



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

2 OCTOBER 2019

MEDIA RELEASE

DAVID NOEL ROIGARD v THE QUEEN

(SC 25/2019)

CASE SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz. A direct link to the judgment is included at the end of this synopsis.

Note that the High Court suppression order prohibiting publication of the names and identifying particulars of witnesses F and W remains in force.

Introduction

The appellant, David Roigard, was convicted of the murder of his adult son, Aaron Roigard, following a jury trial in 2015. He was also convicted of eight charges of theft in a special relationship.

Aaron had been making regular payments to his father, Mr Roigard, of money he earned as a farm worker. Aaron believed that this money was being invested by Mr Roigard with a view to Aaron and his partner purchasing a farm property. However, Mr Roigard used the money for his own purposes. This was the basis for the theft charges.

At trial, the Crown case was that Mr Roigard killed Aaron because it was becoming increasingly likely that Aaron would discover that Mr Roigard had been spending the money deposited by Aaron. The Crown's case was largely based on circumstantial evidence. No body was ever found.

The inmate confession evidence

The Crown relied heavily on two confessions it was claimed Mr Roigard made to fellow inmates, F and W, while on remand in prison prior to the trial.

The first inmate, F, gave evidence at trial that Mr Roigard had spoken to him in detail about the case. F said that Mr Roigard told him initially that Aaron would turn up, but later said that Aaron “wouldn’t be back”. Mr Roigard said Aaron was a “hothead” and had threatened to go to the police about the money. According to F, Mr Roigard then said that he struck Aaron in the head with a wood splitter three times. F said that in another conversation, Mr Roigard referred to the location of Aaron’s body.

The second inmate, W, gave evidence that Mr Roigard told him Aaron “got what he deserved” and that the police would never find the body. W also referred to other remarks made by Mr Roigard about the case.

F had amassed more than 150 criminal convictions, over 130 of which involved dishonesty. F also received a sentencing discount because of his cooperation with the police. Similarly, W had over 100 convictions including more than 60 involving dishonesty. He too received a less severe sentence because of assistance he provided to the police.

Mr Roigard’s appeal to the Court of Appeal

Mr Roigard appealed against conviction and sentence to the Court of Appeal. He advanced a number of grounds of appeal, including that the evidence of F and W should not have been admitted at trial.

Mr Roigard argued that evidence of a confession allegedly given to a cellmate is generally inadmissible. However, the Court of Appeal dismissed this ground of appeal. This was because it was bound by the Supreme Court decision in *Hudson v R*, where it held that there is no general rule that evidence of a cellmate confession is inadmissible.

Mr Roigard’s appeal to the Supreme Court

The Supreme Court granted Mr Roigard leave to appeal. The approved ground of appeal is whether the Court of Appeal erred in finding that the evidence of F and W was admissible at trial.

As the Supreme Court explained in its leave judgment, the Court will not be reconsidering the decision in *Hudson* that cellmate confessions are not generally inadmissible. Rather, the issue on appeal is whether the evidence of F and W should have been excluded under the provisions of the Evidence Act 2006.

In particular, the Supreme Court will consider whether the evidence of F and W was admissible under ss 7 and 8 of that Act. Section 7 provides that only relevant evidence is admissible; section 8 provides that evidence

must be excluded if its probative value is outweighed by the risk it will have an unfairly prejudicial effect on the proceeding.

The Court will also consider whether the evidence of F and W should have been excluded under s 30, which is concerned with improperly obtained evidence.

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Supreme Court leave decision: [\[2019\] NZSC 63](#) (27 June 2019)

Court of Appeal decision: [\[2019\] NZCA 8](#) (13 February 2019)

High Court sentencing notes: [\[2016\] NZHC 166](#) (15 February 2016)