IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 71/2026
[2026] NZSC 169

BETWEEN	JIMEL DESMA TIANA BURNS-WONG-TUNG Applicant
AND	THE KING Respondent

Court: Ellen France, Kós and Cooke JJ

Counsel: M E Goodwin and A O Graham for Applicant
Z R Johnston and O A Jessop Boivin for Respondent

Judgment: 6 November 2026

JUDGMENT OF THE COURT

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.

REASONS

[1] Mr Rangiwhero Ngaronoa died of blood loss on 21 November 2021 after having been stabbed with a knife eight times earlier that day. Ms Burns-Wong-Tung was convicted of his murder and sentenced to life imprisonment with a 15-year minimum period of imprisonment.[1]

[2] Witnesses and CCTV footage provided an evidential foundation for the Crown case that Ms Burns-Wong-Tung attacked Mr Ngaronoa with a knife on the afternoon of 21 November while he was in the back of an SUV, in a cul-de-sac (CCTV footage

1 *R v Burns-Wong-Tung* [2023] NZHC 350 (Muir J).

showing her lunging repeatedly at Mr Ngaranoa in the back of the car). It is accepted Mr Ngaranoa had been taken there by two of his uncles so Ms Burns-Wong-Tung could confront him about comments he had made about a relative. The only evidence directly connecting her to a knife at the scene was from two brothers (relatives of Ms Burns-Wong-Tung's then-partner), who were also there.[2] The defence said there was reasonable doubt that the stabbing had taken place *after* Ms Burns-Wong-Tung had beaten Mr Ngaronoa, and while he was driven away by his uncles.

[3] The two brothers had given written statements to police but at trial refused to cooperate when called by the Crown. They gave affirmations but, after providing some introductory answers, stated they could not remember what had occurred and one claimed his statement was not his. After first making *Hannigan v R* rulings and attempting other incremental steps, the Judge declared both witnesses hostile.[3] They provided very limited further evidence in cross-examination to both the Crown and defence, although did provide some limited answers helpful to the defence. The brothers were cross-examined on their prior statements and these statements were then admitted as evidence.

[4] The trial Judge dismissed an application for a ruling that the brothers were not "witnesses" under the Evidence Act 2006 as they could not be cross-examined "in substance", and for a mistrial including on the basis that the statements being read into the record caused unfair prejudice under s 8.[4] The Judge gave a direction on the statements to the jury during summing up, which included a direction that the jury may accept either the written or oral statements, parts of both or neither.

[5] The Court of Appeal dismissed Ms Burns-Wong-Tung's appeal against conviction and sentence. Relevant to this application, the Court held that first, the trial Judge did not err in finding the brothers to have been "witnesses", and relatedly, did not accept that the Crown should have known the brothers would be hostile or should not have called them as witnesses.[5] Secondly, the statements' probative value was not

---

2 Although CCTV also captured Ms Burns-Wong-Tung holding a large knife in a laundromat later that day.

3 *Hannigan v R* [2013] NZSC 41, [2013] 2 NZLR 612.

4 *R v Burns-Wong-Tung* HC Auckland CRI-2021-092-009236, 11 September 2023 (reissued 8 December) (Reasons for Ruling No 15 of Muir J) at [7], [10]–[13] and [47]–[58].

5 *Burns-Wong-Tung v R* [2024] NZCA 597 (Ellis, van Bohemen and Hinton JJ) at [70]–[79].

outweighed by any unfair prejudice from the limited ability of the defence to cross-examine the brothers, and several factors suggested the evidence was reliable.[6] Thirdly, the Judge did not err in his directions to the jury.[7] The trial was also not unfair and there was no error in not aborting the trial.[8] Finally, the Court considered that Ms Burns-Wong-Tung's sentence was not in error.[9]

Proposed appeal

[6] Ms Burns-Wong-Tung applies for leave to appeal out of time against conviction and sentence on seven proposed grounds of appeal, summarised into three core submissions. She first submits that the approach to hearing the brothers' evidence resulted in an unfair trial and was inconsistent with fair trial rights. She secondly submits that the Court of Appeal applied the incorrect test from this Court's decision in *Morgan v R* as to whether the evidence was admissible.[10] She thirdly submits that the law is unsettled on whether a witness who does not engage in cross-examination is truly a "witness" under the Evidence Act such that their prior inconsistent statement may be admitted without passing through the reliability protections for hearsay. She also acknowledges that her proposed appeal against sentence would not warrant a grant of leave if leave is refused against her conviction appeal. In her submission, this case raises matters of general or public importance and gives rise to a substantial miscarriage of justice.[11]

Our assessment

[7] We are not satisfied that it is necessary in the interests of justice to hear or determine the proposed appeal.[12] It is convenient to consider the three primary submissions in reverse order. First, we see no likelihood of error in the Court of Appeal's conclusion that the brothers were witnesses. This Court declined leave on the same issue in *Jones v R*, involving a similar context in which witnesses were sworn

---

6 At [80]–[86].
7 At [87]–[94].
8 At [95].
9 At [110]–[127].
10 *Morgan v R* [2010] NZSC 23, [2010] 2 NZLR 508.
11 See Senior Courts Act 2016, s 74(2)(a) and (b).
12 See s 74(1).

in but largely refused to answer questions.[13] No matter of general or public importance arose on those facts, and nor does one arise here.[14] This case is plainly distinguishable from *Ford v R,* cited by Ms Burns-Wong-Tung, in which the witness refused to take an oath or affirmation at all.[15]

[8] Secondly, we also see no likelihood of error in the Court's application of *Morgan* and in finding the evidence should not have been excluded under s 8 for unfair prejudice. We are not persuaded the Court was likely wrong to find the probative value of the evidence outweighed any unfair prejudice resulting from the lack of engagement of the brothers during cross-examination. While one might harbour reservations about the finding that the Crown did not expect the brothers to be hostile, they did give statements to the police voluntarily, and there were apparent indications their potential hostility would change. The Judge took a careful approach to the issue, giving due consideration to the relevant principles.

[9] Thirdly, we also see no likelihood of error in the Court finding the trial process not unfair. Indeed, that must follow from the preceding conclusions.

[10] Finally, in the absence of detailed submissions on the proposed sentence appeal, leave will not be granted on that ground.

[11] Ms Burns-Wong-Tung has provided some explanation for her delay, her application was not wholly unmeritorious and her conviction was for very serious offending. We therefore grant her application for an extension of time.[16]

Result

[12] The application of an extension of time for leave to appeal is granted.

---

13 *Jones v R* [2018] NZSC 44 at [7]–[8].
14 At [8].
15 *Ford v R* [2024] NZCA 239.
16 Supreme Court Rules 2004, r 11(4).

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

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