

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 43/2017
[2019] NZSC 110

BETWEEN TONY DOUGLAS ROBERTSON
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
 M J Lillico for Respondent

Judgment: 10 October 2019

JUDGMENT OF THE COURT

**The application for recall of this Court's judgment in
Robertson v R [2017] NZSC 101 is dismissed.**

REASONS

[1] Mr Robertson has applied for a recall of this Court's judgment in *Robertson v R* (the leave judgment).¹ In the leave judgment the Court dismissed Mr Robertson's application for leave to appeal from his unsuccessful appeal in the Court of Appeal against his conviction after trial for the murder and rape of Blesilda Gotingco.² Leave to appeal to this Court was brought on the basis that manslaughter should have been left to the jury.³

¹ *Robertson v R* [2017] NZSC 101. Elias CJ, who was on the earlier panel, has retired. O'Regan J has replaced her Honour on the panel.

² *Robertson v R* [2016] NZCA 99 (Harrison, Miller and Cooper JJ). The events giving rise to the charges occurred in late May 2014. Mr Robertson hit Mrs Gotingco with his car causing her serious injuries. He put her in his car and took her to his nearby home where he stabbed her.

³ This was not a ground raised in the Court of Appeal.

[2] In dismissing the application for leave, this Court's assessment was that nothing raised by the applicant suggested there was a credible narrative in the evidence for a manslaughter verdict.⁴

[3] The application for recall is brought on the basis Mr Robertson's counsel on the leave application did not make submissions as to various evidential matters Mr Robertson says he was instructed to put forward. Mr Robertson wishes to argue these matters show there was a credible narrative for manslaughter.⁵ These matters were however set out in some detail in the application for leave to appeal to this Court.⁶ The impact of these matters as they related to the Crown and defence cases at trial was considered by the Court in the leave judgment at [7]–[13]. The application for recall accordingly in substance is an attempt to re-argue the application for leave. Nothing has been advanced which would warrant a recall of our decision not to grant leave.

[4] The application for recall is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁴ The leave judgment noted the effect of the authorities was that where there was a credible narrative in the evidence for a manslaughter verdict, the possibility of manslaughter should be left: at [6].

⁵ Mr Robertson's evidence at trial was that he believed Mrs Gotingco was dead and he acted without murderous intent in stabbing her. He denied strangling or raping her.

⁶ The application records the submission that the evidence at trial provided a credible narrative and then lists various matters beginning with, by way of example, the finding by the Court of Appeal that the running down was accidental. Other matters referred to include the pathologist's evidence about the cause of death, the absence of defensive injuries, and mishandling of the introital swab.