



**Supreme Court of New Zealand
Te Kōti Mana Nui**

16 August 2019

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

R (SC 1/2019) v THE QUEEN

(SC 1/2019) [2019] NZSC 87

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Suppression

This judgment is subject to suppression orders under ss 200, 203 and 204 of the Criminal Procedure Act 2011. These suppression orders prevent the publication of the name, address, occupation or identifying particulars of the appellant, the complainant and any person under the age of 18 years who appeared as a witness in the proceeding.

Background

The appellant was convicted after a jury trial of sexual offending against a teenage complainant. At trial, the complainant gave evidence of experiencing nightmares and other changes in behaviour following the alleged offending. She also gave evidence about self-harming which had begun prior to the alleged offending. Further, in response to a question from the prosecutor, she said that since the alleged offending she had stopped going to school and had attempted suicide.

The appellant’s defence at trial was that the complainant was a “troubled young woman” whose evidence was neither credible nor reliable. Defence counsel referred to the evidence of the complainant’s self-harm to support the defence case.

The appellant appealed to the Court of Appeal against conviction arguing the admission of the evidence about the complainant's behaviour had given rise to a miscarriage of justice. In addition, he said the trial Judge should have cautioned the jury about the limits on the use of this evidence.

The appeal was dismissed. The Court found that the challenged evidence was admissible but even if not, there was no risk of a miscarriage of justice in part because that evidence was central to the defence's trial strategy. Further, it was clear on the evidence the complainant had been self-harming before the first incident giving rise to the charge. The Court observed that "ideally" a direction that the jury should not jump to the conclusion that the challenged evidence boosted the complainant's credibility should have been given. But the absence of such a direction was not fatal in all the circumstances.

The Supreme Court granted leave to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeal. That question raised issues as to the admissibility of evidence about behavioural changes and as to the adequacy of the directions to the jury. The first issue was narrowed down at the hearing because the appellant accepted that all of the evidence except that of the attempted suicide was admissible so long as appropriate directions about the use of the evidence were given to the jury.

The Supreme Court's decision

The Supreme Court has unanimously dismissed the appellant's appeal. The Court accepted the evidence in issue was admissible. The evidence was relevant and its probative value was not outweighed by its prejudicial effect. In particular, this was evidence which was proximate in time to the offending that something out of the ordinary was occurring in the complainant's life. The evidence in question was largely given by the complainant herself and was describing her experience. The Court said the reference to attempted suicide was relevant as forming part of the context. The Court considered that the prejudicial effect of this evidence had to be assessed in light of the defence strategy which was to show the complainant as an irrational and overly-emotional young woman.

The Court also said judges should consider the need to direct in relation to the proper use of evidence of this nature and as to the need for a tailored direction not to be influenced by matters of prejudice and sympathy. The Court was, however, satisfied that the absence of a specific direction as to the use that could be made of the evidence in issue in this appeal had not given rise to a miscarriage of justice. There was sufficient evidence before the jury as to the competing explanations

for the complainant's behaviour and those contentions were also put to the jury by the trial Judge in the summing up. In addition, the reference to attempted suicide was inadvertent and nothing was made of that evidence in submissions to the jury.

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