NOTE: ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF THE PARTY REFERRED TO BELOW AS W PURSUANT TO S 140 OF THE CRIMINAL JUSTICE ACT 1985 REMAINS IN FORCE.

NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF APPLICANT PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.

IN THE SUPREME COURT OF NEW ZEALAND

SC 31/2017 [2017] NZSC 94

BETWEEN L (SC 31/2017)

Applicant

AND THE QUEEN

Respondent

Court: Elias CJ, O'Regan and Ellen France JJ

Counsel: S M Cooper for Applicant

M A Corlett QC and G E Schumacher for Respondent

Judgment: 21 June 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

- [1] The applicant, L, has applied for leave to appeal against the decision of the Court of Appeal in a criminal appeal, W(CA731/2015) v R.
- [2] As L was not a party to the decision in W (CA731/2015) v R, counsel were asked to file submissions on the question of the Court's jurisdiction to deal with L's

_

W (CA731/2015) v R [2017] NZCA 73 (Harrison, Wild and Miller JJ).

application for leave and any appeal that would follow in the event that leave were granted.

- [3] W (CA731/2015) v R was an appeal by W against his convictions on a number of counts of sexual offending against L, and one count of threatening to cause grievous bodily harm to L. The events founding the charges happened in 2004 and W's trial took place in December 2004. At the time W and L were in institutional care.
- [4] In the course of its judgment, the Court of Appeal considered evidence from two witnesses to the effect that L recanted his allegations against W in 2005. The Crown filed an affidavit from L in response to the appeal in which he said he did not remember making any statement in the nature of a recantation to either of the two recantation witnesses. He was not called for cross-examination. The Court found the evidence of the recantation witnesses was reliable.²
- [5] The Court of Appeal granted W an extension of time to appeal, allowed his appeal and did not order a retrial.
- [6] L has commenced civil proceedings against the Attorney-General alleging negligence while he was in care. One aspect of this negligence was that he was placed in a situation where W was able to sexually abuse him in the ways that resulted in the criminal charges of which W was subsequently convicted. The applicant argues the Court of Appeal decision and reasoning will have an adverse impact on the civil proceedings that he has commenced against the Attorney-General.
- [7] Although counsel for L filed detailed submissions about the inherent powers of the Court, the inherent jurisdiction of High Court Judges (and the fact that Supreme Court Judges remain High Court Judges), cases where permission was given for complainants or witnesses to be represented in criminal proceedings and the law of other jurisdictions, we see the question of jurisdiction as being a matter of

² At [36]–[37].

interpretation of the relevant statutory provisions conferring jurisdiction on this

Court in relation to criminal matters.

[8] This Court has power to hear and determine appeals authorised by Part 6 of

the Criminal Procedure Act 2011 or section 10 or 10A of the Court Martial Appeals

Act 1953.3

[9] Only pt 6 of the Criminal Procedure Act is in issue here. The relevant

provision in pt 6 is s 237(1), which deals with appeals against determinations of a

first appeal court (as the Court of Appeal was in the case of W(CA731/2015) v R).

Section 237(1) provides:

A convicted person may, with the leave of the second appeal court, appeal to that court against the determination of the person's first appeal under this

subpart.

[10] Section 238(c) makes it clear that this Court is the second appeal court in

relation to a determination of a first appeal in the Court of Appeal. Section 239(1)

provides that a convicted person commences a second appeal by filing a notice of

application for leave to appeal in the second appeal court. It is clear from those

provisions that the Court's jurisdiction in relation to criminal proceedings is limited

in the case of second appeals to appeals by the convicted person or, in a few cases,

the prosecutor or other party to the appeal.⁴

[11] It is clear from these provisions that the Court does not have jurisdiction to

entertain an appeal by a complainant against a decision of the Court of Appeal on a

first appeal setting aside convictions for offences in respect of which the complainant

was the alleged victim.

[12] As the Court does not have jurisdiction to consider the present application,

the application is dismissed.

Solicitors:

Cooper Legal, Wellington for Applicant

Crown Law Office, Wellington for Respondent

³ Senior Courts Act 2016, s 71; Supreme Court Act 2003, s 10.

See for example ss 253(2) and 303 of the Criminal Procedure Act.