

IN THE SUPREME COURT OF NEW ZEALAND

SC 146/2013
[2014] NZSC 27

BETWEEN QUENTIN DUANE PUKEROA
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: R M Lithgow QC for the Applicant
 J E Mildenhall for the Respondent

Judgment: 26 March 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Pukeroa seeks leave to appeal¹ against the Court of Appeal's judgment of 18 July 2013, dismissing his appeal against his conviction for murder.² He also seeks leave to appeal with regard to sentence.

[2] In the High Court, Mr Pukeroa was sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 15 years.³ In setting the MPI at 15 years, the sentencing judge took into account the other offending of which Mr Pukeroa was

¹ The application for leave to appeal is out of time but no issue is taken with this by the Crown.

² *Pukeroa v R* [2013] NZCA 305 (O'Regan P, Miller and MacKenzie JJ).

³ *R v Pukeroa* HC Rotorua CRI-2009-063-697, 10 December 2010 (Wylie J).

convicted (attempted murder, injuring with intent to injure, participation in an organised criminal group and two counts of aggravated burglary).

Background

[3] The murder charge arose because Mr Pukeroa drove a utility through the front fence of the Herewini property, pursued the three Herewini brothers up the side of the house and ran over and killed the youngest of the three brothers, Mr Jordan Herewini. Jordan had tripped over a clothesline into the path of the vehicle.

[4] The Crown alleged that Mr Pukeroa committed a culpable homicide by the unlawful act of using a vehicle as a weapon, deliberately driving at the Herewini brothers and with the intention to kill Jordan, injure Jordan (and was reckless as to whether death ensued) or kill Jordan's brothers (or was reckless) with Jordan as the accidental victim.

Proposed conviction appeal

[5] The grounds of the proposed conviction appeal are that there was hyperbole in the Crown closing address, that the way the case was put was overly complicated and that the Judge should have explained the path to a manslaughter verdict in a balanced manner (and should not merely have summarised the contentions of counsel).

Proposed sentence appeal

[6] For the proposed sentence appeal, it is contended that s 23 of the Sentencing Act 2002 prohibits an uplift in the MPI from 10 years to 15 years. It is also submitted that the overall MPI is an excessive sentence, even if s 23 is not engaged.

[7] Section 23 provides that “[n]o sentence of any kind may be imposed cumulatively on an indeterminate sentence of imprisonment.”

Court of Appeal judgment

Conviction

[8] In the Court of Appeal it was suggested that the most obvious alternative to murderous intent was “crazy reckless driving” and an intention merely to chase and frighten the Herewini brothers, and that this would have led to a manslaughter verdict. On the evidence and having regard to the respective contentions of the parties, the Court of Appeal rejected the contention that this possibility should have been put to the jury by the Judge.⁴

[9] The defence position at trial was that the Crown had not proved that the “unlawful act” involved any specific intent to assault with the vehicle. If that had been accepted by the jury, this would have led to an acquittal. The alternative was to argue that, if there was an unlawful act, Mr Pukeroa’s intent was solely to cause damage to property. If accepted, this would likely have resulted in a manslaughter verdict. The defence position would have been undermined had the Judge directed in the manner contended for.⁵

[10] In the circumstances, the Court of Appeal did not consider that the Judge was required to put any other possible basis of conviction for manslaughter to the jury.⁶ The Court also did not consider that the question trail was overly complex. Any complexity arose because of the nature of the parties’ cases.⁷ The Court rejected the contention that there had not been a proper concentration on the option of the verdict of manslaughter in the summing up and question trail.⁸ The Court also rejected criticisms of the Crown’s closing address.⁹

⁴ *Pukeroa v R*, above n 2, at [18]–[21].

⁵ At [19]–[22].

⁶ At [23].

⁷ At [24]–[25].

⁸ At [26]–[27].

⁹ At [33].

Sentence

[11] With regard to the sentence imposed, the Court of Appeal endorsed the proposition that Mr Pukeroa's other offending justified the uplift of the MPI from 10 to 15 years as a starting point¹⁰ but reduced the MPI to 13 years to take provocation into account.

[12] The Court of Appeal rejected the submission that s 23 was engaged in this case. The Court said that under s 85, the totality of the offending must be considered. Further, under s 85(4), the most serious offence must receive the penalty that is appropriate for the totality of the offending. In this case, the most serious offence was murder. The only way in which the offending other than the murder could be reflected in the sentence was in fixing the MPI.¹¹

[13] The Court did not consider that fixing a MPI by taking into account other offending is the imposition of a cumulative sentence and therefore the prohibition in s 23 is not infringed.¹²

Discussion

[14] With regard to the proposed conviction appeal, the issues raised are related to the facts and circumstances of this particular case. No issue of public or general importance therefore arises. We do not consider that the points raised on behalf of Mr Pukeroa created a risk of a miscarriage of justice.

[15] As to sentence, the proposed argument does raise a matter of principle but we do not consider that it is available on the wording of s 23 of the Sentencing Act. Nor does any matter raised suggest that the MPI (as modified by the Court of Appeal) was excessive.

¹⁰ At [43].

¹¹ At [40]. The Court also discussed s 103(2) at [41].

¹² At [42].

Result

[16] We are not satisfied that it is in the interests of justice to give leave to appeal in this case. Therefore the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent