

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 9/2023
[2023] NZSC 60

BETWEEN TRISTAN ROSS LOCKE
 Applicant

AND THE KING
 Respondent

Court: O'Regan, Ellen France and Kós JJ

Counsel: Applicant in person
 Z R Johnston for Respondent

Judgment: 18 May 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Locke's neighbour, Mr Cowling, objected to the volume at which Mr Locke was playing music. This eventually resulted in Mr Cowling turning off the power supply more than once to Mr Locke's property. Mr Locke, who is autistic and has mental health issues, went over to Mr Cowling's property and stabbed him three times at his front door. Mr Cowling died.

[2] Mr Locke admitted stabbing Mr Cowling but denied murderous intent. He was convicted of murder by a jury and sentenced to life imprisonment with a minimum period of imprisonment of 10 years.¹

¹ *R v Locke* [2021] NZHC 1843 (Mander J).

[3] Mr Locke appealed his conviction to the Court of Appeal, where he represented himself.² The Court addressed particularly the three convictions grounds (of the 20 presented) that could be said to be arguable:

- (a) the admissibility of Detective Henderson-Rauter’s evidence, which included unsympathetic remarks – they are hardly admissions of guilt – made by Mr Locke;
- (b) the admissibility of Mr Locke’s letter to his father, written while awaiting trial and in which he wrote that he “got one useless New Zealander and got to watch him die like a bitch”,³ and
- (c) the reasonableness of the jury’s verdict.

[4] As to these grounds, the Court of Appeal concluded:

- (a) The detective’s statement had been read to the jury with the consent of Mr Locke’s trial counsel. That consent was assumed to have been on Mr Locke’s instructions, in the absence of a waiver of privilege. Nor was there any basis to exclude the evidence as unfairly or improperly obtained.⁴
- (b) As to the letter Mr Locke wrote to his father, a psychiatrist provided contextual explanation for the letter at trial, and the trial Judge gave specific prejudice directions to the jury. Dismissing that ground, the Court of Appeal held that the jury could be expected to have followed those directions, which were carefully tailored to guard against the risk of unfair prejudice arising.⁵
- (c) There was more than sufficient evidence to justify the jury’s verdict that Mr Locke acted with murderous intent when he stabbed Mr Cowling

² *Locke v R* [2022] NZCA 616 (Gilbert, Muir and Gendall JJ) [CA judgment].

³ Admissibility was challenged unsuccessfully pre-trial: *R v Locke* [2021] NZHC 938 (Brewer J).

⁴ CA judgment, above n 2, at [55]–[65].

⁵ At [67]–[68].

three times in the chest. Even if Mr Locke may not have intended to kill Mr Cowling when he stabbed him, there was ample evidence of a reckless killing.⁶

Proposed appeal

[5] Mr Locke submits that a miscarriage of justice will occur if leave is not granted.⁷ In his written submissions in support of his application for leave to appeal his conviction, Mr Locke traverses his side of the confrontation with Mr Cowling in significant factual detail. Mr Locke seeks to invoke ss 29 and 35 of the Evidence Act 2006 in this context and to re-advance the first and second grounds advanced in the Court of Appeal. He also claims the Court of Appeal was biased against him.

Assessment

[6] The criteria for leave are not met in this instance. The submissions made by Mr Locke seek substantially to reargue the facts of the case, on which the jury has delivered its verdict. Mr Locke had the assistance of very capable counsel at trial. There is no substantial allegation as to jury misdirection by the trial Judge. Nothing put before us presents any likelihood that a substantial miscarriage of justice may have occurred. Nor is there any adequate foundation on which a fair-minded lay observer might reasonably apprehend the Court of Appeal did not bring an impartial mind to the decision, given the evident care and compassion with which it considered Mr Locke's arguable grounds of appeal.⁸ Finally, no issue of general or public importance is evident.⁹

⁶ At [70].

⁷ Senior Courts Act 2016, s 74(2)(b).

⁸ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.

⁹ Senior Courts Act, s 74(2)(a).

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent