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**<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

**NOTE: DISTRICT COURT ORDER IN [2022] NZDC 10698 PROHIBITING PUBLICATION OF THE DETAILS IN PARAGRAPH [28] OF THAT JUDGMENT REMAINS IN FORCE.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 21/2024  
[2024] NZSC 67**

<b>BETWEEN</b>	<b>REX MALCOLM POOLE</b> Applicant
<b>AND</b>	<b>THE KING</b> Respondent

**Court:** Glazebrook, Ellen France and Kós JJ

**Counsel:** Applicant in person  
M J R Blaschke for Respondent

**Judgment:** 18 June 2024

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### **JUDGMENT OF THE COURT**

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- A** An extension of time to make the application for leave to appeal is granted.
- B** The application for leave to appeal is dismissed.
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### **REASONS**

#### **Introduction**

[1] The applicant, Mr Poole, applied in the District Court for leave to withdraw a guilty plea to a charge of attempted sexual violation. The application was dismissed

by Judge Lynch on 23 December 2021,<sup>1</sup> and Mr Poole was convicted and sentenced to 12 months' home detention.<sup>2</sup> Mr Poole's appeal against conviction, on the grounds that the Judge should have allowed him to withdraw his guilty plea, was dismissed by the Court of Appeal on 14 December 2023.<sup>3</sup> He now applies for leave to appeal to this Court.

## **Background**

[2] The background facts and the procedural history are set out in the Court of Appeal decision<sup>4</sup> and we do not need to repeat them in detail here. It suffices to say that the complainant and Mr Poole had been friends and the incident leading to the charge occurred one evening when Mr Poole visited the complainant to return some property.

[3] The complainant's mentor was an eyewitness to part of the incident and a medical examination revealed bruising and redness to the complainant's anus, as well as bruising on his right arm caused by blunt force. There was also forensic evidence that Mr Poole's DNA had been identified from testing of the semen stains on the complainant's duvet.

[4] On the night of the incident Mr Poole had later been arrested on an unrelated matter. When he was questioned by one of the detectives investigating the alleged sexual offending in the early hours of the morning following the alleged offending, Mr Poole claimed that he had in fact been the victim and that the complainant had held a knife to his throat. In interviews later that morning he claimed he had been drugged by the complainant but refused to take a blood test until he had seen his lawyer. Attempts to contact the lawyer were unsuccessful.

## **Extension of time to file application**

[5] The application for leave to appeal is out of time. An extension of time to appeal is not opposed, given Mr Poole is self-represented, has explained his efforts to

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<sup>1</sup> *R v Poole* [2021] NZDC 25469 [DC judgment].

<sup>2</sup> *R v Poole* [2022] NZDC 10698 (Judge Lynch) at [55].

<sup>3</sup> *Poole v R* [2023] NZCA 643 (French, Thomas and Fitzgerald JJ) [CA judgment].

<sup>4</sup> At [4]–[33]. These are discussed in more depth in DC judgment, above n 1.

try and find counsel, and there has been no prejudice to the Crown. We agree that, in these circumstances, it is appropriate to extend the time to file the application.

### **District Court decision**

[6] In the District Court, Mr Poole contended that his trial counsel, Mr Bamford, was not adequately prepared for the impending trial and accordingly, coerced or manipulated Mr Poole into entering the guilty plea. Mr Poole further contended that he was vulnerable and was essentially worn down to the point where he simply gave up and pleaded guilty.<sup>5</sup>

[7] The Court of Appeal summarised the key findings of the District Court Judge as follows:<sup>6</sup>

- (a) Mr Poole was a forthright person with strong views which he expressed clearly and forcefully. He had demonstrated when giving evidence and being cross-examined that he was his own man and not to be trifled with. It was “inconceivable” that he simply rolled over and entered a guilty plea he did not want or intend to enter.
- (b) Mr Poole fabricated some of his evidence to suit his duress narrative.
- (c) Mr Nolan was an impressive witness.<sup>7</sup>
- (d) While aspects of Mr Bamford’s representation and trial preparation were not up to best practice standard (for example inadequate record keeping and failing to obtain Mr Poole’s signature to the summary of facts), the trial was not complex and an experienced barrister like Mr Bamford would have got up to speed in terms of preparation;
- (e) The complaints against Mr Bamford were either not made out or did not have a material bearing on Mr Poole’s decision to plead guilty.
- (f) The Crown case against Mr Poole was a strong one and it was not a case where on the facts he could not have been guilty of the charge.
- (g) Mr Poole appreciated the nature of the charge, knew the case against him and knew he could defend it if he wished.
- (h) His decision to plead guilty was not affected by ill-health, any impairment or lack of capacity and he was not operating under a material mistake.

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<sup>5</sup> DC judgment, above n 1, at [3].

<sup>6</sup> At [34]. Footnotes omitted.

<sup>7</sup> Mr Nolan appeared as agent for Mr Bamford the day Mr Poole entered his guilty plea.

## Court of Appeal decision

[8] The Court of Appeal's conclusion was that the:<sup>8</sup>

... overwhelming weight of the evidence supported the Judge's finding that the decision to enter a guilty plea was a considered and fully informed one made by Mr Poole of his own free will. The fact he may have regretted it shortly afterwards does not alter that fact. He entered the plea freely after careful and proper advice from an experienced counsel. He undoubtedly knew what he was doing. He knew the likely consequences and he knew the legal significance of the facts alleged by the Crown.

[9] The Court held that Mr Poole was experienced in his dealings with the criminal justice system and the process of pleading to charges and was very familiar with the case against him.<sup>9</sup> He had in the past demonstrated a preparedness to dismiss lawyers, even near trial, and that this "sits uneasily with the suggestion that Mr Poole had felt trapped and had no choice but to plead guilty because of Mr Bamford's alleged shortcomings and the pending trial".<sup>10</sup>

[10] Mr Poole had earlier claimed in the District Court that Mr Bamford had already entered his guilty plea for him and also said that, until he walked into the Court that morning, he "had no idea" that he was there for a guilty plea hearing. The Court of Appeal said that this was "demonstrably false and cannot be glossed over as a subjective understanding or subjective predicament".<sup>11</sup> There had also been a two-day interval between Mr Poole's discussions with Mr Bamford about pleading guilty and the entry of the plea, during which Mr Poole could have changed his mind.<sup>12</sup> The Court agreed that the Crown case was strong, pointing, among other things, to the eyewitness account.<sup>13</sup>

[11] The Court also agreed with the Judge that an application to withdraw a guilty plea is not a licence "to explore a defence or defences which were always available".<sup>14</sup> The Court said that in any event "the defence that Mr Poole had been drugged and

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<sup>8</sup> At [48]. Footnote omitted.

<sup>9</sup> At [49].

<sup>10</sup> At [50].

<sup>11</sup> At [52]. The Court noted, among other things, that there were signed instructions.

<sup>12</sup> At [53].

<sup>13</sup> At [54].

<sup>14</sup> At [55] citing DC judgment, above n 1, at [119].

raped by the complainant would almost certainly have been rejected by the jury as implausible”.<sup>15</sup>

[12] The Court rejected the application to adduce new evidence from a prison officer about Mr Poole’s alleged state of intoxication, given that it was inconsistent with the evidence, not just in relation to who was the sexual aggressor but also contemporary documentation as to Mr Poole’s state at the relevant time.<sup>16</sup>

[13] There was also evidence that Mr Poole changed his story:<sup>17</sup>

Only a few hours after the incident when he first claimed to police he had been raped by the complainant, he never mentioned being stupefied or drugged. What he said was that he had been attacked and a knife had been held to his throat. He was even able to describe the knife. It was, he said, a serrated knife that came from a knife set.

### **The application for leave**

[14] Mr Poole essentially reprises the same arguments as in the Courts below. He also raises longstanding grievances he holds against the justice system generally.<sup>18</sup> As the Crown submits, these grievances are irrelevant to the application to withdraw the guilty plea. The Crown notes that, in any event, the District Court Judge’s assessment of Mr Poole’s longstanding issues was key to the decision to impose home detention, rather than imprisonment, having taken into account the lengthy period of time he had spent on EM bail, and in custody, across a number of charges, including the attempted sexual violation.

### **Our assessment**

[15] The leave criteria are not met.<sup>19</sup> The proposed appeal relates to the particular circumstances of Mr Poole’s case and raises no issues of general or public importance.<sup>20</sup> The case has already been the subject of detailed consideration in the

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<sup>15</sup> At [55].

<sup>16</sup> At [56], [59], [60] and [61].

<sup>17</sup> At [58].

<sup>18</sup> Mr Poole filed a large bundle of documents with his application. Many of these documents relate to this ground.

<sup>19</sup> Senior Courts Act 2016, s 74.

<sup>20</sup> Section 74(2)(a).

Courts below and nothing raised by Mr Poole suggests that these decisions were wrong in any material way. There is thus no risk of a miscarriage of justice.<sup>21</sup>

## **Result**

[16] An extension of time to make the application for leave to appeal is granted.

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

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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<sup>21</sup> Section 74(2)(b).