Supreme Court of New Zealand
Te Kōti Mana Nui

6 July 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

JUSTIN AMES JOHNSTON v THE QUEEN

(SC 61/2015) [2016] NZSC 83

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz.

The appellant was convicted by a jury on one count of attempted sexual violation by unlawful sexual connection. He was sentenced to preventive detention.

The events leading to the charge against the appellant were as follows. One evening the appellant was on the back lawn of a residential property near a sleepout which was used as a bedroom by a teenage girl. The girl's father found the appellant and chased him on to a neighbour's property. The appellant was later apprehended by the police. At trial, the Crown adduced evidence to support its contention that the appellant had the intention to rape the teenage girl. This included evidence of prior incidents where the appellant had been on or around the property and propensity evidence involving previous sexual assaults by the appellant and statements by the appellant to the effect that he intended to sexually assault a young girl. The appellant's argument that the Crown had not excluded the reasonable possibility that his presence on the property was to commit a burglary must have been rejected by the jury.

The appellant appealed his conviction on the basis that his acts were merely preparatory and therefore not sufficiently proximate to the intended offence to constitute an attempt. This issue had been resolved against the appellant in an earlier appeal in the Court of Appeal, where the Court had determined that his actions, on the facts argued by the

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Crown, would meet the degree of proximity required for an offence. In the appellant's appeal against conviction, the Court of Appeal adopted its earlier decision on this point.

The Supreme Court granted leave to appeal on the question whether the trial Judge was wrong to conclude that the actions of the appellant on the night of the alleged offending were sufficiently proximate to constitute the actus reus of an attempt.

The appellant submitted that, contrary to the view taken in the lower Courts, evidence of a defendant's intentions should not be taken into account in the question of whether their acts were sufficiently proximate to constitute an attempt. On that basis the acts on the night in question could not be said to have gone past mere preparation. The respondent submitted that intentions are relevant to the question of whether the actions constitute an attempt, and that in this case the actions of the appellant had gone beyond mere preparation.

The Supreme Court has unanimously dismissed the appeal. The Court held that evidence of the intentions of a defendant could be used to determine whether or not the defendant's actions were mere preparation or were sufficiently proximate to constitute an attempt. The Court found that the law was correctly applied to find that the requirements for an attempt had been met in this case.

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