

NOTE: COURT OF APPEAL ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPLICANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE.

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY COMPLAINANTS/PERSONS UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 117/2016
[2017] NZSC 6**

BETWEEN T (SC 117/2016)
Applicant

AND THE QUEEN
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
M J Lillico for Respondent

Judgment: 10 February 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty on 29 charges involving offending against his former wife, his three daughters, a son and a step-daughter. The charges encompassed sexual violation, indecent assault, various assaults and a threat to kill. There was also a charge of possession of an offensive weapon. The offending started

in 1997 and concluded in 2009. The Court of Appeal dismissed his appeal against conviction and sentence¹ and he now seeks leave to appeal.

[2] The applicant was represented by counsel in the Court of Appeal. In his application to this Court for leave to appeal he provided marked up copies of extracts from (a) the submissions made to the Court of Appeal and (b) the judgment of the Court of Appeal. From this material, we take it that he has raised three issues.

[3] The first relates to the use of representative charges of rape and unlawful connection in relation to offending against the applicant's wife. The date range for these charges covered 12 years. The appropriateness of these charges was reviewed carefully by the Court of Appeal and we see no appearance of error in that Court's analysis.²

[4] The second is the absence of a warning under s 122 of the Evidence Act 2006. As to this, we note that his trial took place before the judgment of this Court in *CT (SC88/2013) v R* and there was no request from counsel for a direction.³ Had such a direction been sought, the lengthy period of the offending alleged, not all of which was 10 years before trial, would have been material. As the Court of Appeal noted, the defences advanced were that the applicant's wife had fabricated the allegations of offending against her and coached the children in respect of their evidence. Documentary evidence which was contemporaneous with the offending (for instance Plunket records) assisted the applicant. Nothing specific by way of prejudice was alleged. In respect of this aspect of the case too, we see no appearance of error in the approach taken by the Court of Appeal.⁴

[5] The third issue is the absence of a propensity direction, particularly in light of some general comments made by the prosecutor to the jury in relation to the applicant's temper, violence and use of alcohol. The Court of Appeal concluded that the Crown was not invoking coincidence or tendency reasoning.⁵ In light of this,

¹ *T (CA561/2014) v R* [2016] NZCA 235 (Stevens, Asher and Williams JJ).

² At [42]–[61].

³ *CT (SC88/2013) v R* [2014] NZSC 155, [2015] 1 NZLR 465. The judgment date was 30 September 2014 and the applicant was sentenced on 17 September 2014.

⁴ At [34]–[41].

⁵ At [14]–[33].

and the general directions given by the trial Judge (as to individual consideration of each charge and putting prejudice to one side), it concluded that there had been no miscarriage of justice. In doing so, the Court applied the approach proposed in *Mahomed*.⁶ Once again we see no appearance of error.

[6] The proposed appeal does not give rise to any question of public or general importance nor is there any appearance of a miscarriage of justice. Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁶ *Mahomed v R* [2011] NZSC 52, [2011] 3 NZLR 145.