IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 4/2023
[2023] NZSC 67

BETWEEN	GARATH RICHARD COLLINGS Applicant
AND	THE KING Respondent

Court: O'Regan, Williams and Kós JJ

Counsel: D J Matthews for Applicant
E J Hoskin for Respondent

Judgment: 14 June 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Garath Collings, was convicted of murdering Mr Robin Friend.[1] He was sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 11 years.[2] His sentence appeal to the Court of Appeal was dismissed.[3] He now seeks leave to appeal to this Court arguing that the circumstances of the offending justified a departure from the statutory default of life imprisonment.

Facts

[2] On 13 July 2020, Mr Collings drove himself and another male to the home of Ms Kyla Fielding, intending to pick her up. When Ms Fielding got into the car, the

1 Crimes Act 1961, s 167.
2 *R v Collings* [2022] NZHC 1275 (Mander J) [Sentencing remarks].
3 *Collings v R* [2022] NZCA 605 (Gilbert, Brewer and Moore JJ) [CA judgment].

victim, with whom Mr Collings was acquainted, also approached the car. What happened next was captured on a nearby CCTV camera. A short "bickering" exchange ensued between the two men through the driver's window. Mr Friend then left, walking round the front of the vehicle whereupon Mr Collings deliberately drove at and over Mr Friend, stopping only when he crashed the car into a tree some distance away. Mr Friend suffered crush injuries and died on the scene.[4]

[3] A psychiatric report obtained by Mr Collings advised as follows:

> It is likely Mr Collings' threat processing mechanisms in his brain were deranged at the time, due to the combined effects of grief [at the recent death of his daughter], [long-term] PTSD and methamphetamine abuse.

[4] Relevantly, Mr Collings alleges that as Mr Friend walked away, he threatened Mr Collings' family. He said to Mr Collings words to the effect of "your kids better watch it". Ms Fielding confirmed this in her evidence and the Crown accepted at trial that such a threat was a reasonable possibility. That said, the passengers described the exchange between Mr Collings and Mr Friend as "not particularly noteworthy", although it had caused Mr Collings to "become a wee bit flustered".[5]

Manifestly unjust sentence

[5] Section 102(1) of the Sentencing Act 2002 provides that an offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a life sentence would be manifestly unjust.

Lower court judgments

[6] At sentencing Mander J acknowledged that the alleged threat to Mr Collings' family, combined with his grief, depressive state and after-effects of methamphetamine use, may have played a part in his reaction. However, the Judge found these factors were not such as to displace the statutory presumption of life imprisonment for murder. Such a sentence was not manifestly unjust in terms of the

---

4 The facts are laid out in the Sentencing remarks, above n 2, at [3]–[10].
5 Sentencing remarks, above n 2, at [6].

s 102 test. The Judge emphasised the brutality of the attack by motor vehicle. He accepted that Mr Collings' reaction was impulsive, but it was nonetheless certain to kill in a matter of seconds.

[7] On appeal, the Court of Appeal acknowledged that Mr Collings' personal circumstances were unfortunate and influenced his offending, but not to the extent seen in cases where courts had found a life sentence to be manifestly unjust. Further, the Court considered that Mr Collings' mental health was not so compromised that he had no control over his actions. Nor was it the kind of "justified loss of self-control" seen in battered defendant cases.[6] The Court accepted that premeditation was limited and the offending largely reactive. But, the CCTV footage showed Mr Collings did not slow down or stop after hitting Mr Friend, instead driving until the tree stopped the car.

[8] The Court also considered that the alleged threat was insufficient to situate Mr Collings' culpability below the threshold in s 102. The exact words of the alleged threat were unclear and the evidence of the others in the car was that the exchange was brief and "not particularly noteworthy".

Submissions

[9] Counsel for Mr Collings submits that a sentence of life imprisonment is manifestly unjust in his case because of the circumstances of the offending. Counsel submits that Mr Friend's words were a form of provocation when viewed in this context, intrinsically linked to Mr Collings' bereavement and poor mental health. Without these factors the threats would not have affected him, and the offending would not have occurred. Counsel further submits that insufficient weight was given to the psychiatric evidence that the threat processing mechanisms in Mr Collings' brain were likely to have been deranged at the time.[7]

[10] Counsel argues that, seen in proper context, the attack was provoked, impulsive, and took a mere five seconds from start to finish. The Court of Appeal, it

---

6 CA judgment, above n 3, at [22].

7 Note that Mr Collings' alternative submission in the Court of Appeal, that the MPI should not have exceeded 10 years, is not pursued in this Court.

was argued, underweighted these factors and overstated Mr Collings' ability to slow down or stop the attack once it was launched. It is submitted therefore that declining leave would result in a substantial miscarriage of justice if it transpired that a finite sentence should have been imposed.[8]

[11] Finally, Mr Collings submits that the appeal raises a matter of general or public importance.[9] That is because few have successfully displaced the presumption of life imprisonment for murder, and the prospect this case presents of expanding the reach of the exception necessarily gives rise to a question of general or public importance.

[12] The respondent opposes leave, submitting that this was an orthodox application of the factors in s 102 and does not need to be revisited in a second appeal. No issues of particular significance arise on the facts. The respondent submits that the mental health considerations in *Van Hemert v R* were far more serious than in the present case.[10] Further, the respondent submits this case does not "plainly" give rise to an appearance of a substantial miscarriage of justice. Citing *Trotter v R*, it is submitted that it is not sufficient to argue that a miscarriage will occur if the sentence is not reviewed.[11]

[13] The respondent submits that Mr Collings' approach would require the Court to routinely review murder sentences. Each s 102 case turns on its own, fact-specific assessment. Appeals against sentence will, it is submitted, only infrequently raise a question of general or public importance, and this case does not.[12] Nor is it a case where further elucidation regarding the proper application of s 102 is required.

Analysis

[14] On any view of it, Mr Collings' attack was deliberate rather than the result of a loss of control and, though provoked, his reaction to the provocation was grossly disproportionate.[13] Further, while Mr Collings struggled generally with addiction and

---

8 Senior Courts Act 2016, s 74(2)(b).
9 Senior Courts Act, s 74(2)(a).
10 *Van Hemert v R* (SC 38/22) heard on 18 November 2022, with judgment reserved.
11 *Trotter v R* [2005] NZSC 7.
12 *Mist v R* [2005] NZSC 29.
13 *R v Te Maru* [2020] NZHC 2084.

poor mental health, we can see no reason to revisit the Court of Appeal's evaluation of the role these matters played in Mr Collings' actions. The Courts below, accordingly, applied settled principles to their evaluation of the circumstances of the offence and the offender as directed by s 102.

[15] It follows that there is no reasonable prospect of establishing that the sentence imposed was manifestly unjust and no appearance of miscarriage. Nor does the proposed appeal raise any matter of principle.

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent