IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 33/2018
[2018] NZSC 65

BETWEEN	DONNY FALAKOA Applicant
AND	THE QUEEN Respondent

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

Counsel: Applicant in person
K Peirse-O'Byrne for Respondent

Judgment: 31 July 2018

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was sentenced to 13 years, six months' imprisonment for offending involving: aggravated robbery, assault with intent to rob, receiving stolen property, dangerous driving, unlawfully getting into a motor vehicle, aggravated assault, intentional damage, using a firearm against a police officer, theft of a motor vehicle, reckless discharge of a firearm and conversion of a motor vehicle.[1] He appealed against that sentence to the Court of Appeal on the basis that the 25 per cent discount allowed by Judge Blackie, the sentencing Judge (for pleas of guilty, mental health issues and remorse) from the starting point of 17 years, six months was inadequate.[2] In the Court of Appeal, counsel for the applicant contended that the discount should have been 30 per cent. This argument was addressed and dismissed

1 *R v Falakoa* [2015] NZDC 20574 (Judge Blackie).
2 *Falakoa v R* [2016] NZCA 202 (Harrison, Simon France and Woolford JJ).

by the Court of Appeal which commented that a discount of 30 per cent "could well be seen as unduly lenient".[3] The applicant now seeks leave to appeal to this Court.

[2] In his submissions, the applicant maintains that the overall sentence was excessive and complains that no discrete allowance was given for his mental health issues and remorse. The starting point adopted by the Judge was not challenged in the Court of Appeal. So we do not have the advantage of that Court's consideration of the issue. The same is also true of the challenge to the undifferentiated and global nature of the discount for mitigating factors. In respect of this latter issue, there is also the practical consideration that, providing the total allowance for mitigating factors was appropriate (which is what the Court of Appeal concluded), its make-up is of limited practical moment.

[3] We are conscious that the sentence imposed was severe. But, having regard to the considerations just mentioned, we have reached the view that the proposed appeal raises no issue of public or general importance and there is no appearance of a miscarriage of justice.[4]

[4] The applicant also seeks to challenge his conviction for using a firearm against a police officer. This charge was laid under s 198A(1) of the Crimes Act 1961. He contends that he should have been prosecuted under s 198A(2) which carries a lower maximum penalty. On our review of the summary of facts, we are of the view that the charge in issue was appropriately laid under the former subsection. We note as well the applicant did not appeal to the Court of Appeal against his conviction on this charge and he has advanced nothing to suggest that there are exceptional circumstances of the kind which would warrant granting leave to appeal direct to this Court.[5]

[5] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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3 At [7].
4 Supreme Court Act 2003, s 13(2); and Senior Courts Act 2016, s 74(2).
5 Supreme Court Act 2003, s 14; and Senior Courts Act 2016, s 75.