

IN THE SUPREME COURT OF NEW ZEALAND

**SC 74/2005
[2006] NZSC 9**

PHILLIP EDWARD CROOKS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: J H M Eaton for Appellant
A Markham for Crown

Judgment: 20 March 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Crooks seeks leave to appeal against the dismissal by the Court of Appeal of his appeal against a sentence of 16 months' imprisonment imposed after he pleaded guilty to charges of inducing an indecent act and indecent assault relating to a 14 year old girl. The appellant was aged 32 at the time of the offending.

[2] The proposed ground of appeal is that a miscarriage of justice has occurred because both the sentencing Court and the Court of Appeal proceeded on the basis of a summary of facts which was in error and which should have been disregarded. We

accept that this did occur. Clearly it should not have done. A defendant is entitled to be sentenced and have any appeal heard on a correct factual basis.

[3] When the facts are correctly understood they reveal conduct on the part of the appellant which was always likely to lead to a sentence of at least 16 months' imprisonment. The variations between the facts admitted and those derived by the Judge from the summary of facts were relatively minor. There was ample material before the judge by consent at sentencing by way of email and text messages passing between the appellant and the complainant to justify the interpretation the Judge placed on the offending. It is therefore clear that there has not been a miscarriage of justice.

[4] The application is dismissed.

Solicitors:
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