

WERUMA MOHI WALKER

v

THE QUEEN

Court: Elias CJ, McGrath and William Young JJ

Counsel: C M Clews for Applicant
N P Chisnall for Crown

Judgment: 9 March 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal from a judgment of the Court of Appeal dismissing his appeal against a sentence of nine years imprisonment (with a six year minimum period) imposed on counts of aggravated robbery and kidnapping.¹

[2] We note that the applicant had been the leader of a group of four, the offending involved, inter alia, a home invasion and the severely traumatised 61 year old victim committed suicide three weeks later. The pleas of guilty were not entered until the day the trial was scheduled to start and followed the dismissal of the applicant's challenge to the admissibility of the victim's statement.

¹ *Walker v R* [2010] NZCA 534.

[3] In sentencing the applicant, Judge Weir concluded that the offending warranted a starting point sentence of ten years. He added a year to reflect the applicant's record and then allowed a discount of two years for the plea of guilty.² He explained this discount on the basis that there had been "some form of understanding between counsel that there should be a discount ... of approximately 20 per cent".³

[4] The applicant's primary complaint is that there was no separate allowance for remorse. Such remorse as was exhibited was at best strictured. The applicant apparently has no remorse over the offending but is sorry that the victim committed suicide.

[5] The structure of the Judge's sentencing remarks along with the starting point selected suggest that he did not treat the victim's death as an aggravating feature. To put this another way, the applicant could have expected to receive the same sentence if the victim had not killed himself. In this the applicant was treated with considerable leniency. The nearly 20 per cent discount was also extremely generous giving the timing and circumstances of the pleas. There was no occasion for any separate allowance for remorse.

[6] We are satisfied that the applicant's situation was fully and accurately addressed by Judge Weir. The sentencing process and outcome were carefully reconsidered by the Court of Appeal. All in all, there is no appearance of a miscarriage of justice and the proposed appeal has no prospects of success.

Solicitors:
Crown Law Office, Wellington

² *R v Walker* DC Rotorua CRI-2009-077-563, 26 March 2010 at [25].

³ At [2].