

IN THE SUPREME COURT OF NEW ZEALAND

**SC 14/2007
[2007] NZSC 34**

KENNETH GRANT LINDSAY

v

THE QUEEN

Court: Blanchard, Tipping and Anderson JJ

Counsel: C J Tennet for Applicant
M F Laracy for Crown

Judgment: 22 May 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal in respect of convictions for sexual and other physical assaults. His appeal to the Court of Appeal was dismissed.

[2] The grounds of the application relate to the following:

- (a) whether evidence of prior consistent statements by the complainant, in the nature of complaints, should have been led in re-examination;

- (b) whether the Judge's directions were adequate, having regard to acknowledged prior inconsistent statements by the complainant;
- (c) whether the Judge misdirected the jury in relation to part of an answer given in the course of cross-examination of a child psychiatrist and paediatrician called by the Crown;
- (d) whether there was a miscarriage of justice occasioned by the failure of the defence to lead evidence of good character;
- (e) whether a miscarriage of justice was occasioned by incompetence on the part of trial counsel;
- (f) whether a miscarriage of justice was occasioned by the particulars of one of the counts in the indictment.

[3] The evidence of prior complaints was properly led to rebut a challenge of recent invention by the complainant. It was very restrictive in its scope and was led in a context which clearly indicated its limited purpose. As to prior inconsistent statements, it is plain, and must have been so at trial that the credit of the complainant was crucial. The prior inconsistencies and the lateness of complaints were focal points of the defence challenges to the complainant's credit. The Judge emphasised the points made by the defence. In the circumstances of the case his directions were sufficient on those issues.

[4] The psychiatrist's observation had no probative value unless it were an opinion, as the Judge characterised it, and no value as an opinion unless appropriately qualified as such, which it was not. In the circumstances no miscarriage of justice was or could have been occasioned by the Judge's direction to the jury not to have regard to it.

[5] As to the failure to call character evidence, we observe that this ground was not raised before the Court of Appeal, where the applicant was represented by counsel who had not represented him at trial. There appear to have been justifiable

tactical reasons for not putting character in issue. The Crown had given notice to the defence that if the applicant should put his character in issue the Crown would seek to adduce evidence of relevant bad character. That would have to be balanced against the limited probative value of character testimony in a case where the alleged offending is necessarily of a covert, domestic nature.

[6] The absence of character evidence, in the circumstances of the case, does not persuade us that there was or may have been a miscarriage of justice. Nor does any other matter raised on behalf of the applicant. There is no proper basis to infer incompetence on the part of trial counsel.

[7] The complaints about the form of the indictment have no substance.

[8] The case raises no issue of general or public importance nor is there any appearance of miscarriage of justice.

[9] The application is dismissed.