

C The application for leave to appeal is otherwise dismissed.

REASONS

Background

[1] Mr Holland has a history of sexual offending and possession of child pornography. This includes:

- (i) sexual offending in 1988 against a 13 year old female in Australia;
- (ii) importing child pornography in 1996;
- (iii) possessing child pornography in 1999;¹
- (iv) party to sexual conduct in 2007 with a child outside of New Zealand (photographing a seven year old female holding or masturbating the penis of an associate); and
- (v) possession of objectionable publications in 2008. This was a representative charge describing 33 images of females approximately 10 years of age and younger, naked and partially naked, displaying their genitalia as well as Mr Holland and his genitalia. The hard drive containing these 33 images contained some 5000 images overall.

[2] In March 2012 Mr Holland was sentenced to three years imprisonment for the 2007 and 2008 offending.² After his release in December 2014 an application for an interim supervision order and an extended supervision order (ESO) was made by the Department of Corrections.

[3] The application for an interim supervision order was granted on 11 June 2015.³ On 6 November 2015 Mr Holland was arrested for breaching his interim

¹ We assume that the offences listed at (ii) and (iii) were under the Customs and Excise Act 1996.

² This was under the Crimes Act 1961, ss 144A(1)(a) and 66 and the Films, Videos and Publications Classifications Act 1993, s 131A [FVPCA]. These offences triggered his eligibility for an ESO under pt 1A of the Parole Act 2002.

³ This came into force 12 June 2015.

supervision conditions. In February 2016 Judge Fraser imposed an ESO for 10 years.⁴

[4] Mr Holland appealed against the imposition of an ESO and alternatively the length of the ESO to the Court of Appeal. This appeal was dismissed.⁵ Mr Holland now applies for leave to appeal to this Court.

Grounds

[5] Mr Holland submits that the courts below erred in their interpretation of the terms “serious sexual offence” and “pervasive pattern of serious sexual offending” in relation to the ESO regime.⁶ In his submission, offences against the FVPCA (such as his 2008 offending) are not sexual offences and are therefore only relevant for the eligibility threshold, not for the assessment of whether there is a pervasive pattern of serious sexual offending.⁷

[6] Even if this argument does not succeed, Mr Holland submits that there was an insufficient basis for the conclusion that there was a high risk of his committing a relevant sexual offence. He also submits that the courts below erred in the assessment of the gravity of the offending and that the 10 year ESO period was disproportionate to the risk he posed.

Our assessment

[7] We grant leave with regard to the issue set out at [5].

[8] The arguments raised by Mr Holland set out at [6] relate to the particular facts of his case and therefore raise no issues of general or public importance. Nor is

⁴ *Department of Corrections v Holland* [2016] NZDC 2441 [ESO Order].

⁵ *Holland v Chief Executive of the Department of Corrections* [2016] NZCA 504 (Miller, Courtney and Woodhouse JJ) [CA judgment].

⁶ Mr Holland argues that before an extended supervision order (ESO) can be made, it must be considered “whether each instance is of sexual offending” and whether each instance individually amounts to serious sexual offending within the meaning of s 107I(2)(a). It is only when both of these questions have been addressed that the court can decide whether there is a pervasive pattern of serious sexual offending as required for an ESO.

⁷ The Court of Appeal took the FVPCA offending into account when making this assessment: CA judgment, above n 5, at [55]. See also ESO Order, above n 4, at [135] where “all of Mr Holland’s offending” was considered to be serious sexual offending.

there any risk of a miscarriage of justice, given the nature of his offending and the level of risk as outlined in the evidence put before the District Court.⁸ Leave is therefore declined on these issues.

Solicitors:
Crown Law Office, Wellington for Respondent

⁸ The assessor for the Department of Corrections assessed Mr Holland as being at a high risk of reoffending and concluded he demonstrated a “clear predilection and proclivity for sexual offending against children”. Mr Holland also minimised the sexual nature of his actions and refused to take responsibility for them. Mr Holland’s assessor said he was only at a moderate risk of reoffending, but did say a case could be made that there is a high risk Mr Holland would commit a further sexual offence. He also agreed that Mr Holland did not accept responsibility for his actions. For more, see ESO Order, above n 4, at [37]–[65] and [84]–[102]; and CA judgment, above n 5, at [14]–[28].