

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 73/2019
[2019] NZSC 101**

BETWEEN IRAIA ARANGA NGAMOTU BURTON
 Applicant

AND THE QUEEN
 Respondent

Court: Winkelmann CJ and Glazebrook J

Counsel: Applicant in Person
 R K Thomson for Respondent

Judgment: 23 September 2019

JUDGMENT OF THE COURT

The application for an extension of time is dismissed.

REASONS

Introduction

[1] Mr Burton was convicted, after a Judge-alone trial (Judge Crosbie), of the burglary of a property at Lynn Street in Dunedin.¹ He had been charged with four burglaries (with alternative receiving charges to three of the burglaries), the unlawful taking of a vehicle, and assault with intent to injure. He pleaded guilty (at various times) to one of the burglary charges, to all of the receiving charges, to the unlawful taking of a vehicle and to the assault charge. Apart from the Lynn Street burglary charge, the other burglary charges were withdrawn.

¹ *R v Burton* [2017] NZDC 13558.

[2] On 11 October 2018 the Court of Appeal dismissed Mr Burton's appeal against the Lynn Street burglary conviction.² Mr Burton now applies for leave to appeal that conviction to this Court.

[3] The application for leave to appeal is some six months out of time. Mr Burton says that the delay was due to communication difficulties and we treat his submissions as an application for an extension of time to apply for leave to appeal. The Crown made no submissions on whether or not an extension of time should be granted.

Parties' submissions

[4] In Mr Burton's submission, the Lynn Street burglary conviction was based on propensity reasoning alone and on the basis of evidence that was not relevant to the Lynn Street charge but only to the other charges to which he had pleaded guilty. He says that his understanding, from what was said in Court and from his counsel, was that this evidence would not be relied on. Mr Burton submits that the other evidence called at trial did not support the conviction. He also seeks to put new evidence before the Court, including his bank statements and cell phone evidence, which he submits shows that he had an alibi and that a miscarriage of justice has occurred.

[5] The Crown submits that it is clear that the conviction was not based only on propensity reasoning but on a range of other evidence.³ In addition, it is also clear that his trial counsel had advised him that the evidence related to the other charges would likely remain admissible as propensity evidence.⁴ The Crown also submits that the other evidence did support the conviction and that the new evidence Mr Burton seeks to rely on would have been available at the time of the trial (and is therefore not fresh). In any event it is submitted that the proposed new evidence does not show there was a miscarriage of justice.

² *Burton v R* [2018] NZCA 355 (Kós P, French and Miller JJ) [CA judgment].

³ CA judgment at [9].

⁴ CA judgment at [28].

Our decision

[6] The matters Mr Burton wishes to raise are all factual. No issue of general or public importance arises. Nor do we consider that the issues raised suggest any risk of a miscarriage of justice.

[7] Any application for leave to appeal would therefore not be granted. In these circumstances there is no point in granting an extension of time to make the application for leave to appeal.

Result

[8] The application for an extension of time is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent