NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 20/2019
[2019] NZSC 44

BETWEEN	PAORA TAHAU Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: J S Jefferson for Applicant
K Peirse-O'Byrne for Respondent

Judgment: 3 May 2019

JUDGMENT OF THE COURT

A An extension of time to appeal is granted.

B The application for leave to appeal is dismissed.

REASONS

[1] The applicant stood trial in the District Court on three charges of sexual violation (two of rape and one of digital penetration). He was found guilty on one of the rape charges and not guilty on the other two charges.

[2] The charges arose in this way. The complainant and two female friends who were drinking in a bar were approached by the applicant who introduced himself. He explained that he had just been released from prison after a five-year sentence for "bashing a nigger". In context, this suggested that the applicant was associated with

the Mongrel Mob and that the victim of his assault was associated with Black Power. There was initially some friendly interaction between the complainant and the applicant in the course of which they danced and kissed. Her evidence at trial was that she became uncomfortable with the applicant and, with a view to getting rid of him, went to the lavatory. He, however, followed her and wound up with her in a cubicle. On her evidence, he penetrated her digitally, and there was also sexual intercourse. During this time, the complainant's friends went into the lavatory to look for her but she did not call out to them.

[3] The applicant did not give evidence at trial. At interview he said that he had been led by hand by the complainant into the lavatory cubicle and that the sexual activity which occurred was consensual. His account of that activity differed from that of the complainant and his admissions were confined to one act of intercourse.

[4] In a pre-trial ruling, it was held that the applicant's statement that he had just got out of prison for serious violence was admissible. The evidence as to what the applicant had said about his prison sentence was led to enable the complainant to explain her reasons for acting as she did, including her reactions to the applicant's actions and her not responding to calls from her friends when she was in the lavatory cubicle. As it turned out, the complainant's evidence at trial as to whether, and if so why, she was scared of the applicant was rather more vague than had been anticipated. She did, however, refer to the remarks and having been "frightened" and "scared … a little" while in the cubicle.

[5] The applicant's appeal to the Court of Appeal against conviction was dismissed.[1] That Court was satisfied that the remarks made by the applicant as to his recent release from prison were admissible and remained so despite the complainant not having fully come up to brief on the issue.[2] The Court was also of the view that the directions given by the Judge dealt adequately with the risk of illegitimate prejudice in remarks which, as the Court noted, were "notably robust".[3]

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1 *Tahau v R* [2018] NZCA 538 (Kós P, Lang and Moore JJ).
2 At [12]–[13].
3 At [14].

[6] The Court also dismissed arguments that the verdict of guilty was unreasonable and inconsistent with the not guilty verdicts on the other two charges.[4] In doing so, the Court reviewed the evidence given at trial and also provided explanations for the pattern of verdicts.

[7] The applicant seeks leave to appeal to this Court on the basis that the Court of Appeal judgment was wrong. If leave were granted, the case would involve a re-run of the arguments which were advanced in the Court of Appeal. The proposed appeal thus raises no question of public or general importance.[5] All issues which the applicant wishes to raise have been dealt with in the Court of Appeal judgment and we see no appearance of error in the analysis and thus of a miscarriage of justice.

[8] We note the application for leave is out of time but there is no objection to an extension of time. We grant an extension of time, but the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

4 At [18] and [22].
5 Senior Courts Act 2016, s 74(2).