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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 27/2023
[2023] NZSC 75**

BETWEEN RAYMOND JOHN BELSEY
 Applicant

AND THE KING
 Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person
 B F Fenton for Respondent

Judgment: 26 June 2023

JUDGMENT OF THE COURT

The application for an extension of time to apply for leave to appeal is dismissed.

REASONS

[1] The applicant applies for leave to appeal against a judgment of the Court of Appeal.¹ In that judgment, the Court of Appeal dismissed the applicant's appeal to that Court against his conviction for sexual violation by unlawful sexual connection. The applicant had been convicted of that offence after a District Court jury trial and sentenced to a term of imprisonment of three years and four months.²

¹ *Belsey v R* [2022] NZCA 484 (Gilbert, Brewer and Moore JJ) [CA judgment].

² *R v Belsey* [2022] NZDC 16117 (Judge Turner). He was also convicted of intentional damage of a wooden panel in the dock of the trial Court, a charge to which he pleaded guilty.

The applicant also appealed to the Court of Appeal against sentence, but that appeal was abandoned.

[2] The applicant was a serving prisoner at the time of the offending and the victim was the applicant's cellmate. The victim alleged the applicant digitally penetrated his anus three times with his thumb, after an argument that had led to the applicant becoming angry.

[3] The applicant was represented by counsel at the trial and in the Court of Appeal, but now pursues his application for leave in this Court in person.

[4] The application for leave to appeal was filed about four months out of time. We therefore treat it as an application for extension of time to apply for leave, as well as an application for leave. The respondent opposes an extension of time, on the basis that the proposed appeal has no merit.

[5] In its decision, the Court of Appeal accepted that some errors were made during the applicant's trial. In particular, a police officer should not have read out a record of the allegations made against the applicant by the victim when the officer was recounting her interview of the applicant.³ However, the Court considered that no miscarriage of justice arose from this. The jury had already heard the victim's evidence which was substantially the same as the allegations recorded during the police interview.⁴ Additionally, the Court rejected an argument that significant unfair prejudice arose because the police officer referred to the fact that the applicant became aggressive after the interview.⁵ The Court also rejected arguments made on the applicant's behalf in relation to the trial Judge's summing up.⁶

[6] The applicant's submissions in support of the application for leave do not specify with clarity what the proposed grounds of appeal are, but it is made clear in these submissions that the applicant feels he was wrongly convicted and that the allegation made against him by the victim was untrue. He says the victim's injuries

³ CA judgment, above n 1, at [17].

⁴ At [17].

⁵ At [20]–[22].

⁶ At [49] and [61].

(which were used as evidence supporting the Crown's case) were, in fact, self-inflicted. He also says his trial was unfair and his counsel did not prosecute his appeal to the Court of Appeal properly.

[7] If leave is granted, the applicant wishes to argue that his trial counsel's advice in relation to the giving of evidence at trial (the applicant did not give evidence) was wrong and that his appeal counsel did not listen to his instructions. There appears to be no suggestion that the applicant was prevented from giving evidence at trial, nor is there any substance provided as to the alleged failings of his appeal counsel. The applicant also wishes to raise issues about the sentence imposed on him, but, as noted earlier, his sentence appeal in the Court of Appeal was abandoned. That provides an inauspicious background to any arguments relating to sentence.

[8] More generally, the applicant argues he is innocent and was wrongly convicted. However, there is nothing before us to indicate that the jury verdict was unreasonable based on the evidence before the jury and it was not argued in the Court of Appeal that the jury's verdict was unreasonable. Nor is there any appearance of a miscarriage of justice in the way the Court of Appeal addressed the argument for the applicant that the trial was unfair.

[9] There is nothing in the material provided by the applicant that raises any matter of public importance.⁷ Nor do we see any risk of a miscarriage of justice if leave to appeal is not granted.⁸ That means the criteria for the grant of leave to appeal are not met. In those circumstances, there is no point in granting an extension of time to seek leave to appeal.

[10] The application for an extension of time to apply for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁷ Senior Courts Act 2016, s 74(2)(a).

⁸ Section 74(2)(b).