

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>

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY PERSON UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360352.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 114/2021
[2021] NZSC 167**

BETWEEN ATONE IULIANO
Applicant

AND THE QUEEN
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: S Brickell for Applicant
J A Eng for Respondent

Judgment: 2 December 2021

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty of four charges involving sexual activity with a child. His appeal against conviction was dismissed by the Court of Appeal¹ and he

¹ *Iuliano v R* [2021] NZCA 432 (Miller, Thomas and Wylie JJ).

now seeks leave to appeal to this Court against the Court of Appeal judgment. The applicant wishes to challenge the decision of the Judge to discharge a juror.

[2] Given the applicant's state of health and need for regular dialysis, the trial court could sit only on Mondays, Wednesdays and Fridays. On that basis, the trial was scheduled to take two weeks. On the Monday of the second week, one of the jurors (juror 1) was discharged because her husband had taken ill and been admitted to intensive care. On the same day, another juror, the foreperson (juror 2), advised the Judge that she had been exposed to the risk of contracting COVID-19. The trial was adjourned to the Wednesday so that she could be tested. By this stage – that is still on the Monday – the Crown case had concluded. Unfortunately, the result of juror 2's test was not available on the Wednesday. The following Monday was a public holiday. Faced with the risk that either the juror would test positive or that a negative result would not be available by the Friday, resulting in the possibility of the trial being adjourned until the following Wednesday, the Judge discharged juror 2 and continued the trial with 10 jurors.

[3] Under s 22 of the Juries Act 1981, a Judge may discharge a juror who is incapable of continuing to perform their duty as a juror. It is not in dispute that it was open to the Judge to conclude that this was the case with juror 1. In issue is the Judge's conclusion that, "having regard to the interests of justice", it was appropriate for him to discharge juror 2. The Judge concluded that it was. The Court of Appeal reviewed the relevant considerations and held that the Judge's conclusion was fairly open to him.²

[4] The proposed appeal is based on a contention not raised in the Court of Appeal that the Judge should have made inquiries of other jurors as to whether they were prepared to sit beyond the Friday (and in particular on the Saturday) and the argument that if juror 2 had remained on the jury a different outcome might have resulted.

[5] Although it is likely that jury trials will in the future face disruption due to the current pandemic, the issues raised in relation to the discharge of juror 2 are so particular to the case at hand that the arguments which the applicant wishes to rely on

² At [31].

do not raise any question of general or public importance.³ There being as well no appearance of a miscarriage of justice,⁴ the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

³ Senior Courts Act 2016, s 74(2)(a).

⁴ Section 74(2)(b).