IN THE SUPREME COURT OF NEW ZEALAND

SC 112/2009
[2010] NZSC 21

STEPHEN LESLIE JELLYMAN

v

THE QUEEN

Court: Elias CJ, McGrath and Wilson JJ

Counsel: T Ellis for Applicant
G H Allan for Crown

Judgment: 12 March 2010

JUDGMENT OF THE COURT

The application for leave to appeal against conviction and sentence is dismissed.

REASONS

[1] The applicant was convicted by a jury of sexual violation by digital penetration. He seeks leave to appeal against the dismissal of his appeal against conviction and sentence to preventive detention. The submissions raise two grounds of appeal, the central features of which are:

(a) The complainant was not competent to give evidence on account of her disability which should have raised doubts over her ability to tell the difference between truth and falsehood.

(b) The failure to comply with the requirement of s 77 of the Evidence Act 2006 that evidence be sworn, in relation to the complainant's evidence in chief given by videotape.

[2] We are satisfied that both points were correctly addressed by the Court of Appeal and that the interests of justice do not require us to grant leave to appeal.

[3] On the first ground, the textbook medical description of the complainant's velo-cardio-facial syndrome gave no cause for concern. Nor did the professional report attached to the Crown's mode of evidence application. The applicant's counsel points out that the complainant told the prosecution she did not know what a lawyer was, but in context this is not significant. Trial counsel did not object to the complainant's video evidence (which enabled the defence of consent to be run without the defendant giving evidence). Significantly, when addressing the jury, counsel for the defence asserted the complainant was "anything other than handicapped". Overall, we are satisfied that there is no reason for concern in this case that the complainant's disability affected her competence to give evidence.

[4] On the second ground we note that the complainant took the oath before giving her oral evidence. Playing the videotape to the jury was part of her evidence. It came in as an exhibit. She had promised to tell the truth during the interview, in accordance with the applicable regulations. The defence acquiesced in the mode of evidence application. We do not consider it to be arguable that s 77 of the Evidence Act, or any other rule of evidence, requires verification that the taped evidence was truthful.

[5] The proposed appeal against sentence is supported by submissions from the applicant himself. Because of prior offending at 16 and again at 19 he was eligible for preventive detention. He received a five year sentence. There is no particular legal issue raised by his submissions that he should have been given a finite sentence. It is clear that the sentence imposed was within the discretion of the trial Judge.

[6] The application for leave to appeal against conviction and sentence is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington