



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

13 OCTOBER 2023

MEDIA RELEASE

ELIZABETH MARIA BOLEA v THE KING

(SC 25/2023)

Hearing in the Supreme Court Tuesday 31 October

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. A direct link to the judgment is included at the end of this synopsis.

Background

In July 2022, the appellant pleaded guilty to one charge of participating in an organised criminal group. The appellant's partner was a nominee of the Comancheros Motorcycle Club. In August 2020, the appellant drove her partner and another person from Auckland to Christchurch in a car containing "at least 500 grams" of methamphetamine. The appellant knew that there was methamphetamine in the vehicle, although she did not know the exact amount, and knew that it was to be used for supply. The appellant is an Australian national and holds a New Zealand resident visa. Under s 161(1)(b) of the Immigration Act 2009, her conviction makes her liable for deportation.

Lower Courts

At sentencing, on 16 November 2022, the appellant applied to be discharged without conviction. The courts' power to discharge an offender without conviction is governed by ss 106 and 107 of the Sentencing Act 2002. A court can only discharge an offender without conviction if "the court is satisfied that the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence".

The appellant and her partner have a young daughter. The appellant's partner has been deported from Australia and is unable to return. The appellant submitted that if she is deported to Australia she will take their daughter with her, and the daughter will be permanently separated from her father. The appellant also submitted that a conviction would prejudice her long-term employment opportunities.

The sentencing Judge declined to discharge the appellant without conviction. Relying on *Zhu v R* [2021] NZCA 254, he found that liability to deportation would be a consequence of conviction but that "deportation itself, if that occurred, would be a consequence of [the

appellant’s] offending, not of the conviction”. The Judge recognised that a conviction would have some consequences for the appellant’s future employment but noted that, despite the offending, she had recently been offered a full-time position with her current employer. The consequences of the conviction were not out of all proportion to the gravity of the offending. The appellant was sentenced to four months’ home detention.

The appellant appealed her conviction and sentence to the Court of Appeal, inviting the Court to depart from *Zhu v R*. On 6 March 2023, the Court also found that deportation would be a consequence of the offending and not the conviction, and that the risk of deportation was not sufficiently disproportionate in this case. The appeal was dismissed.

This appeal

On 22 June 2023, the Supreme Court granted leave to appeal the decision of the Court of Appeal. The approved question is whether the Court of Appeal was correct to dismiss the appeal.

Viewing of hearing

The courtroom is open to the public.

The panel

The Hon Justice Williams	The Hon Justice O’Regan	The Hon Justice Glazebrook	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

Counsel

- Elizabeth Maria Bolea (Appellant): *A J Bailey, E Huda and R J T George*
- The King (Respondent): *M J Lillico, R M A McCoubrey and M C M Nash*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 39](#) (6 March 2023)

Supreme Court leave decision: [\[2023\] NZSC 72](#) (22 June 2023)