

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAMES
OR IDENTIFYING PARTICULARS OF F AND W REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 25/2019
[2019] NZSC 63**

BETWEEN DAVID NOEL ROIGARD
 Applicant

AND THE QUEEN
 Respondent

Court: Winkelmann CJ, William Young and O'Regan JJ

Counsel: R M Lithgow QC for Applicant
 A Markham for Respondent

Judgment: 27 June 2019

JUDGMENT OF THE COURT

- A Leave to appeal against conviction is granted to the extent described below (*Roigard v R* [2019] NZCA 8).**
- B The approved question is whether the Court of Appeal erred in upholding the admissibility of the proposed evidence of the witnesses F and W.**
- C Leave to appeal against sentence is declined.**
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REASONS

[1] The applicant was convicted of the murder of his son and sentenced to life imprisonment with a minimum period of imprisonment of 19 years.¹ His appeal

¹ *R v Roigard* [2016] NZHC 166 (Heath J).

against conviction and sentence to the Court of Appeal failed.² He now seeks leave to appeal to this Court against both conviction and sentence.

[2] These reasons explain briefly the limits of the leave granted and the reasons for not granting leave on all points raised by the applicant.

[3] Leave to appeal against conviction is granted in relation to the approved question on the basis that the Court will not revisit its decision in *Hudson v R* that there is no presumption of inadmissibility of prison informant evidence.³ In *Hudson*, the Court recognised there may be scope for excluding such evidence under ss 7 and 8 of the Evidence Act 2006 and counsel have raised the possibility of inadmissibility under other sections of that Act. Leave is granted to allow those arguments to be advanced.

[4] Leave is declined on the other matters raised in the application for leave to appeal.

[5] The argument about the warning given under s 122 of the Evidence Act is specific to the facts of this case and raises no point of general importance. We see no appearance of miscarriage in the way this point was addressed by the Court of Appeal.⁴

[6] The same applies to the argument that the applicant's trial counsel acted against instructions in raising the possibility of manslaughter in his closing submissions.⁵

[7] The applicant also seeks to contest the decision in his pre-trial appeal on the admission of evidence that the applicant argued was unfairly prejudicial.⁶ Counsel realistically acknowledged this point did not meet the leave criteria and we agree.

[8] The application for leave to appeal against sentence is advanced on the basis that the sentencing Judge wrongly characterised the refusal to identify the location of the deceased's body as an element of callousness in terms of s 104(1)(e) of the

² *Roigard v R* [2019] NZCA 8 (French, Cooper and Clifford JJ) [*Roigard* (CA)].

³ *Hudson v R* [2011] NZSC 51, [2011] 3 NZLR 289.

⁴ *Roigard* (CA), above n 2, at [68]–[83].

⁵ See *Roigard* (CA), above n 2, at [84]–[95].

⁶ *R v Roigard* [2015] NZCA 430. In *Roigard* (CA), above n 2, the Court of Appeal declined to revisit this decision: at [103].

Sentencing Act 2002. We do not consider that this raises a concern that a miscarriage of justice has occurred and we do not consider the point the applicant wishes to advance as a matter of public importance justifying leave being granted.

[9] We ask the Registrar to set down this appeal for hearing immediately before or immediately after the hearing for the appeals in SC 38/2019 and SC 39/2019 if that is possible, given the similarity of the issues raised. Those appeals are pre-trial appeals and we have asked that they be set down for hearing in August 2019.

Solicitors:
Crown Law Office, Wellington for Respondent