

IN THE SUPREME COURT OF NEW ZEALAND

SC 22/2016
[2016] NZSC 59

BETWEEN ISAAC PAPAROA
Applicant

AND THE QUEEN
Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: I A Jayanandan for Applicant
M D Downs for Respondent

Judgment: 30 May 2016

JUDGMENT OF THE COURT

A Extension of time for filing application for leave to appeal granted.

B Application for leave to appeal dismissed.

REASONS

[1] The applicant was found guilty by a jury of aggravated robbery and he pleaded guilty to a charge of theft of a mobile phone. For present purposes, it is the aggravated robbery which is of primary significance.

[2] The applicant had been involved in the planning of the robbery and, in its immediate aftermath, he drove his two co-offenders away in a second stage get-away car (that is to say his co-offenders drove from the place the robbery occurred to the applicant, who was ready in a second car). The target of the robbery was a security van carrying cash. The co-offenders timed their robbery to the moment when the security guards were separated and the cash was most accessible. In the course of the robbery the disguised principal offender presented a firearm at a security guard and, following a struggle, made off with \$3,300.

[3] The applicant and the principal offender were both sentenced to eight years and three months' imprisonment. The third man (whose role was to drive the first get-away car) received a sentence of eight years six months' imprisonment. Minimum terms of imprisonment of four years and three months, four years and six months and three years and ten months were imposed on the principal offender, the first get-away car driver and the applicant respectively.

[4] The applicant's appeal to the Court of Appeal against sentence extended to the length of the prison term (eight years and three months) and the imposition, and length, of the minimum period of imprisonment.¹ This appeal was dismissed by the Court of Appeal and the applicant now seeks leave to appeal. The application is out of time but we grant an extension of time. The proposed appeal is confined to the minimum period of imprisonment.

[5] Contrary to the submissions advanced on behalf of the applicant, the proposed appeal does not raise any question of law of public or general importance. It rather concerns a relatively routine sentencing exercise, albeit in relation to serious offending. The Court of Appeal noted that the sentencing Judge had addressed himself correctly to the relevant statutory criteria provided for by subs 86(2) of the Sentencing Act 2002 and was not persuaded that there was any error in the Judge's approach.²

[6] Given the planning, premeditation and use of a firearm, a minimum period of imprisonment was always likely to be imposed.³ At sentencing, the applicant could point to some behavioural changes on his part and a risk of re-offending which was appreciably less than that of his co-defendants. The Judge had regard to his rehabilitative prospects (which explains the differential in minimum periods of imprisonment). But he was also entitled to have regard to the principles of holding

¹ *Thompson v R* [2015] NZCA 234 (Harrison, Andrews and Gilbert JJ).

² At [6]–[9].

³ See generally: Simon France (ed) *Adams on Criminal Law – Sentencing* (online looseleaf ed, Thomson Reuters) at [SA86].

the applicant to account, denunciation and deterrence. We therefore see no appearance of a miscarriage of justice.

Solicitors:
Crown Law Office, Wellington for Respondent