

**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR
IDENTIFYING PARTICULARS, OF COMPLAINANT PROHIBITED BY S
203 OF THE CRIMINAL PROCEDURE ACT 2011.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC124/2016
[2016] NZSC 170**

BETWEEN	CYRUS CHRISTIAN (AKA WILLIAM JOHN TASSELL) Applicant
AND	THE QUEEN Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: N Levy for Applicant
A Markham for Respondent

Judgment: 21 December 2016

JUDGMENT OF THE COURT

A Leave to appeal is granted (*Christian (aka Tassell) v R* [2016] NZCA 450).

B The approved question is whether the Court of Appeal was correct to dismiss the conviction appeal.

REASONS

[1] Mr Christian was found guilty of three counts of sexual violation by rape. His appeal against conviction and sentence was dismissed by the Court of Appeal on 22 September 2016.¹

¹ *Christian (aka Tassell) v R* [2016] NZCA 450 (Stevens, Asher and Joseph Williams JJ).

[2] He sought leave to appeal to this Court on two issues:

- (a) Whether the Court of Appeal was correct to hold that consent must be actively expressed; and
- (b) Whether the Court of Appeal was correct in its determination that the jury must have accepted the complainant's evidence about lack of consent.

[3] The Crown accepted that the application for leave ought to be granted on the first issue but submitted that it should not be granted in relation to the second.

[4] We have granted leave in the terms we have because we do not consider the first proposed question can be properly examined outside of its factual context. The Crown can, however, renew its arguments about the second proposed issue at the hearing of the appeal.

Solicitors:
Crown Law Office, Wellington for Respondent