IN THE SUPREME COURT OF NEW ZEALAND

SC 123/2013
[2013] NZSC 148

BETWEEN	ANTHONY DAVID BANBROOK Applicant
AND	THE QUEEN Respondent

Court:	McGrath, William Young and Arnold JJ
Counsel:	Applicant (In Person) J M Jelas and T M Daniel for Respondent
Judgment:	18 December 2013

JUDGMENT OF THE COURT

Application for leave to appeal is dismissed.

REASONS

[1] Mr Banbrook applies for leave to appeal against the dismissal by the Court of Appeal of his appeal against his conviction on a charge of making an untrue statement in a prospectus.[1] The proposed ground of appeal is that his guilty plea was induced by a ruling that was wrong in law.

[2] The applicant was charged in 2008. On 22 June 2012, he pleaded guilty to a charge brought under s 58 of the Securities Act 1978. Earlier that month, Ellis J had dismissed his application for a stay of proceedings based on undue delay.[2] Some time later the applicant signed an agreed statement of facts. He was sentenced by Collins J to home detention and reparation on 12 March 2013.[3]

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1 *Banbrook v R* [2013] NZCA 525.
2 *R v Banbrook* [2012] NZHC 1318.
3 *R v Banbrook* [2013] NZHC 462.

[3] The applicant essentially wishes to argue that his case comes within the third situation in which a guilty plea can be withdrawn as recognised in *R v Le Page*.[4] His proposed argument, which was unsuccessful in the Court of Appeal, is that Ellis J's ruling was wrong and left him no choice but to plead guilty. Substantial prejudice arose from the ruling because of death and unavailability of witnesses, and loss of company records, during the period of delay after he was charged.

[4] The legal principle in *Le Page* is not in dispute. If leave were granted the issue would be whether it applied. We are, however, satisfied that it was open to the Court of Appeal to conclude that the case was not one of such exceptional circumstances that the guilty plea should be set aside. Following refusal of a stay, although he had a reverse onus to discharge, the applicant remained able to defend the charge and he could have given evidence as to his belief that the statements in the prospectus were true and that he had reasonable grounds for that belief. Whether the unavailable witnesses or lost minutes would have helped him with his defence is highly speculative. The application for leave does not reveal any specific basis for his claim that the lapse of time caused him substantial prejudice. In these circumstances, it is not necessary that we further address the judgment of Ellis J on undue delay by the prosecution.

[5] The applicant also submitted that his decision not to proceed with a disputed facts hearing, and to accept the Crown's statement of facts at sentencing, was the result of coercion by the Crown. This was done while having the assistance of senior counsel. An email exchange attached to his submissions does not indicate that his decision was other than a considered acceptance of what was in his best interests. We do not accept that his submission of coercion is arguable.

[6] Overall, we see no possibility of a miscarriage of justice in this case which accordingly does not meet the test in s 13 of the Supreme Court Act 2003 for a further appeal. The application is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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4 [2005] 2 NZLR 845 (CA) at [19].