NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS 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 COMPLAINANTS 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 O AOTEAROA

SC 43/2022
[2023] NZSC 139

BETWEEN	ASTON EDWARD WILLIAM ERNEST WEDGWOOD Applicant
AND	THE KING Respondent

Court:	O'Regan and Ellen France JJ
Counsel:	Applicant in person J E Mildenhall for Respondent
Judgment:	26 October 2023

JUDGMENT OF THE COURT

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

B The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant applies for leave to appeal against a decision of the Court of Appeal declining to grant name suppression.[1]

Background

[2] The applicant, Aston Wedgwood, was convicted after a jury trial in 2017 of charges of: meeting a young person after grooming; supplying cannabis; and doing an indecent act on a male aged 12 to 16 years. He appealed against conviction to the Court of Appeal. At that time, the applicant did not have name suppression in relation to these matters.[2] However, after he had been convicted the applicant was charged with providing allegedly forged documents to the District Court.

[3] In light of those forgery charges, an interim suppression order was made in the District Court to protect the applicant's fair trial rights.[3] The suppression order was expressed to apply until resolution of the forgery trial. Ultimately, after various delays, the Crown formally withdrew those charges with leave from the Court. That same day, 1 August 2019, the District Court was told the applicant would be seeking final name suppression orders under s 200 of the Criminal Procedure Act 2011. The application related to the, by then withdrawn, forgery charges and his earlier convictions.

[4] What occurred subsequently was both protracted and complex. First, on 16 August 2019, the District Court declined the application for name suppression.[4] Judge Neave expressed some uncertainty as to whether he had jurisdiction to make the order in relation to the conviction. That was because of the pending conviction appeal to the Court of Appeal. The Court of Appeal subsequently dismissed the conviction appeal on 20 August 2019.[5] That judgment did not address suppression.

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1 *Wedgewood v R* [2022] NZCA 42 (Brown, Mallon and Moore JJ) [CA judgment].
2 *Wedgewood v R* [2019] NZDC 16023 (Judge R E Neave) [DC judgment] at [9].
3 *R v Wedgewood* [2017] NZDC 8524 [Sentencing remarks] at [17].
4 DC judgment, above n 2.
5 *W (CA252/2017) v R* [2019] NZCA 367 (French, Mallon and Moore JJ).

[5] The applicant appealed unsuccessfully to the High Court against the District Court decision declining name suppression.[6] Churchman J considered there was insufficient evidence that extreme hardship would likely occur upon publication of the applicant's name.[7] Further, the nature and type of offending meant it was likely that the public interest would outweigh the applicant's interests in non-publication.[8]

[6] In dismissing the applicant's appeal against the decision of the High Court, the Court of Appeal concluded that the District Court suppression decision was a nullity. That was because the District Court was functus officio by that time. As a result, the High Court judgment was treated as one of first instance.

[7] In the Court of Appeal counsel was appointed to assist the applicant. Counsel listed four main grounds of appeal:

(a) extreme hardship in light of the applicant's severe health condition and risk of suicide (s 200(2)(a));

(b) endangerment of his safety, including through the fact that publication may induce assaults by others (s 200(2)(e));

(c) prejudice to fair trial, as the applicant had sought leave to appeal against conviction to this Court (s 200(2)(d)); and

(d) failure of the High Court to appoint a litigation guardian in light of his incapacity.

[8] In dealing with the first of these grounds, extreme hardship, the Court considered: two reports under s 38(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (which had been filed with respect to the applicant's fitness to stand trial on the forgery charges); a letter of 14 August 2019 from Dr Newburn, a neuropsychiatrist, which did address name suppression; two affidavits from the applicant; and his written submissions. The Court said that the applicant's principal

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6 *Wedgewood v R* [2020] NZHC 406 (Churchman J) [HC judgment].
7 At [34].
8 At [35].

claim was that because of his mental health presentation, he is more vulnerable in prison to social violence stressors and that his safety has been compromised and his mental condition deteriorated.[9] The applicant also submitted he has suicidal ideations.

[9] In determining that the extreme hardship threshold was not met in this case, the Court did not consider the evidential material established extreme hardship. The case was distinguishable from *X (CA226/2020) v R*, relied on by counsel assisting.[10] In particular, the applicant's circumstances were not "notorious" in the sense of achieving any national or local "newsworthy prominence" and his name was "neither unique nor particularly unusual".[11] The Court also considered the reports supported the view that given a "well-documented tendency to exaggerate", limited weight should be placed on aspects of the claims.[12]

[10] The Court accepted that evidence of suicidal ideation and claims of attempted suicide were to be taken seriously. However, on the material before it there was no causative connection between publication of his name and an elevation in the relevant risk. The Court noted that the highest estimation of the risk of self-harm was found in one of the s 38 reports which referred to "a history of suicidal ideation without known attempts".[13] Accordingly, the Court said that, even if it accepted the applicant has suicidal thoughts and may have attempted suicide, the link between that and the future risk of suicide was "a good deal more tenuous".[14] Finally, the Court considered that monitoring by prison authorities could mitigate the risk identified.

[11] In terms of the second ground, endangerment of the applicant's safety, the Court concluded the evidence was well short of satisfying the statutory test. Turning then to fair trial rights, the third of the matters raised, the Court found it was unlikely the application to this Court would succeed.[15] The Court also noted that name suppression had not been granted initially as the order was made only on the basis of protecting his rights with regard to the forgery charges. The evidence before the Court

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9 It appears the applicant is no longer in prison.
10 *X (CA226/2020) v R* [2020] NZCA 387.
11 CA judgment, above n 1, at [39].
12 At [40].
13 At [41].
14 At [41].
15 At [49].

and the limited nature of publication to date meant the risk of prejudice was neither real nor appreciable.

[12] On the final ground, it was common ground the High Court had no jurisdiction to appoint a guardian ad litem as the proceedings were criminal. The Court was also satisfied the arguable points had all been raised on the appeal.

[13] Even if the statutory grounds had been made out, the Court considered there were strong public policy considerations favouring publication.

The proposed appeal

[14] The matters the applicant wishes to advance in this Court are directed primarily to his concerns about the process in the Court of Appeal. The applicant has not filed separate submissions in support of the application but has filed material in respect of his claim that there was insufficient accommodation for his disabilities. The key points the applicant wishes to advance can be summarised in this way: first, there was insufficient time and resources to obtain medical evidence; "faulty evidence" was before the Court; and insufficient procedural allowances were made to accommodate his disabilities such that he could not participate properly in the appeal.

[15] There is no challenge to the principles applicable to name suppression. No question of general or public importance accordingly arises.[16] The other factual matters raised by the applicant have insufficient prospects of success to warrant an appeal to this Court. Nor do they establish any risk of a miscarriage of justice.[17] As the respondent notes, the appeal in the Court of Appeal was filed in March 2020. Counsel assisting was appointed in July 2020. The applicant's affidavit evidence in support of his appeal was filed on 21 January 2021. While the appeal was set down for hearing in August of that year, in July 2021 the applicant sought and was granted extra time in order to obtain further evidence. A fixture date of 9 November 2021 was given and written submissions and a further affidavit was filed in October of that year along with submissions from counsel assisting. We add that nothing raised by the

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16 Senior Courts Act 2016, s 74(2)(a).

17 Section 74(2)(b). From the record it appears there has been no name suppression in place since at least 2020.

applicant calls into question the Court of Appeal's assessment of the evidential material.

Result

[16] The application for leave to appeal is out of time. The respondent does not oppose an extension of time to apply for leave to appeal. An extension of time to apply for leave to appeal is accordingly granted. The application for leave to appeal is dismissed.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent