

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360352.html>

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF NAMES, DETAILS AND IDENTIFYING PARTICULARS OF APPLICANT AND HIS MOTHER REMAIN IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 8/2018
[2018] NZSC 31**

BETWEEN T (SC 8/2018)
Applicant

AND THE QUEEN
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: R J Stevens and T Singh for Applicant
Z R Johnston for Respondent

Judgment: 16 April 2018

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant, Mr T, was convicted of 30 charges involving assaults on six children all of whom lived with Mr T and his mother, Ms T. Mr T was acquitted on another 10 charges. Ms T was also charged with assaults on the children.

[2] Shortly before their joint trial was to commence, Ms T pleaded guilty to 41 charges. The Crown chose not to call any evidence on a number of other charges. Evidence of her convictions and of the Crown's decision not to call evidence on other charges was led at the applicant's trial in an agreed statement of facts.¹

[3] Mr T appealed to the Court of Appeal against conviction and sentence. In dismissing the appeal, the Court of Appeal rejected Mr T's argument that the trial Judge, Judge David Sharp, erred in admitting the evidence of Ms T's convictions and in directing the jury as to its use.²

[4] Mr T now seeks leave to appeal to this Court.

The proposed grounds of appeal

[5] The proposed grounds of appeal reflect those raised in the Court of Appeal, namely, whether the evidence of Ms T's convictions was admissible and whether bolstering the complainants' evidence was a permissible use of the convictions. The first proposed ground is said to raise questions about the relationship between ss 8 and 49 of the Evidence Act 2006 and about the directions to the jury as to the use of evidence of convictions.

[6] On the first issue, the Court of Appeal found the evidence was relevant. A number of factors were noted including the factual inter-connection between some of Ms T's actions towards the children and Mr T's assaults on them³ and that it provided the jury information about "the circumstances in which the children were living".⁴ The evidence also "provided an answer to an important part of the defence case that the offending did not happen as the children were unaffected and no one noticed anything wrong with them".⁵

[7] The Court saw "the real issue" as being whether the probative value of the evidence was outweighed by its prejudicial effect such that it should have been

¹ *R v [T]* [2017] NZDC 2816 (Judge David Sharp).

² *T (CA251/2017) v R* [2017] NZCA 595 (Winkelmann, Venning and Duffy JJ).

³ At [15].

⁴ At [14].

⁵ At [21].

excluded under s 8 of the Evidence Act.⁶ In this respect, the important potential prejudice was the risk Mr T was found guilty by association.

[8] Venning J, delivering the judgment for the Court, made the point the Crown did not seek to advance any form of guilt by association. The Court noted also that defence counsel in closing emphasised that to find guilt by association was impermissible reasoning. Finally, the Judge directed the jury it would be wrong to convict on this basis.

[9] The Court then dealt with the second proposed ground of appeal, that is, the impact of the evidence on the complainants' credibility. The Court rejected the submission that the Judge in summing up directed the jury the convictions led to the inference that what the complainants said about Mr T was also correct. But the Court accepted that the evidence "had the incidental effect of bolstering the complainants' credibility".⁷ The Court did not see anything wrong with that. This conclusion led to a consideration of the directions given to the jury about the use of the evidence.

[10] The Court noted the Judge had dealt with this although in the context of discussion of the Crown case. Venning J said "a separate direction" would have been preferable.⁸ That said, the Court concluded "importantly, the Judge did explain ... the reasons for ... admission and how it could be used".⁹

[11] The arguments Mr T wishes to raise were accordingly evaluated by the Court of Appeal. These issues turn on the particular facts of this case. No question of general or public importance arises.¹⁰

[12] As to the appearance of a miscarriage of justice, it is accepted the evidence is of some relevance. The applicant's concern relates primarily to the effect of admission. As to that, the potential for prejudice and the adequacy of the directions

⁶ At [18].

⁷ At [28].

⁸ At [37].

⁹ At [37].

¹⁰ Supreme Court Act 2003, s 13(2); Senior Courts Act 2016, s 74(2).

given to address that potential were carefully assessed by the Court of Appeal. We see no appearance of a miscarriage of justice arising from that assessment.

[13] The application for leave to appeal is dismissed.

Solicitors:
Public Defence Service, Auckland for Applicant
Crown Law Office, Wellington for Respondent