

NOTE: THE CONFIDENTIALITY OF THE NAMES OR IDENTIFYING PARTICULARS OF ANY CLAIMANTS, REFUGEES OR PROTECTED PERSONS MUST BE MAINTAINED PURSUANT TO S 151 OF THE IMMIGRATION ACT 2009

IN THE SUPREME COURT OF NEW ZEALAND

**SC 76/2014
[2014] NZSC 169**

BETWEEN HAKAORO HAKAORO
 Applicant

AND THE QUEEN
 Respondent

Court: McGrath, Glazebrook and O'Regan JJ

Counsel: M E Goodwin for Applicant
 J E Mildenhall for Respondent

Judgment: 20 November 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Hakaoro seeks leave to appeal against a decision of the Court of Appeal dismissing his appeal against sentence.¹ The sentence against which he appealed was imposed in the Manukau District Court by Judge Paul after Mr Hakaoro pleaded guilty to six charges of providing immigration advice without a licence and one charge of holding himself out as an immigration adviser without a licence. The sentence imposed in the District Court was a term of imprisonment of one year and eight months.²

¹ *Hakaoro v R* [2014] NZCA 310.

² *Department of Labour v Hakaoro* DC Manukau CRI-2011-92-19106, 22 January 2014.

[2] The two grounds of appeal which Mr Hakaoro seeks to advance in this Court are that the Court of Appeal erred in law in finding that it was open to the District Court Judge:

- (a) to rely upon the probation officer's unsubstantiated opinion, expressed in the pre-sentence report, that Mr Hakaoro lacked remorse, even in the face of independent evidence to the contrary in the report of a restorative justice facilitator; and
- (b) to rely solely upon the probation officer's opinion in finding that home detention could not be granted.

[3] In *Burdett v R*, this Court made it clear that leave to appeal in relation to sentencing decisions of the Court of Appeal will be granted in only rare cases where some important question of general principle arises, such as the jurisdiction for the imposition of a sentence, or where there is plainly an appearance of a substantial miscarriage of justice.³

[4] The Court of Appeal heard evidence from Mr Hakaoro, his brother and the probation officer who wrote the pre-sentence report. The probation officer was cross-examined by Mr Hakaoro's counsel. The Court of Appeal, having heard that evidence, determined that the pre-sentence report accurately recorded Mr Hakaoro's position as it had been conveyed to the probation officer, subject to one error relating to the duration of Mr Hakaoro's relationship with his partner.⁴

[5] What is more, the Court also found that the pre-sentence report was incomplete because the probation officer had not been made aware of other facts relating to Mr Hakaoro which reflected badly on him. In particular, the probation officer was not aware that Mr Hakaoro had, before the offending for which he was sentenced had come to light, obtained an immigration adviser's licence, which was then cancelled by the Immigration Advisers Complaints and Disciplinary Tribunal.⁵ The Tribunal had upheld complaints against Mr Hakaoro for failing to provide the

³ *Burdett v R* [2009] NZSC 114 at [4].

⁴ *Hakaoro v R*, above n 1, at [17].

⁵ At [18].

professional services he had charged for, for being dishonest and misleading and for failing to meet minimum professional standards.⁶ The probation officer was also unaware of Mr Hakaoro's previous criminal history.⁷ Accordingly, the Court of Appeal was satisfied that the ground of appeal in that Court based on errors in the pre-sentence report was misguided.⁸

[6] The proposed grounds of appeal focus on the sentencing Judge's reliance on the pre-sentence report in relation to remorse and the inappropriateness of home detention. In light of the Court of Appeal's conclusions about the reliability and accuracy of the pre-sentence report, it is not arguable that the sentencing proceeded without any proper evidential basis or that the pre-sentence report contained any errors disadvantageous to Mr Hakaoro. The matters which Mr Hakaoro seeks to raise on appeal are factual matters which have been thoroughly considered by the Court of Appeal. No arguable point of appeal arises and there is no appearance of a miscarriage of justice. In those circumstances the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent.

⁶ See *BN & MN v Hakaoro* [2013] NZIACDT 51; and *BN & MN v Hakaoro* [2013] NZIACDT 64.

⁷ *Hakaoro v R*, above n 1, at [18].

⁸ At [19]–[24].