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

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 79/2025
[2025] NZSC 170

BETWEEN	B (SC 79/2025) Applicant
AND	THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: J E L Carruthers for Applicant
M H Cooke and I A A Mara for Respondent

Judgment: 25 November 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, B, was convicted by a jury on 18 charges of sexual offending against his daughter, C, between 2001 and 2011, when C was aged between 8 and 17 years. He was also found guilty of supplying methamphetamine and cannabis to C. He was sentenced to 14 years' imprisonment, with a minimum period of imprisonment of seven years.[1] His appeals against conviction and sentence failed.[2]

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1 *R v [B]* [2024] NZDC 12002 (Judge Yelavich).
2 *B (CA 417/2024) v R* [2025] NZCA 285 (Katz, Brewer and Gault JJ) [CA judgment].

[2] B seeks leave to appeal to this Court, contending:

(a) the trial Judge failed to give an identification warning under s 126 of the Evidence Act 2006, due to confusion C at times had in distinguishing B from his double-cousin, F—said to be very similar in appearance, with C admitting that at times she could not tell them apart (Ground 1);

(b) the Judge likewise failed to give a reliability warning in respect of C's evidence given her self-described mental health issues and prior false allegations against F and other family members (Ground 2); and

(c) as to sentence, the 10 per cent discount given to B for his ill health was inadequate (B has a debilitating condition causing incontinence and confinement to a wheelchair, and is unable to access medicinal cannabis to treat it in prison) (Ground 3).

[3] B also seeks to adduce further affidavit evidence in support of Ground 3.

Our assessment

[4] We do not consider the criteria for leave to appeal are made out.[3] No matter of general or public importance is raised by this application, which turns on the application of well-established principles to the facts of the case.[4] Nor do we find a substantial miscarriage of justice may occur unless the proposed appeal is heard.[5]

[5] Ground 1 lacks substance. As the Court of Appeal found, the complainant's occasional difficulty distinguishing F arose in non-sexual family contexts, whereas B was her father and the offending for which he was convicted was alleged to have occurred over a period of ten years (F having lived in the house for only some months).[6] In addition, propensity evidence supported C's claim that the offender was B, not F, and the Judge gave detailed directions about the need to be sure about B being

3 Senior Courts Act 2016, s 74.
4 Section 74(2)(a).
5 Section 74(2)(b).
6 CA judgment, above n 2, at [29].

the offender. While s 126 of the Evidence Act was engaged here (as the Court of Appeal accepted), we see no likelihood that the absence of an express warning caused a miscarriage of justice.

[6] As to Ground 2, in agreement with the Court of Appeal we are satisfied that no separate, non-mandatory reliability warning was needed in the circumstances of this case when the Judge addressed C's credibility and reliability in some detail in her summing-up to the jury. Given the partial defence of fabrication, and evidence before the jury as to the matters relied upon under this ground, C's credibility and reliability were directly in issue; it was, as the Judge said more than once, the jury's "key focus". The Judge gave detailed directions on how the jury should deal with those matters.

[7] Finally, we do not consider there is any likelihood of a substantial miscarriage of justice if the proposed appeal against sentence is not heard (Ground 3). The discount given was within range. The fresh evidence tendered relates to a decline in B's condition, but any response to that should occur via administrative processes, such as under ss 25(1) or 41(1)(b) of the Parole Act 2002 or s 62(2)(a)(ii) of the Corrections Act 2004, rather than by a revision of sentence.[7]

[8] For these reasons we are not satisfied it is necessary in the interests of justice for this Court to hear and determine this proposed appeal.[8]

Result

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

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

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7 *Poi v R* [2015] NZCA 300; and *Robertson v R* [2024] NZCA 162 at [29].
8 Senior Courts Act, s 74(1).