

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA460/2020
[2021] NZCA 62**

BETWEEN MARK ROBERT WILLIAMSON
 Applicant

AND THE QUEEN
 Respondent

Court: Goddard, Lang and Hinton JJ

Counsel: Applicant in person
 S E Trounson for Respondent

Judgment: 12 March 2021 at 11.00 am
(On the papers)

JUDGMENT OF THE COURT

The application for leave to appeal is declined for want of jurisdiction.

REASONS OF THE COURT

(Given by Hinton J)

[1] Mr Williamson purports to apply for leave to bring a second appeal against conviction and sentence. In fact, he requires leave to appeal against Ellis J's refusal to grant leave to bring a first appeal out of time.¹ For the reasons we note below, that is not something he can do, and so his application must fail.

¹ *Williamson v R* [2020] NZHC 1791 [High Court judgment].

[2] On 23 April 2015, at the conclusion of a Judge-alone trial before Judge Down in the District Court at Auckland, Mr Williamson was convicted on two charges of doing an indecent act on a young person,² and five charges of sexual violation by unlawful sexual connection.³ One further charge of grooming was dismissed, and not guilty verdicts entered on two further charges of sexual violation.⁴

[3] All of these charges related to events over the course of the year between September 2012 and December 2013, and all related to the same boy S, who was aged 12 to 13 at the time. S had started visiting Mr Williamson at his home, having taken an interest in Mr Williamson’s hobby. A friendship was struck up, and S started to spend most afternoons at Mr Williamson’s home. Mr Williamson began to touch S inappropriately, leading to oral and anal intercourse. S told police he had sexual connection with Mr Williamson about 50 times altogether. The Judge concluded that S’s consent was “fluctuating” during the period — thus the not guilty verdicts on two of the charges of sexual violation.

[4] On 16 July 2015, Judge Down sentenced Mr Williamson to nine years’ imprisonment on the lead charges of sexual violation, with concurrent sentences in respect of the other charges.⁵ He also ordered Mr Williamson to pay reparations of \$20,000 to S, which the Judge understood S’s family would hold on trust for S.⁶

[5] In 2019, some four years later, Mr Williamson sought leave to appeal out of time against conviction on the basis his sexual connection with S was consensual; his trial counsel failed to understand the centrality of the issue of consent (and therefore erred); and the Judge’s reasons were inadequate having regard to the decision in *Sena v Police*.⁷

[6] Having evaluated in some detail the merits of the proposed appeal, on 23 July 2020, Ellis J declined Mr Williamson’s application for leave to appeal out

² Crimes Act 1961, s 134(3).

³ Section 128(1)(b).

⁴ *R v Williamson* [2015] NZDC 6995 at [81]–[84].

⁵ *R v Williamson* [2015] NZDC 13746 at [36].

⁶ At [37].

⁷ *Sena v New Zealand Police* [2019] NZSC 55, [2019] 1 NZLR 575.

of time against conviction.⁸ In summary, Ellis J concluded that Mr Williamson's trial counsel had acted competently in response to Mr Williamson's instructions during the trial which were to the effect that the alleged incidents did not occur. Ellis J also considered that the trial Judge's reasons were adequate. The unmeritorious nature of the appeal, coupled with the absence of a good explanation for the delay in filing the appeal and the need for finality was, in Ellis J's view, fatal to the application for an extension.⁹

[7] Mr Williamson had also sought leave to appeal out of time against sentence. This was contingent on the success of the conviction appeal as he contended that he was liable at most for sexual connection with a young person rather than sexual violation and therefore the maximum penalty would be halved.¹⁰ Leave to bring the conviction appeal having been declined, Ellis J also dismissed the application for leave to appeal out of time against sentence.¹¹

[8] As noted at the outset, Mr Williamson, who is now self-represented, applies for leave to appeal against Ellis J's decision. The proposed appeal is much the same as the proposed first appeal in respect of which Ellis J declined leave, except that Mr Williamson has now added scandalous allegations of incompetence and malfeasance against standby counsel who appeared in the High Court.

[9] Had Ellis J in fact determined a first appeal, then in terms of ss 237(1) and 253(1) of the Criminal Procedure Act 2011 (the Act), Mr Williamson could with leave of this Court (the second appeal court)¹² appeal against her determination.

[10] However, Ellis J did not determine a first appeal. Rather, the Judge declined to exercise her discretion to extend time for filing a first appeal under ss 231(3) and 248(4)(a) of the Act. There being no grant of an extension, Mr Williamson's first appeal was not in fact commenced.¹³

⁸ High Court judgment, above n 1, at [79].

⁹ At [76].

¹⁰ At [27].

¹¹ At [78].

¹² Criminal Procedure Act 2011, ss 238(b) and 254(b).

¹³ Sections 231 and 248 of the Criminal Procedure Act provide that a first appeal against conviction or sentence respectively is commenced by the filing of a notice of appeal within 20 working days after the date of sentence or later if the court extends time.

[11] Sections 231(3) and 248(4)(a) contain no reference to any right of appeal against a refusal to extend time. The same or similar wording for an application to extend time as used in those sections is used in relation to all the other appellate pathways created by pt 6 of the Act. None contains any provision for a right to challenge a refusal to grant an extension of time by the first appeal court and it is now well settled that this Court has no jurisdiction to hear such an appeal.¹⁴

[12] The same position applied under the previous legislation, as was stated in *Douglas v R*:¹⁵

[7] This Court recently confirmed that, where a High Court Judge refuses an application for an extension of time, no further steps will be available to the applicant by way of challenge in this Court.

[13] It follows that this Court has no jurisdiction to consider Mr Williamson's application.

Result

[14] The application for leave to appeal against the decision of the High Court refusing leave is accordingly declined for want of jurisdiction.

Solicitors:
Crown Law Office, Wellington for Respondent

¹⁴ See for example *Nottingham v District Court at Auckland* [2018] NZCA 345 at [27]–[32].

¹⁵ *Douglas v R* [2014] NZCA 219 (footnote omitted).