

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 73/2024  
SC 74/2024  
[2024] NZSC 168

BETWEEN GABRIEL HIKARI YAD-ELOHIM  
Applicant  
AND THE KING  
Respondent

Court: Ellen France, Kós and Miller JJ  
Counsel: J Y Yi for Applicant  
M J Lillico for Respondent  
Judgment: 6 December 2024

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JUDGMENT OF THE COURT

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**The application for leave to appeal is dismissed, without prejudice to Mr Yad-Elohim's right to seek leave to appeal after the Court of Appeal has considered any recall application.**

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REASONS

[1] Mr Yad-Elohim seeks leave to appeal his conviction for murdering Michael Mulholland on 26 September 2017. His defence was insanity.

[2] On 1 May 2023 the Court of Appeal dismissed his conviction appeal.<sup>1</sup> On 4 June 2024 it declined to extend time for appealing the sentence of life imprisonment with a minimum period of 13 years.<sup>2</sup> He no longer pursues an application for leave to appeal his sentence.

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<sup>1</sup> *Yad-Elohim v R* [2023] NZCA 136 (Goddard, Woolford and Fitzgerald JJ) [CA conviction judgment].

<sup>2</sup> *Yad-Elohim v R* [2024] NZCA 206 (Wylie, Lang and Campbell JJ) [CA sentence judgment].

[3] The proposed appeal is brought on the ground that a substantial miscarriage of justice may have occurred because the defence had insufficient time to prepare in the face of new information about Mr Yad-Elohim's Korean origins and his delusion that he was a Japanese anime character.

[4] Briefly, Mr Yad-Elohim had gone to Mr Mulholland's apartment with an acquaintance, Ms Uru, to buy drugs. She evidently knew Mr Mulholland but he did not. She told him to wait downstairs while she completed the transaction. She did not visit the apartment but left via a balcony, taking Mr Yad-Elohim's money. She had planned to do that all along. After a time he became suspicious and went to the apartment, where he confronted Mr Mulholland and then attacked him. The killing was brutal; Mr Mulholland was kicked and stomped on over a period of seven minutes.

[5] Mr Yad-Elohim is a person with mental health conditions. He has a diagnosis of schizophrenia. At the time he was experiencing psychosis. It was common ground at his trial, which was held in July/August 2018, that he had a disease of the mind.<sup>3</sup> The Crown must have persuaded the jury that he was not insane at the time but rather acted as he did because a drug deal had gone wrong.

[6] Mr Yad-Elohim was twice found fit to stand trial.<sup>4</sup> He told a series of health assessors that he was Japanese and his name was Yuuki Watanabe. During trial a Korean lawyer contacted defence counsel to advise him that Mr Yad-Elohim is in fact Korean. (He was born in South Korea and was formerly named Jung Hoon Song. He adopted the Hebrew name Gabriel Yad-Elohim in 2012). An agreed statement of facts to that effect was produced.

[7] Six days before trial Mr Yad-Elohim also disclosed to the defence expert, Dr Cavney, that he was acting as a Japanese anime character when he killed Mr Mulholland. At about the same time a monologue that Mr Yad-Elohim delivered in Japanese in a police interview room, some 24 hours after the attack, was transcribed and made available. Dr Cavney gave evidence about these new disclosures at trial but had to accept that his theories were speculative.

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<sup>3</sup> See *R v Yad-Elohim* [2018] NZHC 2494 (van Bohemen J) at [6] and [41].

<sup>4</sup> See *R v Yad-Elohim* [2018] NZHC 1785.

[8] The Court of Appeal examined the trial evidence carefully and it considered new evidence, in the form of affidavits from trial counsel, the Korean lawyer (now counsel for Mr Yad-Elohim), Dr Cavney and another forensic psychiatrist, Dr Chaplow.<sup>5</sup> Dr Chaplow assessed Mr Yad-Elohim after trial and opined that he would comfortably meet the requirements for insanity.

[9] The Court of Appeal dismissed the appeal against conviction. It was not persuaded that Dr Cavney had insufficient time to address the new information; further, there was no reason to think more time would have allowed Dr Cavney to gain a better understanding of Mr Yad-Elohim's condition.<sup>6</sup>

[10] The application for leave to appeal to this Court was filed on 22 July 2024. It is out of time by over a year. As the Crown points out, no real attempt has been made to explain the delay. We have been told in the notice of appeal that it is attributable to a change of counsel. The delay would not preclude leave if we were satisfied that there may have been a substantial miscarriage of justice.

[11] In support of the application, Mr Yad-Elohim has sought leave to file new evidence, in the form of an affidavit of his own and an affidavit of Dr Cavney. The substance of this evidence is that Mr Yad-Elohim says he was acting as a character in a Japanese anime series called *Bleach*.

[12] Dr Cavney says that he discovered a particular scene from the anime some weeks after the trial. He disclosed this to former appellate counsel but says it was “not fully represented” in the Court of Appeal.

[13] We have considered the video and the transcript of Mr Yad-Elohim's monologue. Dr Cavney identifies several similarities between the video and the attack on Mr Mulholland and there are similarities also with Mr Yad-Elohim's monologue. The argument is that the video and the transcript together justify the

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<sup>5</sup> CA conviction judgment, above n 1, at [55]. The Crown also filed a report from Dr Dean which commented on Dr Chaplow's report: at [67]. The Court declined to admit an affidavit from Mr Yad-Elohim's mother: at [69].

<sup>6</sup> At [98], [109]–[111] and [128].

inference that Mr Yad-Elohim was in the grip of a delusion when he attacked Mr Mulholland.

[14] But for the new evidence there would be no justification for granting leave to appeal. The evidence is significant and appears credible, but on a leave application it is difficult for us to gauge its impact on the other expert evidence led at trial and on appeal, and its implications for the verdict. We also have no information about why the video was not produced in the Court of Appeal. These are matters which should be assessed in the Court of Appeal in the first instance.

[15] For these reasons we consider that Mr Yad-Elohim ought to seek recall of the Court of Appeal's decision. His application for leave to appeal to this Court is dismissed, without prejudice to his right to seek leave to appeal after the Court of Appeal has considered any recall application.<sup>7</sup>

Solicitors:  
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<sup>7</sup> In these circumstances, the Court has not found it necessary at this stage to determine the application for an extension of time for leave to appeal or the application to adduce new evidence.