

[3] Mr Timmerman faced various health issues and delays while awaiting trial. He was first remanded in custody for over three months (the first three weeks being under close supervision), where he was assessed as having mild autistic traits and experiences of trauma, but was fit to stand trial. He was placed on electronically monitored (EM) bail in June 2020. COVID-19 restrictions applied at the time. He made two suicide attempts in 2020, following which he had a meeting with crisis services and began taking antidepressants. He was later diagnosed by a clinical psychologist as having post-traumatic stress disorder causing anxiety and low mood. His EM bail conditions were relaxed in 2021, allowing him to work, see his daughter and have other outings from his bail address. Throughout this period he had heart issues.¹ He was transferred to the High Court in May 2021, but in November 2021 his trial was adjourned indefinitely due to COVID-19 restrictions.

[4] The charges of conspiring to defeat justice, forgery and attempting to obstruct the course of justice were discharged in November 2021.² He received a sentence indication on 2 December on the remaining charges and decided to accept it after five days' consideration, pleading guilty to them.³ He was sentenced to 9 months' supervision.⁴ He maintained his innocence. Mr Timmerman's co-defendant, Mr Simonsen, had all but one charge dismissed and was acquitted of the remaining charge in March 2024.⁵

Appeal

[5] In 2023, Mr Timmerman applied for extension of time to appeal conviction. The Court of Appeal granted extension of time but dismissed the appeal because it found no miscarriage of justice.⁶ First, there was no trial counsel error.⁷ Secondly, there were no "other exceptional circumstances" giving rise to a miscarriage.⁸ The Court considered Mr Timmerman's treatment and physical and

¹ Following conviction he received heart surgery — performed in February 2023.

² *Timmerman v R* HC Hamilton CRI-2020-063-917, 11 November 2021.

³ *R v Timmerman* [2021] NZHC 3287.

⁴ *R v Timmerman* [2022] NZHC 226 (Lang J).

⁵ *R v Simonsen* [2024] NZDC 5766.

⁶ *Timmerman v R* [2025] NZCA 604 (Collins, Jagose and Gault JJ) [CA judgment] at [9] and [16]–[39].

⁷ At [25]–[27].

⁸ At [28] and [33].

mental health issues, but decided that his plea was not overborne by unbearable strain or a unique combination of factors. Mere stress or pressure while deciding his plea was not enough. Ultimately, Mr Timmerman made a rational and informed decision to plead guilty.⁹ Thirdly, no miscarriage arose due to Mr Simonsen being acquitted.¹⁰ The case against Mr Timmerman was not dependent on joint possession with Mr Simonsen. It remained strong despite Mr Simonsen’s separate acquittal.

Proposed appeal

[6] Mr Timmerman submits his proposed appeal provides a fact-appropriate opportunity to explore the relevance to the validity of guilty pleas of pressures such as serious health concerns which are exacerbated by lengthy pre-trial delays, and the scope in such circumstances for policy considerations which underpin the sanctity of guilty pleas to give way. These were relevant factors noted, but not examined, in this Court’s decision in *Re Solicitor-General’s Reference (No 1 of 2023) (Re S-G’s Reference)*.¹¹

[7] Counsel submits that Mr Timmerman’s guilty plea was not truly voluntary given his experience of exceptional stress (contributed to by his heart condition) and indefinite adjournment of his trial, and what he described as “unusually severe” impacts from awaiting trial. Additionally, Mr Simonsen’s acquittal showed Mr Timmerman may have had a defence. The exceptional circumstances at play minimise the risk of floodgates opening.

Our assessment

[8] As this Court indicated in *Re S-G’s Reference*, the categories upon which a plea of guilty may be revoked to avoid a miscarriage of justice are not closed, but revocation will only be permitted in exceptional circumstances.¹² Pressure and delay may potentially be relevant factors.¹³ In the present case, we see no question of general or public importance arising necessitating a second appeal.¹⁴

⁹ At [28].

¹⁰ At [34]–[36].

¹¹ *Re Solicitor-General’s Reference (No 1 of 2023)* [2023] NZSC 151, P at [37] and [45].

¹² At [43]–[45].

¹³ At [37].

¹⁴ See Senior Courts Act 2016, s 74(2)(a).

[9] Whether, relevantly, there is likely to be a substantial miscarriage of justice unless the appeal is heard must necessarily turn on the particular facts of the case.¹⁵ First, starting with the strength of the case Mr Timmerman was facing, nothing advanced on his behalf suggests the Court of Appeal erred in its assessment, first, that the case against him was a strong one and, secondly, that the strength of the case was not materially undermined by the acquittal of Mr Simonsen.

[10] Secondly, that leaves the issue of Mr Timmerman's health and the trial delay caused by COVID-19 restrictions. The delay here was not exceptional. Charges were laid in March 2020 and a jury trial had been set for November 2021. That trial could not proceed due to COVID-19 restrictions and was vacated. Instead, Mr Timmerman advanced two applications which were promptly made, heard and determined. The first application was for dismissal, resulting in dismissal of three of the 12 charges. The second application was for a sentence indication on the remaining charges. The indication given made clear that a non-custodial sentence might well be available. Mr Timmerman was given five working days to consider whether to accept the indication. He took that time, then pleaded guilty and was sentenced to 9 months' supervision.

[11] While we acknowledge Mr Timmerman faced contemporaneous health and personal issues, contributing to stress, nothing advanced by him suggests these could be assessed as truly exceptional, or that the Court of Appeal erred in concluding that Mr Timmerman made a rational and informed decision to plead guilty having regard to further trial delay, risk of conviction and likely sentence. In applying for discharge and sentence indication, and in accepting the indication and pleading guilty, Mr Timmerman had the benefit of legal representation, and it is not now suggested counsel erred in advising him.¹⁶

[12] For these reasons, we consider it is not necessary in the interests of justice for this Court to hear the proposed appeal.¹⁷

¹⁵ See s 74(2)(b).

¹⁶ The Court of Appeal rejected an appeal ground of trial counsel error, and it is not renewed here: CA judgment, above n 6, at [27].

¹⁷ Senior Courts Act, s 74(1).

Result

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

Solicitors:

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