

NOTE: THERE IS AN EXTANT ORDER SUPPRESSING THE NAMES AND IDENTIFYING PARTICULARS OF THE APPLICANT AND HER FATHER

IN THE SUPREME COURT OF NEW ZEALAND

**SC 43/2012
[2012] NZSC 76**

A

v

THE QUEEN

Court: Elias CJ, McGrath and Chambers JJ

Counsel: C Mitchell for Applicant
A Markham for Crown

Judgment: 24 August 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against conviction 11 months out of time on the basis that she should have been discharged without conviction under s 106 of the Sentencing Act 2002.¹

[2] The applicant pleaded guilty to a count of conspiracy to commit incest. It is accepted that no actual incest took place between the applicant and her natural father

¹ *A (CA 747/2010) v R* [2011] NZCA 328.

but plans to participate in sexual activity were made over a period of some months. The sentencing judge, in a fully reasoned decision in which he examined and rejected suggestions that the impact of a conviction would be disproportionate, rejected that submission that she be discharged without conviction. The applicant was convicted and ordered to come up for sentence within 12 months if called upon.

[3] The applicant's appeal to the Court of Appeal was dismissed. The Court considered all matters advanced on behalf of the applicant as to the disproportionate effect of conviction. Given the permanent name suppression imposed by the judge, the Court considered that the suggestions of impact of conviction (upon the applicant's employment and immigration status and on questions of access and custody relating to her children) were to some extent speculative, although accepting there could be such adverse effects. Nevertheless, it concluded that the "seriousness of the departure from community standards involved in [the offending]"² meant that the consequences of conviction were not out of proportion to the gravity of the offending. The courts should not usurp the role of the relevant registration bodies, employers and the immigration service in assessing whether the convictions properly impacted upon the applicant's standing. The Court considered that the sentencing judge had achieved a correct balance between acknowledging the seriousness of the offending and the wider community interests against the private interests of the applicant by entering convictions on the basis of name suppression.

[4] The applicant seeks to traverse matters fully considered by the sentencing Judge and by the Court of Appeal. No matter of general or public importance arises. Nor is there any matter advanced which raises the possibility of a substantial miscarriage of justice. No question of law or sentencing principle arises. Nor is there explanation for the delay in making the application. In these circumstances, the criteria for leave to appeal to this Court under s 13 of the Supreme Court Act 2003 are not made out and the application must be declined.

Solicitors:
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² At [30].