

LUANA ROBERTA TAYLOR

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: J K W Blathwayt for Applicant

Judgment: 1 July 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has sought leave to appeal against the refusal by the Court of Appeal to grant leave for a pre-trial appeal to that Court. Section 379AB(1) of the Crimes Act 1961 reads:

- (1) With the leave of the Supreme Court, an accused person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under s 379A(1) or (2).

[2] We have received written submissions from Mr Blathwayt which address the question of this Court's jurisdiction and having read them are satisfied that the absence of jurisdiction for us to hear the proposed appeal is so clear that it is unnecessary to call for submissions from the Crown.

[3] The expression “a decision of the Court of Appeal on appeal” also appears in s 144A of the Summary Proceedings Act 1957 and this Court has previously said in that context that a decision of the Court of Appeal refusing leave or special leave to appeal to it is not a decision “on an appeal”. It is simply a decision that no appeal shall be permitted.¹

[4] If, contrary to the view of the Court of Appeal, there is substance in the argument which the applicant was refused leave to advance in the Court of Appeal, the point can be taken if it remains relevant following any conviction at trial. The point could be raised in a conviction appeal to the Court of Appeal without need for leave.

Solicitors:
WCM Legal, Carterton for Applicant

¹ *Simpson v Kawerau District Council* (2004) 17 PRNZ 358 at paras [5], *Clarke v R* [2005] NZSC 60.