty, and that Mr Pomeroy had made such an application.

It was, however, pointed out to Mr Pomeroy during the course of his submissions that the judgment of Neazor J from which he seeks leave to appeal did in fact accept both those matters. The basis upon which the judgment found against Mr Pomeroy was the quite different point that he had failed to observe the terms of the amnesty which, accordingly, could not provide any defence to him.

Upon that being pointed out, Mr Pomeroy accepted that indeed the point on which the decision in the High Court was based was the issue of compliance with the terms of the amnesty, not any doubt that there was an amnesty, nor any question whether he had applied to come within it.

It follows that neither of the questions of law specified in the application are questions which are raised by the decision from which leave is sought to appeal, or would call for determination by this Court if leave were granted to appeal.

It is equally fatal to the application that neither of the points are in any event questions of law "of general or public importance". They relate entirely to the relationship and dealings between the Inland Revenue Department and Mr Pomeroy about his personal tax returns. While those concerns are of great interest to Mr Pomeroy, they cannot be inflated into matters of "general or public importance".

Each of the two grounds just discussed would suffice to determine the application against the applicant. Because, however, we do not doubt that Mr Pomeroy has pursued this matter to this point because of a firm opinion that he has not been justly treated and because as a layman he may have difficulty understanding that this Court can only operate within the law and within the limits which the law places upon it, we propose to look briefly at the question whether or not the conviction entered was one which might be disturbed, had the Court jurisdiction to do so.

The central finding underlying the conviction of Mr Pomeroy was that he had failed to observe the terms of the amnesty declared by the Department in 1988. This topic was considered by Neazor J's judgment in the following paragraph:

"According to Mr Pomeroy he had telephoned the Department on 26 October 1988. As a result he was sent forms on 3 November which he described as annual return forms. He said that it would take some time to fill in the forms but he was advised to fill in the returns and send them in. Thereafter he received the two warning letters. He did nothing in response to them. He said he was fed up with the whole business and expected the Revenue Department to 'back off as it had done before'. By the time the prosecution was heard he still had not put together the necessary information and made the returns."

Mr Pomeroy was asked whether the facts there set out were historically correct. He confirmed that they were. He maintained, however, that he was entitled to rely upon advice in the amnesty notification that the date by which outstanding returns were to be filed was to be agreed. His argument was that this placed on the Department the onus of agreeing with him a date by which his returns should be filed.

That was not a term of the amnesty, as Neazor J's judgment points out. The amnesty documents advised Mr Pomeroy that "You will have to agree with Inland

Revenue on a date" and that the amnesty would protect him if he complied with such agreement. Mr Pomeroy did not agree a new date and, as the circumstances recorded in the judgment and set out above disclose, he did not complete the returns forwarded to him on 3 November 1988 until after his conviction for failure to furnish returns on 15 September 1989.

The normal requirements of our taxation code require all persons in business on their own account to file returns by specified dates. The terms of amnesties may give an excuse in law against strict compliance with such provisions, but they will only do so if those who seek to rely upon them comply strictly with the amnesty terms. In our view, the record shows that the judges who have previously considered this matter were justified by the evidence in their conclusions that Mr Pomeroy had not complied with the terms of this amnesty. Accordingly their decisions would in any event have been upheld by this Court on the merits, had the Court jurisdiction to consider the appeal.

In fact, for the reasons previously stated, it is clear that the Court has not that jurisdiction, and the application for special leave is therefore dismissed.

A handwritten signature in black ink, appearing to be 'D. J. [unclear]', written over a horizontal line.

Solicitors

Crown Solicitor, Wellington.