NOTE: PUBLICATION OF THE NAME AND IDENTIFYING PARTICULARS OF THE APPLICANT CURRENTLY PROHIBITED UNDER INTERIM NAME SUPPRESSION ORDER MADE BY THE DISTRICT COURT.

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 PERSON 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 169/2025
[2026] NZSC 23

BETWEEN	T (SC 169/2025) Applicant
AND	THE KING Respondent

Court:	Ellen France, Williams and Kós JJ
Counsel:	M W Ryan and L J Jackson for Applicant M H Cooke for Respondent
Judgment:	1 April 2026

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant, whom we call Ms T,[1] pleaded guilty to two representative charges of sexual connection with a young person. She was sentenced to eight and a half months' home detention with post-detention conditions for a six month period.[2] The applicant had sought, but was declined, a discharge without conviction. On appeal to the Court of Appeal she challenged the decision to refuse a discharge without conviction. The Court of Appeal dismissed the appeal and the applicant now seeks leave to appeal to this Court.[3]

Background

[2] The applicant was 18 years old at the time of the offending. The complainant is a relation who was 12 years old at the time. The relationship between the two was described by the Court of Appeal as "akin to that of aunt and nephew".[4] The incidents of sexual connection occurred on more than one occasion over a four-month period and extended to full sexual intercourse.

[3] The District Court in declining the application for a discharge without conviction applied the three-step analysis discussed in the authorities, as follows:[5]

> First, the court must determine the gravity of the offending taking into account all of the aggravating and mitigating factors of the offending and the offender. Secondly, the court must determine the direct and indirect consequences of a conviction of which there needs to be a real and appreciable risk that the consequences will arise. Finally the court must determine whether those consequences are out of all proportion to the gravity of the offending. There is a residual discretion not to grant a discharge but that will rarely be exercised where the statutory criteria have been met.

[4] The District Court concluded that the overall gravity of the offending, taking into account Ms T's personal circumstances, was moderately serious. The Judge discussed the evidence before the Court as to the likely consequences of a conviction

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1 The respondent advises that the applicant currently has interim name suppression.
2 *R v* [*T*] [2025] NZDC 7866 (Judge Wharepouri) [Sentencing notes].
3 [*T*] *v R* [2025] NZCA 488 (Cooke, Brewer and Harvey JJ) [CA judgment].
4 At [3].
5 Sentencing notes, above n 2, at [2].

but was not convinced those consequences would be out of all proportion to the gravity of the offending. The Court of Appeal essentially agreed with the District Court's analysis.

The proposed appeal

[5] The applicant submits the proposed appeal raises issues of general and public importance.[6] Those issues include the extent to which youth mitigates the gravity of the offending and whether youth magnifies the consequences of conviction. Hence, the applicant wishes to argue the Court was wrong to find the gravity of her offending was moderately serious and wrong not to find that the seriousness of the offending was further reduced by her very young age.

[6] In addition, the applicant submits insufficient weight was given to the consequences of conviction for her. Finally, the applicant argues that the proposed appeal raises a question about the exercise of police discretion about disclosure of offending in the context of vetting where a discharge without conviction has been granted for that offending.

Our assessment

[7] The proposed appeal would reprise the arguments made in the Court of Appeal. The Court of Appeal, in dismissing the appeal, agreed with the District Court Judge as to the assessment of the offending overall. In reaching the view it was moderately serious offending, the Court noted that the offending itself was serious having taken place "repeatedly over a period of four months and extended repeatedly, to full sexual intercourse".[7] The Court of Appeal considered that the family relationship and the applicant's presence in the complainant's life meant there was a significant breach of trust. The Court also said that the difference in age was a "profound" one in terms of maturity and vulnerability.[8] Finally, in terms of the gravity of the offending, the Court referred to the victim impact statement which expressed, amongst other matters, the resultant harm to the complainant.

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6 Senior Courts Act 2016, s 74(2)(a).
7 CA judgment, above n 3, at [19].
8 At [21].

[8] The Court of Appeal also agreed with the District Court's assessment of the likely consequences for the applicant of the entry of conviction. The Court considered the sentencing Judge was well aware of the applicant's aspirations to be a Māori educator and the effect convictions would likely have on those aspirations. But, the Court said:

> … as the Judge noted, sexual offending against a child who attended a youth programme at a marae where Ms [T] became a senior student/youth leader, will unsurprisingly affect aspirations to teach in environments where children are pupils.[9]

[9] We do not consider that the proposed appeal raises questions of general or public importance. There is no challenge to the three-step approach adopted by the District Court. Ultimately, the appeal would turn on the application of that approach to the facts personal to the applicant. We also agree with the submissions for the respondent that the proposed appeal does not provide an appropriate vehicle for consideration of the scope of police discretion in the context of vetting.[10]

[10] There were features personal to the applicant which warranted careful attention in sentencing. But the Judge in sentencing the applicant recognised those in the significant discount given for her guilty pleas, youth, remorse and rehabilitative efforts (she had attended a SAFE programme), as well as other personal factors. Further, in commuting what would have been an end sentence of 17 months' imprisonment to home detention, the District Court recognised the applicant's "young age, lack of previous convictions, the efforts that [she had] made to rehabilitate, [her] remorse and the prospects which [she has] for the future".[11]

[11] The matters the applicant wishes to raise were fully considered by both the sentencing Judge and the Court of Appeal. Nothing raised by the applicant suggests any appearance of a miscarriage of justice in the way the Courts below dealt with her case.[12] In these circumstances there is no proper basis for the grant of leave.

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9 At [24].

10 The respondent also drew attention to the Policing (Police Vetting) Amendment Bill 2024 (89-2) which addresses disclosure of charges.

11 CA judgment, above n 3, at [22].

12 Senior Courts Act, s 74(2)(b).

Result

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

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