NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.

IN THE SUPREME COURT OF NEW ZEALAND

SC 14/2013
[2013] NZSC 31

ROBERT KEITH JEFFRIES

v

THE QUEEN

Court: Elias CJ, William Young and Chambers JJ

Counsel: T Ellis for Applicant
M R Davie and S B Edwards for Crown

Judgment: 15 April 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty by a jury on a number of counts involving sexual offending against four children. A subsequent appeal against conviction was dismissed by the Court of Appeal[1] and he now seeks leave to appeal against that judgment.

[1] *R v Jeffries* [2012] NZCA 608.

[2] The submissions in support of the application for leave to appeal challenge three aspects of the procedure adopted before and at trial:

(a) The substitution of Gendall J for Miller J in relation to a process under s 9 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the Act).[2]

(b) The non-adoption, at the s 9 hearing, of special procedures to allow for the applicant's mental impairment.

(c) The applicant being required to sit in the dock at trial while two of the complainants gave evidence at trial from behind a screen.

[3] The substitution of Gendall J for Miller J occurred because the latter was away when he had been scheduled to complete the process under the Act which, accordingly, began again before Gendall J. The applicant's arguments in relation to this were dismissed by the Court of Appeal who could see nothing to suggest that the applicant had suffered any prejudice.[3] In his written submissions for the applicant, Mr Ellis maintains that the course which was adopted, including the non-release of the reasons explaining why Miller J was not available, "caused a substantial miscarriage". This contention, however, was neither amplified nor explained. On this aspect of the case, we see neither an appearance of a miscarriage of justice nor a point of general or public importance as would warrant the granting of leave to appeal.

[4] In his pre-trial judgment, Gendall J suggested that the applicant's mental impairment should be accommodated by the applicant sitting by his counsel during the trial and for breaks to be taken to enable him to talk to counsel or just "to have a rest from the pressures of the trial". The second of the proposed grounds of appeal is based on the proposition that similar procedures should have been, but were not, adopted at the s 9 hearing before Gendall J. There is, however, no suggestion that the applicant or his counsel were dissatisfied with the procedure adopted at the s 9 hearing. Nor is there any tangible basis for concern that this procedure resulted in

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2 *R v Jeffries* HC Wellington CRI-2009-063-732, 6 October 2010.
3 At [29]–[30].

any actual prejudice in relation to that hearing. In respect of this ground of appeal, the statutory criteria for leave have not been established.

[5] On the third proposed ground of appeal, Mr Ellis relied primarily on academic commentaries and American authorities which deprecate placing a defendant in a dock during trial. In its judgment, the Court of Appeal noted that there was good and obvious reason for the change in seating arrangements when the two complainants in question gave evidence.[4] Otherwise the purpose of the direction of the trial Judge (which was unchallenged by counsel for the applicant) that the two complainants give evidence from behind a screen would have been nullified.[5] We see no basis for concern for thinking that the applicant was prejudiced by the requirement (also not challenged by his counsel) that he sit in the dock while the two complainants gave evidence. The statutory criteria in relation to leave are also not satisfied in relation to this proposed ground of appeal.

[6] Accordingly the application for leave to appeal should be dismissed.

Solicitors:
Crown Law Office, Wellington

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4 As will be apparent from what we have said, the applicant sat in the dock only while the complainants were giving evidence.

5 The complainants were to give evidence out of the line of sight of the applicant to reduce the stress they experienced during the proceedings.