NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985 AND S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

SC 35/2017
[2017] NZSC 187

BETWEEN	DAVID STANLEY TRANTER Applicant
AND	THE QUEEN Respondent

Court:	Elias CJ, William Young and O'Regan JJ
Counsel:	A J McKenzie for Applicant A B Richards for Respondent
Judgment:	12 December 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal against a Court of Appeal decision dismissing Mr Tranter's appeal against conviction and sentence.[1] The focus of the appeal to the Court of Appeal was Mr Tranter's convictions for historical sexual offending against a young complainant, whom we will call "A". Mr Tranter was also convicted of sexual offending against two other complainants, whom we will call "B" and "C". The offending against A occurred in 1982–83, when A was 10 years old, against B in 1988 and 1989, when she was about 15 years old and against C in 1989

1 *Tranter v R* [2017] NZCA 45 (Kós P, French and Venning JJ) [*Tranter* (CA)].

and 1990, when she was 10 years old. The Court of Appeal also dismissed his appeal against the sentence of preventive detention imposed in the High Court.[2]

[2] The conviction appeal to the Court of Appeal was based on evidence adduced in the Court of Appeal that had not been in evidence at trial. This consisted of information obtained from the files of the Ministry of Social Development relating to A, in particular that Mr Tranter had faced a charge of ill-treatment of A in 1983, but the charge was withdrawn. Mr Tranter says this evidence would have at least partially substantiated a statement he made at trial that A had made an earlier allegation of sexual abuse against Mr Tranter and the charge had been dismissed. The same document referred to complainant A's propensity for lying. In its appeal judgment, the Court of Appeal said it did not see this evidence as sufficient to call into question the safety of the conviction and refused to admit it as fresh evidence. It thought it did not substantiate Mr Tranter's trial testimony that a charge of sexual abuse of A had been dismissed and that the propensity to lie evidence would have been inadmissible.[3]

[3] The second aspect of the appeal point based on new evidence concerned a different document obtained from the Ministry of Social Development, namely an information sheet about A dated 23 February 1988. This included a statement to the effect that A had been taken to a care facility in the North Island in early 1988.

[4] The significance of this is said to be that if A was taken to the care facility in the North Island, then he could not have been at Mr Tranter's home in Kaikoura when B (and a friend) said they saw him there. A said he did not recall returning to Kaikoura after he left it, though thought he had once been returned to the family home from a foster home but could not recall where the family home was at the time.

[5] The Court of Appeal did not deal with the second aspect in its appeal judgment. One of the proposed grounds of appeal was "the proper approach where an appellate court has overlooked addressing an argument that was advanced by an appellant". We issued a minute dated 3 July 2017 in which we indicated that it may be preferable for Mr Tranter to seek a recall of the Court of Appeal judgment so that Court could deal

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2 *R v Tranter* [2016] NZHC 111 (Gendall J).
3 *Tranter* (CA), above n 1, at [10]–[12].

with the second aspect. Mr Tranter did then apply for recall of the Court of Appeal judgment. The Court of Appeal refused to recall its judgment.[4]

[6] The Court of Appeal noted that the information sheet dealing with the admission of A to the care facility in the North Island related to a period some years after the period to which the convictions for offences against A related and was of no assistance in relation to the convictions that were subject to appeal in the Court of Appeal.[5] It also found that other documents showing that A was in a care facility for part of the period covered by the second charge relating to A did not impair the safety of the conviction on that charge.[6]

[7] The Court of Appeal also rejected an argument that the information sheet cast doubt on evidence given by B that she had seen Mr Tranter abusing A in the period that A would have been in the North Island care facility. To the extent this was said to affect the safety of the convictions entered in relation to offences against B, it said those convictions were not subject to appeal.[7]

[8] We do not consider that these issues meet the criteria for leave to appeal. They raise no issues of public importance. They have now been assessed by the Court of Appeal and we see no appearance of a miscarriage of justice in that Court's evaluation of them.

[9] Mr Tranter was sentenced by Gendall J to preventive detention. The Court of Appeal considered that was the correct sentence.[8] Mr Tranter wishes to argue on appeal that the availability of extended supervision orders and public protection orders means that a point of public importance arises, namely how the availability of those orders impacts on decisions relating to preventive detention. We accept that this may be an issue that could be considered by this Court but we do not see the present appeal as an appropriate case for that to occur. In addition, we see nothing in the material

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4 *Tranter v R* [2017] NZCA 440 (Kós P, French and Venning JJ).
5 At [9].
6 At [10].
7 At [11].
8 *Tranter* (CA), above n 1, at [17].

advanced in support of the sentence appeal as providing any concern that a miscarriage of justice would arise if leave were not given on this point.

[10] We dismiss the application for leave to appeal.

Solicitors:
Crown Law Office, Wellington for Respondent