ORDER PROHIBITING PUBLICATION OF THE APPLICANT'S NAME, ADDRESS, OCCUPATION AND ANY IDENTIFYING PARTICULARS UNTIL 2.00 PM ON THURSDAY 17 APRIL 2025.

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY PERSONS UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS IN THE TRIALS OF THE APPLICANT OR CO-DEFENDANTS 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 O AOTEAROA

SC 106/2024
[2025] NZSC 39

BETWEEN	MARICA TOALEI Applicant
AND	THE KING Respondent

Court:	Ellen France, Kós and Miller JJ
Counsel:	J N Olsen for Applicant T R Simpson for Respondent
Judgment:	15 April 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Order prohibiting publication of the applicant's name, address, occupation and any identifying particulars until 2.00 pm on Thursday 17 April 2025.

REASONS

Introduction

[1] The applicant, Marica Toalei, seeks leave to appeal from a decision of the Court of Appeal[1] dismissing her appeal against the decision of the High Court declining her permanent name suppression.[2]

Background

[2] The applicant was charged with the 2018 kidnapping and murder of 17-year-old Dimetrius Pairama.[3] The other two offenders, Ms Winter and Mr Te Amo, pleaded guilty to kidnapping and were found guilty of murder following a jury trial in 2019.[4] The applicant was 16 years old at the time of the offending. She has foetal alcohol spectrum disorder and mild intellectual disability. She was initially found unfit to stand trial and was detained in a secure facility. The applicant was granted permanent name suppression by Brewer J in 2020 after a hearing to establish her involvement in the offending under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) but with the qualification that suppression would not apply to a future proceeding if the applicant were later found fit to stand trial. Brewer J took the view the extreme hardship threshold in s 200 of the Criminal Procedure Act 2011 was met where the applicant was young with particular vulnerabilities, and her rehabilitative prospects in secure care would be compromised if her name were published given the notoriety of the case. She had not been convicted of any offence and publication risked identification of RT, a witness who gave evidence at trial and who has permanent name suppression.

[3] The applicant was, subsequently, found fit to stand trial. Accordingly, in 2023 she stood trial separately from Ms Winter and Mr Te Amo.[5] She was convicted of kidnapping. The jury was unable to reach agreement on the murder charge. The

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1 *M (CA792/2023) v R* [2024] NZCA 451 (Courtney, Mander and Walker JJ) [CA judgment].
2 *R v MT* [2023] NZHC 3544 (Tahana J) [HC sentencing and suppression judgment].
3 On 24 September 2024 the Court of Appeal made an order continuing the applicant's interim name suppression pending determination of this application/any appeal.
4 Ms Winter was declined leave to appeal against her conviction by this Court.
5 The applicant was granted interim name suppression for the duration of the trial to protect fair trial rights.

Crown did not seek a retrial on that charge, and the charge was dismissed under s 147 of the Criminal Procedure Act.[6]

[4] Tahana J, the trial Judge, imposed a sentence of five years 10 months' imprisonment on the kidnapping charge and ordered that the applicant be detained under the CPMIP Act in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. Tahana J declined to grant permanent name suppression.

[5] Tahana J in declining name suppression did not consider the extreme hardship threshold in s 200 of the Criminal Procedure Act was met. The Judge referred to the applicant's youth and to the protection afforded under the United Nations Convention on the Rights of the Child.[7]

[6] The Judge then considered the expert reports. She found the two more recent reports more relevant than two earlier ones, as the later reports specifically addressed rehabilitation. The Judge took the view there would be no significant effect on rehabilitation where the applicant had declined to fully engage with the rehabilitative programmes on offer. The Judge also considered that, as a detainee of a secure facility, the applicant would receive the necessary support to deal with the impact of any publication. As to the latter, the media had indicated any publication would include the fact the applicant was only convicted for kidnapping, making it clear she was not convicted of murder.

[7] The Judge did not accept publication of the applicant's name would risk identification of RT given the nature of the media reporting.

[8] Even if the threshold were met, Tahana J considered public interest factors weighed against permanent suppression. Among other matters, the Judge said there was a public interest in the applicant's identity being known given her high and ongoing risk of general and violent offending.

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6 HC sentencing and suppression judgment, above n 2, at [87].

7 Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

[9] The Court of Appeal dismissed the applicant's sentence and suppression appeal.

[10] In its decision, the Court of Appeal said Tahana J was wrong to dismiss the prospect of any impact on rehabilitation on the basis the applicant was not engaging in rehabilitation. That said, the Court agreed with the High Court judge that the extreme hardship threshold was not met. The Court said this:[8]

> … M is no longer a teenager. Considerations of extreme hardship necessarily focus on the effect of her disability and her prospects of rehabilitation and reintegration into society. While we readily accept that M's disability makes life for her and those caring for her very difficult, there is nothing specific that emerges from the material before us to suggest that her situation will be markedly worsened if her identity is known. Further, M can expect to be held at the secure facility for some time yet and we must proceed on the basis that the systems in place at the secure facility to keep patients safe and manage stressors will be engaged in relation to M.
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> [78] We do not see any basis on which to conclude that media reporting of M's offending would elevate it to the level of her co-offenders who were guilty of murder. Nor do we accept that there is any evidence of a real risk of RT being identified in the event of M not having name suppression.

[11] The applicant, by that point, was 23 years of age.

[12] The Court agreed with the High Court that even if the extreme hardship threshold were met, the public interest did not favour suppression given the seriousness of the offending and the assessed future risk of reoffending.

The proposed appeal

[13] On the proposed appeal, the applicant wishes to address, first, whether the Court of Appeal was correct to refuse to apply the youth principles to the applicant's case. The applicant accepts that this Court recently dealt with youth principles in the context of name suppression in *M (SC 13/2023) v R* and recognised "youth is seen as a larger concept" extending beyond the age of 18.[9] But, the applicant says, the Court has not identified where the line is to be drawn, nor whether the applicable age is when the offence was committed or later.

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8 CA judgment, above n 1, at [77]–[78].

9 *M (SC 13/2023) v R* [2024] NZSC 29, [2024] 1 NZLR 83 at [54], n 63.

[14] Second, it is argued a miscarriage will occur if the appeal is not heard. As advanced, this is another way of saying youth justice principles should have been applied. We say no more about this proposed ground.

[15] Third, the applicant says the Court of Appeal erred in not considering the applicant's intellectual disability in assessing extreme hardship. In this context, the applicant notes that although the Court of Appeal said the applicant would be in secure care for some time yet, where her stressors could be managed, when the Court of Appeal judgment was released she had completed her sentence. After the expiry of the six months' care recipient order, any further detention in a secure facility was outside of the criminal justice system and at the discretion of the Family Court. Her secure care order was in fact extended for 18 months on 4 December 2024 albeit the Care Coordinator indicated they were "actively looking for a community-based, secure placement".

[16] As the applicant acknowledges, this Court has only recently considered the principles applicable to youth in this context. Where the line is to be drawn between "youth" and "adult" justice principles in a case like this is essentially a factual matter. The applicant by the time of the Court of Appeal judgment was not very young. We see no error in the Court of Appeal's assessment of where the line was drawn here.

[17] It may be that this Court will wish at some point to consider the approach to be adopted to name suppression for disabled persons in light of the United Nations Convention on the Rights of Persons with Disabilities.[10] However, we do not see this case as the appropriate vehicle for that consideration. The Court of Appeal had evidence about, and in fact admitted new evidence on, the applicant's intellectual disability. The Court turned its mind to the applicant's particular circumstances. Nothing raised by the applicant calls into question the Court of Appeal's assessment of those circumstances.

[18] The applicant had interim name suppression pending determination of this application. In these circumstances, to allow her to be advised of the outcome of her

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[10] Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).

application, we will make an order prohibiting publication of this judgment for 48 hours.

Result

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

[20] Order prohibiting publication of the applicant's name, address, occupation and any identifying particulars until 2.00 pm on Thursday 17 April 2025.

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