

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 2/2018
[2018] NZSC 33

BETWEEN AKOSITA VAEAFISI
Applicant

AND THE QUEEN
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
J E L Carruthers for Respondent

Judgment: 17 April 2018

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Ms Vaeafisi seeks leave to appeal against a Court of Appeal judgment dismissing her appeal against sentence.¹ Her application is made on the basis that the Court of Appeal should have aligned her sentence with that of her sister.

Background

[2] Ms Vaeafisi pleaded guilty to six charges of aggravated robbery and one charge of burglary. These offences were committed with members of her family in early 2015. She, and at times her sister, were the chief architects of the offending.

¹ *Vaeafisi v R* [2017] NZCA 545 (Harrison, Lang and Ellis JJ) [CA judgment].

[3] Three members of the family had earlier pleaded guilty: one on 15 October 2015 and the other two, including Ms Vaeafisi's sister, on 26 February 2016. The Crown appealed against the sentences imposed by the District Court on two of them, including Ms Vaeafisi's sister.

[4] The District Court Judge had adopted a starting point of nine years imprisonment for Ms Vaeafisi's sister. Discounts for her guilty pleas and her willingness to give evidence for the Crown had resulted in an end sentence of four years.² On appeal, Toogood J considered the starting point should have been not less than 13 years imprisonment with an end point of between six and seven years. As it was a Crown appeal, the sentence for Ms Vaeafisi's sister was only increased to five years and six months.³

Ms Vaeafisi's sentence

[5] Ms Vaeafisi pleaded guilty on 27 March 2017, her trial having been scheduled for 10 April 2017. On sentencing, Judge Andrée Wiltens adopted the starting point of 13 years. He allowed a discount of 35 per cent for her willingness to assist the Crown and lack of previous convictions and a further discount of 12.5 per cent for her guilty plea. The Judge applied a further discount of six months to align the sentence more closely with that of her sister.⁴ The end result was a sentence of six years and nine months imprisonment.

[6] Ms Vaeafisi argued in the Court of Appeal that her sentence needed to be reduced further to bring it into line with the sentence Toogood J imposed on her sister. The Court of Appeal did not accept that argument. The Court considered that Toogood J had been "extremely generous" in sentencing Ms Vaeafisi's sister to five years and six months imprisonment.⁵ In addition, the Court noted that this sentence had been imposed pursuant to an appeal by the Crown and that Ms Vaeafisi pleaded guilty at a much later stage than her sister did.⁶ The Court said that, in light

² *R v Vaeafisi* [2016] NZDC 26230 at [13]–[15].

³ *R v Kirk* [2017] NZHC 673.

⁴ *R v Waitai* [2017] NZDC 12651.

⁵ CA judgment, above n 1, at [17].

⁶ At [18]–[19].

of these factors, an independent and objective observer would understand why the sentences were different.⁷

Our assessment

[7] No point of general or public importance arises and nothing suggests that the Court of Appeal's analysis was wrong. Thus, there is no risk of a miscarriage of justice.

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent

⁷ At [21].