NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.

IN THE SUPREME COURT OF NEW ZEALAND

SC 144/2016
[2017] NZSC 16

BETWEEN	LESLIE MCGEACHIN Applicant
AND	THE QUEEN Respondent

Court:	Glazebrook, Arnold and O'Regan JJ
Counsel:	Applicant in person C A Brook and A B Richards for Respondent
Judgment:	24 February 2017

JUDGMENT OF THE COURT

A The application for an extension of time to apply for leave to appeal against conviction is dismissed.

B The application for leave to appeal against sentence is dismissed.

REASONS

[1] Mr McGeachin was convicted in June 2013, after a jury trial, on five counts of rape, three counts of sexual violation, one count of attempted sexual violation, four counts of other physical violence and three counts of burglary. The offending was committed over a 25 year period against two women.

[2] Mr McGeachin applies for leave to appeal against a decision of the Court of Appeal on 19 November 2015 dismissing his conviction appeal.[1] Mr McGeachin also seeks leave to appeal against his sentence.[2] The latter is an application for an appeal directly from the District Court as he did not appeal against his sentence to the Court of Appeal.

Conviction appeal

Extension of time

[3] Mr McGeachin's application for leave to appeal against conviction is almost one year out of time.[3] He says that the delay in filing was because he is self-represented and was unaware of the time limits. Further, he has been seeking disclosure from the Crown and attributes the delay in his application to this also.

[4] The Crown opposes the application for an extension of time on the basis that there is an inadequate explanation for the delay and Mr McGeachin has not demonstrated a compelling case for granting leave.

[5] We agree with the Crown's submissions. In any event, for the reasons that follow, Mr McGeachin's application for leave to appeal would not have succeeded.

Grounds of application

[6] Mr McGeachin asserts that the Crown failed to disclose the complainants' medical records to substantiate their injuries and also failed to disclose a number of other relevant matters. He says that the complainants lied about the extent of their injuries and colluded with each other. He also alleges scene contamination prior to police inspection.

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1 *McGeachin v R* [2015] NZCA 558 (Kós, Fogarty and Mallon JJ) [*McGeachin* (CA)].

2 *R v McGeachin* DC Wellington CRI-2012-085-2003, 23 July 2013 [*McGeachin* (original sentencing decision)]; and *R v McGeachin* [2016] NZDC 24267 [*McGeachin* (re-sentencing decision)].

3 Section 239(2) of the Criminal Procedure Act 2011 provides that a convicted person must file a notice of application for leave to appeal within 20 working days of the determination being appealed against.

[7] In the Court of Appeal the main ground of appeal was trial counsel error.[4] Mr McGeachin alleges in this Court that his trial counsel made numerous false statements in her affidavit before the Court of Appeal. He also says that the Court of Appeal wrongly refused to accept affidavits which contradicted the statements of the complainants.

Our assessment

[8] In our system of justice it is for the jury to determine the facts. A jury verdict can only be challenged on appeal as unreasonable where it is a verdict that, having regard to all the evidence, no jury could reasonably have reached the standard of proof beyond reasonable doubt.[5]

[9] Nothing raised by Mr McGeachin suggests that the jury verdict was unreasonable. It was for the jury to assess the complainants' evidence and they were entitled to accept it. Whether the complainants had colluded in bringing the allegations, and the effect of any collusion, was ultimately a matter for the jury. Defence counsel had conducted cross-examination directly on that point.[6]

[10] Further, as the Crown points out, a number of the allegedly false statements made by one of the complainants were not even before the jury. If Mr McGeachin seeks to argue that the evidence should have been before the jury to allow a defence suggestion that the first complainant had lied about her injuries, the tactical choices of trial counsel have been held to be reasonable by the Court of Appeal.[7] Nothing raised suggests that conclusion may have been in error.

[11] The further evidence that Mr McGeachin said should have been admitted before the Court of Appeal was from four witnesses Mr McGeachin maintained should have been called at trial.[8] The evidence of trial counsel was that there had been no instructions to call these witnesses.[9] Trial counsel's evidence was accepted by the Court of Appeal on the basis that, in the absence of cross-examination, her

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4 A long list of alleged errors was before the Court of Appeal: *McGeachin* (CA), above n 1, at [3].
5 *Owen v R* [2007] NZSC 102, [2008] 2 NZLR 37 at [13]–[15].
6 *McGeachin* (CA), above n 1, at [7].
7 At [9].
8 At [12].
9 At [7].

evidence was essentially uncontested.[10] The Court of Appeal rightly held that this meant that the evidence Mr McGeachin sought to adduce was irrelevant.[11] We agree.

[12] In this Court he seeks to adduce evidence from one of the victim's daughter. We understand she is one of the four witnesses dealt with in the Court of Appeal. This means that the evidence is also irrelevant to this application for leave.[12]

[13] We turn to Mr McGeachin's complaints about his trial counsel's affidavit in the Court of Appeal. No possible miscarriage of justice could arise where the affidavit was not challenged in the Court of Appeal. We note that the Court of Appeal found trial counsel's affidavit cogent[13] and extensive.[14]

Sentence appeal

[14] Mr McGeachin had originally been sentenced to a period of imprisonment in relation to the first complainant of five years.[15] With regard to the second complainant, a sentence of 14 years imprisonment with a minimum period of imprisonment of nine years was imposed, cumulatively on the first sentence.

[15] Mr McGeachin was re-sentenced by Judge Hobbs in the District Court on 23 November 2016 with regard to the offending against the second complainant.[16] The term of 14 years imprisonment remained the same but the minimum period was reduced to seven years and four months. This was done to reflect the Judge's intention that Mr McGeachin should be eligible for parole after serving nine years of his total sentence.

[16] Given the re-sentencing, it is unclear whether an extension of time is required for the appeal against sentence. We will assume it is not.

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10 At [9].
11 At [12].
12 Even if this is a new witness the evidence would not be fresh and would not in any event point to a risk of a miscarriage of justice.
13 At [9].
14 At [7].
15 *McGeachin* (original sentencing decision), above n 2.
16 *McGeachin* (re-sentencing decision), above n 2.

Grounds

[17] Mr McGeachin's appeal against sentence is based on his contention that the alleged victims lied about the severity of their injuries. He also alleges that the victim impact statement relied on by the sentencing judge was false. Prior to the re-sentencing taking place, Mr McGeachin indicated to this Court that he would not accept a re-sentencing by the District Court.

Our assessment

[18] As the Crown has acknowledged, the jurisdiction of the District Court to correct its error in sentencing under s 180 of the Criminal Procedure Act 2011 is not entirely clear. However, in this case, the new sentence was favourable to Mr McGeachin. It is not therefore a suitable vehicle for resolving the issue. This is particularly the case as we have not had the benefit of the Court of Appeal's views.

[19] The other complaints by Mr McGeachin are complaints about the original sentencing exercise. They should have been raised before the Court of Appeal. The high threshold for a direct appeal to this Court is not met.[17]

[20] In any event, Mr McGeachin has not raised anything to suggest that his sentence was outside the range for the violent and sexual offending of which he was convicted. Nor, as pointed out by the Crown, is there any indication in the sentencing remarks that the Judge was influenced by any of the contested matters in the victim impact statement.

Result

[21] Mr McGeachin's application for an extension of time to apply for leave to appeal against his conviction is dismissed. His application for leave to appeal against his sentence is also dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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[17] As required by s 14 of the Supreme Court Act 2003.