

**NOTE: PUBLICATION OF NAME(S) OR IDENTIFYING PARTICULARS
OF COMPLAINANT(S) PROHIBITED BY S 139 CRIMINAL JUSTICE ACT
1985.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 117/2011
[2012] NZSC 3**

W

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: N Levy for Applicant
S B Edwards for Crown

Judgment: 13 February 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted at a retrial of representative charges of historical sex offending against his step daughter.¹ He seeks leave to appeal against a Court of Appeal² judgment dismissing his appeal against those convictions.

¹ *R v W DC Napier* CIR-2010-020-178, 11 October 2010.

² *W v R* [2011] NZCA 529.

[2] At his first trial the applicant gave evidence and called witnesses in support of his defence. The jury disagreed on all charges and a retrial was ordered. Different counsel appeared for the applicant at the retrial as his original counsel was no longer available. On his new counsel's advice, the applicant did not give evidence at the retrial, nor did he call witnesses.

[3] The proposed grounds of appeal in this Court, although expressed in various ways by counsel, come down to the contention that leading counsel for the retrial was incompetent in the advice given to the applicant about his defence and the way that counsel conducted the defence. One result of this was that the applicant did not give an informed consent to the defence strategy. The Court of Appeal examined the evidence given by defence witnesses at the first trial. The Court also heard evidence from the applicant and the two counsel who appeared for him at the second trial as to the reasons for the strategy and the circumstances in which counsel gave advice. Its judgment has a detailed analysis of these matters.

[4] We are satisfied that the proposed appeal would simply have this Court reappraise the assessment of the Court of Appeal on matters of factual judgment. It raises no issue of principle and it is not arguable that there has been a miscarriage of justice. The application accordingly does not meet the statutory requirements for leave to appeal to this Court and is dismissed.

Solicitors:
Ord Legal, Wellington for Applicant
Crown Law Office, Wellington