

When trials go wrong

More should be done about miscarriages of justice

Kathy Spencer

Alan Hall should never have been convicted of murdering Arthur Easton, and intentionally wounding Brendan Easton, in their Papakura home in 1985. Yet it took 36 years for Hall's convictions to be quashed by the Supreme Court.

Alan Hall had spent 18 of those 36 years in prison, finally being released on parole for a second time in early 2022.

Meanwhile, the person who actually committed the crimes remained at large.

What happened to Alan Hall is not an isolated case. Over the last 10 years, 841 people had convictions quashed, including 36 people convicted of homicide and related offences.

Other examples of the time taken to have a wrongful conviction for murder overturned are: Stephen Stone (26 years); Gail Maney (25 years); and Teina Pora (21 years).

Wrongful convictions raise two issues: how to prevent them from occurring in the first place, and how to get them overturned faster.

Causes of wrongful conviction

In the case of Alan Hall, the main causes of the wrongful conviction were: a witness statement was inappropriately and deliberately altered; crucial evidence was not disclosed to the defence; and the guidelines for police questioning were breached.

In its judgment, the Supreme Court said:

“...the Crown accepts that such departures from accepted standards must either be the result of extreme incompetence or of a deliberate and wrongful strategy to secure conviction. The Crown also acknowledges that without these departures there was insufficient evidence either to charge or to convict Mr Hall.”

The shortcomings of our justice system, and others around the world, have led to the establishment of Innocence Projects, usually based in law schools, to help convicted people who claim innocence.

Research done by the Innocence Network has identified several causes of wrongful convictions, including: eyewitness misidentification; invalid use of forensics; false confessions; and the use of informants. Failure to disclose evidence, misconduct by prosecutors, and plea bargaining or “charge negotiation” are other contributing factors.

Getting wrongful convictions overturned

When a person has been convicted of a crime they didn't commit, the onus is on them to prove their innocence.

Continuing with the example of Alan Hall's case, the 36-year-long effort to have his convictions overturned included an initial appeal in 1987 and three applications for the royal prerogative of mercy – all declined.

For the second and third applications, Hall's lawyer cited crucial eyewitness evidence that was only disclosed by Police in 1988 – this strongly suggested that Hall was not the person seen running near the Easton home.

It was painstaking work on the part of journalist Mike Wesley-Smith and by Alan Hall's defence team – Tim McKinnel and Kayta Pacquin, led by barrister Nick Chisnall KC – that finally led to a successful appeal to the Supreme Court in June 2022.

Madeleine Laracy and Emma Hoskin of Crown Law also deserve some credit. They supported the appeal, agreed that the convictions should be quashed, and enabled Alan Hall's name to be cleared.

A 2022 report into Alan Hall's case by Nicolette Levy KC makes very disturbing reading. It describes how Mike Wesley-Smith detailed serious flaws in the handling of Hall's case in September 2018. In exchanges that followed in 2019, a Crown Law manager says to a senior member of the Police:

"I don't think there's anything we can usefully do at this stage. If/when they bring an appeal we will have to deal with it at that stage."

While this correspondence took place and an appeal was prepared, Alan Hall remained in prison for another 41 months.

We now have an independent body, the Criminal Cases Review Commission (CCRC), to deal with individual claims of miscarriage of justice. It was established in 2020 as part of Labour's 2017 coalition agreement with NZ First.

The CCRC will also conduct investigations into issues that come to light through its review of individual cases – it has one underway now into eyewitness identification.

While the CCRC will no doubt make a valuable contribution, I don't think it's the whole answer.

What more needs to happen?

Between them, the NZ Police and Crown Law are responsible for the processes that sometimes see people convicted of crimes they didn't commit. In my view, there's a lot these agencies could do to make wrongful convictions less likely, and get them overturned faster.

For a start, Crown Law and the NZ Police should make sure that the process failures that led to the wrongful convictions of Alan Hall, Teina Pora, Stephen Stone and Gail Maney, for example, have been fixed.

Secondly, Crown Law and the Police should do something about it when important information is brought to their attention. If law changes are needed to facilitate a proactive approach, those changes should be put forward to the Government.

Thirdly, while there are prosecutions underway following Alan Hall's case, this is rare. Crown Law and the Police should do more to hold individuals to account for their roles in miscarriages of justice.

Finally, people working in our justice system need ways to report observed or suspected "departures from accepted standards" without fear of ruining their promotion prospects or being ostracised at work.

Had such avenues been available in the 80s and 90s, people like Alan Hall and Teina Pora might never have been charged.

Kathy Spencer was a Deputy Director-General in the Ministry of Health, a General Manager in ACC and a Tax Manager in the Treasury.