

IN THE SUPREME COURT OF NEW ZEALAND

**SC 96/2009
[2010] NZSC 14**

ALEX KWONG WONG

v

THE QUEEN

Court: Blanchard, McGrath and Wilson JJ

Counsel: F C Deliu for Applicant
M D Downs for Crown

Judgment: 2 March 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal against the Court of Appeal's dismissal of Mr Wong's appeal against conviction on charges of importation and possession for supply of a large quantity of methamphetamine. The application for leave to appeal against sentence has been withdrawn.

[2] The central point taken on the conviction appeal is whether, in circumstances where a jury note referred to the possibility of bullying if there were further deliberations, it was open to the Judge to have given a direction in the form known

as a *Papadopoulos* direction¹ and whether the direction actually given was adequate to deal with that possibility. (There is nothing in the further suggestion that the Judge should have taken a verdict without making the further inquiry that revealed to her that the jury was undecided.)

[3] We are not persuaded that the Court of Appeal may have erred in deciding that there was no impropriety or unfairness in what the Judge did. As that Court said, the jury note did not indicate that there had actually been intimidation of any juror. Obviously there was tension, as there often is, and it may have been better had the Judge specifically referred in her direction to the reference to the possibility of bullying. But the third and fourth paragraphs of the portion of the direction quoted at para [12] of the Court of Appeal judgment² were sufficient. It is significant that there was no sign of disagreement by any juror when the verdicts were delivered. The only juror who seems to have expressed emotion was in fact the foreperson who delivered the verdicts and her willingness to do so very much suggests that she was not a victim of bullying. Her emotion appears to have been a reaction to the stress of undertaking that task and to have been induced after the verdicts were announced by cries from the applicant's mother. The tendered affidavits from Mr Wong's parents do not in their essentials contradict the Judge's observations of what occurred when the jury verdicts were given.

[4] These were factual matters particular to the case and, in the absence of any appearance that the Court of Appeal's conclusions on them were not properly reached, there is no basis for a second appeal.

[5] The focus group material tendered by Mr Deliu is of no probative value. It was a completely artificial exercise divorced from the evidence and circumstances of the trial and should not have been put before the Court.

¹ See *R v Accused* (CA 87/88) [1988] 2 NZLR 46 at p 59 and *R v Papadopoulos* [1979] 1 NZLR 621.

² *R v Wong* [2009] NZCA 440.

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