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**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 168/2025  
[2026] NZSC 41**

BETWEEN	SHANE ROMEK BEECHAM Applicant
AND	THE KING Respondent

Court: Ellen France, Kós and Miller JJ  
Counsel: J D Lucas for Applicant  
K B Bell for Respondent  
Judgment: 30 April 2026

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

**Introduction**

[1] The applicant was convicted after a jury trial of three charges of sexual violation by unlawful sexual connection. He was acquitted of one charge of sexual conduct with a child under the age of 12. The applicant appealed unsuccessfully to the Court of Appeal against conviction on the third charge.<sup>1</sup> He now seeks leave to

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<sup>1</sup> *Beecham v R* [2025] NZCA 555 (Palmer, Brewer and Gault JJ) [CA judgment].

appeal to this Court. His challenge in this Court is also confined to the third of the charges on which he was convicted.

## **Background**

[2] The three charges resulting in conviction related to the period when the complainant was around 10 years old. The offending was generally similar in kind, involving digital penetration. The complainant said that the third charge arose from an incident in 2010 which took place when her stepmother was away from home attending a residential course.

[3] The complainant was cross-examined on the basis that the residential course occurred in 2012, and that there was never a time when her stepmother was away leaving the complainant in the applicant's care for a week. In cross-examination, the complainant said that her stepmother went to lots of different courses.

[4] When the complainant's stepmother gave evidence, the defence put to her information from the organisers of the residential course which showed that she was at the course in 2012. That was well after the time the complainant said this incident took place and after the complainant and her stepmother moved out of the address at which the alleged offending occurred. The stepmother posited in cross-examination that she may have been away over the relevant period in connection with a business she ran.

[5] On appeal to the Court of Appeal, the applicant sought to adduce fresh evidence. The applicant said the evidence showed that the complainant's stepmother was not away for any number of consecutive days over the relevant period. The fresh evidence is summarised by the Court of Appeal as follows:<sup>2</sup>

- (a) Someone living at the relevant address at the time the third offence was alleged to have occurred, around 15 years ago, provided an affidavit. He does not recall the complainant's stepmother travelling for business purposes during the time he lived there and does not recall her being away for any number of consecutive days. Under cross-examination he agreed that it is possible she did go away and he just could not remember or recall that now.

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<sup>2</sup> At [8] (footnote omitted).

Under re-examination he stated he did recall her going for perhaps an overnight trip “[b]ut certainly not multiple days” and not for a week.

- (b) An affidavit by someone else who lived at the address in 2009 and early 2010, who does not recall the complainant’s stepmother going away for days at a time or leaving her children in [the applicant’s] care for any length of time.

[6] As is apparent from this description, the first of the proposed witnesses was cross-examined before the Court of Appeal.

[7] The Court of Appeal determined that this evidence was neither fresh nor cogent. In relation to freshness, the Court considered that the absence of the complainant’s stepmother was always going to be a trial issue and the applicant knew about this evidence at trial. The proposed new evidence could have been obtained during the trial after the complainant’s stepmother gave her evidence. The Court of Appeal’s reasoning the evidence was not cogent is summarised in this passage:

[13] The central issue at trial was the complainant’s credibility, not the dates or places of the offending, as the Judge stated in his summing up. The complainant’s evidence was clear about the conduct. Whether the stepmother was at the [course] or not was not directly relevant to the allegations. The issue to which the evidence is said to be relevant was squarely before the jury, as the Judge’s summing up quoted above demonstrates. The memories of two people as to whether the complainant’s stepmother left her address for more than one night, 15 years ago, does not demonstrate that she did not do so. Even if the evidence were admitted, it would not impugn the jury’s verdicts on any of the charges. Two additional people not remembering the complainant’s stepmother leaving the address for more than one night would not have added materially to the evidence before the jury. Absence of memory is not memory of absence.

[8] In the passages of the summing up the Court of Appeal referred to, the trial Judge concluded as follows:

[64] To some extent I think the defence really argues that the [course] is the thread which when you pull on it, the whole case unravels and I think that is pretty much the way in which [defence counsel] argues it. It will be up to you to determine whether or not there is the inconsistency and if the inconsistency is truly important. That is entirely over to you.

### **The proposed appeal**

[9] The applicant challenges the Court of Appeal’s decision not to admit the new evidence. He says the evidence was fresh because it could not, with reasonable

diligence, have been obtained. He emphasises that the suggestion there was another explanation for the stepmother's travel (i.e., not for the residential course but for business) did not emerge until she was cross-examined. The trial was over in two days so it was not practicable to bring the two witnesses to Court. The applicant says the proposed appeal will therefore require consideration of what is meant by "reasonable diligence". The applicant also argues the new evidence was cogent as it showed the third incident could not have happened in the way alleged.

### **Our assessment**

[10] We agree with the submissions for the respondent that the proposed appeal does not raise a question of general or public importance in terms of what is meant by reasonable diligence.<sup>3</sup> Rather, this aspect would turn on the particular facts. In terms of the facts, as the Court of Appeal noted, whether the complainant's stepmother was away at the relevant time was an issue known prior to trial. That is apparent from the fact the defence put evidence about the timing to her in cross-examination. But, in any event, whether or not the evidence should have been treated as fresh, nothing raised by the applicant calls into question the Court of Appeal's assessment that the proposed evidence was not cogent. At trial, the defence was able to say that the complainant's stepmother could not have been away on the course at the relevant time. Against that background, the evidence would have added little, given its vagueness.

[11] In these circumstances, there is no appearance of a miscarriage of justice.<sup>4</sup>

### **Result**

[12] 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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<sup>3</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>4</sup> Section 74(2)(b).