

# David Bain wins retrial after 'miscarriage of justice', rules top court

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David Bain: Murder conviction quashed but must remain in prison. File Photo

## David Bain case

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In an extraordinary move, the Privy Council has allowed convicted killer David Bain's appeal, saying there has been a substantial miscarriage of justice.

Bain will have to remain in prison awaiting his retrial.

The Privy Council handed down its judgment today after hearing from lawyers for Bain and the Crown in March.

Sitting in their final ever New Zealand case following the institution of New Zealand's own Supreme Court, the Law Lords today said although there had been a substantial miscarriage of justice, Bain must remain in custody.

Bain has maintained his innocence since being jailed for slaying five members of his family in their Dunedin home in 1994.

Bain, then 23, was found guilty in May 1995 of murdering his mother Margaret, his father Robin, sisters Arawa, 19, and Laniet, 18, and brother Stephen, 14.

All had died from .22 gunshot wounds to their heads.

Bain was arrested four days after making a frantic 111 call from the family home. Police responding to the emergency found him huddled in the house babbling incoherently.

Bain collapsed in the dock as guilty verdicts were read at the end of a 16-day trial.

Three weeks later he was sentenced to life imprisonment with a minimum non-parole period of 16 years.

Bain has argued that his father Robin killed the family then himself while Bain was out doing his early morning paper run.

His last ditch appeal for a retrial was heard by the Privy Council's judicial committee in London in March, after an earlier bid in the Court of Appeal for a retrial was turned down.

Michael Reed QC told the five Law Lords that Bain could not have committed the murders because bloody sock-prints found at the murder scene were too small to fit his feet and had to belong to his father.

Robin Bain had been identified as "clinically depressed" and perhaps "psychotic" and had motive because he was in an incestuous relationship with a daughter and was likely to lose his marriage, career and freedom if found out.

The Crown said Bain's story was full of inconsistencies and he had created a "fictitious suicide scenario".

Solicitor-General David Collins QC said bullet trajectories and blood spatters were inconsistent with the theory Robin Bain had committed suicide and proved he was shot by someone else.

Crown counsel John Pike said defence evidence on the bloody footprints was inconclusive.

Bloody opera gloves found in Stephen Bain's bedroom were too big for Robin Bain to have worn during the murders and none of his fingerprints were on the murder weapon, Mr Pike said.

He said "chaos" buried a lens under skating boots as Bain murdered his brother Stephen in a struggle.

But Mr Reed said the gloves were elastic and could be worn by anyone, the lens -- from spectacles Bain may have been wearing -- was dusty and hidden, and the gun had unidentified fingerprints on it.

He also presented new evidence about the gun having misfired, which he said supported Bain's innocence.