NOTE: ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPLICANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS OR PERSONS UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY SS 203 AND 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

SC 115/2017
[2018] NZSC 21

BETWEEN	M (SC 115/2017) Applicant
AND	THE QUEEN Respondent

Court:	Elias CJ, William Young and O'Regan JJ
Counsel:	M J Kidd for Applicant K S Grau for Respondent
Judgment:	22 March 2018

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 applies for leave to appeal against a decision of the Court of Appeal dismissing his appeal against conviction.[1] He had been convicted after a

[1] *M (CA47/2016) v R* [2016] NZCA 649 (Cooper, Brewer and Peters JJ).

District Court jury trial of two representative charges of sexual offending and two charges of violent offending against a child ("A") who lived in the same household as the applicant.

[2] The application was made out of time and the applicant seeks an extension of time to apply for leave. The Court of Appeal decision was delivered on 22 December 2016. The present application was made on 8 November 2017, over 10 months later. In light of the reasons given for the delay and the absence of prejudice to the respondent, we grant an extension despite the respondent's opposition.

[3] Two of the proposed grounds of appeal that the applicant wishes to advance on appeal are the same as those rejected by the Court of Appeal. They are:

(a) The applicant, who is illiterate, should have had an interpreter at the trial. The Court of Appeal was satisfied the applicant was able to understand questions in English and gave answers that were fluent and apposite.[2] He was also able to communicate adequately with his trial counsel.

(b) Two witnesses should have been called by trial counsel for the applicant.[3] The Court of Appeal found that the applicant had decided after his counsel's advice not to call one of these proposed witnesses and that the other's proposed evidence would not have assisted his defence.

[4] No point of importance arises in relation to either of these issues and there is no appearance of any miscarriage in the Court's treatment of these issues.

[5] The applicant wishes to argue that there was no physical evidence of sexual abuse. This does not seem to have been raised in the Court of Appeal. The lack of

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2 At [70]–[72].

3 Counsel for the applicant also refers to a third witness he says should have been called but this was not raised in the amended notice of appeal to the Court of Appeal or in the applicant's affidavit in that Court and there is no indication of how that witness could have assisted the applicant's case.

such evidence is not unusual in cases of this kind and does not give rise to a concern that a miscarriage may have occurred.

[6] The other points the applicant seeks to raise have no prospect of success.

[7] The criteria for the grant of leave are not met.[4] The application for leave to appeal is dismissed.

Solicitors:
Kidd Legal, Auckland for Applicant
Crown Law Office, Wellington for Respondent

[4] Senior Courts Act 2016, s 74; Supreme Court Act 2003, s 13.