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

IN THE SUPREME COURT OF NEW ZEALAND

SC 72/2011
[2011] NZSC 150

F

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Judgment: 8 December 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted by a jury on 22 counts of assaulting or injuring his six children. One was a charge of attempted rape of his 12 year old daughter. The Court of Appeal[1] dismissed his appeal against the convictions and he now seeks leave to appeal to this Court.

[2] The grounds of the proposed appeal related to subsequent recantations of videotape interview evidence admitted at the trial in support of the Crown's case by three of the complainants and by another witness who is their cousin. The Court of

1 *F v R* [2010] NZCA 266.

Appeal admitted further evidence from the cousin at the hearing of the appeal but, following cross-examination, rejected it as being neither credible nor cogent.

[3] The application for leave states that the three complainants who gave evidence "continue to recant their evidence at trial and their statements to the police". The position in this respect as at the date of the Court of Appeal hearing is discussed in detail in the comprehensive judgment delivered by the Court of Appeal. It was satisfied that the jury had seen through the recantations at the trial by two of the complainants of what they had earlier said in videotaped interviews. The third complainant gave evidence consistent with her video interview statement, and withdrew her subsequent claims that this statement was untrue.

[4] The applicant has been unable to obtain legal aid for his leave application and as a result counsel who prepared the application has withdrawn. No submissions have been filed by the applicant and, despite an extension, the time for doing so has expired. We did not seek submissions from the Crown. In those circumstances we have considered the material before us to assess whether the grounds appearing in the application are arguable so that it is necessary in the interests of justice that we hear the proposed appeal.[2] We are, however, satisfied that is not the case and accordingly we dismiss the application for leave to appeal.

[5] If the applicant is concerned that there is new material available that he has not been able to put before the Court of Appeal or this Court, his only future route for challenging his convictions is under s 406 of the Crimes Act 1961. We emphasise, however, that we are not encouraging him to do so.

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[2] Supreme Court Act 2003, s 14.