

**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 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 113/2023  
[2024] NZSC 7**

<b>BETWEEN</b>	<b>BRETT OWEN TAYLOR</b> Applicant
<b>AND</b>	<b>THE KING</b> Respondent

<b>Court:</b>	Glazebrook and Kós JJ
<b>Counsel:</b>	S Brickell for Applicant H G Clark for Respondent
<b>Judgment:</b>	9 February 2024

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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] Mr Brett Taylor was convicted, after a jury trial, of 18 charges of sexual offending, including sexual violation by rape, sexual violation by unlawful sexual connection and doing an indecent act on a young person.<sup>1</sup> Four of the rape charges

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<sup>1</sup> Crimes Act 1961, ss 128(1)(a), 128(1)(b) and 134(3) respectively.

and two of the unlawful sexual connection charges were representative charges. The offending took place over a period when the complainant was aged between around seven and 14.

[2] The Court of Appeal dismissed Mr Taylor's appeal against conviction and sentence.<sup>2</sup> He now seeks leave to appeal to this Court against the dismissal of the conviction appeal.

### **Court of Appeal judgment**

[3] Mr Taylor's appeal to the Court of Appeal was on the basis that the trial Judge (Judge Grau) misdirected the jury on the consent element of the charges for rape and unlawful sexual connection and that this resulted in a miscarriage of justice.<sup>3</sup>

[4] The Court of Appeal was satisfied that this case differed from *Christian v R*.<sup>4</sup> Unlike in *Christian v R*, both in the question trial and in the summing up, the trial Judge in Mr Taylor's case specifically directed the jury that consent had to be proven.<sup>5</sup> In her summing up, the Judge also said that there is no presumption that a person is incapable of consenting to sexual connection because of age.<sup>6</sup> The Court held that the Judge properly drew the jury's attention to the fact that, even though Mr Taylor's case was that the alleged acts of sexual violation did not happen, if the jury was satisfied that the acts did in fact happen, they had to be sure that the complainant had not consented to the acts and that Mr Taylor had not reasonably believed that she had.<sup>7</sup>

[5] Mr Taylor also argued in the Court of Appeal that the trial Judge had quoted selectively from s 128A of the Crimes Act 1961. The Court held this to have no factual foundation.<sup>8</sup> The Judge only covered the elements of that section that might have been relevant.<sup>9</sup> The Court did not accept that the Judge in summarising the relevant parts of s 128A diminished the direction that there is no presumption in law that a person is

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<sup>2</sup> *Taylor v R* [2023] NZCA 476 (Wylie, Ellis and van Bohemen JJ) [CA judgment].

<sup>3</sup> At [3].

<sup>4</sup> *Christian v R* [2017] NZSC 145, [2018] 1 NZLR 315.

<sup>5</sup> CA judgment, above n 2, at [26].

<sup>6</sup> At [26].

<sup>7</sup> At [27].

<sup>8</sup> At [29].

<sup>9</sup> At [31].

incapable of consenting because of their age.<sup>10</sup> Nor did the Judge's directions on s 128A render that direction unclear.<sup>11</sup>

[6] The Court of Appeal also rejected Mr Taylor's submission that the Judge should have directed the jury's attention to evidence that might have suggested consent with regard to the acts that allegedly occurred when the complainant was aged between 12 and 14.<sup>12</sup> This was on the basis that in almost all of the passages referred to the complainant qualified her evidence by referring to her fear that Mr Taylor would hurt her mother or her brother.<sup>13</sup> Generally, the complainant's narrative of events was not consistent with consent and the Judge could not invite the jury to disbelieve Mr Taylor's defence of denial of the offending.<sup>14</sup>

[7] Finally, the trial Judge had directed the jury that the key question for charges 3 to 18 was whether the alleged offending happened. She said that they needed to work through the other questions if they found that it did and commented that "they would not take you very long".<sup>15</sup> The Court said that the trial Judge's directions were to reassure the jury that the 20-page question trail was not as daunting as it might first appear.<sup>16</sup> The Court did not consider that there was substance in Mr Taylor's contention that this comment diminished or downplayed the significance of consent or reasonable belief in consent.<sup>17</sup>

### **Our assessment**

[8] Essentially Mr Taylor's leave application seeks to reprise the arguments rejected in the Court of Appeal and it concerns the application of settled law to the particular circumstances of Mr Taylor's trial. The proposed appeal therefore raises no matter of general or public importance.<sup>18</sup> Further, nothing raised by Mr Taylor

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<sup>10</sup> At [32].

<sup>11</sup> At [32].

<sup>12</sup> At [36].

<sup>13</sup> At [36].

<sup>14</sup> At [37].

<sup>15</sup> At [40].

<sup>16</sup> At [40].

<sup>17</sup> At [40].

<sup>18</sup> Senior Courts Act 2016, s 74(2)(a).

suggests that the Court of Appeal may have been wrong in its analysis and there is thus no appearance of a miscarriage of justice.<sup>19</sup>

## **Result**

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

Solicitors:

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

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<sup>19</sup> Section 74(2)(b).