

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 RETRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.

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

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY COMPLAINANT AND WITNESS B UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360352.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 122/2019
[2020] NZSC 5**

BETWEEN	OWEN WILLIAMS Applicant
AND	THE QUEEN Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: G H Vear for Applicant
A J Ewing for Respondent

Judgment: 14 February 2020

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B 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 retrial. Publication in law report or law digest permitted.

REASONS

Introduction

[1] The applicant faces a retrial on four charges of sexual offending in relation to one complainant, A. The Court of Appeal dismissed the applicant's appeal against the admission of propensity evidence at the retrial.¹

[2] The evidence in issue comprises evidence from the applicant's first trial. At that trial, the applicant was acquitted of three charges relating to A but the jury could not agree on the remaining four charges, which are to be heard on the retrial. At the same trial he was acquitted of three charges of sexual offending against another complainant, B. On the retrial, the Crown seeks to lead evidence from A about all of the alleged offending against her.² The Crown also seeks to lead evidence from B about the alleged offending against her.

[3] The applicant seeks leave to appeal from the decision of the Court of Appeal prior to the retrial.

The proposed appeal

[4] The proposed grounds of appeal would focus on two questions. The first question is whether the admission of acquittal propensity evidence at a retrial, without new evidence, amounts to an abuse of process. The second question is whether the Court of Appeal erred in finding there was no risk of the jury placing disproportionate weight on the evidence in issue.

¹ *Williams v R* [2019] NZCA 563 (Courtney, Brewer and Gendall JJ). The Court subsequently delivered its reasons in *Williams v R* [2019] NZCA 681 [CA judgment].

² On the charges for which the applicant was acquitted, A's evidence at trial was that B was present at incidents to which two of these charges related: CA judgment, above n 1, at [14].

[5] We do not consider that it is necessary in the interests of justice for the proposed appeal to be heard by this Court before retrial.³ There may be a question about the approach to admissibility of such evidence but, if the applicant is convicted, he may raise this issue in any later appeal. At that stage, any consideration will take place in light of the full trial record.

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

[7] For fair trial reasons, an order is made 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 retrial. Publication in law report or law digest permitted.

Solicitors:
Public Defence Service, Auckland for Applicant
Crown Law Office, Wellington for Respondent

³ Senior Courts Act 2016, s 74(4).