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

IN THE SUPREME COURT OF NEW ZEALAND

SC 119/2011
[2011] NZSC 153

RICKY JOHN TAMATI

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: P E Dacre for Applicant
K A L Bicknell for Crown

Judgment: 13 December 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal 20 months out of time against a judgment of the Court of Appeal dismissing the applicant's appeal against conviction on charges of sexual offending against a teenage male.[1] The delay in bringing the application is explained on the basis of the need to seek expert opinions before formulating the appeal but no detail of that has been provided.

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1 *Tamati v R* [2010] NZCA 49.

[2] A further difficulty for the applicant is that the point now sought to be taken was not taken at trial nor in the Court of Appeal, where present counsel represented the applicant. The sole ground in the Court of Appeal was that the jury verdicts were unreasonable. The Court of Appeal reviewed the evidence in some detail and rejected that contention. The applicant now asserts that he was prejudiced by the failure of the trial Judge to give a direction pursuant to s 122 of the Evidence Act 2006 and warn the jury that the complainant's evidence might be unreliable. This is said to have been necessary because the complainant has intellectual difficulties as a result of an accident in which he suffered brain injuries. But, as the Court of Appeal recorded,[2] the primary focus of the trial was on the reliability of the complainant's evidence and it could not fairly be suggested that the difficulties in relation to his evidence were overlooked or played down.

[3] The issue of his reliability was squarely before the jury. The Court of Appeal undertook its own analysis of the quality of his evidence and concluded he was able to recall the events he referred to in his evidence. It followed that the verdicts were reasonably open to the jury.

[4] The trial Judge was not required by s 122 to give a direction in the circumstances of the case. The proposed appeal would address only the application of s 122 to the particular circumstances of the case. It does not raise any question of general or public importance.

[5] Given that there has already been a thorough review by the Court of Appeal, which was alert to the central issue of the reliability of the complainant's testimony and considered that to have been adequately placed before the jury, there is no appearance of any substantial miscarriage of justice having occurred.

Solicitors:
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2 At [46].