

IN THE SUPREME COURT OF NEW ZEALAND

SC 63/2015  
[2015] NZSC 137

BETWEEN                      SIONE FEHOKO MAKANESI  
   Applicant  
  
AND                              THE QUEEN  
   Respondent

Court:                      Elias CJ, William Young and Arnold JJ  
  
Counsel:                      Applicant in person  
   J E L Carruthers for Respondent  
  
Judgment:                      21 September 2015

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant, Mr Makanesi, was found guilty of supplying methamphetamine, possessing methamphetamine for supply and supplying a precursor substance at a jury trial in the Auckland District Court and was sentenced to 11 years imprisonment, with a minimum period of imprisonment of five years, six months.<sup>1</sup> Although he filed an appeal against both conviction and sentence, Mr Makanesi abandoned his conviction appeal through counsel and proceeded only with the appeal against sentence. That appeal was unsuccessful.<sup>2</sup> Mr Makanesi now seeks leave to appeal to this Court against his convictions and his sentence.

[2] In relation to his proposed conviction appeal, Mr Makanesi indicated in his application for leave to appeal that he wished to raise the issue of the competence of his appellate counsel. However, he has subsequently indicated that he wishes to

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<sup>1</sup> *R v Makanesi* DC Auckland CRI-2011-004-19490, 5 December 2013.

<sup>2</sup> *Makanesi v R* [2015] NZCA 134.

raise additional issues, including severance, competence of trial counsel, admissibility of evidence led by the Crown, fresh evidence and the conduct of the jury. Mr Makanesi has not provided any detail or background to these grounds.

[3] In the Court of Appeal, counsel for Mr Makanesi filed a memorandum dated 10 November 2014 advising that he had become involved as counsel after the notice of appeal was filed and that he had considered the file and discussed the position with Mr Makanesi. However, he did not at that point have clear instructions. Subsequently, on 17 March 2015, counsel filed a further memorandum advising that he now had clear instructions from Mr Makanesi, which were that he wished to abandon his conviction appeal and proceed only with the sentence appeal. This is what then happened.

[4] Because Mr Makanesi abandoned his conviction appeal, none of the matters which he wishes to raise on appeal to this Court has been addressed by the Court of Appeal. If Mr Makanesi wishes to pursue an appeal against his convictions, the appropriate course is that he applies to the Court of Appeal for leave to withdraw his notice of abandonment and reinstate his appeal. We understand that Mr Makanesi made such an application on 27 August 2015.

[5] In relation to the sentence appeal, it raises no point of principle, nor does there appear to be any risk of a substantial miscarriage of justice.

[6] For these reasons, the application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent