

NOTE: ORDER MADE BY THE COURT OF APPEAL PROHIBITING PUBLICATION OF [4], [5], [6], [13], [14], [15] AND [16] OF THE DECISION IN [2017] NZHC 231 REMAINS IN FORCE WITH THE AMENDMENT NOTED IN [6] BELOW.

NOTE: ORDER MADE IN THE HIGH COURT PROHIBITING PUBLICATION OF THE DECISION IN [2016] NZHC 545 AND THE EVIDENCE CONTAINED IN IT REMAINS IN FORCE WITH THE AMENDMENT NOTED IN [6] BELOW.

NOTE: ORDER MADE IN THE HIGH COURT ON 23 FEBRUARY 2017 PROHIBITING PUBLICATION OF THE NAMES, ADDRESSES AND OCCUPATIONS OF FAMILY MEMBERS REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 116/2017
[2018] NZSC 3**

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|---------|------------------------------------|
| BETWEEN | PHILIP MURRAY KINRAID Applicant |
| AND | THE QUEEN Respondent |

Court: Elias CJ, Glazebrook and Ellen France JJ

Counsel: P M Keegan for Applicant
A Markham for Respondent

Judgment: 21 December 2017

Reissued: 2 February 2018

Effective date
of judgment: 21 December 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal from a decision of the Court of Appeal.¹ The Court dismissed the applicant's appeal from a decision of the High Court declining to grant suppression of the fact that, at one point, the applicant was charged with the murder of his two year old daughter.² He subsequently pleaded guilty to the manslaughter of his daughter.

Background

[2] The applicant was originally charged with manslaughter following the death of his daughter. The charge was elevated to murder after police obtained medical records from medical professionals pursuant to a production order. There was a challenge to the admissibility of that medical evidence. The medical records were excluded on the basis medical privilege applied.³ The charge was reduced to manslaughter, a guilty plea entered and the applicant was sentenced to a term of imprisonment of four years and three months.⁴ The High Court also declined to suppress the fact the applicant was earlier charged with murder.⁵ The applicant appealed to the Court of Appeal.

[3] In dismissing the appeal, the Court of Appeal was not satisfied publication would be likely to cause "extreme hardship" in terms of s 200(2)(a) of the Criminal Procedure Act 2011.⁶

The proposed appeal

[4] The applicant seeks to challenge the way in which the Court of Appeal dealt with various contextual matters. If those matters had been viewed properly, the applicant says, the Court of Appeal would have concluded that the threshold for suppression was met. In particular it is said that insufficient weight has been given to the nature of the charge (murder), the fact the victim was the applicant's daughter and to the effect the resultant publicity would have on the applicant and his family. The

¹ *Kinraid v R* [2017] NZCA 443 (French, Asher and Clifford JJ) [*Kinraid* (CA)].

² *R v Kinraid* [2017] NZHC 231 (Ellis J) [*Kinraid* (suppression)].

³ *R v Kinraid* [2016] NZHC 545 (Davison J).

⁴ *R v Kinraid* [2017] NZHC 233 (Ellis J).

⁵ *Kinraid* (suppression), above n 2.

⁶ *Kinraid* (CA), above n 1, at [50]–[58].

applicant also says that the murder charge should not have been laid and the Court of Appeal should have taken that aspect of his case into account.

[5] We do not consider the criteria for leave are met.⁷ The proposed appeal is fact-specific. The facts were carefully analysed by the Court of Appeal and no challenge is made to the principles applied. No question of general or public importance is raised and there is no appearance of a miscarriage of justice.

[6] The application for leave to appeal is dismissed. The orders made by the Court of Appeal and the High Court set out in the first two Notes at the commencement of this judgment are varied to the extent necessary to make it clear that publication of the mere fact the pre-trial challenge involved medical records and privilege as outlined in [2] of this judgment is not in breach of those earlier orders.

Solicitors:
Crown Law Office, Wellington for Respondent

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