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IN THE SUPREME COURT OF NEW ZEALAND

**SC 75/2016
[2016] NZSC 114**

BETWEEN SHAHIDAN NISHA
 Applicant

AND THE QUEEN
 Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: R G Glover for Applicant
 C A Brook for Respondent

Judgment: 30 August 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted after a jury trial of 27 charges involving offences of violence. She appealed against conviction and sentence to the Court of Appeal. That Court allowed her appeal against convictions on two of the 27 charges, but otherwise dismissed the appeal.¹

[2] One of the grounds of appeal to the Court of Appeal related to the standard of translation provided by the interpreter engaged to assist the applicant at the trial. The applicant said she had a very poor understanding of English and could not

¹ *Nisha v R* [2016] NZCA 294 (Ellen France P, Clifford and Katz JJ) [*Nisha* (CA)].

meaningfully engage with counsel in preparation for the trial. She also said that the interpreter had not translated very much of what had been said during the trial. These deficiencies were said to have led to a breach of the applicant's right to an interpreter under s 24(g) of the New Zealand Bill of Rights Act 1990.

[3] The Court of Appeal heard evidence from the applicant, her two trial counsel and the interpreter. The Court of Appeal concluded there was no breach of s 24(g). It said:²

We are in no doubt Ms Nisha was carefully advised and briefed prior to trial and that she understood the advice. We also reject Ms Nisha's evidence as to the approach taken by the interpreter at trial. We find the interpreter translated the evidence and other interactions during the trial as she was required to do and there is no reason to believe that Ms Nisha did not understand what was happening.

[4] The applicant seeks leave to appeal on the basis that her right under s 24(g) was breached, but the point she wishes to raise in this Court differs from that raised in the Court of Appeal. She does not seek to challenge the adverse credibility finding made against her in the Court of Appeal. Rather, she seeks to argue on appeal that the adoption of a process of simultaneous interpretation (rather than consecutive interpretation) led to a breach of her right under s 24(g).

[5] When giving evidence in the Court of Appeal, the interpreter expressed concern about being required to translate simultaneously at the applicant's trial, referring to the decision of this Court in *Abdula v R*, which indicated that consecutive interpretation is "highly desirable".³

[6] We do not see any point of public importance arising in this case, given that the Court has comparatively recently given full consideration to the requirements to comply with an accused person's rights under s 24(g) in *Abdula v R*.

[7] Nor do we see any risk of miscarriage if leave to appeal is declined. We say this because the Court of Appeal's assessment after hearing all of the relevant witnesses was that the applicant did understand what was happening at her trial and

² At [27].

³ *Abdula v R* [2011] NZSC 130, [2012] 1 NZLR 534 at [60].

was able to participate fully in the preparation for her trial. The Court of Appeal noted that the interpreter was unhappy that she was required to provide simultaneous rather than consecutive translation, but said it had no concerns about the applicant's understanding of the nature and detail of the case against her nor of her ability to make intelligent decisions about her defence.⁴

[8] There is nothing in this Court's decision in *Abdula v R* to indicate that a failure to provide consecutive translation will automatically lead to a finding that a miscarriage of justice has occurred. While this Court indicated that consecutive translation was best practice, it made it clear that any challenge based on s 24(g) required an assessment of the level of assistance required by the defendant and the standard of assistance actually provided. In this case, in view of the very clear finding of the Court of Appeal that the applicant had sought to mislead the Court as to the level of her ability to communicate in English and had, in fact, understood what was going on at her trial, we do not see any proper basis on which leave to appeal could be granted.

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

Solicitors:
Crown Law Office, Wellington for Respondent

⁴ *Nisha (CA)*, above n 1, at [39].