

IN THE SUPREME COURT OF NEW ZEALAND

**SC 78/2006
[2006] NZSC 103**

GEOFFREY PAUL AFFLECK

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: P F Gorringe for Appellant
M F Laracy for Crown

Judgment: 4 December 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Affleck seeks leave to appeal against the Court of Appeal's dismissal of his appeal against convictions for sexual violations of a girl who was visiting his home as the friend of his daughter. The offending took place in the lounge and bedroom of the home during the course of one evening. Cannabis and alcohol had been consumed. Both the complainant and Mr Affleck's daughter testified that Mrs Affleck was asleep in the lounge at the time of the offending. Mr Affleck was of course present in Court when this evidence was given. Mrs Affleck was also in Court when the evidence of Mr Affleck's daughter was given. Neither sought to have trial counsel contradict the evidence that Mrs Affleck was asleep.

[2] The appeal to the Court of Appeal was, however, conducted on the basis that Mrs Affleck should have been called to give evidence that she was in fact awake at the relevant time, was in a position to see if any sexual offending had occurred and in fact saw nothing of that kind. Trial counsel gave evidence in the Court of Appeal that, if he had been instructed to that effect, which he was not, he would not have run the defence as he did.

[3] The Court of Appeal heard evidence from Mr and Mrs Affleck and from trial counsel. It did not accept Mrs Affleck's evidence of being awake and of having told trial counsel of that fact. It concluded that her evidence was implausible.

[4] We agree. The Court of Appeal was fully entitled to accept the evidence of trial counsel and to conclude that Mrs Affleck's proposed evidence was not credible. Nor of course was it fresh.

[5] No question of general or public importance arises and we are not persuaded that there has been any miscarriage of justice.

Solicitors:
Crown Law Office, Wellington