

**PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF  
COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC45/2008  
[2008] NZSC 77**

**R**

v

**THE QUEEN**

Court: Elias CJ, McGrath and Wilson JJ

Counsel: R A Harrison for Applicant  
A Markham for Crown

Judgment: 8 October 2008

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal<sup>1</sup> which dismissed an appeal against his conviction on six representative counts of sexual offending against a boy under the age of 16 years. The applicant claims that a miscarriage of justice occurred first because his counsel did not call

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<sup>1</sup> *R v NGR* [2008] NZCA 196.

witnesses who could have given evidence that there was limited, if any, opportunity for the alleged offending to have occurred and secondly because the trial Judge did not discharge the jury after there was contact outside the Courtroom between the complainant and some members of the jury.

[2] Most of the alleged offending occurred while the applicant was a social worker at a residential school where the complainant was a pupil. The proposed additional evidence is that of nine other social workers from the school. Trial counsel (not Mr Harrison) gave unchallenged evidence to the Court of Appeal that the applicant accepted his advice not to call one of these witnesses and counsel decided not to pursue the calling of other “opportunity” evidence because much of the alleged offending had occurred in the applicant’s private quarters and because of the risk of damaging rebuttal evidence being called. The Court of Appeal, with the benefit of having seen some of the proposed witnesses give evidence, held that the decision of trial counsel was a reasonable one. There is no basis for seeking to revisit that assessment on appeal to this Court.

[3] The contact between the complainant and members of the jury involved the complainant saying “thank you for listening to me”. The jurors reported what had occurred. The trial Judge, Allan J, ruled that there was no necessity to discharge the jury but, in summing-up, gave an appropriately firm direction that the incident was to be disregarded. The Court of Appeal concluded that the Judge was best placed to determine whether, following such a direction, there was a real possibility of prejudice to the applicant and that it was open to the Judge to find that there was not. We agree.

[4] In summary, it does not appear that a miscarriage of justice has occurred, or that there is another point qualifying for leave to appeal to this Court. The application for leave to appeal is therefore dismissed.

Solicitors:  
Crown Law, Wellington