

IN THE SUPREME COURT OF NEW ZEALAND

**SC 61/2011
[2011] NZSC 88**

MATIU JOSEPH PAORA PAHAU

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: S W Hughes QC for Applicant
J C Pike and M J Inwood for Crown

Judgment: 15 August 2011

JUDGMENT OF THE COURT

Leave to appeal against conviction and sentence is refused.

REASONS

[1] The applicant, a senior member of Black Power, was convicted of the murder, by stabbing, of the member of a rival gang. He was sentenced to life imprisonment with a minimum period of imprisonment of 17 years.¹ The killing occurred when a group of Black Power members, including the applicant, pursued a group from the rival gang back to the house from which they had earlier come following an altercation initiated by the Black Power group. The deceased was stabbed by the applicant on the deck of the house while the deceased was trying to enter the house through an open window.

¹ *R v Pahau* HC New Plymouth CRI-2008-043-4555, 16 August 2010.

[2] Leave is sought to appeal against both conviction and sentence.

[3] The Court of Appeal ²decided that it was open to the trial Judge not to give the jury a warning under s 122 concerning certain admissions that the applicant had made to another member of the group, Mr Murray, while in prison on remand. The Judge thought such a warning would risk the jury giving less than due weight to Murray's evidence. He covered the criticisms made of Murray's evidence in other ways in his address. As a result, the jury was clearly made aware it had to focus on the credibility of Mr Murray in considering the evidence. Overall we are satisfied that it is not arguable that the way the Judge handled this aspect of the trial gave rise to a miscarriage of justice. This disposes of the sole ground for the conviction appeal.

[4] On the sentence appeal, we accept the Court of Appeal's view that the circumstances brought the offending of the applicant within s 104(1)(c) having regard to the concept of an unlawful entry into or presence in a dwelling place. We accept that there is a sanctuary purpose implicit in the term "dwelling-place" that will be of significance in marginal cases. The circumstances of the present case where the deceased was stabbed while he was in the course of getting to (relative) safety by climbing into the house do not in our view provide an arguable basis for challenging the conclusions of the Court of Appeal on the meaning and application of s 104(1)(c).

[5] Giving leave to appeal would accordingly not serve the interests of justice. The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington

² *Pahau v R* [2011] NZCA 147.