

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS, OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS, OF ANY COMPLAINANTS/PERSONS UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 123/2015
[2016] NZSC 13**

BETWEEN CHRISTOPHER ROGER KING
Applicant

AND THE QUEEN
Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: M J Phelps for Applicant
M J Lillico for Respondent

Judgment: 18 February 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr King, was employed by St John as an ambulance officer. Following a jury trial he was convicted of stupefaction and various sexual offences (including making intimate visual recordings) in respect of four female patients who required medical treatment and travelled in his ambulance. This offending occurred between 2010 and 2013. Following his trial, Mr King pleaded guilty to five counts of sexual offending against two female family members. This offending occurred

between 2002 and 2006. Mr King received a total sentence of 14 years, six months, with an eight year minimum period of imprisonment.¹

[2] Mr King was given some credit for his guilty pleas to the offending against his family members, but did not receive any discount for previous good character. He argues that he should have been given such a discount. His appeal to the Court of Appeal against sentence having been unsuccessful,² he seeks leave to appeal to this Court on this point.

[3] The Court of Appeal acknowledged that a sentencing judge is required to take into account as a mitigating factor evidence of an offender's previous good character to the extent applicable to the case.³ However, the Court identified three reasons why such recognition was not appropriate in this case:

- (a) First, Mr King was in a position of trust in relation to both sets of victims, all of whom were vulnerable. (We note that some complained at the time, but were not believed.)
- (b) Second, the offending involved multiple complainants and occurred over a number of years. Any claim to previous good character was overwhelmed by the persistence of the offending.
- (c) Finally, Mr King had aggressively defended the charges on which he stood trial. The complainants were subjected to vigorous cross-examination and their character and credibility were attacked as Mr King attempted to avoid conviction for offending he later accepted that he had committed. As the Court put it: “[Mr King] lied to protect himself and falsely discredit his victims. He relied on his good character to give credibility to his lies.”

[4] For Mr King, Mr Phelps argues that this Court should give guidance on the circumstances in which judges should give recognition to previous good character.

¹ *R v King* DC Napier CRI-2013-020-2979, 18 December 2014 (Judge Rea).

² *King v R* [2015] NZCA 475 (Harrison, Dobson and Gilbert JJ).

³ Sentencing Act 2002, s 9(2)(g).

He submits that at the moment it is largely a matter of impression for sentencing judges and argues that there is as a result the risk of a lack of transparency and inconsistent application as a consequence.

[5] Appellate oversight of sentencing is the principal responsibility of the Court of Appeal. It is not appropriate for this Court to intervene unless an important issue of general principle is raised or there is plainly an appearance of a substantial miscarriage of justice. We do not consider that either circumstance applies in the present case. To the contrary, we consider that the Courts below were right not to allow Mr King any discount for previous good character, essentially for the reasons they gave. On any view of it, sustained offending in two significant periods over an 11 year timeframe against multiple complainants (both young and old) in circumstances involving grave breaches of trust undermines totally any claim to recognition of previous good character.

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

Solicitors:
Crown Law Office, Wellington for Respondent