

IN THE SUPREME COURT OF NEW ZEALAND

**SC 56/2013
[2013] NZSC 93**

BETWEEN NOEL LEE BLAND
Applicant

AND THE QUEEN
Respondent

Court: Elias CJ, McGrath and Arnold JJ

Counsel: M M Wilkinson-Smith for Applicant
K A L Bicknell and A R van Echten for Respondent

Judgment: 7 October 2013

JUDGMENT OF THE COURT

The application for leave to appeal is refused.

REASONS

[1] Following a District Court jury trial, the applicant, Mr Bland, was convicted on one count of wounding with intent to cause grievous bodily harm. The Crown case was that he and two others set upon the victim outside a tavern, causing him serious injuries. Mr Bland was sentenced to imprisonment for six years.¹ He now seeks leave to appeal against sentence, on the ground that, since he was sentenced, he has rendered assistance to prosecuting authorities leading to the successful prosecution of one co-offender and is prepared to provide further assistance in the upcoming trial of the other co-offender.

[2] Although Mr Bland did not give evidence at his trial, his stance was that he played no part in the offending. He made two statements to this effect to the police.²

¹ *R v Bland* DC New Plymouth CRI-2010-021-661, 19 August 2011.

² As explained by the Court of Appeal in *Bland v R* [2012] NZCA 165 at [13] [*Bland* (CA)].

[3] Mr Bland appealed against his conviction and sentence to the Court of Appeal. Before the appeal was heard, Mr Bland gave a further statement to the police, in which he admitted that he had participated in the initial stages of the assault (although he denied causing any serious injury to the victim) and implicated his co-offenders.³ He also indicated that he was prepared to give evidence against them.

[4] On his conviction appeal, Mr Bland argued that new evidence had come to light since trial which rendered his conviction unsafe. This new evidence included his further statement to police. The Court of Appeal did not accept that the new evidence should be admitted and dismissed the conviction appeal.⁴ On his sentence appeal, Mr Bland raised a number of arguments,⁵ but significantly for present purposes did not argue that he was entitled to a discount for his willingness to provide assistance to the authorities.

[5] Following the determination of the appeal, Mr Bland gave evidence at the trial of one of his co-offenders, who was convicted. Mr Bland then applied to the Court of Appeal to recall its judgment,⁶ on the ground that the Court of Appeal had determined his sentence appeal in ignorance of a critical fact, namely, his assistance to authorities, which entitled him to a discount on sentence. The Court of Appeal dismissed that application,⁷ which led to the present application for leave to appeal.

[6] While we accept that the general issue of sentence discounts for assistance to authorities is a matter of public or general importance, we are not satisfied that it is necessary in the interests of justice for the Court to hear and determine this appeal.⁸ First, to the extent that such discounts do in principle raise issues of general or public importance, this case does not provide an appropriate context for their consideration. Second, there is no appearance of a substantial miscarriage of justice in this case. We say this because:

³ At [15] and [33].

⁴ *Bland* (CA), above n 2, at [49].

⁵ All of which were dismissed: *Bland* (CA), above n 2, at [55].

⁶ In reliance on the Court of Appeal's "inherent power to revisit its decisions in exceptional circumstances when required by the interests of justice": *R v Smith* [2003] 3 NZLR 617 (CA) at [36].

⁷ *Bland v R* [2013] NZCA 192 [*Bland* (CA) - recall].

⁸ Supreme Court Act 2003, s 13(1).

- (a) Although represented by senior counsel on his appeal, Mr Bland did not raise assistance as a ground of appeal against sentence. This Court does not usually entertain criminal appeals on grounds that, although available, were not raised before the Court of Appeal.⁹
- (b) Any assistance rendered by Mr Bland was belated and appears to have been self-serving rather than motivated by a genuine desire to cooperate with authorities. Mr Bland's stance at trial was that he had not participated in the assault at all. In his statement after trial, he accepted that he had participated but only in the initial stages and not in a way that caused any serious injury. Mr Bland then sought to use this post-trial statement in support of his conviction appeal.
- (c) It appears that, given the other evidence available to prosecuting authorities, Mr Bland's evidence was not essential to the successful prosecution of either co-offender.¹⁰ As a consequence of this (and of the previous consideration), any discount available to Mr Bland would have been modest, as the Court of Appeal noted in its judgment dismissing Mr Bland's recall application.¹¹

[7] For these reasons, we dismiss the application for leave to appeal.

Solicitors:
Crown Law Office, Wellington for Respondent

⁹ *Mankelow v R* [2007] NZSC 57 at [2].

¹⁰ See *Bland* (CA), above n 2, at [41]–[46].

¹¹ *Bland* (CA) – recall, above n 7, at [15].