

**NOT
RECOMMENDED**

THE QUEEN

v.

A

Coram: Henry J.
Thomas J.
Temm J.

Judgment: 28 March 1996
(ex parte)

JUDGMENT OF THE COURT DELIVERED BY TEMM J.

The applicant was convicted of three representative counts of indecent assault on his daughter, and one count of inducing her to do an indecent act upon him. The daughter was born on 1967 and the offences occurred during the period 1973 and 1979 when she was six to eleven years of age. At the time she gave evidence against her father she was 28 years old. She had come to learn that police were investigating complaints made about the applicant's behaviour with a granddaughter and volunteered to them the information that became her evidence.

The applicant gave evidence denying any wrongdoing and called his wife as a witness who deposed that she had not had any complaint made to her by her daughter about her husband's conduct.

The applicant's first ground of appeal is that the trial was interrupted so much that although it was expected to be completed in two days it took four days before the verdict was announced. There is no substance in this ground.

The second ground of appeal is a complaint against the applicant's counsel for failing to question the complainant as to whether or not she, the complainant, had left her own daughter with her parents on many occasions from infancy up until about eight years of age. There can be no miscarriage of justice on this ground; counsel may have had good reason not to put such matters, but whether he did or did not, failure to ask such questions would not have affected the course of the trial.

The third ground of appeal is that the applicant had to wait 20 months from the time of arrest to the date of the trial. He was on bail throughout that period and there is nothing in the file to show any abuse of process in the delay, nor whether the applicant or his counsel objected to delay at any time. There is no substance in this third ground of appeal.

In a letter dated 15 March 1996 the applicant made further submissions asking for a review of the decision to refuse legal aid. Those submissions relate only to minor aspects of the case. The jury had an opportunity to assess the credibility of the complainant on the one hand, and the accused and his wife (her mother) on the other. They deliberated for nine hours and on a five count indictment recorded guilty verdicts in four counts involving the complainant, and a not guilty verdict in respect of a different complainant.

3.

There is nothing to indicate that the trial has miscarried in any way, and the complainant's evidence, accepted as it must have been, gives a good foundation in law for the convictions.

The application for leave to call fresh evidence is dismissed. The fresh evidence is that of a Mr G.T. Gerbes, but there is no affidavit proving what evidence he can offer, nor is there any explanation as to why he was not called as a witness, except for the applicant's statement that the applicant did not have enough time to do so. Since he was waiting 20 months for this case to come to trial that is very difficult to believe.

The application for leave to appeal is dismissed.

A handwritten signature in black ink, appearing to read "A. Steyn", is written on the right side of the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.