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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 10/2026
[2026] NZSC 44**

BETWEEN COREY ROBERT MURFITT
 Applicant

AND THE KING
 Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: L A Elborough for Applicant
 Z R Johnston for Respondent

Judgment: 1 May 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.**
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REASONS

Introduction

[1] The applicant, Mr Murfitt, was found guilty after trial of sexual violation by rape in relation to the complainant UT, and sexual violation by unlawful sexual connection and attempted rape in respect of the complainant AT. The applicant pleaded guilty to a charge of theft. He was found not guilty on two other charges and

the jury could not agree on one charge. The Court of Appeal dismissed his appeal against conviction.¹ The Court of Appeal also dismissed an application for recall.²

Background

[2] UT and AT were sex workers. The incidents they described leading to the charges took place in 2019. Evidence at trial was also called on a propensity basis from another sex worker, KJ.³ KJ said that in 2005, the applicant raped her in a similar situation to that described by UT and AT. A charge of rape in relation to KJ's complaint was dismissed in 2006 on the ground that the Crown had failed to prove penetration. KJ had said only that the applicant performed "sexual intercourse" and was unable to return to give further evidence. The applicant pleaded guilty to theft of KJ's handbag.

[3] In giving her evidence at the applicant's trial on the charges relating to UT and AT, KJ was antagonistic to the questioning in cross-examination. At one point, after a confrontational exchange with defence counsel, KJ left the courtroom. After a 40-minute adjournment, she returned and questioning resumed, but not for long before KJ again left. On this occasion, she did not return. While in Court, her testimony included an expletive-laden series of observations which were derogatory of the applicant. She ultimately told defence counsel to "go [f...] herself".⁴

[4] After KJ left the Court on the second occasion, the trial Judge spoke with counsel in chambers. Defence counsel confirmed, having taken instructions from the applicant, that her questioning had covered the key point so cross-examination could conclude. The jury returned to Court and the Judge gave a direction making it clear "absolutely no criticism can be made of the defence for them following their instructions in terms of asking questions of a witness". In closing, both counsel for the Crown and for the defence referred to the manner in which KJ gave her evidence.

¹ *Murfitt v R* [2025] NZCA 247 (Campbell, Dunningham and Harvey JJ) [CA judgment].

² *Murfitt v R* [2025] NZCA 639 (Campbell, Dunningham and Harvey JJ) [CA recall judgment].

³ The District Court had ruled this evidence inadmissible in *R v Murfitt* [2021] NZDC 16124 but that decision was overturned by the Court of Appeal in *R v Murfitt* [2021] NZCA 625.

⁴ See CA judgment, above, n 1, at [40]. The relevant passages in cross-examination are set out at [38]–[41].

The proposed appeal

[5] The applicant wishes to raise two main matters, both of which are said to have led to a miscarriage of justice. The first of these matters is that the Judge did not give either an enhanced sympathy and prejudice direction or a strong demeanour direction. In developing this proposed ground, the applicant says that there was significant unfair prejudice arising from the way in which KJ gave her evidence which undermined his right to a fair trial. A strong judicial direction was necessary to mitigate the prejudice. It is also said that the Court of Appeal was wrong to conclude that the prosecutor's reference to KJ's demeanour did not require further judicial direction.

[6] The second proposed ground of appeal is that the trial Judge's directions on the proper use of propensity evidence were insufficient. In particular, the Judge erred in not telling the jury they first needed to consider whether they accepted KJ's evidence as reliable and credible and, if so, as to what weight they should give it. The applicant submits that, as a result, the jury would have focused primarily on whether the evidence showed the existence of a relevant pattern, which is only one part of the test.

Our assessment

[7] The applicant's arguments would largely reprise the arguments made in the Court of Appeal. In relation to the challenge arising out of KJ's manner of giving evidence, the Court of Appeal concluded that nothing further was required by way of direction.⁵ The Judge had directed the jury in his opening remarks not to make demeanour "the only or the most important factor in your decision". In summing up, a general sympathy and prejudice direction was given. In that context, the Judge noted that "many people have strong feelings against those who are charged with sexual assaults" but that the jury must be "utterly dispassionate" and put such feelings, or sympathy for KJ and/or the complainants, "entirely to one side". Also, when dealing with propensity, the Judge on two occasions told the jury they could not decide the case on prejudice against, or dislike of, the applicant. Finally, the Court pointed out that the trial Judge also gave the jury instructions to assist them in assessing the

⁵ The Court's approach to this aspect is helpfully summarised at [11]–[12] of the CA recall judgment, above n 2.

evidence, such as looking for consistencies to determine credibility, and “urged them to measure the evidence in a ‘careful way’”.⁶

[8] Nor did the Court of Appeal consider that the prosecutor in closing made an “outright” appeal to a demeanour-based assessment of a witness’s credibility as this Court cautioned against in *Taniwha v R*.⁷ One reference was made to KJ’s “raw emotion” in the context of a submission directed to KJ’s consistent and “unwavering” evidence she had been raped by the applicant.⁸

[9] In relation to the propensity directions, the Court of Appeal said that it was clear that the Judge had explained how the propensity evidence might be taken into account.⁹ The Court of Appeal also considered it was sufficient that the Judge gave the jury a general credibility and reliability direction which, the jury was told, related to “any of the witnesses who had given evidence”. Further, the Judge told the jury on three occasions that could only use propensity reasoning in relation to KJ’s evidence if they first accepted the account she gave that the applicant had offended against her.¹⁰

[10] Nothing raised by the applicant calls into question the Court of Appeal’s assessment that, taking into account the directions on demeanour in the Judge’s opening remarks, and viewing the summing up as a whole, the directions were sufficient. In these circumstances, no question of general or public importance arises and nor is there an appearance of a miscarriage of justice.¹¹

⁶ CA judgment, above n 1, at [53].

⁷ *Taniwha v R* [2016] NZSC 123, [2017] 1 NZLR 116 at [55].

⁸ CA judgment, above n 1, at [52].

⁹ The applicant had also argued it was an error not to make specific reference in summing up to the fact that this was acquittal propensity evidence. This point does not appear to be pursued in this Court. The Court of Appeal in dismissing this challenge observed that the jury had been told in an agreed statement of facts that the charge of rape arising from KJ’s allegations “was dismissed by the Judge [in an earlier trial] for legal reasons”: at [28]. Defence counsel had emphasised the point in her closing address and the Judge repeated this in his summing up when summarising the defence position on KJ’s evidence.

¹⁰ The applicant challenges this conclusion saying there are only two references and neither sufficiently make the point. There were, however, two occasions on which the Judge referred to the requirement that the jury accept the account that this was what the applicant had done.

¹¹ Senior Courts Act 2016, s 74(2)(a) and (b).

[11] There was a delay in filing the application for leave to this Court because the applicant had sought recall of the Court of Appeal judgment. The respondent does not object to an extension of time.

Result

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

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

Solicitors:

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