IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 117/2024
[2025] NZSC 43

BETWEEN	RUTH RAMIREZ-ALFONSO Applicant
AND	THE KING Respondent

Court: Williams, Kós and Miller JJ

Counsel: T D A Harré for Applicant
H G Clark for Respondent

Judgment: 16 April 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant is a Colombian national. She pleaded guilty to a single representative charge of importing cocaine. She unsuccessfully sought a discharge without conviction and was sentenced to three years and six months' imprisonment in the High Court.[1] She has since been issued with a deportation liability notice.

[2] The Court of Appeal dismissed her appeal against the High Court's refusal to grant a discharge without conviction and she now seeks leave to appeal to this Court on this issue.[2]

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1 *R v Ramirez-Alfonso* [2024] NZHC 1868 [Sentencing notes] at [41] and [53].

2 *Ramirez-Alfonso v R* [2024] NZCA 545 [CA judgment] at [53]. An appeal against sentence was also brought by the applicant and dismissed by the Court of Appeal. The appeal against sentence has not been pursued in this Court.

Background

[3] The applicant was a migrant worker employed on dairy farms in South Canterbury. The drug syndicate to which the applicant's offending was connected used farm workers as cover for their cocaine importation operation. The applicant admitted to being involved in the importation of 1.8 kilograms of cocaine by supplying a residential address for its receipt in three separate packages between 23 October 2019 to December 2021. She received $5,000 "as well as another cash sum which she claims was a lesser amount" for the assistance she provided.[3]

High Court

[4] The sentencing Judge accepted that the applicant played a lesser role in the offending, and while the payment received was significant given the limited extent of her involvement, it was not commensurate with the risk assumed.[4] The Judge found the quantum involved would ordinarily place the offending at the higher end of band four of *Zhang v R*,[5] but the Judge placed her offending in the middle of band two, taking into account the applicant's reduced role, her at least initial naivety and her lack of insight into the amount of drugs being imported.[6] He adopted a starting point of five years and six months' imprisonment, describing the offending as "serious".[7]

[5] Personal factors such as good character, the disproportionate impact of imprisonment in this country and guilty plea led to total discounts of 35 per cent.[8] In rejecting the application for discharge without conviction, the Judge found that the risk of deportation was not out of all proportion to the offending as it was a predictable risk faced by offenders in Ms Ramirez-Alfonso's position.[9]

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3 At [7].
4 Sentencing notes, above n 1, at [25].
5 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.
6 Sentencing notes, above n 1, at [29].
7 At [33].
8 At [45]–[51].
9 At [40]–[41].

Court of Appeal

[6] On appeal, the Court of Appeal agreed with the High Court's categorisation of the offending as serious.[10] The Court noted that the sentencing Judge had applied this Court's recent decision in *Bolea v R*,[11] noting, with approval, the factors considered by the sentencing Judge, including the fact that a conviction would significantly increase the real and appreciable risk of deportation, leading in turn to financial hardship and difficulties with personal relationships. But the Court accepted that a conviction was nonetheless "a proportional and unsurprising consequence" of this type of offending.[12] The Court of Appeal also considered that the applicant's ties to New Zealand fell short of those of the appellant in *Datt v R*, where the Court was satisfied that it ought to grant a discharge without conviction "by the finest margin" due to the consequences on the applicant's family if he were to be deported.[13]

Submissions

[7] The applicant argues that her offending was the result of naivety and exploitation. The applicant submits that these concepts require further consideration by this Court as there have been 28 decisions in the higher courts referring to these concepts, nine of which postdate the decision of this Court in *Berkland v R*,[14] and none of these decisions have engaged meaningfully with what naivety and exploitation mean.

[8] The applicant submits that the sentencing Judge accepted she was an exploited migrant worker drawn into the offending by her "friends". She submits that she was exploited in her occupation as a farm worker and, consequently, vulnerable to her co-defendants' manipulation. The applicant submits that the Court of Appeal did not properly engage with exploitation as a factor mitigating offender culpability. In this case, that exploitive context included the applicant's relative isolation in this country leading to significant vulnerability.

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10 CA judgment, above n 2, at [24].
11 *Bolea v R* [2024] NZSC 46, [2024] 1 NZLR 205.
12 CA judgment, above n 2, at [25]–[28] citing Sentencing notes, above n 1, at [40].
13 CA judgment, above n 2, at [29] citing *Datt v R* [2024] NZCA 297 at [55].
14 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

[9] The applicant refers to *Datt* and *Martin v R*.[15] The applicant submits that the exploitation of migrant workers presents a complex intersection of vulnerabilities: economic precarity, social isolation and power imbalances that create susceptibility to further exploitation. The Court of Appeal, it is submitted, failed to address these interrelated factors in a holistic way.

[10] For the Crown, it is submitted that the Court of Appeal was alive to the problem of the exploitation of migrant workers and that there is no need for further conceptual clarification of offending driven by naivety or exploitation. This Court's decisions in *Bolea* and *Berkland* were, the Crown submits, correctly applied by the Court of Appeal and there is no need for further explication.

Analysis

[11] While exploitation and vulnerability in the context of migrant labour is potentially a matter of general and public importance,[16] what amounts to exploitive behaviour and vulnerability are matters discussed in *Berkland* and *Bolea* and will, generally speaking, be intensely factual. We are not satisfied that, on these facts, the issue is squarely raised. It is relevant in that regard that, as the sentencing Judge noted, purely in terms of quantum, this offending was at the higher end of band four. Accordingly, we see no risk of a miscarriage of justice and do not consider it necessary in the interests of justice for this Court to hear and determine the proposed appeal.[17]

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

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

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15 *Martin v R* [2022] NZCA 285
16 Senior Courts Act 2016, s 74(2)(a).
17 Section 74(1) and (2)(b).