

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPLICANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE.

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 NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY PERSONS UNDER THE AGE OF 18 YEARS WHO IS A COMPLAINANT OR 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 64/2024
[2025] NZSC 56**

BETWEEN	J (SC 64/2024) Applicant
AND	THE KING Respondent

Court:	Ellen France and Miller JJ
Counsel:	J W Griffiths for Applicant M J Lillico and T Zhang for Respondent
Judgment:	21 May 2025

JUDGMENT OF THE COURT

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| 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. |
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REASONS

[1] The applicant, whom we will call “J”, seeks leave to appeal his conviction and sentence for the rape of his 14-year-old daughter.¹ His identity is suppressed.

[2] J requires an extension of time. He has adequately explained the delay. We are satisfied an extension of time is warranted in the circumstances.

[3] J wishes to argue that the Court of Appeal erred in accepting the trial Judge’s reasons for accepting evidence of the complainant about a door, which she said J had interfered with to prevent her from leaving the area in which the rape occurred,² and says the defence was prejudiced because of lost evidence relating to the door. He points to other alleged inconsistencies in the complainant’s evidence. He says that the trial Judge effectively required him to show that the complainant had a motive to lie. And he contends that the Court of Appeal erred in its reliance on *Sena v Police* to defer to the trial Judge’s credibility assessment because the complainant’s evidence had been pre-recorded in an evidential video interview.³ With respect to sentence, he contends that the sentencing Judge erred by proceeding on the basis that there was an element of detention.

[4] The only issue which is potentially of general or public importance is the question whether an appellate court ought to defer to a trial Judge’s credibility assessment of a complainant whose evidence has been pre-recorded.⁴ But in this case the complainant’s cross-examination at trial was not pre-recorded and it was described by the Court of Appeal as “thorough”,⁵ so the issue does not fully arise. The allegation that the onus was reversed was not raised before the Court of Appeal, and we accept the Crown’s submission that an error in the trial Judge’s approach is not immediately apparent and leave should not be granted when this Court does not have the benefit of the Court of Appeal’s opinion.

¹ See *R v [J]* [2022] NZDC 3278 (Judge Rowe); *R v [J]* [2022] NZDC 4706 (Judge Rowe) [DC reasons judgment]; and *R v [J]* [2022] NZHC 2364 (Cooke J).

² DC reasons judgment, above n 1, at [103]–[133]; and *J (CA519/2022) v R* [2024] NZCA 21 (Mallon, Churchman and Osborne JJ) [CA judgment] at [50]–[52]. J was convicted following a judge-alone trial.

³ CA judgment, above n 2, at [52] citing *Sena v Police* [2019] NZSC 55, [2019] 1 NZLR 575 at [38].

⁴ Senior Courts Act 2016, s 74(2)(a).

⁵ CA judgment, above n 2, at [52].

[5] The only other question is whether there may have been a miscarriage of justice.⁶ As to that, the Court of Appeal reviewed the evidence and the trial Judge's reasons for verdict, and was not persuaded.⁷ Nothing raised by the applicant provides a reason to differ.

[6] J was eligible for preventive detention, so he was sentenced in the High Court on findings of fact made by the trial Judge. The sentence was 12 years' imprisonment with a minimum period of eight years. We see no error of principle or apparent miscarriage of justice in the reasons of the Court of Appeal.⁸

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

Solicitors:

Main Street Legal Ltd, Upper Hutt for Applicant

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

⁶ Senior Courts Act, s 74(2)(b).

⁷ See especially CA judgment, above n 2, at [46]–[52].

⁸ At [62]–[68].