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

SC 47/2017
[2017] NZSC 105

BETWEEN	BRUCE JAMES SPITTLE Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: A H Waalkens QC for Applicant
Z R Johnston for Respondent

Judgment: 6 July 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was charged with two counts of indecent assault. He was convicted after a jury trial. He appealed to the Court of Appeal on the basis that the verdicts of the jury were unreasonable, but his appeal was dismissed.[1]

[2] The applicant seeks leave to appeal to this Court, arguing that a miscarriage of justice has occurred or will occur if leave is not given, because the verdicts of the jury were unreasonable. Thus, he seeks, in effect, to advance the same arguments as those advanced on his behalf in the Court of Appeal. He does not suggest that any point of public importance arises.

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1 *Spittle v R* [2017] NZCA 116 (Winkelmann, Duffy and Whata JJ) [*Spittle* (CA)].

[3] The incidents that founded the charges against the applicant occurred in 1999 when he was a psychiatrist and the complainant was a patient of his. She suffered from a number of mental health disorders at that time. The complainant raised concerns about aspects of the applicant's treatment of her in 1999, but did not at that time allege any sexual touching. The applicant's response to the concerns raised in 1999 was to the effect that he acknowledged he had crossed professional boundaries and became too involved with the complainant. However, he said there was no sexual component to his feelings for the complainant.

[4] The complaint that the applicant had indecently assaulted the complainant was made in 2012. The complainant had received extensive treatment for her mental health disorders during the period between 1999 and 2012.

[5] The applicant takes issue with a number of aspects of the judgment of the Court of Appeal. These include its assessment of the expert evidence given by both Crown and defence witnesses at the applicant's trial, the weight it gave to the explanations for the complainant's delay in complaining of the applicant's conduct (including its assessment of the extent of the counselling the complainant had received during the period of the delay), its assessment of evidence relating to the risk of distortion on the complainant's behalf given her history of unwanted relationships with males, its assessment of evidence relating to disassociation and its analysis of evidence highlighting inconsistencies between the complainant's evidence at trial and records made at the time of the incidents founding the charges against the applicant.

[6] We have considered the points raised by the applicant and the treatment of those points by the Court of Appeal. All were carefully considered by the Court of Appeal, and all the issues relating to the complainant's evidence at the trial had been before the jury. The application is an attempt to have a second run at the arguments carefully considered and assessed by the Court of Appeal.

[7] The applicant also seeks to argue on appeal that the Court of Appeal did not adopt the correct approach to the assessment of the appeal, as set out in this Court's

decision in *R v Owen*.[2] He says the Court of Appeal approached the matter on the basis that because the guilty verdicts were available to the jury, they were reasonable.

[8] The Court of Appeal directed itself by reference to *R v Owen* at the beginning of its judgment.[3] After analysing the arguments raised on behalf of the applicant, the Court concluded that the jury had a sufficient and proper basis to prefer the complainant's account to that of the applicant, and gave its reasons for that conclusion.[4] We see that as indicating that the Court had satisfied itself that the jury's verdicts were not verdicts that no jury could reasonably have reached to the standard of beyond reasonable doubt.[5] We do not think it is arguable that this involved the Court concluding that the verdicts were reasonable because they were available to the jury.

[9] Having considered the matters raised by the applicant, we are not persuaded that the applicant has demonstrated that it is necessary in the interests of justice for this Court to hear and determine the appeal because a substantial miscarriage of justice has occurred.[6]

[10] We therefore decline leave to appeal.

Solicitors:
DLA Piper, Wellington for Applicant
Crown Law Office, Wellington for Respondent

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2 *R v Owen* [2007] NZSC 102, [2008] 2 NZLR 37 at [13] and [17].
3 *Spittle* (CA), above n 1, at [12].
4 At [52].
5 *R v Owen*, above n 2, at [15] and [17].
6 Senior Courts Act 2016, s 74(2)(b) and Supreme Court Act 2003, s 13(2)(b).