

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 112/2019
[2019] NZSC 131

BETWEEN ZEN PULEMOANA
 Applicant

AND THE QUEEN
 Respondent

Court: Winkelmann CJ, Glazebrook and O'Regan JJ

Counsel: J D Munro and J N Olsen for Applicant
 A J Ewing for Respondent

Judgment: 19 November 2019

JUDGMENT OF THE COURT

- A An extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
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REASONS

[1] The applicant was tried before a jury in the High Court on two counts of murder. He was found guilty of the manslaughter of one victim, Raymond Fleet, and of the murder of the other victim, James Fleet. James Fleet was the nephew of Raymond Fleet.

[2] The applicant appealed against his conviction to the Court of Appeal.¹ One of the grounds of appeal was that the trial Judge should have discharged a juror, who was referred to in the Court of Appeal judgment as “Mr X”. The mother of one of the victims, James Fleet, had raised with the officer-in-charge that she recognised Mr X

¹ *Pulemoana v R* [2019] NZCA 293 (Brown, Wylie and Moore JJ).

and the Crown prosecutor drew the matter to the attention of the Judge. It transpired that Mr X had been in an antenatal course run by the mother (Ms Fleet) some 14 years before the trial, although he had attended only two classes. In addition, Mr X's wife had Facebook contact with Ms Fleet but this had been several years before the trial and was unknown to Mr X. Having ascertained these facts, the Judge decided not to discharge Mr X from the jury.

[3] The Court of Appeal rejected the argument put forward on behalf of the applicant that the Judge had erred in not excusing Mr X from the jury under s 16(3)(b) of the Juries Act 1981. Under that section, a Judge may excuse a person called to attend as a juror if satisfied the person is closely connected with one of the parties. The Court of Appeal rejected the submission made on behalf of the applicant and expressed agreement with the decision reached by the Judge. The Court gave six reasons:²

- (a) Mr X's contact with Ms Fleet had occurred approximately 14 years earlier;
- (b) Mr X had attended only two of the antenatal classes;
- (c) the Facebook interaction between Mr X's wife and Ms Fleet had occurred six to seven years earlier and comprised approximately 10 comments over a two or three year period;
- (d) Mr X had no other interaction with Ms Fleet and had not been aware of his wife's Facebook contact with Ms Fleet;
- (e) Mr X had confirmed to the Judge he was comfortable continuing to serve as a juror and that he could bring an open and unbiased mind to the task; and
- (f) it was apparent from the jury's verdicts that they had carefully considered all of the evidence.

² At [65]–[70].

[4] The applicant seeks leave to appeal against this aspect of the Court of Appeal's judgment. His application for leave was filed about two months after the time for filing expired. The delay is, however, adequately explained and the respondent does not oppose an extension of time being granted. We therefore grant the required extension.

[5] The applicant wishes to argue on appeal to this Court that the Court of Appeal erred in its assessment of the situation and misapplied the accepted test for juror bias.³ The applicant points in particular to the fact that the applicant's co-accused was found guilty of manslaughter in relation to both victims, whereas the applicant was found guilty of murder in relation to Ms Fleet's son, James Fleet.

[6] The application for leave to appeal is advanced on the basis that a substantial miscarriage of justice will occur if leave is not granted.⁴ The applicant does not suggest that any matter of general or public importance arises.

[7] The High Court Judge and the Court of Appeal both applied the well-established test for juror bias to the particular facts of the case. The case is entirely fact-specific and we do not consider there is sufficient prospect of success in the proposed argument that the Courts below erred in their assessment to justify a further appeal.

[8] Leave to appeal is therefore declined.

Solicitors:
Crown Law Office, Wellington for Respondent

³ Whether "a fair-minded and informed member of the public would have the reasonable apprehension or suspicion that a jury or juror would not discharge their task impartially": *R v C* (CA395/08) [2009] NZCA 272, [2010] 2 NZLR 289 at [35].

⁴ Senior Courts Act 2016, s 74(2)(b).