

IN THE SUPREME COURT OF NEW ZEALAND

SC 75/2015
[2015] NZSC 186

BETWEEN TATYANA KONDRATYEVA
Applicant

AND THE QUEEN
Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: N G Cooke for Applicant
M J Lillico and Y Moinfar for Respondent

Judgment: 4 December 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Ms Kondratyeva, was convicted on two charges under the Animal Welfare Act 1999 in relation to 50 cats at a Judge-alone trial before Judge Andrée Wiltens.¹ She was sentenced to 125 hours of community work and 12 months' supervision and was also prohibited from owning or exercising authority over animals for a period of ten years.² The cats were ordered to be forfeited.

[2] The Court of Appeal dismissed Ms Kondratyeva's appeal against both conviction and sentence.³ She now seeks leave to appeal to this Court. Although her initial application sought leave in respect of both conviction and sentence, Ms Kondratyeva now seeks leave to appeal only against her sentence and, in particular, the prohibition order.

¹ *R v Kondratyeva* DC Auckland CRI-2011-044-4684, 15 December 2014.

² *R v Kondratyeva* DC Auckland CRI-2011-044-4684, 19 December 2014.

³ *Kondratyeva v R* [2015] NZCA 266 (Stevens, Andrews and Gilbert JJ).

[3] On behalf of Ms Kondratyeva, Mr Cooke raises a number of points about the circumstances of the offending. He argues, for example, that Ms Kondratyeva was concerned to rescue and care for unwanted and diseased cats, that she alleviated rather than added to their suffering to the extent that her limited resources permitted and that only 22 of the 50 cats were suffering significant health problems. He submitted that the prohibition was disproportionate when considered in the context of sentencing in other animal welfare cases and submitted that there was a lack of clear criteria in relation to the making of prohibition orders.

[4] We are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. It raises no significant issue of sentencing principle that this Court can address, nor do we see any risk of a substantial miscarriage of justice.

[5] The focus of the sentence appeal before the Court of Appeal was on the prohibition order, in particular, whether the order should have been subject to an exception enabling Ms Kondratyeva to own two or three cats. The Court of Appeal noted that the sentencing Judge had specifically considered this possibility but had rejected it. The Court considered that there was no basis on which they could conclude that the sentencing Judge had erred in this respect.⁴

[6] The proposed sentence appeal would largely be a further appellate review of the sentence imposed, and the prohibition order in particular. As was explained in *Trotter v R*:⁵

It is not sufficient to contend that a substantial miscarriage of justice may occur if the sentence is not reviewed on a second appeal. Justice requires that sentences be imposed in accordance with the law and by the application of correct principles, with the opportunity for review on appeal. It does not require a further review of the severity or appropriateness of the sentence by way of second appeal. A further appeal is appropriate only when there is raised a question whether the sentencing process has seriously miscarried.

[7] To the extent that Ms Kondratyeva seeks to have this Court state criteria for the imposition of prohibition orders, that issue does not appear to have been raised

⁴ At [25].

⁵ *Trotter v R* [2005] NZSC 7 at [6].

before the Court of Appeal and it is not appropriate that this Court consider it in the absence of any consideration by that Court.

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

Solicitors:
Crown Law Office, Wellington for Respondent