IN THE SUPREME COURT OF NEW ZEALAND

SC 66/2006
[2006] NZSC 88

DARRYL SHANE WILSON

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: M I Koya for Applicant
B J Horsley for Crown

Judgment: 18 October 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal delivered on 31 July 2006 dismissing his appeal against sentence. The applicant had been sentenced to 8 years imprisonment comprising 8 years imprisonment on a charge of wounding with intent to cause grievous bodily harm, 3 years (concurrent) on a charge of assault with intent to commit sexual violation and 3 months (concurrent) on an excess blood alcohol charge. The sentencing judge imposed a minimum period of imprisonment of 4 years.

[2] It is contended on behalf of the applicant that the District Court Judge, in sentencing the applicant for wounding with intent to cause grievous bodily harm, had been wrong to apply the sentencing guideline set by the Court of Appeal in *R v*

Taueki.[1] Application of that guideline was said to contravene s 25(g) of the New Zealand Bill of Rights Act 1990 and s 6(1) of the Sentencing Act 2002, because it was adopted after the commission of the offence. Effectively the applicant argues that he was entitled to be sentenced in accordance with the Court of Appeal's earlier decision in *R v Hereora*.[2]

[3] The applicant had pleaded guilty in the District Court to all charges. The undisputed facts disclosed very serious offending. The Judge took a starting point of 11 years from which he deducted 3 years for mitigating factors including his guilty pleas. With this deduction he arrived at the lead sentence of 8 years. The assault entailed repeated stabbing of a pregnant woman following an earlier sexual assault. The victim received a total of 14 stab wounds to her chest, abdomen and arms. The applicant followed up the attack by pursuing the victim and attempting to stifle her screams. The assaults came to an end only when the victim's two children arrived in response to her screams. Both the victim and the children have been severely traumatised.

[4] The Court of Appeal held that the principles in s 25(g) of the New Zealand Bill of Rights Act 1990 and s 6(1) of the Sentencing Act 2002 were not contravened by application of a higher sentencing guideline than had applied at the date of the commission of the offence, applying the decision of this Court in *Morgan v Superintendent Rimutaka Prison*.[3] There had been no change to the maximum penalty prescribed by law for the offence of wounding with intent to cause grievous bodily harm. In any event, the Court of Appeal was of the view that whether or not the sentencing judge had applied the guidelines in *R v Hereora* the sentence of 8 years imprisonment was well within range. We agree with that assessment and, indeed, think that the totality of offending means that the case was not properly to be regarded as one of wounding with intent to cause grievous bodily harm alone. The sexual assault which preceded the stabbing was additional serious offending which needed to be reflected in the total sentence and which underscores the Court of Appeal conclusion that the sentence was well within range.

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1 [2005] 3 NZLR 372.
2 [1986] 2 NZLR 164.
3 [2005] 3 NZLR 1.

[5] In those circumstances, the point of principle the applicant seeks to raise is moot. We are not satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. It raises no matter of general or public importance which is live.

Solicitors:
M I Koya, Auckland for Applicant
Crown Law Office, Wellington, for Respondent