

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 39/2026
[2026] NZSC 98

BETWEEN SHONTAYN TOKOREMA TARATU
Applicant

AND THE KING
Respondent

Court: Kós and Cooke JJ

Counsel: D-M Cross for Applicant
H G Clark for Respondent

Judgment: 3 August 2026

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal from the decision of the Court of Appeal dismissing his appeal against his conviction following a jury trial on two representative charges of offering to supply cocaine and ketamine, respectively.¹ He submits that there has been a substantial miscarriage of justice, and that his appeal raises matters of general or public importance under s 74 of the Senior Courts Act 2016.²

Background

[2] The applicant's trial was of limited scope. At the outset he pleaded guilty to two charges of supplying cannabis, and the trial proceeded on the two representative

¹ *Taratu v R* [2026] NZCA 38 (Palmer, Downs and Harvey JJ) [CA judgment].

² Section 74(1) and (2)(a)–(b).

charges only. The Crown’s evidence was limited to the Officer in Charge producing text messages from the applicant’s phone, and expert evidence from a Detective Sergeant as to the meaning of words such as “coco” and “keta” in those text messages. The applicant elected to give evidence in which he said these words referred to cannabis rather than cocaine and ketamine. The jury nevertheless convicted him. He was sentenced to nine years and eight months’ imprisonment,³ reduced to nine years’ imprisonment on appeal.⁴

[3] The applicant advances four potential grounds of appeal:

- (a) that there had been trial counsel error through a failure to call evidence from a particular witness;
- (b) that the prosecutor implied his position as a defendant affected his credibility and thereby undermined the presumption of innocence, and this was exacerbated by the trial Judge’s failure to give the full tripartite direction;
- (c) that a propensity evidence direction should have been given; and
- (d) that the trial Judge failed to give expert evidence directions.

Assessment

[4] We are not satisfied that these proposed grounds are sufficiently arguable to warrant the grant of leave to appeal.

[5] We see no basis to doubt the Court of Appeal’s acceptance of trial counsel’s evidence that the applicant instructed him not to call the witness. We also accept the respondent’s submission that there is no merit in the applicant’s criticism of trial counsel, and that there was a proper basis for trial counsel’s advice. Neither do we consider that there is merit in the arguments that propensity reasoning was engaged because the prosecutor referred to the applicant as a drug dealer in light of his

³ *R v Taratu* [2024] NZDC 18541 (Judge Fitzgibbon).

⁴ CA judgment, above n 1, at [44] and [46]–[47].

admission to cannabis dealing, or that the presumption of innocence was infringed because the prosecutor referred to a motivation to lie in challenging his evidence. These were legitimate points to make when challenging the applicant's evidence. We also consider that the trial Judge's error in relation to the tripartite direction was inconsequential. The Judge told the jury that if the applicant's evidence created a reasonable doubt they should find him not guilty, but omitted to say that this would be so if they accepted he was telling the truth. We consider that this would have been obvious to the jury.

[6] We accept that the opinion evidence of the Detective Sergeant on the interpretation of the text messages should have resulted in the Judge giving an expert evidence direction, and that the evidence itself can be criticised given the principles outlined by this Court in *Kuru v R*.⁵ But we accept the respondent's submission that there is no risk of miscarriage. The significance of the prosecution evidence arose from the words in the text messages themselves, rather than the opinion evidence as to what they meant. This was a straightforward factual question for the jury. Concessions were also extracted from the Detective Sergeant during cross-examination that the words could have meant something else, further reducing the significance of his opinion evidence. In these circumstances, we do not accept that there is a real risk of a miscarriage of justice.⁶

Result

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

Solicitors:

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

⁵ *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985.

⁶ Senior Courts Act, s 74(2)(b).