



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

14 NOVEMBER 2022

MEDIA RELEASE

KAINE VAN HEMERT v THE KING

(SC 38/2022)

Hearing in the Supreme Court Friday 18 November

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal.

Background

Following a sentence indication, Mr Van Hemert pleaded guilty to the murder of Ms Te Pania. In sentencing Mr Van Hemert, on 7 December 2020, the High Court Judge determined that a sentence of life imprisonment would be manifestly unjust so that the presumption in favour of life imprisonment in s 102 of the Sentencing Act 2002 did not apply. A finite sentence of 10 years' imprisonment with the requirement that Mr Van Hemert serve a minimum period of imprisonment (MPI) of six years and eight months was imposed.

On appeal against sentence by the Solicitor-General to the Court of Appeal, the Court, on 22 June 2021, concluded the High Court had misapplied s 102 with the result that there was no basis to depart from the presumption that life imprisonment should be imposed. The appeal was allowed. The Court did not resentence Mr Van Hemert but, rather, the matter was remitted back to the High Court for a further sentence indication which was to be consistent with the reasons given by the Court of Appeal in allowing the appeal. A further sentence indication was provided and Mr Van Hemert maintained his guilty plea. He was resentenced on 28 October 2021 to life imprisonment with an MPI of 11 and a half years.

This appeal

Mr Van Hemert appealed out of time to this Court. After an oral leave hearing, this Court determined that the best course was to grant an extension of time to enable Mr Van Hemert to appeal both the Court of Appeal judgment and the High Court resentencing judgment. The approved question was whether the Court of Appeal was correct to conclude that the



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presumption in favour of life imprisonment in s 102 was not displaced given the circumstances of the offence and of Mr Van Hemert.

In its leave judgment, this Court directed appeal counsel to focus on the correctness of the Court of Appeal's interpretation, and application, of s 102. There were two particular issues arising from the approach to s 102 in this case, which counsel were also directed to address. The first was whether the Court was correct to treat the circumstances of the offending (the brutality of the murder and Ms Te Pania's vulnerability) as having "precluded" a departure from the presumption of life imprisonment. The second matter related to the correctness of the Court's assessment of Mr Van Hemert's circumstances. In particular, this Court referred to the discussion of the extent to which Mr Van Hemert's mental illness could or should be treated as distinct from other aspects of his behaviour, such as his heavy use of alcohol and drugs, and his anger over the relevant period.

The Criminal Bar Association of New Zealand and the Defence Lawyers Association New Zealand | Te Matakahi have been granted leave to intervene in the appeal and appear at the hearing to present oral submissions on issues of general principle raised by the appeal.

Viewing of hearing

The Courtroom is open to the public in accordance with the [Supreme Court Operating Protocols](#).

Contact person:

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Supreme Court leave decision: [\[2022\] NZSC 94](#) (3 August 2022)