

IN THE SUPREME COURT OF NEW ZEALAND

SC 36/2015
[2015] NZSC 69

BETWEEN PETER BONFERT
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, William Young and Glazebrook JJ

Counsel: Applicant in person
 M J Lillico for the Respondent

Judgment: 25 May 2015

JUDGMENT OF THE COURT

**The application for an extension of time to file an application for
leave to appeal is dismissed.**

REASONS

Introduction

[1] Mr Bonfert applies for leave to appeal against a Court of Appeal decision dismissing his appeal against his conviction on two charges of male assaults female,¹ one charge of assault with a weapon (a chair) and one charge of threatening to kill.² The Court of Appeal allowed his sentence appeal.³ Mr Bonfert also wishes to challenge the sentence now imposed.

¹ The jury were given an alternative on one of these charges of disabling by rendering the complainant unconscious under s 197 of the Crimes Act 1961 but convicted him on the male assaults female charge “for placing his hand around [the complainant’s] throat”.

² *Bonfert v R* [2012] NZCA 313 (Arnold, Potter and MacKenzie JJ) at [5]–[6].

³ See [33]–[44].

[2] Mr Bonfert's application for leave to appeal is out of time by over two and a half years. His explanation for the delay is that he only received all the documents from the Court of Appeal a few months ago.

Background

[3] The charges arose out of Mr Bonfert's relationship with his former partner. It was alleged at trial that, during an argument on 10 January 2011, Mr Bonfert verbally abused the complainant, pushed her onto a couch, sat on her and threatened to punch her. After they moved to another room, Mr Bonfert put his hands around the complainant's neck and she lost consciousness. In her police statement the complainant said that she woke to Mr Bonfert giving her mouth to mouth resuscitation.

[4] On 13 January 2011, it was alleged that Mr Bonfert raised an office chair above his head and threatened to hit the complainant with it. He then threw the chair on to the floor, before picking up a kitchen knife and saying to the complainant "I could kill you" in German.

Submissions

[5] Mr Bonfert submits that there were a number of mistakes in his trial, meaning that he was "unfairly judged". He also submits that the proposed appeal raises important issues for all "expats" in New Zealand. As to sentence, he submits this should have been no longer than seven months.

[6] In his submissions, Mr Bonfert says that he did not put his hands around the complainant's neck on 10 January 2011. Rather, he submits that when he found her she had lost consciousness while intoxicated and while he was out of the room. He had found her not breathing and had given her "mouth to mouth". Once resuscitated, she had refused his offer to call an ambulance. He says the complainant has a skin disease and bruises easily.

[7] He also says that on 13 January 2011, there was no broken chair. He had just put the chair down hard. As to the threat to kill, Mr Bonfert says that in the "German

Swabian dialect” what he had said means “I have enough of you” and there was never an intention for the threat to be taken seriously.

[8] He also alleges that the complainant had signed the original complaint on 13 January 2011, without reading or checking it and that the judge ignored subsequent affidavits saying it was all a misunderstanding.

Court of Appeal decision

[9] At trial, the complainant was a reluctant witness. She was declared hostile and the Judge allowed cross-examination on her 13 January statement. The Judge directed the jury that it was up to them to decide whether to accept the evidence given in court or the earlier statement.

[10] The Court of Appeal held that the reliability of the complainant was squarely and appropriately put to the jury by the trial Judge.⁴ Further, the Court held that the theory that the threat was not meant to be taken seriously was also appropriately summed up on by the Judge.⁵

[11] As to sentence, the Court of Appeal considered that the sentencing Judge had been wrong to impose cumulative sentences. The Court therefore had to consider the sentencing anew. It took 18 months imprisonment as a starting point for the most serious charge (threatening to kill) and considered that a discount of two months was appropriate to reflect all personal factors. It thus reduced the sentence from an effective sentence of 23 months to one of 16 months imprisonment.⁶

Discussion

[12] No proper explanation is given for the delay in making the application for leave to appeal. Mr Bonfert does not explain why he needed documents from the Court of Appeal to file a notice of application for leave to appeal. Nor does he explain why it took so long to receive the documents or why he delayed for a “few months” before filing his application once the documents were received.

⁴ At [15].

⁵ At [21] to [22].

⁶ See [38]–[42].

[13] In any event, the proposed appeal does not meet the threshold for leave in s 13 of the Supreme Court Act 2003. The proposed conviction appeal seeks to re-litigate factual matters that were clearly before the jury and which the Court of Appeal has already examined. No issue of general or public importance arises. Further, nothing put forward suggests the risk of a miscarriage of justice.

[14] The proposed sentence appeal raises no question of law or sentencing principles. Nor is there any question of a miscarriage of justice. Indeed, the sentence may be seen as lenient, given the attempted strangulation in the first incident and the presence of the knife in the second.

Result

[15] The applicant's application for an extension of time to file an application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent