

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 63/2021  
[2022] NZSC 64

BETWEEN SKYE AMBER RENES  
Applicant  
AND THE QUEEN  
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: W C Pyke for Applicant  
J E Mildenhall for Respondent

Judgment: 20 May 2022

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

**Introduction**

[1] Ms Renes is a physiotherapist and a registered treatment provider under the accident compensation scheme. She was charged with a number of dishonesty charges related to her dealings with the Accident Compensation Corporation (ACC) and was convicted on three dishonesty charges.<sup>1</sup> She was sentenced to three months' community work.<sup>2</sup>

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<sup>1</sup> Ms Renes stood trial on 38 charges. She was discharged on 11 charges under s 147 of the Criminal Procedure Act 2011. The jury was unable to reach a verdict on three charges and acquitted on a further 21 charges.

<sup>2</sup> *R v Renes* [2020] NZDC 8784 (Judge de Ridder).

[2] The charges on which Ms Renes was found guilty were:

- (a) Charge 13 – charging fees for around 629 treatments provided by someone not qualified and not a registered ACC provider (laid as a representative charge).
- (b) Charge 21 – charging fees for treatments under Katherine Spence’s provider ID that were not carried out by her (laid as a representative charge).
- (c) Charge 37 – dishonestly and without claim of right using a document with intent to obtain a pecuniary advantage. This related to Ms Renes filling out and submitting the registration form required for another physiotherapist, Mr Whale, to provide ACC treatments. It was alleged that she had forged his signature on the form.

[3] Ms Renes seeks leave to appeal against the Court of Appeal’s decision dismissing her appeal against conviction.<sup>3</sup>

### **Grounds of appeal**

[4] For charges 13 and 21, Mr Renes submits that:

- (a) The charges should not have been laid representatively and should have been broken up into smaller charges.
- (b) The trial judge failed to give an unanimity direction.

The verdict on charges 13 and 21 were unreasonable and/or the trial was unfair, a ground not raised in the Court of Appeal – these submissions are based on the Crown not producing the relevant forms.

[5] For charge 37, Ms Renes submits that the filing of the ACC24 form could not of itself bring a pecuniary advantage to her. It was mere preparation and meant the

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<sup>3</sup> *Renes v R* [2021] NZCA 188 (Collins, Ellis and Muir JJ) [CA judgment].

elements of the offence were not satisfied.<sup>4</sup> That in turn rendered the jury's verdict unreasonable.

## **Court of Appeal decision**

### *Charges 13 and 21*

[6] The issue with charges 13 and 21 was that the evidence at trial did not meet the assumptions when the charges were laid. The assumption in laying charge 13 was that Ms Renes was not present on any of the occasions on which treatments for which ACC payments were claimed were provided, but was claiming on the ACC forms that she was. The treatment was then carried out by someone neither registered nor qualified (Ms Pieta). However, at trial it became clear that Ms Renes was present on some occasions. This meant that Mr Renes had different defences for the different situations (depending on whether she was present). The same applied to charge 21 where at trial it transpired Ms Spence had been present on some of the occasions.

[7] The Court of Appeal concluded that, while it was not "best practice" in terms of how the charges were framed, the task of the defence would have been the same had the charges been split up and there was therefore no prejudice to the defence from the representative charges.<sup>5</sup>

[8] The Court of Appeal agreed an unanimity direction should have been given in this case because of the difficulties with the representative charges.<sup>6</sup> But the Court considered a jury question revealed the jury's process with regard to charge 13:<sup>7</sup>

- Charge 13. 629 claims.
- Wellsford 7's, Lawrence & Wakouaiti Rodeo, [the defendant] is found not to be present at the above events.

Q) You mentioned, if one treatment is proven guilty that means [the defendant] is guilty for that whole charge?

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<sup>4</sup> Mr Whale was only employed by Ms Renes' company for a week.

<sup>5</sup> CA judgment, above n 3, at [67]. The Court treated the representative charges as having been laid under s 20(2) rather than s 20(1) of the Criminal Procedure Act 2011: at [60].

<sup>6</sup> At [74].

<sup>7</sup> At [44].

- (out of 629 treatments there are a average of 48 treatments not provided by [the defendant] & they were billed.)
- can you split the number of charges?

[9] The Judge interpreted this jury question as centring on the issue of representative charges and said “in respect of charge 13 in order to find the defendant guilty, you must be satisfied that during the dates alleged the offending happened at least once” and that this approach applied to all the representative charges.<sup>8</sup>

[10] The Court found that the jury’s question to the Judge:<sup>9</sup>

... gives as great an insight as conceivably possible into the jury’s reasons for finding Ms Renes guilty on charge 13. The most reasonable inference is that they were agreed as to proof of all the elements of the offences (including the making of a false representation) where ACC45 forms in the name of Ms Renes had been submitted for events at which she had not attended. Importantly — and although it is a matter of good luck, rather than good management by the Crown — we think the question suffices to put to bed any risk of miscarriage on the grounds of a “missing” unanimity direction.

[11] The Court thus inferred from the jury verdict in light of its question that the jury was agreed that there had been a false representation on at least one of the occasions Ms Renes was not present. In turn, it was “inconceivable” that the jury would have not treated charge 21 with the same logic.<sup>10</sup>

### *Charge 37*

[12] The Court of Appeal noted that charge 37 was laid under s 228 of the Crimes Act 1961 which only requires the intent to obtain a pecuniary advantage. The Court considered there was intent on the part of Ms Renes to claim a pecuniary advantage.<sup>11</sup> This could have been from either the registration itself or the later claims for treatment by Mr Whale once registered. Completing Mr Whale’s registration form was a key step in being able to claim at a later date.<sup>12</sup>

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<sup>8</sup> At [45].

<sup>9</sup> At [76].

<sup>10</sup> At [77].

<sup>11</sup> At [86].

<sup>12</sup> At [87]–[88].

## **Our assessment**

### *Charges 13 and 21*

[13] It is essential that great care is taken when filing representative charges that the relevant requirements are met.<sup>13</sup> Where the situation changes during trial, as it did here, it should be addressed appropriately by the prosecution and the trial judge, preferably by charges being split or withdrawn. As the Court of Appeal recognised, however where charges are not split or withdrawn, the issue can be addressed by a unanimity direction.<sup>14</sup>

[14] The Court of Appeal concluded that, despite the fact there was no unanimity direction, there was no miscarriage of justice because of the jury question.<sup>15</sup> We agree that the jury question shows that the jury appears to have been concentrating on the occasions when Ms Renes was not present. Unfortunately, the Judge's answer to the question did not directly respond to the jury's query and in particular the question of whether the charges could be split. As we indicated above, ideally the Judge should have in fact split the charges before they were left to the jury.

[15] The Court of Appeal concluded that there was no risk of a miscarriage of justice. We do not consider there is sufficient prospect of a successful argument to the contrary to justify a further appeal. The jury question shows they were alive to the issue and were focusing on occasions when Mr Renes was not present.

[16] In any event, nothing raised by the applicant calls into question the Court of Appeal's assessment that the jury was agreed as to proof of all the elements of the offences in situations where Ms Renes was not in attendance.<sup>16</sup> In other words, nothing raised suggests that some members of the jury may have been sure the charges were proved on an occasion Ms Renes was present, but not sure the charges were proved on an occasion she was not present, while other members of the

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<sup>13</sup> The Court of Appeal at [67] said there may be a question about why the prosecution did not ascertain more clearly prior to trial what the evidence would be.

<sup>14</sup> At [74].

<sup>15</sup> At [76].

<sup>16</sup> At [76].

jury may have sure the charges were proved on an occasion where she was not present but unsure if they were proved on an occasion she was present.

[17] We thus accept the Crown submission that there was no realistic prospect that a lack of a unanimity direction may have resulted in some jurors being satisfied of Ms Renes' guilty in respect of one or more of the false representations and some in respect of others.

[18] As to the submissions relating to unreasonable verdicts and/or unfair trial on counts 13 and 21, there was evidence of the claims having been made which the jury was entitled to accept.<sup>17</sup> The applicant's submission that the verdicts were unreasonable or that the trial was unfair is not sufficiently arguable to justify the grant of leave on this point.

[19] With regard to charge 37, nothing raised by Ms Renes suggests that the reasoning of the Court of Appeal may have been in error.

## **Result**

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

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>17</sup> We note that the jury was provided with a booklet that contained a spreadsheet that included the names of patients treated, the relevant ACC45 claim number, date of treatment and the amount claimed for 20 of the 629 treatments alleged for charge 13. The remainder were recorded in summary form but this still included the names and dates of each event and the amounts claimed from ACC. The 294 treatments for charge 21 were also recorded in summary form.