

IN THE SUPREME COURT OF NEW ZEALAND

**SC 108/2009
[2010] NZSC 85**

DEAN CARLEO CICONE NOBLE

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: B J Hart for Applicant
M D Downs for Crown

Judgment: 16 July 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted on charges of sexually violating a fellow prisoner in Paparoa Prison. The Court of Appeal dismissed his appeal: *R v Noble*¹. Affidavit evidence from two other prisoners was sought to be admitted. The deponents said that the complainant had made statements to them to the effect that he had not been violated by the applicant. The Court of Appeal heard these witnesses cross-examined. It did not believe their evidence, for the reasons it gave. It declined to admit that evidence.

¹ *R v Noble* [2009] NZCA 507.

[2] The proposed ground for a further appeal to this Court is that the Court of Appeal should have admitted the evidence of the other prisoners. Counsel for the applicant submits that the approach to the admission of further evidence on appeal followed by the Court of Appeal, based on *R v Bain*², although approved by the Privy Council in *Bain v R*³, is outdated. Counsel urges a different approach. We are unpersuaded by this argument, noting that the *Bain* approach is consistent with that followed in comparable jurisdictions.⁴ Furthermore, it is inconceivable that on any basis an appellate court would be obliged to receive evidence which it did not find to be sufficiently credible, as was the case here.

[3] Counsel has tendered an unsigned document said to be a statement taken from a third prisoner. We decline to receive it, noting that the application to this Court was made as long ago as 20 November 2009 and that the applicant has been given numerous extensions of time for the filing of submissions and supporting material.

Solicitors:
Crown Law Office, Wellington

² *R v Bain* [2004] 1 NZLR 638 (CA) at [22]–[24].

³ *Bain v R* (2007) 23 CRNZ 71 (PC).

⁴ *Gallagher v R* (1986) 160 CLR 392, *Palmer v R* [1980] 1 SCR 759 and *Pendleton v R* [2002] 1 WLR 72 (HL).