Supreme Court of New Zealand
Te Kōti Mana Nui

30 October 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

CT (SC 88/2013) v THE QUEEN
(SC 88/2013) [2014] NZSC 155

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Following a jury trial in the District Court, the appellant was found guilty on two counts: one count of indecent assault and one representative count of inducing an indecent act.

The case against the appellant related to events in the early 1970s. The complainant complained to the police in August 2007 and the appellant was charged in March 2012, around 40 years after the alleged offending.

In the District Court, the appellant twice sought a stay of proceedings on the basis of forensic prejudice caused by delay. Both applications required the trial Judge to determine whether the appellant could receive a fair trial despite the delay.

The first stay application was made before the appellant's trial commenced. He complained of the pre-charge delay and contended that it would be impossible for him to have a fair trial which met the requirements of s 25(a) of the New Zealand Bill of Rights Act 1990. The Judge dismissed the application and the trial commenced.

At trial, the complainant's evidence differed significantly from the narrative recorded in her committal statement. This resulted in amendments to the indictment and prompted a second application for a stay of proceedings by the appellant, this time at the end of the Crown case. The trial Judge also dismissed this second application and the appellant was ultimately convicted on two counts.

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The appellant appealed against his convictions on the basis that there had been a miscarriage of justice within the meaning of s 385(1)(c) of the Crimes Act 1961. The Court of Appeal dismissed the appeal. The appellant sought and was granted leave to appeal to this Court.

The Supreme Court has unanimously allowed the appeal and ordered that the convictions of the appellant are quashed.

The Court has held that, while the trial Judge was correct to refuse the first stay application, given the variances between the complainant's committal statement and evidence at trial, the resulting need for a re-writing of the indictment and, most particularly, the difficulty in being confident as to what offending happened in which locations, the second stay application should have been granted.

The Court has also held that, even if the trial Judge had been correct to dismiss the second stay application, in light of s 122(2)(e) of the Evidence Act 2006, the directions given to the jury were insufficient to overcome the risk of unfairness in the trial arising from the effect of delay. While agreeing that the warning given by the trial Judge was inadequate, Glazebrook and Arnold JJ have issued separate reasons on this point as they have taken a different view of the scope of s 122(2)(e).

As a result, the appeal is allowed and the convictions of the appellant are quashed. Given the Court's conclusion that the second stay application should have been granted, it is not appropriate to direct a retrial.

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