

IN THE SUPREME COURT OF NEW ZEALAND

**SC 73/2009
[2009] NZSC 114**

KEVIN STANTON BURDETT

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: M E Goodwin for Applicant
S B Edwards for Respondent

Judgment: 4 November 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant wishes to appeal to this Court against the Court of Appeal's dismissal of his appeal against a sentence of two years four months imprisonment imposed after he pleaded guilty to a charge of having sexual connection with a person aged between 12 and 16 years of age, contrary to s 134(1) of the Crimes Act 1961. Such offending carries a maximum sentence of imprisonment of 10 years.

[2] The offending on one occasion, against a 15 year old girl by a 44 year old man, was preceded by a period of grooming, although as the Court of Appeal

recognised some encouragement had been given, after grooming commenced, by the complainant. What occurred was consensual but that provides no defence to a charge under s 134(1).

[3] We are not persuaded that this Court should interfere with the Court of Appeal's determination that the sentence was within the range open to the sentencing Judge.

[4] This Court has previously had occasion to point out that the primary responsibility for reviewing levels of sentencing rests with the Court of Appeal which, because of the large number of sentencing appeals coming before it, has expertise and experience in the area which this Court lacks. Second level appeal Courts in comparable jurisdictions also do not regard themselves as the appropriate vehicles to perform such a function. It will therefore be only in rare cases where some important question of general principle arises, such as the jurisdiction for the imposition of a sentence, or where there is plainly an appearance of a substantial miscarriage of justice, that this Court will grant leave on a sentencing matter. Neither of those exceptional circumstances exist in the present case.

Solicitors:

Jess Nguy, Auckland for Applicant
Crown Law, Wellington