

IN THE SUPREME COURT OF NEW ZEALAND

**SC 34/2007
[2007] NZSC 58**

RAYMOND FRASER KARA

v

THE QUEEN

Court: Elias CJ, Blanchard and Anderson JJ
Counsel: T W Fournier for Applicant
D La Hood and M Inwood for Crown
Judgment: 23 July 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal in respect of a sentence. The applicant had pleaded guilty to a charge of causing grievous bodily harm with intent to do so, contrary to s 188(1) of the Crimes Act 1961. The offence occurred in the course of a fatal attack on an intoxicated man by the applicant and an associate, the latter subsequently being convicted of murder. The applicant was sentenced by the

High Court to three and a half years imprisonment but on an appeal by the Solicitor-General the Court of Appeal increased the term to five years.

[2] The Court of Appeal found that the High Court had erred in assessing the applicant's culpability relative to that of the associate rather than sentencing him on the basis of aggravating factors of the applicant's own conduct, in order to ascertain the appropriate starting point in terms of *R v Taueki*¹. There were six aggravating factors, one of which was a degree of premeditation which distinguished the case from one which was impulsive or a reaction to an unexpected event. The applicant's submission is that the Court of Appeal erred in its factual basis for that conclusion, because it took into account a manoeuvre of the car in which the applicant and his associate were passengers, before it stopped near the victim preparatory to the attack. The applicant submits there was no proper evidential basis for a factual conclusion as to the reason for that manoeuvre.

[3] The case involves no question of general or public importance. We are not satisfied that by reason of the Court of Appeal's approach there has been or may be a miscarriage of justice. Whether the car's manoeuvre was motivated by a decision to attack is insignificant in light of what occurred seconds later when it stopped and the applicant and his associate alighted in order to attack the victim. There was plainly a degree of premeditation, as well as the other aggravating factors.

[4] The application is dismissed.

Solicitors:
Crown Law Office, Wellington

¹ [2005] 3 NZLR 372.