

**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 67/2016  
[2016] NZSC 117**

BETWEEN                      PETER ALAN HUTCHINS  
   Applicant  
  
AND                              THE QUEEN  
   Respondent

Court:                      William Young, Arnold and O'Regan JJ  
  
Counsel:                      C J Tennet for Applicant  
   J E Mildenhall for Respondent  
  
Judgment:                      31 August 2016

---

**JUDGMENT OF THE COURT**

---

- A      An extension of time to apply for leave to appeal is granted.**
- B      The application for leave to appeal is dismissed.**
- 

**REASONS**

[1]      The applicant was convicted after a retrial of one count of sexual violation by unlawful sexual connection and one count of sexual violation by rape. He appealed to the Court of Appeal alleging that the trial Judge had made factual errors in his summing up, had misdirected the jury in certain respects and had failed to put the defence case adequately. He also sought to appeal his sentence on the ground it was manifestly excessive. The appeal was dismissed.<sup>1</sup>

---

<sup>1</sup>      *Hutchins v R* [2016] NZCA 173 (Stevens, Simon France and Ellis JJ) [*Hutchins* (CA)].

[2] The applicant seeks to appeal against the Court of Appeal decision. The application was made out of time but the respondent takes no issue with an extension of time being granted. We grant the extension.

[3] The first ground on which leave is sought relates to the direction given by the trial Judge on the burden of proof. This direction did not follow the guidance given by the Court of Appeal in *R v Wanhalla*.<sup>2</sup> The Court of Appeal highlighted certain deficiencies in the direction, but formed the view that there was no real risk that the jury misconstrued the standard of proof.<sup>3</sup> The Court concluded that no risk of miscarriage arose.<sup>4</sup>

[4] The applicant wishes to argue in this Court that the departures from the guidance given in *R v Wanhalla* led to a miscarriage of justice in the present case. He refers to the deficiencies identified by the Court of Appeal and in addition the reference in the question trail given to the jury by the Judge which refers to the need for the jury to “feel sure”, which he argued downplayed the importance of the requisite standard of proof. He argued that, given the importance of the burden and standard of proof in every criminal trial, the departure from the guidance given in *R v Wanhalla* should have led to a finding of a miscarriage of justice and an order for a retrial.

[5] The Court of Appeal’s assessment of the likely impact of the Judge’s direction on the burden and standard of proof was specific to the direction he gave and the facts of the particular case. We do not see any point of public importance arising. Nor do we consider that there is any real risk of a miscarriage of justice if leave to appeal is declined, given the Court of Appeal’s careful assessment of the direction, its divergence from the guidance in *R v Wanhalla* and the Judge’s summing up as a whole. We therefore do not consider that leave should be granted on this ground.

[6] The second ground that the applicant wishes to raise on appeal concerns four factual questions highlighted by the Judge in the summing up. They were, the Judge

---

<sup>2</sup> *R v Wanhalla* [2007] 2 NZLR 573 (CA).

<sup>3</sup> *Hutchins* (CA), above n 1, at [41].

<sup>4</sup> At [43].

said, “questions that you [the jury] might think are helpful”. The Court of Appeal considered the applicant’s complaints about these questions and concluded that they were not prejudicial and did not favour one side or the other.<sup>5</sup> The applicant says this ignores the “sting” in the questions themselves. The applicant argues that the questions undermined the defence case.

[7] The applicant’s counsel did not, however, take issue with the questions when the summing up was delivered.

[8] Again we see this as a factually specific question which does not raise any point of public importance. We do not see any reason to assess the impact of these questions differently from the Court of Appeal and in those circumstances we see no risk of a miscarriage if leave to appeal is declined on this ground.

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

Solicitors:  
Crown Law Office, Wellington for Respondent

---

<sup>5</sup> *Hutchins* (CA), above n 1, at [54].