

**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 38/2014
[2014] NZSC 77**

BETWEEN BRUCE FRANKLIN CHARNLEY
 Applicant

AND THE QUEEN
 Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: P M Keegan for the Applicant
 M J Lillico and K J Cooper for the Respondent

Judgment: 20 June 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against his conviction and sentence to preventive detention on a charge of meeting a young person following sexual grooming. The elements of this offence under s 131B of the Crimes Act 1961 include that the subsequent meeting is intentional and that, at the time of the meeting, the accused intends to act in a way that offends against provisions of Part 7 of the Crimes Act.

[2] The applicant pleaded guilty to this count following a ruling by Heath J on the scope of the offence. In those circumstances the Court of Appeal accepted that he could appeal against this conviction, but it dismissed that appeal.¹

[3] At his trial, the applicant was also convicted as a party to an associate's sexual conduct with another under 16 year old. That conviction was set aside by the Court of Appeal. The Court did not, however, alter his sentence of preventive detention.

[4] The circumstances of the applicant's offending were that he met the complainant, whom he knew to be under-aged, at the home of an associate, and discussed with her arranging a possible lesbian encounter with another acquaintance. When he returned home, a female acquaintance arrived to visit, uninvited, and after a conversation with the acquaintance, the applicant telephoned the complainant and told her that a woman was at his house who would be willing to engage in sexual activity. The applicant arranged to meet the complainant again, at a shop. He took her to his home where he introduced her to the female acquaintance. Sexual activity between the two women followed. The applicant actively facilitated this. The acquaintance was not charged, apparently because the Police accepted she had reasonable grounds for believing the complainant to be over 16 years of age.

[5] The proposed ground for appeal to this Court is that s 131B is directed at a different type of conduct than that of the applicant. It is said only to cover preparatory acts taken to implement what was contemplated during premeditated grooming, before there is any opportunity to commit a sexual attack on the victim. The applicant relies on a series of alternative scenarios to submit essentially that if events had occurred in only a slightly different manner, the elements of the offence would not have been made out. It is said that this demonstrates that the applicant lacks the culpability at which the legislation is directed.

[6] We are satisfied, however, that the breadth of the language of s 131B(1) cannot permit such limitation and that there is nothing in the application of the

¹ *Charnley v R* [2013] NZCA 226.

provision to the applicant's conduct that gives rise to a question making it in the interests of justice for there to be a further appeal against conviction.

[7] The sentence appeal arises because the Court of Appeal decided to leave in place the sentence of preventive detention despite its acquittal of the applicant on the charge of being party to the under aged sex offending of his associate. The Court considered carefully the altered circumstances resulting from its acquittal of the applicant on one count, looking at the matter afresh.² It was satisfied the applicant posed a threat for the future which a finite sentence and extended supervision order could not adequately meet. Preventive detention with a minimum period of five years imprisonment was appropriate for his offending.³ Nothing in the circumstances indicates there was any arguable error of principle, possible miscarriage of justice or other feature indicating that it is in the interests of justice to permit a further appeal against that decision.

[8] Accordingly, the application for leave to appeal against conviction and sentence is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

² At [81]–[85].
³ At [85].