

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 96/2024  
[2024] NZSC 158

BETWEEN KAIYA FRANCES SHUTE  
Applicant

AND THE KING  
Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: J-A Kincade KC and E P Priest for Applicant  
Z R Johnston for Respondent

Judgment: 14 November 2024

---

**JUDGMENT OF THE COURT**

---

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

---

**REASONS**

**Introduction**

[1] Ms Shute seeks leave to appeal against her sentence of two years and two months' imprisonment<sup>1</sup> following an unsuccessful appeal against sentence to the Court of Appeal.<sup>2</sup> Ms Shute was 18 years old at the time of the offending which gave rise to charges of assault with intent to injure, common assault and manslaughter. Her co-offender, Mr Grace, was also charged with manslaughter. She seeks leave to appeal from the Court of Appeal's decision on the basis the proposed appeal raises a general question about the approach to sentencing for young people convicted of serious offending.

---

<sup>1</sup> *R v Shute* [2024] NZHC 197 (Gault J) [Sentencing remarks].

<sup>2</sup> *Shute v R* [2024] NZCA 334 (Cooke, Collins and Moore JJ) [CA judgment].

## Background

[2] The offending comprised a number of incidents. The first incident led to a charge of assault with intent to injure the complainant, Ms Olson. The relevant facts were that, about three days prior to the incident leading to the most serious of the charges (manslaughter), Ms Shute confronted Ms Olson in a bar. She poured drinks over Ms Olson's head before punching and kicking her. The second incident leading to a further charge of assault with intent to injure took place three days later when, at the same bar, Ms Shute again assaulted Ms Olson, pulling her hair and dragging her to the ground.

[3] Shortly after this, there were various incidents involving another complainant, Mr Boyd, which involved pushing, punching and kicking by Ms Shute. Further, while a passenger in a vehicle, Ms Shute reached out of the rear passenger window and struck Mr Boyd on the head. These incidents led to three charges of common assault and a further charge of assault with intent to injure.

[4] The Crown case in relation to manslaughter was described by the trial Judge in these terms:<sup>3</sup>

... Mr Grace then leaned out of the driver's window and grabbed Mr Boyd by the shirt, and drove off at speed while holding onto Mr Boyd, causing him to stumble and run alongside the vehicle. Ms Shute then grabbed onto the back of Mr Boyd's shirt. Mr Grace and Ms Shute both held onto Mr Boyd's shirt while Mr Grace proceeded to drive along Gore Street and through the intersection without slowing down. Mr Grace then turned right onto Customs Street at speed, while Mr Boyd was still being held by the vehicle's occupants on the exterior of the vehicle, causing Mr Boyd to have to stand on the exterior step of the vehicle that is used to get in and out of the vehicle. The vehicle turned onto Commerce Street and was travelling towards Queen Street at speed when Mr Boyd fell off the exterior of the vehicle. As he fell, the right rear tyre of the vehicle ran over Mr Boyd's head and body. Mr Boyd died as a result of his injuries.

[5] Ms Shute pleaded guilty (at varying times) to the charges relating to Ms Olson and those relating to Mr Boyd. She was found guilty after trial of manslaughter by assault.<sup>4</sup> Her co-offender, Mr Grace, pleaded guilty to a charge of assault and was

---

<sup>3</sup> *R v Shute* [2023] NZHC 3835 (Gault J) at [11].

<sup>4</sup> Sentencing remarks, above n 1, at [2].

found guilty of manslaughter by dangerous driving and of failing to stop to ascertain injury.<sup>5</sup>

[6] In sentencing Ms Shute, the High Court took a starting point of three years' imprisonment for all of the offending against Mr Boyd. An uplift of nine months' imprisonment was imposed for the two assault with intent to injure charges against Ms Olson, allowing what the Judge said was "modest" credit for the late guilty pleas and having regard to the totality of offending.<sup>6</sup> The Court reduced the sentence by 40 per cent to reflect youth, good character, the contents of a psychological report, and rehabilitative prospects. There was a one-month discount for time spent on bail.

[7] The Court of Appeal dismissed the sentence appeal by a majority. The majority considered the uplift for the offending relating to Ms Olson was within range. The majority also agreed with the sentencing Judge's assessment as to an appropriate discount, distinguishing Ms Shute's case from that of *Diaz v R* where a 67.5 per cent discount was imposed.<sup>7</sup> Finally, looking at the matter in the round, the Court found the sentence was in range. In doing so, the Court said this was not the case to consider the alternative sentencing approach advanced in separate reasons in *Diaz* by Goddard J in relation to s 18 of the Sentencing Act 2002 which deals with offenders under the age of 18. That was because Ms Shute was not under 18 at the time of the offending.

[8] In *Diaz*, Goddard J suggested that where s 18 applies, the court should start by asking if home detention or imprisonment is the least restrictive outcome that is appropriate in the circumstances. If there is no appropriate less-restrictive outcome, so the choice is between home detention and imprisonment, the court would then ask whether a compelling justification is made out for imposing a prison term. The guidelines/tariff decisions would only be relevant if it was determined imprisonment was the least restrictive appropriate outcome.

[9] Cooke J in dissent in the present case would have substituted a sentence of two years' imprisonment, commuted to home detention and post-detention conditions.

---

<sup>5</sup> At [3].

<sup>6</sup> At [64].

<sup>7</sup> *Diaz v R* [2021] NZCA 426.

He took the view that whatever methodology was adopted, the sentence must be the least restrictive appropriate outcome. Cooke J also saw this case as indistinguishable on its facts from *Diaz* where, as described above, the discount was around 20 per cent higher than that for Ms Shute.

### **The proposed appeal**

[10] Ms Shute wants to argue:

- (a) The majority of the Court of Appeal erred by utilising traditional sentencing methodology. The approach of Goddard J in *Diaz* or a similar approach should be adopted in place of the current methodology.
- (b) Alternatively, lower youth culpability should be considered at the first stage of the sentencing exercise, as well as at the second.
- (c) The uplift of 9 months for the offending relating to Ms Olson was too high and discounts for personal mitigating features were inadequate.

### **Our assessment**

[11] The proposed appeal would raise general questions about the approach to youth sentencing.<sup>8</sup> However, we do not consider this case is an appropriate one to address this question. The Court would be doing so in the absence of any considered assessment of the approach of Goddard J in *Diaz* by the Court of Appeal which would be of assistance in considering the general question. Further, the approach of Goddard J addressed sentencing of a young person who came within s 18 of the Sentencing Act. Ms Shute does not.

[12] Nor do we see any appearance of a miscarriage of justice.<sup>9</sup> Given the seriousness of the offending, nothing is raised by the applicant that indicates the sentence adopted was outside of the available range.

---

<sup>8</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>9</sup> Section 74(2)(b).

## **Result**

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

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent