

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

NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF WITNESS UNDER 17 YEARS OF AGE PROHIBITED BY S 139A OF THE CRIMINAL JUSTICE ACT 1985.

NOTE: DISTRICT COURT ORDER GRANTING PERMANENT NAME SUPPRESSION TO THE APPLICANT REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 35/2015
[2016] NZSC 16**

BETWEEN R (SC 35/2015)
Applicant

AND THE QUEEN
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
M J Lillico for Respondent

Judgment: 24 February 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty at trial on counts alleging sexual violation by rape and assault. The offending was against his young daughter. His appeal against conviction was dismissed by the Court of Appeal.¹

[2] His application for leave to appeal against the judgment of the Court of Appeal is primarily based on his suspicion that there was an association between the

¹ *R (CA151/2013) v R* [2013] NZCA 542 (Wild, Cooper and Lang JJ).

foreman of the jury and a detective who gave evidence at his trial. He says that both had worked at the same school; the former as a caretaker and the latter as a school teacher.

[3] This ground of appeal was not advanced to the Court of Appeal. In those circumstances we invited counsel for the Crown to make inquiries. We were subsequently advised that:

- (a) The detective has not worked at the school since 2006.
- (b) While at the school he had an association with one of the caretakers who was employed there but this person was not on the jury.
- (c) He recalls another person, whom he knew as “Dave”, who worked at the school as a caretaker but cannot say whether he was the foreman as he would not now recognise him.

On the basis of the submissions we received from the applicant in response to what we were told by counsel, we doubt whether “Dave” was on the jury. Further, even if he was on the jury, we see no basis for concern that his prior limited association with the detective would have affected the jury’s assessment of the case. Accordingly, we see no appearance of a miscarriage of justice in relation to this issue.

[4] The applicant in his most recent submissions has raised other points (one as to the evidence of doctors and DNA and the other as to differences between his daughter’s original statement and her evidence). He did not develop any arguments as to these points. Having considered the judgment of the Court of Appeal, we are not persuaded that they warrant the grant of leave to appeal.