ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 14/2019
[2019] NZSC 20

BETWEEN	M (SC 14/2019) Applicant
AND	THE QUEEN Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: S J Shamy for Applicant
R K Thomson for Respondent

Judgment: 28 February 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B We make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.

REASONS

[1] The applicant is charged with 33 charges of a sexual nature against three complainants, S, M and A. His trial is due to take place in April 2019.

[2] The applicant applied for a severance order, so that he had one trial for the 30 counts involving complainant S and another trial for the remaining counts against complainants M and A.

[3] The severance application was dismissed in the District Court[1] and that decision was upheld by the Court of Appeal.[2] The applicant now seeks leave to appeal to this Court. As this is a pre-trial appeal, he needs to establish both that it is in the interests of justice for this Court to hear and determine the appeal in terms of s 74(2) of the Senior Courts Act 2016, and that it is necessary in the interests of justice for the appeal to be heard and determined before the trial in terms of s 74(4) of the Act. We accept that in this case, it is the former that is of importance. If it is satisfied, the latter will also be satisfied given that applications for severance need to be determined pre-trial.

[4] The assessments made by the District Court and the Court of Appeal were fact-specific. They applied settled law to the unusual facts, including the applicant's participation in a family therapy session at which complainants S and M were present, along with other members of their family and at which admissions were allegedly made by the applicant. Both Courts considered it would be impractical to compartmentalise the evidence relating to this session and the reason for which it was convened.[3] The fact that many participants in the session would need to give evidence at both trials if severance was granted was another factor favouring a single trial.[4]

[5] We do not consider any matter of general importance is raised by the applicant. Nor do we see any appearance of a miscarriage of justice in the concurrent assessments

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1 *R v [M]* [2018] NZDC 20557 (Judge Kellar) [*M* (DC)].
2 *[M (CA613/2018)] v R* [2018] NZCA 470 (Miller, Brown and Gilbert JJ) [*M* (CA)].
3 *M* (DC), above n 1, at [35(f)]; and *M* (CA), above n 2, at [19].
4 *M* (DC), above n 1, at [35(e)]; and *M* (CA), above n 2, at [17].

of the District Court and Court of Appeal. It is not, therefore, in the interests of justice to grant leave.

[6] The application for leave to appeal is dismissed.

[7] For fair trial reasons, we make the order set out in the Judgment of the Court prohibiting publication of the judgment until the final disposition of the applicant's trial.

Solicitors:
Crown Law Office, Wellington for Respondent