

IN THE SUPREME COURT OF NEW ZEALAND

**SC 27/2008
[2008] NZSC 52**

M

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: W M Johnson for Applicant
N P Chisnall for Crown

Judgment: 17 July 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the dismissal by the Court of Appeal of his appeal to that Court against his conviction on a number of representative charges of sexual offending and the sentence imposed upon him of five and a half years imprisonment and an order for payment of \$70,000 in reparation to the victim.

[2] Although there was a split decision in the Court of Appeal relating to the convictions, we are not persuaded that leave should be granted. The proposed ground for the conviction appeal concerns certain relatively brief passages in the

applicant's statement to the police. The Court of Appeal unanimously identified the trial Court's error in allowing those passages to be admitted in evidence. Therefore there is no point of law to be corrected. The Court was divided on whether the admission of the evidence resulted in an unfair trial. That is not a question of law or fact of public or general importance as it is entirely dependent upon the facts of the particular case. And, importantly, overall there does appear to have been a fair trial and there is no appearance of any miscarriage of justice.

[3] As to the sentence appeal: by the standards at the time when the offending took place the sentence could possibly be seen as a stern one but there were multiple convictions on representative counts and the victim was very young. Even factoring in the order for reparation, which seems to have been offered by the applicant not out of remorse but out of a desire to reduce the length of sentence, and also factoring in the age of the applicant, we do not consider that this Court should interfere with the Court of Appeal's decision to confirm the sentence. In particular, we are not persuaded that if the applicant had been sentenced for his subsequent offending on the same occasion when he was sentenced for the present offending, the aggregate periods of imprisonment would have been significantly less than the combined sentences he has received on the separate occasions.

Solicitors:
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