

**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>**

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**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 121/2021  
[2021] NZSC 178**

<b>BETWEEN</b>	<b>FORD TEARIKIWAI HUKA TAYLOR</b> Applicant
<b>AND</b>	<b>THE QUEEN</b> Respondent

**Court:** William Young, Glazebrook and O'Regan JJ

**Counsel:** E J Forster for Applicant  
M J Lillico and A H N Forward-Taua for Respondent

**Judgment:** 14 December 2021

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] Following a jury trial in Napier in September 2020, the applicant was found guilty on four charges of sexual offending against a single child complainant. His appeal against conviction to the Court of Appeal was dismissed,<sup>1</sup> and he now seeks leave to appeal to this Court.

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<sup>1</sup> *Taylor v R* [2021] NZCA 449 (Miller, Thomas and Wylie JJ).

[2] The proposed appeal raises two issues.

[3] The first arises in this way. The trial was conducted in accordance with physical distancing requirements associated with the COVID-19 pandemic. This meant that half the jury were in the jury box and the other half were on the opposite side of the court room. The six jurors who were not in the jury box were not able to see, at the same time, both the AVL screen on which the complainant appeared while giving evidence and the applicant. This is because, to watch the screen, they had to have their backs to the applicant. A request was made by the jury to the Judge to alter the seating arrangements so that all jurors could see the applicant and complainant at the same time. The Judge, however, said that the seating arrangements could not be changed.

[4] The second relates to the applicant's mother. She was a defence witness, providing what was described as a "reverse alibi": that, at the time two of the offences were said to have been committed, the complainant was with her mother and that therefore, on that occasion, the applicant did not have an opportunity to offend against the complainant.

[5] The complainant's mother was a prosecution witness. On her evidence, there had been an opportunity for the applicant to have committed the offences in question. In her evidence, she also volunteered the fact that the applicant's mother had been in prison. The Judge immediately told the jury that this was not relevant and later directed the jury to put that evidence to one side. The applicant's mother's offending had been in Hawke's Bay and had attracted some attention, and the details were easily ascertainable from the internet.

[6] The applicant wishes to argue that the Judge was wrong in not accommodating the jury's request for a change in seating arrangements and likewise wrong not to discharge the jury after the disclosure by the complainant's mother that the applicant's mother had been in prison.

[7] Both issues were addressed by the Court of Appeal. It concluded that the applicant did not have a right to have all jurors seated so that they could, at the same

time, see both him and the complainant<sup>2</sup> and that likewise there was no basis for concluding that the seating arrangements resulted in a miscarriage of justice.<sup>3</sup> As well, the Court was not persuaded that the Judge's decision not to abort the trial had been in error.<sup>4</sup>

[8] We are not persuaded that the arguments about the seating arrangements and decision not to abort the trial raise arguable issues of general or public importance<sup>5</sup> and see no appearance of a miscarriage of justice.<sup>6</sup>

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

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>2</sup> At [29].

<sup>3</sup> At [30].

<sup>4</sup> At [33].

<sup>5</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>6</sup> Section 74(2)(b).