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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 104/2018
[2019] NZSC 22

BETWEEN	ALLAN JOHN TITFORD Applicant
AND	THE QUEEN Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
Z R Johnston and Z A Fuhr for Respondent

Judgment: 5 March 2019

JUDGMENT OF THE COURT

The application for an extension of time to file an application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Titford was convicted after a trial before a jury of 39 charges encompassing a range of offending over a 22 year period. Mr Titford was acquitted of 14 charges. He was sentenced to a term of imprisonment of 24 years with no minimum period of

imprisonment.[1] His appeal to the Court of Appeal against conviction and sentence was dismissed.[2] He seeks leave to appeal out of time to this Court against conviction and sentence on the basis a miscarriage of justice has occurred.

Background

[2] The bulk of the charges Mr Titford faced (41 of the 53) were of rape and violence against Mr Titford's former wife (rape, assault and threatening to kill) and children (assault, assault with a weapon and threatening to kill). In addition there were two charges of each of using a document with intent to obtain a pecuniary advantage, arson, reckless discharge of a firearm and discharge of a firearm with intent, and one charge each of perjury, perverting the course of justice, attempted arson and threatening to kill his brother-in-law.

[3] The charges of perjury and perverting the course of justice arose out of an earlier trial. The Crown case was that in the earlier trial Mr Titford perjured himself and forced his former wife and one of their children to provide perjured evidence in his defence.

[4] The other charges related, as the Court of Appeal explained, to "Mr Titford's bitter, long-running and heavily publicised dispute with local iwi who had made a claim to part of his farm in the Waitangi Tribunal".[3]

[5] Mr Titford denied the offending and in his defence at trial attributed various motives to incriminate him to his former wife and others. In particular, as the Court of Appeal recorded, he said his former wife and her family were "pursing a scheme to obtain his assets by indoctrinating the children and attempting to blackmail him".[4]

The proposed grounds of appeal

[6] The proposed conviction appeal would raise a number of grounds. We can encapsulate the critical points under two headings. The first of these is based on what

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1 *R v Titford* DC Whangarei CRI-2010-029-1480, 20 November 2013 (Judge Duncan Harvey).
2 *Titford v R* [2017] NZCA 331 (Harrison, Winkelmann and Gilbert JJ) [CA judgment].
3 At [15].
4 At [18].

Mr Titford says are inadequacies in the defence at trial and the second relates to the fact all of the charges were heard together.

[7] On the first issue, the adequacy of the defence at trial, Mr Titford says that, as a result of inadequate preparation, key documents were not presented and the jury was left without an understanding of what he describes as the fraught relationship property battle at the centre of his "financial motivation" defence.

[8] The question of the adequacy of preparation for the defence was addressed by the Court of Appeal. The Court concluded Mr Titford had exercised "his right to present his defence adequately at trial".[5] In reaching that view, the Court had the benefit of unchallenged evidence from trial counsel. The Court also assessed the new evidence Mr Titford sought to have adduced on the appeal and concluded that the evidence did not meet the test for admission.

[9] No question of general or public importance accordingly arises.[6] Nor does the assessment of the Court of Appeal give rise to an appearance of a miscarriage of justice. As the submissions of counsel for the respondent on this aspect note, trial counsel for Mr Titford put to his former wife in cross-examination the defence proposition that she had fabricated the allegations for financial gain.

[10] We can turn then to the other aspect of the proposed appeal, that is, the grounds based on the fact none of the charges were severed. On this issue, Mr Titford points to four aspects in relation to which he says the outcome may have been different if these matters had been the subject of a separate trial. In respect of each of these matters, he identifies what he says were fallibilities in the evidence at trial which, if the relevant charges had been tried on their own, would have been exposed.

[11] This aspect was addressed by the Court of Appeal. Dealing first with the charges of rape and violence relating to the family the Court said this:[7]

> The connection between this offending could not have been more compelling. The evidence of all familial sex and violence was cross-admissible.

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5 At [52].
6 Supreme Court Act 2003, s 13(2); and Senior Courts Act 2016, s 74(2).
7 CA judgment, above n 2, at [60].

> Mr Mansfield accepted that a court would not have severed the trial of these charges. The charge of threatening to kill [Mr Titford's brother-in-law], while he was working on the farm, falls into the same category.

[12] On the other groups of charges, namely, perjury and perverting the course of justice, attempted arson and arson, the Court considered it was appropriate to hear these groups of charges together and together with the family violence charges. The Court of Appeal explained the position in this way:[8]

> The evidence of [Mr Titford's former wife] and her two eldest children, … was central to the proof of all charges in Mr Mansfield's first three categories and explicable by their fear of and subjugation to Mr Titford's will. When considered together, all evidence relevant to these charges provided a full picture, as Ms Johnston submits, of the family context and dynamics.

[13] The Court said that the charges of arson, attempted arson and using a document for pecuniary gain were "interrelated".[9] Further, although these charges were "less connected" to the charges of family violence and perjury, both Mr Titford's former wife and her brother were witnesses and their evidence "relatively confined".[10]

[14] The Court accepted that the remaining charges relating to the use of a firearm were "more problematic" but the Court said, "their presence does not satisfy us that a miscarriage occurred".[11]

[15] The Court also drew support from the Judge's directions to the jury as to the need to consider charges separately.

[16] There is no challenge to the principles applied by the Court. Rather, the challenge is to the application of those principles to the particular facts. In that respect, we see no appearance of a miscarriage of justice arising out of the Court's assessment.[12]

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8 At [61].
9 At [62].
10 At [62].
11 At [62].
12 The Court also attached some importance in this context to the jury's verdicts, that is, the fact Mr Titford was acquitted of a number of charges: at [64]. Whether that factor is more properly considered in the context of the proviso is not a matter we need to address at this stage.

[17] The application for leave also includes a number of other grounds which were not raised in the Court of Appeal. We are not satisfied there is a demonstrable risk of a miscarriage of justice that has gone uncorrected on the first appeal in relation to any of these grounds.[13] Rather, they relate to fact-specific issues dealt with at trial.

[18] For completeness, we note that while the application for leave referred to a proposed appeal against sentence, that aspect was not pursued in Mr Titford's written submissions. The Court of Appeal dealt with the sentence appeal and concluded the sentence was not manifestly excessive. There is nothing to indicate any risk of a miscarriage of justice in the approach taken by the Court.

[19] The criteria for leave are accordingly not met. Mr Titford's application for leave is some 15 months out of time. The reasons given for delay (lack of knowledge of the 20 working day time limit and the workings of the mail system) do not explain delay of this length. The application for an extension of time to file an application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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[13] *LM v R* [2014] NZSC 9, (2014) 26 CRNZ 643 at [2]; *Pavitt v R* [2005] NZSC 24 at [4]; *Kanhai v R* [2005] NZSC 25 at [6]; *Mankelow v R* [2007] NZSC 57 at [2]; and *Bland v R* [2013] NZSC 93 at [6(a)].