IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

CRI-2013-412-000012
[2013] NZHC 3145

BETWEEN	PAUL DOUGLAS Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 21 November 2013

Appearances: Appeallant Appears in Person
R D Smith for Respondent

Judgment: 27 November 2013

JUDGMENT OF D GENDALL J

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[1] On 15 May 2007 the appellant was convicted in the District Court on one charge of assault pursuant to s 9 Summary Offences Act 1981 following a defended hearing. He was fined $200 and ordered to pay witnesses' expenses and court costs.

[2] On 26 April 2013 the appellant filed an application in the High Court seeking leave to appeal that decision out of time. It was some five years and 10 months after the conviction and sentence was imposed.

[3] The matter came before me on 25 September 2013 and in a reserved decision I delivered on 10 October 2013 I declined the application for reasons outlined in that decision.

[4] The appellant now seeks the leave of the High Court to appeal this 10 October 2013 decision to the Court of Appeal pursuant to s 144 Summary Proceedings Act 1957. That s 144 Summary Proceedings Act 1957 provides:

144 Appeal to the Court of Appeal

(1) Either party may, with the leave of the High Court, appeal to the Court of Appeal against any determination of the High Court on any case stated for the opinion of the High Court under section 107 of this Act or against any determination of the High Court on a question of law arising in any general appeal:...

(2) A party desiring to appeal to the Court of Appeal under this section shall, within 21 days after the determination of the High Court, or within such further time as that Court may allow, give notice of his application for leave to appeal in such manner as may be directed by the rules of that Court, and the High Court may grant leave accordingly if in the opinion of that court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

(3) ....

[5] From a 10 page handwritten document filed in this Court it would seem that the appellant's submissions in support of his application to seek leave to appeal are:

(a) That in my judgment of 10 October 2013 I did not properly grasp the facts of the case in dismissing the appellant's leave application;

(b) That I was wrong to hold that the news articles relied upon by the appellant were not evidence;

(c) That I was wrong to conclude the original hearing of March 2007 was predominantly about the credibility of witnesses called to give evidence;

(d) That I was wrong to conclude that there was an inadequate explanation for the excessive delay in filing the original appeal;

(e) That concerns I expressed in my decision about floodgate considerations were irrelevant to the present case; and

(f) That a convicted person should always have the ability to prove their innocence or prove their conviction was wrong or unsafe, particularly where relevant new evidence comes to light.

[6] In response, it is the respondent's submission that:

(a) There is no question of law posed in this case for the Court.

(b) That if a question of law is identified amongst the grounds advanced for seeking leave then none appear to be of sufficient general or public importance so that they should be referred to the Court of Appeal.

(c) That my conclusions as to the status of evidence and that the original hearing was predominantly about the credibility of the witnesses who were called to give evidence were in fact correct.

(d) That the allegation that a witness who did not give evidence at the hearing, may have had a criminal conviction is without merit. Even with the benefit of a newspaper article it is no more than a mere possibility and in any event the District Court Judge heard no evidence from this individual so could not in any way be influenced.

(e) Even if that complainant did have a prior criminal conviction there is no evidence that his statement had any bearing on the original hearing.

[7] On the question of special leave to appeal, in the leading case of *R v Slater*[1] the Court stated:

> ...Thus, there must be: (i) a question of law; (ii) the question must be one which, by reason of its general and public importance or for any other reason, ought to be submitted to the Court of Appeal; and (iii) the Court must be of the opinion that it ought to be so submitted.
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> Section 144 was not intended to provide a second tier of appeal from decisions of the District Court in proceedings under the Summary

[1] *R v Slater* [1997] 1 NZLR 211 at pp 214 and 215.

> Proceedings Act. Parliament intended such proceedings to be brought to finality with the defendant having an appeal to the High Court other than when the conditions it has specified in subs (2) and (3) are met and leave to appeal is granted. Neither the determination of what comprises a question of law, nor the question whether that point of law raises a question of general or public importance, are to be diluted.

[8] In the present case I am satisfied there is no important question of law at issue here which ought to be submitted to the Court of Appeal. This is a case as I see it which Parliament clearly had in mind when enacting s 144 of the Summary Proceedings Act 1957 that it intended would be brought to finality having reached the High Court. In addition, my decision of 10 October 2013 considered at length the authorities on the question of granting by way of an extension of time leave to appeal the earlier District Court decision out of time. No explanation for the delay in bringing the appeal was provided and there was no merit in the appeal itself and a strong interest existed in reaching some finality with this case after such a long period since the District Court decision.

[9] For completeness here I turn to address what I understand are the principal complaints the appellant raises here.

[10] First, the appellant again seems to raise questions over whether the statement of the complainant Mr Tuitupou who did not give evidence in the District Court and who the charge in respect of was dismissed, in some way affected the mind of the District Court Judge in giving his decision. This suggestion as I see it is without foundation. It is not contended this evidence was even before the District Court Judge and the fact that the charge in respect of this complainant was dismissed would suggest allegations with respect to Mr Tuitupou were put completely to one side.

[11] A further submission from the appellant that the summary of facts would have affected the District Court Judge in making his decision because it included material taken from the statement of the complainant, Mr Tuitupou, is also in my view without foundation as:

(a) No evidence is provided that any fact contained within the summary was founded solely on the statement of the Mr Tuitupou as opposed to other witnesses; and

(b) It is an ordinary practice of police prosecutors to introduce a case to a District Court Judge by reference to a summary of facts and while that occurred in the present case the Judge nonetheless dismissed the charge with respect to that second complainant, Mr Tuitupou.

[12] Next, the mere fact that Mr Tuitupou may have had a conviction, and that is still the subject of conjecture, would not be of any help here. It was the evidence of the other security guard, Mr Papahadjis that the District Court Judge relied on.

[13] Again I repeat that the District Court case was clearly decided on the evidence presented at that hearing either in agreed witness statements or viva voce.

[14] I conclude that this case is not an unusual one or one of general public importance. The charge upon which the appellant was convicted was at the very lowest end of assault charges available by statute and the sentence imposed was a modest fine.

[15] The appellant's case and the various grounds he has endeavoured to advance were thoroughly considered in my 10 October 2013 decision and given my finding that this is not a matter of general or public importance that should be referred to the Court of Appeal, the present application for leave to appeal must fail and it is dismissed.

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D Gendall J

Solicitors:
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Copy to Appellant