

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF WITNESSES P AND S PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 55/2016
[2016] NZSC 86**

BETWEEN JOHN ALFRED ROBINSON
 Applicant

AND THE QUEEN
 Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: E J Forster for Applicant
 J E L Carruthers for Respondent

Judgment: 13 July 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted on a total of 15 charges of sexual offending against the complainant N. The offending occurred between 1998 and 2002, when N was aged between 10 and 13.

[2] Propensity evidence was called from two witnesses, S and P. S gave evidence of sexual offending against her by the applicant in 1980 and 1985, when she was between five and 10 years of age. The applicant faced trial for this offending in 1994 and was found not guilty. P gave evidence of sexual offending

against her by the applicant between 1988 and 1990. The applicant pleaded guilty to some of the allegations made by P and was convicted at trial on others. The applicant's trial for the offending against S happened after his trial for the offending against P, although P was not called as a propensity witness at the trial involving the alleged offending against S.

[3] The applicant challenged the admissibility of the evidence of S and P but in a pre-trial ruling Judge Rea ruled it admissible.¹

[4] A pre-trial appeal against the District Court decision was unsuccessful.² After he was convicted, the applicant appealed again to the Court of Appeal arguing that certain matters raised at the trial justified a reconsideration of the Court of Appeal pre-trial decision. This appeal also failed.³

[5] The applicant's argument at all stages has been that there was evidence that the allegations of N may be the result of suggestibility. This is one of the factors which a Judge may consider when assessing the probative value of propensity evidence under s 43(3) of the Evidence Act 2006.⁴

[6] In the first Court of Appeal hearing, the applicant argued that N's evidence was affected by contact with both S and P, leading to a risk of suggestibility. The focus of his argument at the second Court of Appeal hearing was on contact between N and P only. The present application is also focused on contact between N and P.

[7] The applicant says the test to be applied under s 43(3) is a matter of public importance and that there is a risk of a miscarriage arising from the way the lower Courts dealt with the issue in this case.

[8] We do not consider leave is justified in this case. The lower Courts have all carefully evaluated the contact between N and P on Facebook and otherwise and concluded that there was nothing that suggested that there may be suggestibility

¹ *New Zealand Police v Robinson* [2015] NZDC 6821.

² *Robinson v R* [2015] NZCA 210 (Randerson, Stevens and White JJ).

³ *Robinson v R* [2016] NZCA 188 (French, Simon France and Ellis JJ).

⁴ Evidence Act 2006, s 43(3)(e).

between them. The applicant is, in effect, seeking a further reconsideration of an essentially factual analysis. No point of principle arises and we see no risk of a miscarriage of justice if leave to appeal is not granted.

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

Solicitors:
Crown Law Office, Wellington for Respondent