**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 16/2023**
**[2025] NZSC 91**

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| BETWEEN | PETER JOHN HARTLEY<br>Applicant |
| AND | THE KING<br>Respondent |

Court: Glazebrook, Ellen France and Kós JJ

Counsel: J W Griffiths for Applicant
T R Simpson for Respondent

Judgment: 29 July 2025

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**JUDGMENT OF THE COURT**

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**The application for an extension of time to apply for leave to appeal is dismissed.**

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**REASONS**

[1] In 2011, Mr Hartley stood trial on 19 counts of sexual offending and one count of making an intimate visual recording. The Crown alleged that from approximately 1997 to 2008, he groomed teenagers with money, work opportunities, cigarettes, alcohol, food and internet access before committing the acts alleged in the indictment. His defence in respect of some counts alleging indecencies against young persons was that the complainant was older than 16 at the time the conduct occurred. Other allegations he denied altogether.

[2] A jury found him guilty of 18 counts of sexual offending—one count of rape and 17 of indecencies against young persons—as well as the count of making an intimate visual recording.[1] It acquitted him of one count of indecent assault. The Judge sentenced Mr Hartley to preventive detention with a minimum period of imprisonment of seven years.[2]

[3] He appealed all 19 convictions and his sentence to the Court of Appeal, leaving—as that Court put it—"no ground untraversed".[3] The conviction appeal grounds included trial counsel error, prosecutorial misconduct and judicial error (including as to non-recusal for apparent bias). A number of the verdicts were said to be unreasonable. The Court of Appeal however dismissed the conviction appeal. The sentence appeal succeeded, and a sentence of 14 years' imprisonment (with a minimum period of seven years) was substituted.

**Proposed appeal and submissions**

[4] Mr Hartley now seeks leave to appeal approximately 10 years out of time. In total, he advances 16 proposed grounds. These largely reprise the arguments made in the Court of Appeal.

[5] He submits that the proposed grounds reveal a risk of a substantial miscarriage of justice having occurred,[4] and they involve three issues of general or public importance:[5] the proper approach to an appeal based on unreasonable verdict, as distinct from the approach to a dismissal application;[6] the ingredients of an indecency offence; and the correct approach to the appearance of bias on behalf of a judge presiding over a jury trial.

[6] The Crown submits that to the extent Mr Hartley reprises or substantially reprises arguments previously before the Court of Appeal, there is no error in that

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1 Under the Crimes Act 1961, ss 128(1)(a), 134(2)(a), 134(3), 140A(1)(a) and 216H.
2 *R v Hartley* HC Wellington CRI-2010-085-4305, 29 March 2012 (Williams J) at [61]–[62].
3 *Hartley v R* [2014] NZCA 162 (Miller, Goddard and Clifford JJ) [CA judgment] at [2].
4 See Senior Courts Act 2016, s 74(2)(b).
5 See s 74(2)(a).
6 See Crimes Act, s 347 and Criminal Procedure Act 2011, s 147. The Court of Appeal referred to the Judge's decision on a s 347 dismissal application in its analysis of one of the verdicts said to be unreasonable: CA judgment, above n 3, at [81].

Court's analysis. It submits that, in all cases, there is no risk of a miscarriage of justice. It also submits the proposed appeal raises no question of general or public importance.

**Our assessment**

[7] The delay in making application for leave to appeal is, as the Crown submits, inordinate. Such a delay requires the applicant not only to justify the delay itself but also to demonstrate "a compelling case that the criteria for leave are met".[7] We do not consider either aspect has been met in this case.

[8] The explanation offered is simply not cogent of so long a delay—an explanation that includes an arm injury, the COVID-19 pandemic, lack of access to computer facilities and legal assistance and the fact of incarceration itself. We note, in the event, that Mr Hartley has secured representation from the same firm that acted for him in his first appeal.

[9] Nor do we find the criteria for leave in s 74 of the Senior Courts Act 2016 to be met. First, we do not consider the proposed appeal raises a matter of general or public importance. The Court of Appeal applied orthodox principles concerning unreasonable verdict appeals and apparent bias. It is unnecessary in the context of this proposed appeal to revisit these matters. Rather, the proposed appeal would fall to be decided on its own facts against those principles.[8] Nothing suggests the jury misunderstood its role in assessing all circumstances bearing on indecency.[9] We therefore do not see any matter of general or public importance arising.

[10] Secondly, and as to alleged miscarriage, nothing raised by Mr Hartley supports his contention that there was insufficient evidential foundation for the verdicts given by the jury. We are not, therefore, disposed to interfere with the view it took of the charges. Nor do we see anything in Mr Hartley's challenges to the Court of Appeal's analysis in respect of verdicts he alleged were unreasonable in that Court.

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7 *Todd v R* [2012] NZSC 27 at [1].

8 See for example *Owen v R* [2007] NZSC 102, [2008] 2 NZLR 37; and *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.

9 Compare *R v Armstrong* [2007] NZCA 221, upon which Mr Hartley relies.

[11] Thirdly, we do not consider the proposed new evidence raises an apparent risk of miscarriage.[10] Some of this is said to support Mr Hartley's defence that a number of the acts were committed when the complainants were 16 years or older. The evidence is not fresh. Nor do we see it as demonstrative of a miscarriage of justice when timing was extensively ventilated at trial. Other new evidence is said to support Mr Hartley's denial that the act giving rise to count 12 occurred at all. We do not consider the new evidence reasonably capable of demonstrating doubt in that respect. We therefore do not see any risk of a miscarriage of justice on account of new evidence.

[12] Finally, as to the errors said to emanate from trial counsel, prosecution counsel and the Judge, we see no appearance of error in the analysis of the Court of Appeal. Some new alleged defects, for instance, that Mr Hartley's trial counsel failed to test a complainant's recollection of events Mr Hartley denied occurring, are misconceived. The remainder do not, in our view, give rise to a risk of miscarriage.

[13] It is not therefore necessary in the interests of justice to hear or determine the proposed appeal,[11] and in these circumstances, the application for an extension of time to apply for leave to appeal will be dismissed.

**Result**

[14] The application for an extension of time to apply for leave to appeal is dismissed.

Solicitors:
Main Street Legal, Upper Hutt for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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10 Much of the evidence is not fresh. To the extent it is not, Mr Hartley relies on *R v Bain* [2004] 1 NZLR 638 (CA) at [22] as endorsed in *Bain v R* [2007] UKPC 33, (2007) 23 CRNZ 71 at [34] relating the strength of the evidence to the usual requirement that new evidence on appeal be fresh.

11 Senior Courts Act, s 74(1).