NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT 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 O AOTEAROA

SC 103/2024
[2025] NZSC 12

BETWEEN	MUNYARADZI CORNELIUS MUKOKO Applicant
AND	THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
I L M Archibald for Respondent

Judgment: 7 March 2025

JUDGMENT OF THE COURT

The application for an extension of time to apply for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Mukoko, was charged with burglary and indecent assault following a home invasion. The intruder had accessed the complainant's bedroom through an unsecured balcony, touched her foot (perhaps through the sheet) and left through the front door. The Crown relied on circumstantial evidence, including a recent conversation with the complainant in which Mr Mukoko had learned she lived alone, DNA evidence from the bedroom door handle, CCTV footage showing him wearing Nike sandals similar to ones found at the scene and the complainant's description of the intruder. The defence was one of identity.

[2] On retrial, a jury in the District Court found him guilty of burglary but not of indecent assault.[1] He was sentenced to 14 months' imprisonment (which he had already effectively served), with a reparation order of $2,000.[2]

[3] Mr Mukoko appealed against conviction and sentence to the Court of Appeal.[3] That Court did not accept his argument as to inconsistency of verdicts: the jury could have found that he was the intruder but still doubted whether he committed an indecent assault. Nor did it accept the Judge erred in that he did not explicitly instruct the jury that they needed to be satisfied that the intruder entered with intent to commit a sexual crime. The Court held the direction sufficient in the context of the whole of the summing up and the question trail. While the reparation order was not itemised, it was not shown to be wrong. The Court of Appeal dismissed the appeal.

[4] Mr Mukoko now seeks an extension of time to apply for leave to appeal to this Court. His application reprises his complaints about the inconsistency of verdicts, jury directions and the reparation order. He also seeks to advance new grounds of appeal against conviction: that the Nike sandals should have been produced as an exhibit, not just photograph; that the complainant's descriptions of the intruder were inadmissible identification evidence; that some DNA evidence was unreliable; and that various items of exculpatory evidence were overlooked.

[5] As to filing out of time, he cites various personal and systemic boundaries. The Crown opposes both extension of time and the granting of leave. Mr Mukoko filed submissions in reply, without leave, but which we have considered.

Our assessment

[6] The sole criterion on which leave might be granted concerns whether a substantial miscarriage of justice may have occurred.[4] Nothing Mr Mukoko raises concerning the consistency of verdicts, the trial Judge's directions or the reparation

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1 The Court of Appeal ordered a retrial in *Mukoko v R* [2018] NZCA 87.
2 *R v Mukoko* [2019] NZDC 8887 (Judge Dawson) at [10]–[11].
3 *Mukoko v R* [2019] NZCA 568 (Cooper, Lang and Mander JJ).
4 Senior Courts Act 2016, s 74(2)(b).

order—arguments which essentially reprise those made before the Court of Appeal—suggests the Court of Appeal assessment was incorrect.

[7] The proposed new, evidential grounds of appeal have not had the benefit of the Court of Appeal's assessment. However, it is not apparent how physical production of the Nike sandals would have assisted Mr Mukoko. The complainant's evidence was descriptive, rather than an assertion that the defendant was present at or near the complainant's apartment during the offending.[5] Nothing suggests the DNA evidence was unreliable; all available DNA evidence, including "exculpatory" evidence, was before the jury, and there is no reason to think it was overlooked. The other items of allegedly exculpatory evidence were also before the jury, and there is no reason to think they were overlooked either.

[8] There is no evident miscarriage of justice demonstrated and, in these circumstances, extension of time to apply for leave to appeal must be refused.

Result

[9] The application for an extension of time to apply for leave to appeal is dismissed.

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

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5 Evidence Act 2006, s 4(1) definition of "visual identification evidence".