



## REASONS

[1] Mr KL was convicted on one representative charge of committing an indecent act on a child under 12 years. He was acquitted on six other charges of sexual and violent offending against the same complainant.

[2] Mr KL applies for leave to appeal against the Court of Appeal's decision declining his application to adduce new evidence and dismissing his appeal against conviction.<sup>1</sup>

### Grounds of appeal

[3] Mr KL seeks leave to appeal on two grounds:

- (a) new evidence; and
- (b) inconsistent verdicts.

[4] Subsequent to trial, Mr KL obtained a Report of Concern (ROC) made by a social worker from Oranga Tamariki relating to the first telephone call received from the complainant's mother with regard to the complainant's disclosure of the alleged offending. It is submitted that the ROC, had it been available at trial, would have supported the defence's contention that the complainant was coached.

[5] Mr KL submits that the findings of the jury on charge one and the other charges were logically inconsistent. Mr KL was found guilty of charge one but not of charge two, although both are alleged to have occurred at the same time. Mr KL submits that most of the charges were interrelated. To find charge one proved but not the others was, on his submission, unreasonable.

### *Court of Appeal decision*

[6] The Court of Appeal refused to admit the ROC on the basis it had insufficient cogency to be admitted as fresh evidence on appeal.<sup>2</sup> The Court said that the ROC

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<sup>1</sup> *KL (CA753/2020) v R* [2021] NZCA 375 (Gilbert, Brewer and Hinton JJ).

<sup>2</sup> At [45].

was not a verbatim record and was ambiguous, the allegations of coaching were before the jury and the interactions with Oranga Tamariki were put to the complainant's mother.<sup>3</sup> The Court concluded that the ROC would not have added anything materially to the defence case. Further, it potentially would have supported the Crown's case.<sup>4</sup> In any event, the ROC pertained mostly to the second charge against Mr KL, on which he was acquitted.<sup>5</sup>

[7] On the unreasonable verdict submission, the Court of Appeal applied the test in *R v Munro*<sup>6</sup> and *B (SC12/2013) v R*.<sup>7</sup> It canvassed the charges and concluded that it was not unreasonable for a jury to accept the core allegation on charge one but be uncertain about what else had occurred.

### **Our assessment**

[8] The matters Mr KL seeks to raise essentially reprise the submissions in the Court of Appeal. They relate to the particular facts of his case. No point of general or public importance arises.<sup>8</sup> Nothing raised by Mr KL points to any apparent error in the Court of Appeal's analysis. This means that there is no risk of a miscarriage of justice.<sup>9</sup>

### **Extension of time**

[9] This application for leave to appeal is three days out of time. Adequate reasons for this short delay have been provided. We therefore grant the application for an extension of time.

### **Result**

[10] The application for an extension of time to apply for leave to appeal is granted.

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<sup>3</sup> At [48].

<sup>4</sup> At [51].

<sup>5</sup> At [52].

<sup>6</sup> *R v Munro* [2007] NZCA 510, [2008] 2 NZLR 87.

<sup>7</sup> *B (SC12/2013) v R* [2013] NZSC 151, [2014] 1 NZLR 261.

<sup>8</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>9</sup> Section 74(2)(b).

[11] The application for leave to appeal is dismissed.

Solicitors:

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