

[2] As well as appealing against his conviction, the applicant also issued judicial review proceedings in respect of the conduct of his trial. His application for review was dismissed by Venning J in the High Court,² and a later appeal to the Court of Appeal was also dismissed.³ The applicant now seeks leave to appeal against the Court of Appeal decision.

[3] In issue now are two complaints:⁴ first, that the Judge dismissed the discharge application without calling on the prosecutor, and secondly that the Judge should have given reasons. These points were not directly raised on behalf of the applicant in his conviction appeal save that, as we have noted, he did argue in that appeal that there was insufficient evidence to warrant conviction, which was in substance very much the same argument as was addressed to the trial Judge on the discharge application.

[4] In his judgment, Venning J approached the case on the basis proposed by Tipping J in *Nicholls v Registrar of the Court of Appeal*.⁵ Applying *Nicholls*, Venning J considered whether the applicant had established a prejudice which (a) resulted from alleged errors in the way his trial was conducted; and (b) had not been removed by the judgment of the Court of Appeal dismissing the conviction appeal. On this approach, he found against the applicant. There was no requirement for the trial Judge to hear from the prosecutor before dismissing the discharge application. Reasons having been promised, they should have been provided but the failure to do so was of no moment, as the basis of the refusal was apparent from what was said in the course of the argument on the discharge application. In any event, his complaints were moot given that the Court of Appeal had held that there was sufficient evidence to warrant conviction.

[5] In dismissing the appeal from that judgment, the Court of Appeal endorsed the reasoning of the Judge.

² *Nuku v The District Court at Auckland* [2016] NZHC 2237.

³ *Nuku v The District Court at Auckland* [2017] NZCA 471 (Cooper, Brown and Clifford JJ).

⁴ In the High Court, there was a third complaint relating to directions (or non-directions) in respect of the admissibility of certain evidence. This complaint was held by Venning J to be a collateral attack on the Court of Appeal judgment in which the same issue had been addressed.

⁵ *Nicholls v Registrar of the Court of Appeal* [1998] 2 NZLR 385 (CA).

[6] There was scope for the argument that all the issues raised in the judicial review proceedings were, in effect, a collateral attack on the judgment of the Court of Appeal and that the proceedings were an abuse of process. That approach however was not adopted⁶ and instead the courts below approached the applicant's case on as favourable a basis as could be plausibly contended for. Accordingly, the proposed appeal does not does not raise an arguable issue of public or general importance.⁷ As well, we see no appearance of a miscarriage of justice in the approach taken by the Court of Appeal.⁸

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

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⁶ Save in relation to the admissibility directions/non-directions point which had been directly addressed in the conviction appeal.

⁷ Supreme Court Act 2003, s 13(2)(a); Senior Courts Act 2016, s 74(2)(a).

⁸ Supreme Court Act 2003, s 13(2)(b); Senior Courts Act 2016, s 74(2)(b).