

IN THE SUPREME COURT OF NEW ZEALAND

**SC 1/2008
[2008] NZSC 21**

ROSS FRANCIS HOOKWAY

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: D P H Jones QC for Applicant
M F Laracy for Crown

Judgment: 9 April 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Hookway, was convicted on 12 counts of sexual offending against a girl when she was between 5 and 14 years old. His appeal against conviction was dismissed by the Court of Appeal. He seeks leave to appeal to this Court on two primary grounds. First, he contends that there should be a rule of law obliging defence counsel to inform their client that the client has the right to give instructions which counsel is bound to follow. The second is that the trial Judge should not have given a *Papadopoulos* direction when the jury reported to him that

they were split, with each side holding “rock solid positions”. Mr Hookway seeks to argue that in such circumstances of deadlock a *Papadopoulos* direction is inappropriate.

[2] We consider that the approach taken by the Court of Appeal on each point was correct and that there is no reasonable scope for argument to the contrary. To introduce an invariable rule, for which there is no previous authority, requiring defence counsel to give the suggested advice, would not be a desirable development, for the reasons given by the Court of Appeal. It would also be productive, potentially at least, of much argument about the precise terminology employed by counsel when taking instructions from their clients. In any event, in the present case the Court of Appeal was satisfied that counsel made it clear to Mr Hookway that “he had the final say” about how his case was run. Furthermore, Mr Hookway points to no material instruction he would have given his counsel had he received the advice which he says should have been given to him.

[3] Turning to the second point, the Court of Appeal was satisfied that whether a *Papadopoulos* direction should be given is ultimately a matter for the trial Judge’s discretion and that a substantial degree of latitude should be given to trial Judges in this respect. This is undoubtedly correct law. To introduce an absolute rule in this area, depending on how firmly the jury appears to be divided, would not be a sensible approach. It would tend to put an artificial and unnatural premium on exactly how the jury expressed itself in its communication to the Judge. It can also be said that the terms of the standard *Papadopoulos* direction would be inconsistent with an absolute rule forbidding the giving of such a direction in the case of so-called deadlock.

[4] We do not consider there is sufficient prospect of success on either of these grounds to justify the granting of leave. It is accordingly not in the interests of justice to do so nor can it be said that there is any risk of a miscarriage of justice if leave is not granted.

[5] The applicant raises two further grounds which are said to justify leave, when considered in combination with the two grounds already discussed. As those

grounds have been rejected and the additional grounds are far from qualifying for leave in themselves, they add nothing which requires further consideration.

[6] For these reasons the application for leave must be dismissed.

Solicitors:
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