

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF
COMPLAINANTS PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 65/2012
[2013] NZSC 8**

AENEAS DAVIDSON

v

THE QUEEN

Court: McGrath, William Young and Chambers JJ

Counsel: N Levy for Applicant
J E Mildenhall for Crown

Judgment: 28 February 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the judgment of the Court of Appeal which dismissed his appeal against conviction on counts of sexual violation by rape and sexual violation by unlawful sexual connection.¹

¹ *Davidson v R* [2012] NZCA 391.

[2] He relies on two grounds of appeal, both of which seek to impugn the performance of defence counsel. At the trial, counsel defended the applicant on the basis of consent by the complainant to sexual activity. The first proposed ground of appeal is that the applicant had asked counsel to put to the complainant that she was a liar who had fabricated the allegations in collusion with another woman, but counsel did not do so. The second, and alternative, proposed ground is that, in conducting the defence of consent, counsel introduced, but should not have, evidence that was given of other complaints of sexual violation made against him.

[3] These grounds were raised in the Court of Appeal, which heard evidence and submissions from the parties. In dismissing the appeal, the Court of Appeal clearly formed an adverse view of the applicant's credibility, referring to a number of incidents of inconsistency in his evidence.

[4] We are satisfied that the proposed appeal to this Court raises no question of general or public importance. Nor is there any possibility of a substantial miscarriage of justice if the appeal is not heard. The applicant's complaints about his trial have been fully reviewed by the Court of Appeal and there is no reason for this Court to undertake the same exercise in a further appeal.

[5] The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington