IN THE SUPREME COURT OF NEW ZEALAND

SC 42/2017
[2017] NZSC 93

BETWEEN	MATHEW NGATAI TE MOANANUI Applicant
AND	THE QUEEN Respondent

Court:	William Young, Glazebrook and O'Regan JJ
Counsel:	M F Laracy and J W Griffiths for Applicant K S Grau for Respondent
Judgment:	20 June 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Te Moananui was convicted on one charge of assault with a weapon under s 202C(1)(b) of the Crimes Act 1961. That section provides:

> **202C Assault with weapon**
>
> (1) Every one is liable to imprisonment for a term not exceeding 5 years who,—
>
> …
>
> (b) while assaulting any person, has any thing with him or her in circumstances that prima facie show an intention to use it as a weapon.

[2] Mr Moananui's appeal against his conviction was dismissed on 28 March 2017.[1] Mr Te Moananui seeks leave to appeal to this Court.

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1 *Te Moananui v R* [2017] NZCA 88 (Wild, Simon France and Duffy JJ) [CA decision].

Background

[3] At the time of the offending Mr Te Moananui was serving a sentence at Rimutaka Prison. He refused to undergo a rub-down search before he went into an outside yard and so was ordered back to his cell. He returned towards his cell but refused to go inside it unless the corrections officer followed him in. An altercation followed. Mr Te Moananui reached into his track pants and pulled out an improvised metal weapon, commonly referred to as a shank.[2] Mr Te Moananui attempted to strike the corrections officer with the shank during attempts to restrain him and remove the shank from his possession.

[4] At trial Mr Te Moananui said that he had not intended to use the shank as a weapon. He had taken it from his pants only with the intention of distancing himself from the weapon.

[5] The trial judge instructed the jury that, if they accepted Mr Te Moananui's version of events, they could take it into account when assessing whether a reasonable observer would conclude that Mr Te Moananui intended to use the shank as a weapon. The trial judge said that the test was "not whether [Mr Te Moananui] in fact intended to use it" but "what a reasonable observer would at first sight conclude given what they saw and heard at the time".

Court of Appeal decision

[6] In the Court of Appeal, Mr Te Moananui argued that the words "prima facie" in s 202C(1)(b) should be read as transferring an evidential burden to the defendant to raise evidence of his or her actual subjective intent after the Crown has adduced evidence as to the prima facie circumstances objectively indicating that the defendant intended to use the object as a weapon. The Crown should then be required to prove an actual intention to use the weapon. He argued that an objective test breached his guaranteed rights under the New Zealand Bill of Rights Act 1990.[3]

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2 It was 32 centimetres in length, made from a round metal bar. One end had been sharpened to a point: CA decision, above n 1, at [2].

3 At [8]–[16].

[7] The Court of Appeal held that the proper interpretation of s 202C(1)(b) is that the Crown must prove beyond reasonable doubt "the existence of circumstances that prima facie show an intention to use the object as a weapon."[4] The defence can adduce evidence of his or her subjective intent, but the only relevance of such evidence is to inform the objective inquiry.[5] The Court considered that Mr Te Moananui's interpretation involved too much manipulation of the statutory language and did not accord with the legislative scheme and purpose.[6] Further, as the Court's interpretation did not displace the onus of proof on the Crown, neither ss 5 and 6 of the New Zealand Bill of Rights Act nor the decision in this Court in *R v Hansen*[7] assisted his argument.[8]

Grounds of application

[8] In Mr Te Moananui's submission s 202C(1)(b) can and should be interpreted consistently with the New Zealand Bill of Rights Act.[9] He advances the same proposed interpretation of the provision as he did in the Court of Appeal.

Disposition

[9] Nothing raised by Mr Te Moananui suggests a risk the Court of Appeal was wrong in its interpretation of the provision and there is no risk of a miscarriage of justice.

[10] The application for leave to appeal is dismissed.

Solicitors:
Public Defence Service, Wellington for Applicant
Crown Law Office, Wellington for Respondent

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4 At [37].
5 At [37].
6 The legislative history is discussed by the Court of Appeal at [35]. The Court also referred to the contrast with the specific defence in s 202A(5) : at [32]–[33].
7 *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1.
8 CA decision, above n 1, at [38].
9 Relying on the New Zealand Bill of Rights Act, ss 5–6 and also the decision of this Court in *R v Hansen*, above n 9.