

[2] Mr R appealed against his convictions on the grounds that the verdicts were unsafe by virtue of the circumstances in which they were delivered by the jury and that his trial counsel had failed to represent him adequately. The Court of Appeal dismissed the appeal on 17 June 2014.⁶ He now applies for leave to appeal to this Court.

Mr R's submissions

[3] In this Court Mr R submits that the jury's guilty verdicts were unreasonable having regard to the evidence. His position is that none of the offending happened, and that his children fabricated the allegations at the insistence of their mother (Mr R's former partner).

[4] Mr R has filed supplementary material that he says undermines the credibility of his former partner. He also submits that there is new evidence that supports this ground of appeal, enclosing with his application a purported retraction by one of his children,⁷ as well as an unsworn statement allegedly made by his former partner that she had "told lies and I still do about [Mr R]" and that she, in fact, harmed the children.

[5] Mr R also relies on arguments that are similar to those advanced in the Court of Appeal and he expresses concern about the way his counsel on appeal conducted his case.

Court of Appeal decision

[6] The foreperson at Mr R's trial had difficulty in articulating the jury's verdicts and the trial judge had intervened to ensure the verdicts were correctly taken.⁸ Mr R's contention was that the trial Judge erred in not ensuring the jury had properly reached a verdict and this resulted in a miscarriage of justice.

⁶ *R(CA283/2013) v R* [2014] NZCA 239 (Stevens, Courtney and Lang JJ).

⁷ This is a handwritten statement dated 21 March 2013, marked as exhibit "A" in the affidavit of Ms ER (dated 10 July 2014), received by this Court on 14 July 2014.

⁸ The circumstances as set out in the Court of Appeal judgment: *R(CA283/2013) v R*, above n 6, at [13]–[21].

[7] The Court dismissed this ground of appeal on the basis that it was satisfied that the verdicts ultimately delivered by the foreperson were those with which all or the required majority of the jury agreed.⁹ After considering a report from the trial judge and evidence from Mr R’s trial counsel, the Court concluded that responsibility for the confusion that occurred when the verdicts were delivered rested solely with the foreperson and that the verdicts could properly be regarded as safe.¹⁰

[8] Mr R’s second ground of appeal was that his trial counsel did not allow him to give evidence and that the overall quality of his representation was not adequate. The Court concluded that Mr R had understood the effect of a document he had signed, accepting advice not to give evidence.¹¹

[9] In any event, the Court considered there would have been little benefit to the defence case in Mr R giving evidence at trial. By the end of the Crown case, the jury had already seen an edited version of Mr R’s police video interview and his trial counsel had cross-examined the complainants and their mother in a manner that enabled him to submit to the jury that they were lying or mistaken in material respects.¹² Moreover, there was a real risk that the jury would have formed an adverse impression of Mr R if he had given evidence at trial.¹³

[10] Nor did the Court accept Mr R’s more general allegation that his trial counsel had failed to represent him adequately. Mr R did not identify any specific failures on the part of his counsel (apart from the allegation he was prevented from giving evidence).¹⁴ The Court considered that trial counsel had mounted “an effective line of defence”.¹⁵

Our assessment

[11] Mr R’s principal proposed ground of appeal before this Court appears to be that the jury’s guilty verdicts were unreasonable having regard to the evidence. This

⁹ At [22].

¹⁰ At [22].

¹¹ At [38].

¹² At [39].

¹³ The Court explained why that was the case at [40]–[43].

¹⁴ At [45].

¹⁵ At [47].

was not a ground raised in the Court of Appeal. Mr R is essentially seeking to re-litigate the particular facts of the case for the first time on a second appeal.

[12] The affidavit of Ms ER and the unsworn statement allegedly by his former partner are provided to support the following allegations: that his former partner is a liar, that she had been violent towards her children and that she manipulated the children into fabricating the allegations. These allegations were before the jury. We accept the Crown's submission that the new material relating to the above matters does not materially advance the position of Mr R when compared with what was before the jury. Nothing put forward by Mr R suggests that the guilty verdicts were not open to the jury on the totality of the evidence.

[13] Mr R has also filed what purports to be a retraction by one of his children. This purported retraction was filed in support of his appeal in the Court of Appeal.¹⁶ Mr R also says in his submissions that it was also shown to the Judge, the officer in charge, and counsel prior to sentencing. It is therefore not new material.

[14] Further, the circumstances in which the retraction was made were addressed in the course of Family Court proceedings in January 2014,¹⁷ concerning the care and contact arrangements for the four children. That Court concluded that the retraction was not voluntarily made.¹⁸ Nothing that has been put forward by Mr R suggests that this conclusion was erroneous.

[15] Accordingly, there is no basis for Mr R's contention that the purported retraction is suggestive of a miscarriage of justice. Nor is there any basis for Mr R's complaint that his appellate counsel did not adequately represent him on appeal.

[16] To the extent Mr R wishes to repeat the grounds relied on in the Court of Appeal, there has been nothing put forward to suggest that the Court of Appeal's conclusion on those points was wrong.

¹⁶ Mr R's affidavit (dated 20 June 2013) filed in the Court of Appeal on 21 June 2013, and affidavit of Ms ER (dated 18 June 2013) enclosing the "retraction" as exhibit "A" filed in the Court of Appeal on 19 June 2013.

¹⁷ *[R] v [R]* [2014] NZFC 389 (Judge Southwick QC).

¹⁸ See [18], [24], [25], [32] and [35]. As to the evidence that the retraction was not voluntarily made, the Family Court Judge said that she found that evidence "particularly disturb[ing]": at [18].

[17] For completeness we accept the Crown's submission that there is no basis for Mr R's submission that the Court of Appeal (and/or his appellate counsel) was required to obtain and listen to an audio recording of the taking of verdicts. Nor is there any basis for his suggestion that the District Court record has been tampered with.

Conclusion and result

[18] No point of general or public importance arises. Nor, for the reasons outlined above, is there a risk of a miscarriage of justice.

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

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