NOTE: HIGH COURT ORDER IN [2014] NZHC 550 PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF DEFENDANTS IN [2014] NZHC 550 AND [2014] NZHC 1848 REMAINS IN FORCE.

NOTE: DISTRICT COURT ORDER IN [2018] NZDC 15368 PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF T, C, H, B AND M REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 83/2019
[2019] NZSC 144

BETWEEN	DERMOT GREGORY NOTTINGHAM Applicant
AND	THE QUEEN Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	Applicant in person C A Brook for Respondent
Judgment:	12 December 2019

JUDGMENT OF THE COURT

A The application for an extension of time is granted.

B The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Nottingham was convicted following a jury trial of two charges of

publishing information in breach of suppression orders[1] and five charges of criminal harassment.[2] He was sentenced by the trial Judge, Judge Down, to a term of 12 months home detention and 100 hours of community work.[3] His appeal to the Court of Appeal against conviction and sentence was dismissed.[4] The Court allowed the Solicitor-General's appeal against sentence. The Court quashed the part-served sentence of home detention and imposed a new sentence of 12 months home detention together with 100 hours of community work.

[2] Mr Nottingham seeks leave to appeal against conviction and sentence.[5]

Background

[3] The charges relating to the suppression orders concerned orders for permanent name suppression made by Winkelmann J in relation to the two young men charged with assaulting Stephen Dudley.[6] Mr Dudley subsequently died. The Crown case was that Mr Nottingham published, or had published, an article on the blog laudafinem.com headed *The Murder of Stephen Dudley – New Zealand's Culture of Rugby, Thuggery & Coverup*. The article included photographs and the names of the two young men.

[4] The criminal harassment charges also related to publications on Lauda Finem. The publications related to five complainants who had each crossed paths with Mr Nottingham in some way.

[5] Brief reference needs to be made to three of the five complainants, Ms H, Ms B, and Mr M. Ms H worked for her husband in a real estate business. Mr H had previously worked with another real estate agency, AB, with which Mr Nottingham was later associated. Mr Nottingham's claim, in essence, was that by running two websites Mr H diverted enquiries being made to AB to the website associated with his new agency. Mr Nottingham said this diverted business away from Mr Nottingham to

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1 Criminal Procedure Act 2011, s 211(1).
2 Harassment Act 1997, s 8(1).
3 *R v Nottingham* [2018] NZDC 15373.
4 *Nottingham v R* [2019] NZCA 344 (Wild, Thomas and Muir JJ) [CA judgment].
5 His application is out of time, but only just. There is no objection to our granting an extension of time.
6 *R v M* [2014] NZHC 1848; and *R v Q* [2014] NZHC 550.

Mr and Ms H. The Crown case was that over the period 2011–2015, Mr Nottingham undertook a course of conduct harassing Ms H.

[6] Ms B was approached by Mr H in her professional capacity. Mr H raised concerns about his dealings with Mr Nottingham. Ms B passed on information about Mr Nottingham's conduct to the Minister of Internal Affairs. The Crown case alleged a course of criminal conduct amounting to criminal harassment of Ms B over the period November 2011–June 2014.

[7] Mr M was involved in a review of Mr Nottingham's real estate agent's licence. He ultimately decided Mr Nottingham's licence would not be renewed. The Crown said Mr Nottingham's conduct over the period November 2011–February 2015 comprised criminal harassment of Mr M.

The proposed appeal

[8] Mr Nottingham seeks leave to appeal essentially on the basis a miscarriage of justice has occurred. The main points he wishes to raise can be summarised as follows:

(a) There is evidence which Mr Nottingham says shows Ms H perjured herself in relation to what she told the Court she knew or did not know about the websites. Mr Nottingham says that her falsity on this matter is linked to Mr M and Ms B's subsequent actions.[7]

(b) The Judge (and the prosecution in closing) was wrong to then tell the jury that truth was of limited assistance to them in determining whether what occurred was harassment.

(c) Other acts, for example telephone calls, were relied on by the prosecution but there was no evidence substantiating Mr Nottingham's involvement in these acts.

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7 Mr Nottingham points also to other witnesses at trial whom he says perjured themselves.

(d) The charges alleging publications in breach of name suppression should have failed because Mr Nottingham's responsibility for this conduct was not established.

(e) Mr Nottingham's physical health affected his ability to stand trial.

(f) The Court of Appeal's approach to sentence ignored time served.

[9] The only proposed grounds we need to address in any detail are the first two. We can deal with these together as they essentially raise a question about the way the Court of Appeal dealt with Mr Nottingham's submission in that Court that truth was a complete answer to the charges under the Harassment Act 1997.

[10] The Court of Appeal said first that there was no error in the way the Judge directed the jury as to the relevance of truth. The Court considered that the jury was "legitimately entitled to take into account truth or falsity in its assessment of offensiveness, but it was only one part of a composite of considerations relevant in that respect".[8]

[11] Second, the Court noted that, in any event, on the particular facts the "truth or falsity analysis" on which Mr Nottingham's submission was based was "academic".[9] In this respect the Court said:[10]

> Much of what was published could at best be described as virulent opinion with only a tangential connection to anything arguably true. And in respect of many of the comments, we regard even that description as excessively generous. As the Crown said in closing, the posts were littered with "hate-filled [invective]" and were strongly misogynistic.

[12] The Court went on, after discussing various examples of the type of language and descriptions used, to say:

> [54] It was not unreasonable for the jury to identify such material as offensive. The assessment was one appropriately informed by the composite of community values which it represented. It is one that an appellate court would be more than usually reluctant to interfere with. And to the extent truth

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8 CA judgment, above n 4, at [50].
9 At [51].
10 At [51].

> or falsity did impact on the analysis (as the Judge recognised it had the potential to do, at least at the margins), assessment of the honesty and reliability of witnesses was again a classic jury function.

[13] As is apparent from these excerpts, the observations about the question of truth very much reflected the particular factual context and were limited to those facts. No question of general or public importance accordingly arises.[11] Against that factual background, nor does anything raised by Mr Nottingham give rise to the appearance of a miscarriage of justice arising from the Court's assessment.[12]

[14] The other proposed questions can be dealt with shortly. The issue as to the evidence about telephone calls was a jury matter. It does not meet the criteria for leave. The next of the proposed questions relating to the reasonableness of the verdicts on the suppression charges was considered by the Court of Appeal and the proposed question would reprise those arguments.[13] The Court, having set out the relevant evidence, accepted the Crown submission the circumstantial evidence provided a "very strong, if not overwhelming" Crown case.[14] Nothing raised by Mr Nottingham gives rise to the appearance of a miscarriage of justice as a result of this assessment.

[15] Nor does anything advanced by Mr Nottingham give rise to any appearance of a miscarriage of justice arising in respect to the other two proposed grounds of appeal we have set out.

[16] For these reasons, the application for an extension of time is granted and the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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11 Senior Courts Act 2016, s 74(2)(a).
12 Senior Courts Act, s 74(2)(b).
13 Mr Nottingham called evidence at trial to challenge his connection with the blog.
14 CA judgment, above n 4, at [28].