

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985 AND S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 70/2021
[2021] NZSC 103**

BETWEEN DAVID STANLEY TRANTER
Applicant

AND THE QUEEN
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person
J A Eng for Respondent

Judgment: 20 August 2021

JUDGMENT OF THE COURT

The application for recall of this Court's judgment of 12 December 2017 (*Tranter v R* [2017] NZSC 187) is dismissed.

REASONS

[1] The applicant was convicted after a High Court jury trial in 2015 on five counts of historical sexual offending including sodomy, inducing an indecent act, indecent assault and rape.

[2] The applicant was sentenced to preventive detention, with a minimum period of imprisonment of five years.¹

¹ *R v Tranter* [2016] NZHC 111 (Gendall J).

[3] The applicant appealed to the Court of Appeal against conviction and sentence. The appeal against conviction was advanced on the basis that there was fresh evidence that, if it had been available at trial, would have affected the outcome. This ground of appeal was rejected by the Court of Appeal and the conviction appeal was dismissed, as was the applicant's appeal against sentence.² (We will call this judgment the March 2017 judgment.)

[4] The applicant then applied for leave to appeal to this Court, but that application was dismissed.³

[5] After applying for leave to appeal to this Court but before this Court delivered its leave judgment, the applicant applied to the Court of Appeal for recall of the March 2017 judgment. He argued that a ground that had been advanced in his appeal to the Court of Appeal had not been dealt with. The Court of Appeal considered this ground and determined that it did not assist the applicant's position. The application for recall was therefore dismissed.⁴

[6] In 2018, the applicant made a second application for recall of the March 2017 judgment.⁵ After some procedural issues relating to an attempt by the applicant to obtain an order for disclosure under the Criminal Disclosure Act 2008, the application for recall was considered by the Court of Appeal in 2020. The applicant based this application on an alleged misdirection by the trial Judge on new documentation that he said showed unfair conduct by the prosecution and deficiencies in the evidence of the complainants. The Court of Appeal considered that none of these matters qualified as a fundamental error of procedure in the appeal process justifying recall of the March 2017 judgment. The application for recall was therefore declined.⁶

² *Tranter v R* [2017] NZCA 45 (Kós P, French and Venning JJ).

³ *Tranter v R* [2017] NZSC 187.

⁴ *Tranter v R* [2017] NZCA 440 (Kós P, French and Venning JJ).

⁵ The applicant's application was expressed to be for the re-opening of his appeal against conviction. The Court of Appeal treated that application as being for leave to bring a second appeal pursuant to the Court's jurisdiction to recall its own decisions.

⁶ *Tranter v R* [2020] NZCA 28 (Kós P, French and Miller JJ).

[7] The applicant made a third application to the Court of Appeal for recall of the March 2017 judgment, which was dealt with by that Court in a judgment issued in April 2021.⁷ The Court of Appeal applied the test from this Court's decision in *Uhrle v R* for consideration of an application for recall of a judgment in a criminal matter.⁸ The Court determined that none of the arguments that the applicant sought to raise in the third recall application met the threshold for recall set out in *Uhrle*. The application for recall was therefore declined.⁹ The Court of Appeal directed the Registrar of that Court to decline to accept for filing any fourth or further application for recall of the March 2017 judgment.¹⁰

[8] The applicant now seeks leave to bring a second appeal to this Court. In accordance with this Court's decision in *Uhrle*, we treat this as an application to recall this Court's initial leave judgment (which we call the December 2017 judgment). The question for determination is whether the applicant has demonstrated that there is a very special reason justice requires that the December 2017 judgment be recalled.¹¹

[9] In his submissions in support of his application, the applicant raises a number of issues that have been dealt with earlier by either the Court of Appeal, this Court or both, and also seeks to raise new points, including points relating to the delay between the dates on which the offences were committed and the applicant's trial. He says that he now has new evidence that would affect the outcome, but does not say what it is.¹² In those circumstances, we are not satisfied that the material placed before the Court by the applicant demonstrates a very special reason exists to recall the December 2017 judgment.

[10] In relation to sentence, the applicant seeks to relitigate matters dealt with in the December 2017 judgment. Again, there is no very special reason for reconsideration of this Court's treatment of that ground of appeal.

⁷ *Tranter v R* [2021] NZCA 122 (Kós P, French and Miller JJ) [third recall judgment].

⁸ *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

⁹ Third recall judgment, above n 7, at [8].

¹⁰ At [9].

¹¹ *Uhrle v R*, above n 8, at [29].

¹² We note the Court of Appeal considered that the new evidence that the appellant raised in support of his third recall application did not support the submission it was said to support: see the third recall judgment, above, n 7, at [5].

[11] The application for recall of the December 2017 judgment is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent