DISTRICT COURT OF QUEENSLAND

CITATION:	*R v Wolfe (a pseudonym)* [2024] QDCPR 5
PARTIES:	**THE KING** (respondent) **v** **JOHN WOLFE (*a pseudonym*)** (applicant)
FILE NO/S:	2145/22
DIVISION:	Criminal
PROCEEDING:	Pre-trial hearing
DELIVERED ON:	26 February 2024
DELIVERED AT:	Brisbane
HEARING DATE:	9 February 2024
JUDGES:	Farr SC DCJ
ORDER:	**1. Application is dismissed.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – PLEAS – PLEA OF GUILTY – WITHDRAWAL OF PLEA OF GUILTY – where the applicant seeks leave to withdraw his pleas of guilty – where the applicant is charged with one count of maintaining a sexual relationship with a child, six counts of indecent treatment of a child under 16 who is a lineal descendent and one count of rape – where the applicant claims he did not receive sound legal advice – where the applicant claims actions taken or not taken by his solicitors and counsel were not in the best interests of the applicant – where the applicant claims the plea of guilty to each offence was not attributable to a genuine consciousness of guilt – whether the applicant has proved that a miscarriage of justice has occurred
CASES:	*Borsa v R* [2003] WASCA 254 *Jamieson v The Queen* [2017] VCA 140 *Meissner v The Queen* (1995) 184 CLR 132 *R v Allison* [2003] QCA 125 *R v Carkeet* [2009] QCA 143 *R v Gadaloff* [1999] QCA 286 *R v Knudson* [2021] QCA 267 *R v Wade* [2011] QCA 289 *Weston v R* (2015) 48 VR 213 *White v R* [2022] NSWCCA 241

COUNSEL:	P Carasco for the applicant BM White for the respondent
SOLICITORS:	Zampatti Lawyers for the applicant Office of the Director of Public Prosecutions for the respondent

Introduction

[1] The applicant entered a plea of guilty to each of the following charges when arraigned on 19 July 2023 in the District Court at Brisbane:

(a) 1 x maintaining a sexual relationship with a child (Count 1);

(b) 6 x indecent treatment of a child under 16 who is a lineal descendent (Counts 2-5, 7, 8);

(c) 1 x rape (Count 6)

[2] He now applies for leave to withdraw his pleas of guilty to Counts 1-4 and 6-8.

Basis for application

[3] The applicant seeks leave to withdraw his pleas of guilty on the following grounds:

(a) he did not receive sound independent legal advice;

(b) the actions taken or not taken by KLM Solicitors and counsel, if any, were not in the best interests of the applicant; and

(c) the plea of guilty to each offence was not attributable to a genuine consciousness of guilt.

Nature of the offences

[4] The applicant is the paternal grandfather of the complainant, who at the relevant time was aged 9-14 years.

[5] During that passage of time the applicant and his wife would visit the complainant and her family at Emerald about one to three times a year. About once every two years the complainant and her family would visit the applicant and his wife at their home in Brisbane.

[6] It is alleged that the applicant sexually abused the complainant during such visits on most of the occasions.

[7] The complainant states that the applicant would touch her inappropriately when they sat together on the couch in the lounge room. She said "*pretty much every time he'd come (to visit her in Emerald) … something would happen*". She alleges that he

would make her sit with him on such occasions on the couch with a blanket over them.

[8] The complainant recalls six discreet incidents of sexual offending in Emerald when she was 9-12 years of age. The conduct involved the applicant:

(a) masturbating himself with the complainant's hand (twice) (Counts 2 and 3);

(b) touching her bottom with his penis (Count 4);

(c) exposing his penis to her (Count 5);

(d) digitally penetrating her vagina (Count 6); and

(e) touching her breasts (Count 7).

[9] The complainant has also alleged that the applicant would cause her to place her hand on his penis "*all the time*" when he visited.

[10] The complainant recalled that the last time she saw the applicant was when she visited him in Brisbane in 2018 when she was 14 years old. There was an occasion during that visit when he touched her breasts and vagina (Count 8).

Circumstances of detection and arrest

[11] In early February 2019, the complainant told her parents and sister that the applicant had done inappropriate things to her. Her father (the applicant's son) subsequently rang the applicant and confronted him with what the complainant had revealed. The applicant said "*Yes, I have done things, bad things. I've broken your trust. I should never have touched Abbey. I'm sorry for all of this, but you need to understand she was being mature beyond her years. She would throw herself on me and play around as a granddaughter does, but I thought it was much more than that and felt she knew what she was doing."*

[12] The defendant also apologised for his behaviour in text message conversations with his son.

[13] On 11 February 2019, the applicant presented himself to police headquarters at Roma Street. He participated in an interview under caution. He said that "*seven or eight years ago*"*, he* "*inappropriately touched*" his granddaughter at her home in Emerald.

He said she was seven or eight years old at the time. He said he had put his hand "*inside her pants and touched her lower region ... her pudenda*." He said he touched her "*near her vagina*." He denied that penetration occurred. When asked about the number of times he had done this, he said "*no comment*."

[14] Police commenced an investigation after the applicant's interview, however the complainant declined to provide a statement at that time.

[15] The applicant continued to make statements of apology and remorse to his son in text message conversations throughout 2019.

[16] In May 2021, the complainant told her father that the applicant had "*tried to put his penis in my bum*" and, in relation to another occasion, she felt her grandfather's hand go between her legs and that a finger penetrated her vagina.

[17] The complainant subsequently provided a recorded statement to police on 10 May 2021.

[18] Following that, the applicant's son telephoned the applicant and demanded an explanation from him. That conversation was recorded.

[19] The applicant said he had "*touched her private parts*." He said it happened during a conversation with the complainant which was "*a bit like a sex lesson*" because she was talking about sexual matters that she learnt from school. He said he touched "*her lips*" and warned her not to let a man "*go there*." He said he "*went too far in that sense*" but denied there was any penetration. He said his touching of her on this occasion "*was not something to do with paedophilia*."

[20] The applicant also said, that when he would sit with the complainant in the loungeroom watching television, his hand would be in "*inappropriate places but never ... any penetration*."

[21] The applicant said his behaviour was "*inappropriate*" towards the complainant, but "*it wasn't all the time*." When asked whether it occurred over a period of time, he said he could not remember. He said he "*abused [his] position as a grandparent*" by touching her inappropriately "*on more than one occasion*." He said this happened "*on several occasions*" but he cannot recall "*specific details*." He said he declined to

comment when the police asked him how many times he had touched the complainant because he "*honestly could not remember*." Towards the end of the phone conversation, the applicant said he had told police "*90 percent; the other 10 percent is reserved for a court case … and I've already told you a good bit of that 10 percent*." He said, "*if I'm accused of raping her, then that's just wrong*."

Relevant law

[22] The applicant has submitted that the correct legal test on an application such as this is that which is detailed in *White v R* [2022] NSWCCA 241. In that matter the Court discussed the relevance of the distinction between withdrawing a guilty plea prior to or after sentencing and the recording of conviction.

[23] Bell CJ, Button and N Adams JJ said at [62]:

> "A sensible distinction is to be drawn between allowing a plea to be withdrawn before conviction and going behind a guilty plea that has led to a conviction on appeal. The distinction between the two scenarios is brought home by consideration of the concept of finality, which is frequently mentioned in cases involving applications to withdraw a plea, as it was in the present case. Where a conviction has been entered and sentence passed, any attempt on appeal to disturb that outcome will necessarily impact on the finality of the verdict and sentence. On the other hand, where a conviction has not yet been entered even though the accused has pleaded guilty, nothing is final because it remains open for the Crown or the Court not to accept the guilty plea and, in the case of the Crown, to withdraw its acceptance at any time until the formal recording of a conviction and sentence. That was what *Maxwell* was all about."

[24] Then at [69] the Court said:

> "… While the onus of proof is certainly borne by the accused in an application for leave to withdraw a guilty plea, there is no principled basis for this Court to treat that onus as any "heavier" than in other circumstances where a party seeks to persuade a court to exercise a discretion in the interests of justice."

[25] This approach appears to be unique to New South Wales. It was expressly considered in Victoria in *Weston v R* (2015) 48 VR 213 at [128] where Whelan and Kaye JJA were "*unpersuaded that the suggested explanation based upon the distinction between applications made before and after conviction is to be found in existing authority*." In *Jamieson v The Queen* [2017] VSCA 140 at [101], the Court of Appeal in Victoria expressed approval of the views of Whelan and Kaye JJA in *Weston*. No

other jurisdiction appears to have adopted the *White* approach nor even considered it at the appellate level.

[26] Finally, I note that the applicant has cited no Queensland case where it has been suggested in obiter or judicial comment that the *White* test has application. The reason for that is obvious; it is not the test that applies in Queensland.

The Queensland test

[27] The relevant law in Queensland is that laid down by the High Court in *Meissner v The Queen* (1995) 184 CLR 132.

[28] In that matter, Brennan, Toohey and McHugh JJ held:

> *"A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests.*
>
> *A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence. The principle is stated by Lawton LJ in R v Inns:*
>
> *'The whole basis of a plea on arraignment is that in open court an accused freely says what he is going to do; and the law attaches so much importance to a plea of guilty in open court that no further proof is required of the accused's guilt. When the accused is making a plea of guilty under pressure and threats, he does not make a free plea and the trial starts without there being a proper plea at all. All that follows thereafter is, in our judgment, a nullity.'"*

[29] Dawson J[1] in *Meissner* said:

> *"It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not*

---

1 At p 157.

> *be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence."*

[30] This test was adopted in *R v Gadaloff* [1999] QCA 286. In a single unified judgment the Court endorsed the statements of Brennan, Toohey and McHugh JJ that "*a Court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in the exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a Court does act on such a plea, even if the person entering it is not in truth guilty of the offence*."

[31] The Court in *Gadaloff* concluded[2] that *"... because the law regards a plea of guilty made by a person in possession of all the facts and intending to plead guilty as '*the most cogent admission that can be made' *(Sagiv* (1986) 22 A Crim R 73, 81*), it is necessary that a miscarriage of justice be demonstrated before leave is granted to withdraw such a plea.*"

[32] In *R v Allison* [2003] QCA 125 the Court[3] affirmed that this was the test saying "*the judgment in the High Court in Meissner v R requires this Court to accept that a plea of guilty entered in open court by a person of full age and apparently of sound mind and understanding, and made in the exercise of the free choice in the interest of that person, causes no miscarriage of justice if a court acts on that plea, although the person entering it is not in reality guilty of the offence.*" The Court of Appeal has continued to apply that test.[4]

[33] In *R v Carkeet* [2009] QCA 143 at [24], Fraser JA (with whom Keane and Holmes JJA (as their Honours then were) agreed) said: "*When a person of full age and apparently sound mind and understanding enters a plea of guilty in open court in the exercise of a free choice, the circumstances in which that person might establish a miscarriage of justice resulting from the plea must be very rare indeed.*"

---

2 At [5].
3 At [23] per Jerrard JA, with whom McMurdo P and MacKenzie agreed.
4 *R v Wade* [2011] QCA 289 at [42] per Muir JA.

[34] His Honour also endorsed observations made in a Western Australia case, *Borsa v R* [2003] WASCA 254 at [20], that to show a miscarriage of justice in such a case there must be a strong case and exceptional circumstances.

[35] A comprehensive summary of this area of law was set out in *R v Knudson* [2021] QCA 267[5] at [43] and [44]:

> *"[43] The appellant bears the onus of persuading this Court that, in all the circumstances, it is appropriate to go behind his plea of guilty. It is no easy matter for an appellant to persuade a court to set aside a conviction on a plea of guilty. The entry of a plea of guilty constitutes an admission of all of the elements of the offence and a conviction entered on the basis of such a plea will not be set aside unless it can be shown that a miscarriage of justice has occurred.*
>
> *There are three well recognized circumstances in which a plea of guilty will be set aside: namely, where the appellant did not understand the nature of the charge or did not intend to admit guilt, where upon the admitted facts the appellant could not in law have been guilty of the offence, and where the guilty plea was obtained by improper inducement, fraud or intimidation. However, it should be observed that the court's jurisdiction on this appeal is not circumscribed other than by the existence of a miscarriage of justice.*
>
> *Where a miscarriage of justice has occurred depends on an examination of all of the relevant circumstances of the case.*
>
> *[44] In the present case, the principal ground relied upon by the appellant to establish a miscarriage of justice was that the appellant's plea of guilty was not a true admission of guilt because he did not appreciate the nature of the charge. In R v Mundraby, Gerrard JA observed:*
>
> > *'This Court was referred to the observations of Kirby P (as his Honour then was) in Loberti (1991) 55 ACrimR 120 at 121 – 122, cited by McPherson JA herein. Kirby P also added that:*
> >
> > > *'For good reasons, courts approach attempts at trial or an appeal in effect to change a plea of guilty or to assert a want of understanding of what was involved in such a plea with caution bordering on circumspection. This attitude rests on the high public interests in the finality of legal proceedings and upon the principle that a plea of guilty by a person in possession of all relevant facts is normally taken to be*

---

5 At [43]–[44].

an admission by that person of the necessary legal ingredients of the offence.'''"

[36] In Queensland the accused bears the onus of proving that a miscarriage of justice has occurred which courts will view with "*caution bordering on circumspection*" and there must be a strong and exceptional case to set aside a plea of guilty. There is not a miscarriage of justice just because a person may in fact not be guilty of the offence, provided that the person was of sound mind, and entered into the plea freely knowing what the offence was and the factual basis that underpinned it.

Evidence on application

Applicant's case

(a) Affidavit of applicant, sworn 16 January 2024

(b) Affidavit of Cathryn Zampatti, sworn 16 January 2024

(c) Affidavit of Cathryn Zampatti, sworn 9 February 2024

(d) Oral testimony of applicant

Respondent's case

(a) Affidavit of Emily Lazar, sworn 8 February 2024

(b) Affidavit of Manjot Kaur, sworn 8 February 2024 attaching:

(i) an Affidavit of Jane Bruxner with attachments, solicitor of KLM Solicitors, dated 8 February 2024; and

(ii) an Affidavit of Damien Robert Gates, Barrister dated 30 January 2024;

(c) oral testimony of Jane Bruxner; and

(d) oral testimony of Damien Robert Gates.

Submissions

Applicant's Submissions

[37] The applicant submits that he entered pleas of guilty to these charges only as a result of being advised by "his lawyers" that he had no prospects of successfully defending

these charges because the evidence against him was overwhelming[6] and his only option was to plead guilty.

[38] He further submits that his "solicitors", KLM Solicitors, failed to provide sound and independent legal advice for the following reasons:

(a) the applicant had made no admissions to committing the acts the subject of Counts 1, 2, 3, 4, 6, 7 and 8;

(b) the applicant had continued to deny his involvement in these offences to "his lawyers";

(c) that even on the prosecution case, a triable issue existed in relation to Counts 1 and 6 i.e.: that there was no evidence of some continuity or habituality of sexual contact and not just isolated incidents in relation to Count 1 and that he had denied digital penetration in his interview with police relevant to Count 6;

(d) they should have first attempted to achieve a "negotiated outcome" with the prosecution before advising him to plead guilty;

(e) they failed to collect the applicant's defence brief from his previous solicitors and that such brief contained "important defence strategy, evidence and lines of enquiry for trial" as well as information "with respect to a defence witness who was alleged by the Crown to have been present in the room for most of the offending"; and

(f) they exerted undue and improper pressure on him to plead guilty by advising him that Legal Aid (Qld) (LAQ) had only approved legal aid for him on the basis that he would plead guilty. He was also shown the letter from LAQ confirming that advice.

[39] The applicant submits that for these reasons a miscarriage of justice has occurred because he did not enter a free plea to each charge, rather, he entered pleas under significant and inappropriate pressure. He submits that this is also supported by the fact that he entered pleas of guilty to Counts 1 and 6 notwithstanding that each of those charges carries a sentence of mandatory life imprisonment.

---

6 Affidavit of Denver Nicholas Brodsky, sworn 16.1.23.

Respondent's submissions

[40] The respondent has submitted that the evidence reveals that the applicant entered pleas of guilty to each charge of his own free will in open court and was not the subject of any pressure to plead guilty, let alone undue or improper pressure. In that regard the respondent draws the court's attention to the following matters:

(a) KLM Solicitors received a grant of aid from LAQ on 19 June 2023 via direct referral, for solicitor and counsel to examine the brief, provide advice and cross-examine a protected witness pursuant to s. 21O(4) of the *Evidence Act (Qld)* 1977;[7]

(b) Damien Gates of counsel was briefed to review, provide advice and appear at a s. 21AK *Evidence Act (Qld)* 1977 pre-recorded hearing for the crossexamination of the complainant;[8]

(c) Mr Gates and Ms Bruxner conferred with the applicant on 14 July 2023 at which time:

(i) the scope of the funding and the lawyers' role was explained to him;[9]

(ii) Mr Gates took the applicant through the brief and brought specific attention to admissions/statements against interest made by him;[10]

(iii) the applicant was advised that each of Count 1 and Count 6 carried a sentence of mandatory life imprisonment;[11]

(iv) the applicant advised that he did not want put his grand-daughter through attending court and be cross-examined as she had been through enough and that he intended to plead guilty;[12]

---

7 Affidavit of Jane Bruxner dated 8.2.24, paragraph 1.
8 Affidavit of Jane Bruxner dated 8.2.24, paragraph 8.
9 Affidavit of Jane Bruxner dated 8.2.24, paragraph 14.
10 Affidavit of Jane Bruxner dated 8.2.24, paragraphs 16 – 18.
11 Affidavit of Jane Bruxner dated 7.2.24, paragraph 20.
12 Affidavit of Jane Bruxner, dated 8.2.24, paragraph 21 – 22.

(v) it was explained to him that his decision to plead guilty had to be made voluntarily and that it was entirely a matter for him as to what he chose to do;[13] and

(vi) the applicant confirmed that the decision to plead guilty was a "*conscious decision on my behalf*";[14]

(d) on the morning of 19 July 2023 Ms Bruxner attended upon the applicant in the cells of the courthouse at which time the applicant confirmed his decision to plead guilty;[15]

(e) Ms Bruxner advised him that he was under no obligation to plead guilty;[16]

(f) the applicant advised that he wanted to do what he could to make things up to his granddaughter;[17]

(g) Ms Bruxner advised the applicant that KLM Solicitors were not at that time funded by LAQ to appear at sentence but indicated that it was likely that funding would be approved *given the mandatory life sentence to be imposed*;[18]

(h) the applicant signed instructions to plead guilty which noted:

- the nature of the charges;
- the maximum penalties provided;
- he had the right to plead not guilty to any charge;
- that KLM Solicitors were only engaged to assist with the pre-trial hearing and did not have funding to represent the applicant at sentence or trial;
- he accepted the facts contained in the Statement of Facts;
- he understood that by pleading guilty he was admitting guilt to the offences; and
- he has given instructions to plead guilty of his own free will.

---

13 Affidavit of Damien Robert Gates affirmed 31.1.24, paragraph 39.
14 Affidavit of Damien Robert Gates affirmed 31.1.24, paragraph 41.
15 Affidavit of Jane Bruxner dated 8 2.24, paragraph 25.
16 Affidavit of Jane Bruxner dated 8.2.24, paragraph 28.
17 Affidavit of Jane Bruxner dated 8.2.24, paragraph 29.
18 Affidavit of Jane Bruxner dated 8.2.24, paragraph 31.

(i) the applicant was subsequently arraigned in bulk and entered pleas of guilty to all the charges;[19] and

(j) LAQ funding for sentence was approved on 2 November 2023.[20]

Consideration

[41] Both Ms Bruxner and Mr Gates were impressive witnesses who gave evidence consistent with each other, with their affidavits, with the known facts and with Ms Bruxner's contemporaneous notes.[21]

[42] On their evidence, the applicant was not subjected to any pressure to plead guilty and his decision to do so was made of his own free will knowing all relevant facts. I note though that the "Instructions to Plead Guilty" document does contain the following paragraphs:

> "8. I am aware that my sentence may involve a term of actual imprisonment. I have also been advised that I may be required to serve eighty percent of any term of imprisonment imposed before being eligible for parole.
>
> 9. I fully understand that although I have been given advice on an expected penalty range by my legal representatives, the sentencing court is not bound by, nor obliged to follow or accept, any submissions made by my legal representatives or the prosecution about the appropriate penalty. I understand that the court may impose a penalty that is greater than the range advised."

[43] Whilst the advice contained within these paragraphs is incorrect given that the applicant was facing two charges which carried mandatory life imprisonment as the penalty, Ms Bruxner explained that whilst their insertion into this document was an error, the applicant had nevertheless been advised correctly by her and Mr Gates as to the penalty that would be imposed on sentence.

[44] Ordinarily, whilst the provision of such conflicting advice might very well result in the potential for confusion on the part of a defendant and therefore potentially amount to a miscarriage of justice, that is not the case in this matter. The applicant conceded

---

19 Affidavit of Jane Bruxner dated 8.2.24, paragraph 36.

20 Affidavit of Jane Bruxner dated 8 2.24,paragraph 40; Ex. A to Affidavit of Denver Nicholas Brodsky affirmed 16.1.24.

21 Ex. DNB1 to Affidavit of Jane Bruxner affirmed 8.2.24.

in cross-examination that he at all times was aware that each of Counts 1 and 6 carried sentences of mandatory life imprisonment.[22]

[45] Unfortunately for the applicant, he was an unimpressive witness. His memory was selective and his recitation of events inaccurate. He placed considerable weight on the assertion that at the conference with Mr Gates and Ms Bruxner on 14 July 2023, he was presented with a document from LAQ advising that funding would only be granted for representation on a plea of guilty. This was patently untrue. As I have already noted, that document was dated 2 November 2023 – some three and a half months after the applicant had entered his pleas of guilty.

[46] I do not accept that Mr Gates and Ms Bruxner placed any pressure on the applicant to plead guilty.[23] In fact, I accept Mr Gates' evidence that he did no more than explain to the applicant the potential difficulties that may arise for the applicant in his trial if he maintained the instructions he was giving to that point in time.

[47] Additionally, the applicant had a further period of five days to reconsider his decision to plead guilty before arraignment was to occur, which is further evidence of such a decision being made of his own free will.

[48] The fact that he decided to plead guilty to two charges which carry a sentence of mandatory life imprisonment, whilst unusual, is not unheard of. And of course, he provided his reasoning in that regard, that is, that he had put his grand-daughter through enough and he did not want her to be the subject of cross-examination.

[49] I note though, as Chesterman J concluded in *R v Wade* [2011] QCA 289 at [73], that in an application of this nature for an offence that carries a mandatory term of life imprisonment, the consequences for the applicant are so serious that it is easier to discern a miscarriage of justice than in other cases if the entry of the pleas of guilty are allowed to stand.

[50] Of course, whilst the applicant maintains that he is not guilty of Counts 1, 2, 3, 4, 6, 7 and 8, as Dawson J in *Meisner* a person may plead guilty upon grounds which extend beyond that person's belief in his guilt and a conviction entered upon the basis

---

22 Transcript of Hearing, pp 1 – 10, ll 31 – 50.

23 In fact, they were not challenged in cross-examination in that regard.

of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred.

[51] No such miscarriage of justice is evident in this matter. The applicant was of sound mind, understood the nature of the charges and the consequences of pleading guilty, intended to admit he was guilty by the voluntary entry of pleas of guilty and the facts supported each of the charges as alleged.

[52] The applicant bears the onus of proving there has been a miscarriage of justice. I am not satisfied that he has done so, noting that such applications are viewed with "caution bordering on circumspection", whilst also noting of course the observations of Chesterman J in *Wade* when dealing with a case that involves a sentence of mandatory life imprisonment.

[53] The application is dismissed.