

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 101/2017
[2017] NZSC 179**

BETWEEN C (SC 101/2017)
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, William Young and Ellen France JJ

Counsel: D Purusram for Applicant
 P D Marshall and R M Polaschek for Respondent

Judgment: 27 November 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant wishes to appeal against a judgment of the Court of Appeal which upheld convictions against him for offences against three children encompassing sexual violation by unlawful sexual connection, indecent assault, performing an indecent act, assault, assault with a weapon and neglect of a child.¹ The date range of the offending was between 1990 and 2003. Three convictions for assaulting a child were quashed² because the proceedings had been commenced

¹ *C (CA100/2016) v R* [2017] NZCA 58 (Kós P, Courtney and Williams JJ) [CA Judgment].

² At [9].

outside a 10 year limitation period³ and without the consent of the Attorney-General.⁴ The Court of Appeal also varied the sentences imposed by the trial Judge so as to produce a total effective sentence of 14 years imprisonment with a minimum period of imprisonment of six years.⁵

[2] The application for leave to appeal against the Court of Appeal decision was not filed in time but we grant an extension of time.

[3] The proposed grounds of appeal in respect of conviction are as follows:

- (a) the applicant may have been prejudiced by evidence led as to the three offences in respect of which the prosecution was out of time;
- (b) there was no, or an inadequate, direction under s 122 of the Evidence Act 2006;⁶
- (c) propensity evidence ought not to have been admitted;
- (d) a series of complaints in respect of the summing up in relation to collusion as between complainants, the possibility that they were lying and as to the propensity evidence (in particular as the applicant had been acquitted of charges based on that evidence);
- (e) unparticularised complaints in respect of the applicant's trial counsel;
- (f) additional evidence (not yet to hand) as to a medical examination of one of the complainants in 2003; and
- (g) unparticularised complaints to the effect that the case was not proved to the required criminal standard and that the trial was unfair.

³ Provided for by s 10B(1) of the Crimes Act 1961. This section was repealed by the Crimes Amendment Act (No 4) 2011 which commenced on 1 July 2013.

⁴ Prior consent of the Attorney-General was required to commence or continue any proceedings once 10 years had expired: see Crimes Act, s 10B.

⁵ At [28].

⁶ The Judge did in fact give directions under s 122 and no complaint about them was made to the Court of Appeal.

[4] In the Court of Appeal, the applicant's challenge to his convictions was that the Judge had summed up on the basis that the defence challenged the accuracy but not the honesty of the complainants. This argument was carefully assessed by the Court of Appeal and dismissed as the Judge's summing up was, as that Court held, consistent with the way the defence case was run at trial.⁷ The proposed grounds of appeal cover this argument but, in all other respects, rely on contentions which were not advanced to the Court of Appeal. Having considered the submissions on both sides, we are satisfied that there is nothing in the new arguments which would warrant the granting of leave to appeal against the conviction.

[5] The applicant also wishes to challenge the sentences of imprisonment as varied by the Court of Appeal. This aspect of the case does not raise any issue of public or general importance and there is no appearance of a miscarriage of justice.

[6] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Shobhna & Co Law Office, Auckland for Applicant
Crown Law Office, Wellington for Respondent

⁷ See CA Judgment, above n 1, at [4]–[8].