

IN THE SUPREME COURT OF NEW ZEALAND

**SC 14/2006
[2006] NZSC 29**

ALLAN BORLEY

v

THE QUEEN

Court: Elias CJ, Blanchard and Anderson JJ

Counsel: D P H Jones QC for Applicant
K B F Hastie for Crown

Judgment: 11 April 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted on indictment of sex offences against two infant girls. He appealed unsuccessfully to the Court of Appeal and now applies to this Court for leave to appeal on the grounds that a substantial miscarriage of justice has occurred. This Court has considered the written submissions in support of and in opposition to this application and has determined that it is unnecessary to have oral submissions.

[2] The applicant takes issue with discrepancies between the girls' viva voce evidence and what they had said in their videotaped evidential interviews. However, the girls' reliability was a matter for the jury. It raises no question of general or public importance and we are satisfied that there has been no miscarriage of justice.

[3] The applicant also complains that his trial counsel gave incorrect advice about the possibility of the applicant being cross-examined about previous convictions for sexual offences against children. He says that this bore on his decision not to give evidence himself. But in the Court of Appeal, before which he gave evidence, he accepted that even if he had not been concerned about the possibility of such cross-examination, he would not necessarily have given evidence. He was aware that he had the final say on whether or not he gave evidence and there was at least some basis for concern about the possibility of cross-examination about his previous crimes. The Court of Appeal expressed a firm view, in light of how he had presented there, that he would have diminished his prospects of acquittal had he given evidence. In all the circumstances we are satisfied that no miscarriage of justice has occurred through the applicant not having given evidence at trial. There is no question of general or public importance.

[4] The application is dismissed.