

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 NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF ANY COMPLAINANT 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>

NOTE: DISTRICT COURT ORDER [2016] NZDC 20286 PROHIBITING PUBLICATION OF THE APPLICANT'S NAME REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 22/2022
[2022] NZSC 82**

BETWEEN C (SC 22/2022)
Applicant

AND THE QUEEN
Respondent

Court: O'Regan, Ellen France and Kós JJ

Counsel: Applicant in person
R K Thomson for Respondent

Judgment: 1 July 2022

JUDGMENT OF THE COURT

The application for an extension of time to apply for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted after a jury trial on four charges of sexual offending against his step-daughter and one representative charge of supplying her

with cannabis. The charges related to events between 2010 and 2015. The applicant was sentenced to a term of imprisonment of four years, with a minimum period of imprisonment of two years.¹ The sentencing took place on 12 October 2016.

Court of Appeal decision

[2] On 17 November 2020, the applicant filed a notice of appeal against conviction in the Court of Appeal. The notice of appeal was approximately four years out of time so the applicant required an extension of time for filing an appeal under s 231(3) of the Criminal Procedure Act 2011. The Court of Appeal declined his application for an extension of time.² On 2 February 2022, the applicant applied to the Court of Appeal for recall of its judgment, but this application was dismissed.³

Application for leave to appeal against Court of Appeal decision

[3] The applicant now seeks leave to appeal against the decision of the Court of Appeal declining the extension of time to appeal to that Court. That application must fail, because this Court does not have jurisdiction to hear and determine an appeal against a decision of the Court of Appeal declining to extend time for the filing of a notice of a criminal appeal. That is because this Court's jurisdiction in relation to a second appeal in a criminal matter is limited to an appeal against the determination of the first appeal.⁴ In this case, there was no first appeal because the Court of Appeal declined to grant an extension of time for that appeal to be commenced.

Leapfrog application

[4] The fact that the Court of Appeal declined the applicant's application for an extension of time to appeal to that Court does not preclude the possibility of a leapfrog appeal to this Court against the conviction entered against the applicant in the District Court. Given that the applicant is not assisted by counsel, we will consider

¹ *R v [C]* [2016] NZDC 20286 at [34]–[38].

² *C (CA667/2020) v R* [2021] NZCA 271 (Goddard, Venning and Peters JJ) [CA judgment].

³ *C (CA667/2020) v R* [2022] NZCA 182.

⁴ Criminal Procedure Act 2011, s 237(1); and *Nottingham v Taka* [2018] NZSC 102, [2018] NZAR 1759 at [9].

the application as if it were an application for an extension of time to seek leave for a direct appeal against the conviction entered in the District Court.

[5] The possibility of a leapfrog appeal is provided for in s 231(1)(b) of the Criminal Procedure Act. An extension of time to seek leave for such an appeal may be made under s 231(3). Section 213(1) of the Criminal Procedure Act provides that the requirements for the grant of leave to appeal to this Court set out in the Senior Courts Act 2016 apply to all applications for leave to appeal to this Court. In the present case, that means both ss 74 and 75 of the Senior Courts Act are engaged. Under s 74 of the Senior Courts Act, this Court must not give leave to appeal unless it is satisfied that it is necessary in the interests of justice, that is, that the appeal involves a matter of general or public importance, a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard, or the appeal involves a matter of general commercial significance. In addition to those requirements, s 75 provides that leave for a leapfrog appeal should not be granted unless there are exceptional circumstances that justify taking the proposed appeal directly to this Court.

[6] In relation to the s 74 criteria, none of the points raised by the applicant in support of his application involves a matter of public importance: rather, they are matters that are directed to the specific facts of his case. It is clear that no matter of commercial significance arises either, so the ground against which the application must be considered is the substantial miscarriage ground.

[7] The Court of Appeal gave full consideration to the matters the applicant wished to raise in his appeal to that Court. It determined that the strength of the proposed grounds of appeal fell well below the level necessary to justify reopening proceedings after such a long delay.⁵

[8] We have considered those proposed grounds of appeal afresh and, having done so, conclude that there is no risk of a substantial miscarriage of justice if leave is not granted. In addition, there are no exceptional circumstances justifying a leapfrog appeal to this Court.

⁵ CA judgment, above n 2, at [44].

[9] In those circumstances, it would be pointless to grant an extension of time for the applicant to apply for leave to appeal to this Court.

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent