IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 127/2019
[2020] NZSC 9

BETWEEN	BRENT GAYTHORNE GEBBIE Applicant
AND	THE QUEEN Respondent

Court:	Winkelmann CJ, O'Regan and Ellen France JJ
Counsel:	Applicant in person C A Brook for Respondent
Judgment:	19 February 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Gebbie, was found guilty after a jury trial on a charge of criminal harassment. The sentencing Judge, Judge Thompson, imposed a sentence of four months' community detention and six months' supervision and also made a protection order in favour of the complainant, who was the applicant's former partner.[1]

[2] The applicant appealed to the Court of Appeal against both conviction and sentence. The appeal against conviction was founded on delays that had occurred prior to his trial in disclosure of a Family Court file that was thought to contain information that would be relevant to the applicant's defence. The applicant's counsel did not receive a copy of the Family Court file until three working days prior to the

1 *R v Gebbie* [2019] NZDC 9132.

commencement of the trial. The Court of Appeal considered there was nothing to indicate that the Crown had deliberately delayed the disclosure of this material.[2] The Court said that if the applicant's counsel had felt compromised by the late receipt of the material she would no doubt have raised the issue with the Judge and if necessary sought an adjournment.[3] The Court noted that the applicant had not identified anything contained in the file that might have been put to the complainant in cross-examination.[4] It therefore found that no miscarriage of justice had occurred and dismissed the appeal against conviction.

[3] The applicant's appeal against sentence was confined to a contention that the protection order should not have been made. The applicant argued that s 123B of the Sentencing Act 2002 did not allow a Judge to make a protection order in circumstances where proceedings for the making of a protection order had already been before the Family Court. The Court of Appeal rejected this argument as legally incorrect, finding that s 123B(4) expressly permits a sentencing Judge to make a protection order in favour of a complainant who has filed proceedings under the Domestic Violence Act 1995, even where the proceedings under that Act have not been determined.[5] The Court also found that the argument failed on the facts because there was, in fact, no application for a permanent protection order awaiting hearing in the Family Court at the time of sentencing.[6] Thus it dismissed the sentence appeal as well.

[4] The applicant seeks leave to appeal to this Court. If leave is granted, he will renew the arguments that were rejected by the Court of Appeal.

[5] We see the question as to the responsibility for late disclosure as being an entirely factual issue, and there is nothing in the material before the Court that gives any basis for concern as to the way the Court of Appeal dealt with that issue. In relation to the point about the interpretation of s 123B of the Sentencing Act, we do not consider that the matters raised by the applicant have sufficient prospect of success to justify a further appeal.

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2 *Gebbie v R* [2019] NZCA 540 (French, Lang and Mander JJ) at [13].
3 At [14].
4 At [14].
5 At [19].
6 At [19].

[6] The applicant has not specified the grounds for the grant of leave to appeal on which he relies. We are satisfied that no matter of general or public importance arises from the case, given that it is specific to the particular circumstances of the applicant. Nor do we consider that a substantial miscarriage of justice may have occurred or may occur unless the proposed appeal is heard. The criteria for the grant of leave to appeal set out in s 74 of the Senior Courts Act 2016 are not therefore met.

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

Solicitors:
Crown Law Office, Wellington for Respondent