

IN THE SUPREME COURT OF NEW ZEALAND

**SC 44/2011
[2011] NZSC 75**

PAUESI LEOFA BROWN

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: B J Hart for Applicant
A Markham for Crown

Judgment: 5 July 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This application seeks leave to appeal against the Court of Appeal's dismissal of Mr Brown's appeal against a sentence for murder of life imprisonment with a minimum period of imprisonment of 16 years.

[2] The victim, Mr Hemmings, was a passerby who intervened to prevent Mr Brown from attacking a woman. He bravely put himself between the woman and Mr Brown. When the woman ran away Mr Brown pulled out a knife walked up to the victim and stabbed him in the top left-side of his chest.

[3] The sentencing Judge adopted a starting point of 16 and a half years for the fixing of the minimum period of imprisonment. The complaint made for the applicant is that a reduction of six months was not adequate.

[4] In our view the proposed appeal has no merit. To begin with, the starting point could well have been higher. The sentencing Judge in fact rejected a Crown submission that the circumstances engaged s 104 of the Sentencing Act 2002 and required a minimum period of at least 17 years. The applicant had a long history of offending which justified an uplift from the appropriate starting point. Furthermore, in circumstances in which he had no tenable defence, the applicant waited until immediately before trial before entering a guilty plea so that until the very last moment the victim's family would have believed that they would have to endure the ordeal of the trial.

[5] The sentence was, if anything, lenient and the guilty plea was not deserving of any greater reduction in sentence. There is accordingly no appearance of any miscarriage of justice. The leave criteria are not met.

Solicitors:
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