

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

IN THE SUPREME COURT OF NEW ZEALAND

**SC 68/2009
[2009] NZSC 106**

K (CA 644/2008)

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: B J Hart for Applicant
T Epati for Crown

Judgment: 20 October 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The Court of Appeal has dismissed the applicant's appeal against convictions for offences of sexual violation¹ and he seeks leave to appeal to this Court. We do not grant leave. No point of law of general or public importance is raised and there is no appearance of any miscarriage of justice.

¹ [2009] NZCA 307.

[2] The defence made a tactical decision to seek an order from the trial Judge that the Crown should call evidence regarding two telephone conversations between the complainant and the applicant. The Judge made an order in respect of one of those calls and declined it in respect of the other. The applicant, having had the benefit of the jury's hearing the first and lengthier conversation, has now changed course and argues that the evidence was inadmissible. For the reasons given by the Court of Appeal, we consider that the Judge's ruling was properly made in relation to both calls.

[3] The Judge's direction to the jury to consider the counts separately was accompanied later in his summing up by a succinct encapsulation of the competing contentions of the parties on each of the counts to the extent they could rationally be separated in light of the defence being a general denial of wrongdoing in any respect. That being so, the Judge's directions on the topic of separate consideration were entirely adequate.

Solicitors:
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