

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS, OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 42/2013
[2013] NZSC 61**

BETWEEN SAMSON DUFFY
 Applicant

AND THE QUEEN
 Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: A Stevens for Applicant
 K A L Bicknell for Respondent

Judgment: 21 June 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Duffy was convicted on three charges of indecently assaulting complainant A and five charges of sexual violation with regard to complainant B. Mr Duffy's appeal against his conviction was dismissed by the Court of Appeal on 19 April 2013.

[2] Mr Duffy seeks leave to appeal against the Court of Appeal's judgment. The grounds (being the same as in the Court of Appeal are):

- (a) the decision to join the charges resulted in an unfair trial
- (b) the verdicts with regard to complainant A were unreasonable.

[3] The joinder decision was made by Judge MacDonald on the basis that the evidence of each complainant was propensity evidence with regard to the other complainant, that it had moderate probative value and that its probative value outweighed any unfairly prejudicial effect because it was directly relevant to whether Mr Duffy had a tendency to offend in an opportunistic manner against young girls and that judicial directions would appropriately deal with any risk of unfair prejudice.

[4] The Court of Appeal rejected the argument with regard to joinder, considering the evidence to be orthodox propensity evidence and the judicial directions at Mr Duffy's trial to have been robust and proper.

[5] As to the second ground, it is submitted that a number of factors related to the complainant's evidence show that she should not have been believed by the jury. The most significant are her persisting in her evidence as to her age when the offending occurred, while other evidence showed she did not live at the relevant address in the period she alleged the offending occurred and also the fact that her allegations against Mr Duffy coincided with times of anger with her mother.

[6] The Court of Appeal examined the evidence adduced at trial and was satisfied that there was sufficient evidence for a reasonable jury to find the charges proved beyond reasonable doubt. The Court noted that all the matters raised on behalf of Mr Duffy relating to complainant A's credibility were before the jury and, in particular, that the trial judge had emphasised the defence case that complainant A was not to be believed because of her insistence as to her age at the time of the offending.

[7] The Court of Appeal applied settled principles to the issues relevant to joinder and to whether the verdict was unreasonable, no issues of general or public importance arise and there is no risk of a miscarriage of justice.

[8] The application for leave to appeal is dismissed.