

**In the Supreme Court of New Zealand**

**I Te Kōti Mana Nui o Aotearoa**

SC25/2023

**Between**

**Elizabeth BOLEA**

Appellant

**And**

**The King**

Respondent

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## **Respondent's synopsis of argument**

**30 October 2023**

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**Judicial Officer:** Glazebrook, O'Regan, Ellen France, Williams and Kós JJ

**Next event:** Substantive hearing, 31 October 2023

**MC.**

**Alysha McClintock**

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# Respondent's synopsis of argument

May it please the Court

**In summary, the Crown's argument proceeds as follows:**

**The Court of Appeal was correct to dismiss Ms Bolea's appeal because:**

- 1 It is accepted that if Ms Bolea is not convicted, she is not liable for deportation (submissions at [3.10]).
- 2 However, whether a potential outcome (here, deportation, according to Ms Bolea) is a consequence of a conviction is a fact-specific assessment, requiring an exercise of judgement in each case (*Zhu v R* [2021] NZCA 254 at [25]; appellant's authorities tab 6 at 54–55).
- 3 The relevant consequence here is liability to deportation (submissions at [3.3]; [3.5]–[3.7]).
- 4 There will be cases where mere liability to deportation is disproportionate. And in those cases, the Court does not consider the likelihood of deportation. Rather, the Court considers that liability to deportation is disproportionate (submissions at [3.9]). This is not such a case (submissions at [3.11]).
- 5 Further, there are (rare) cases where deportation is considered very likely on the evidence, and that is taken into account (submissions at [3.8]; *Rahim v R* [2018] NZCA 182; appellant's authorities tab 9 at 74). This is not such a case (submissions at [3.11]).
- 6 *Sok v R* [2021] NZCA 252, (2021) 29 CRNZ 962 (appellant's authorities tab 4) and *Zhu v R* (above) do no more than reflect existing case law with which the decision under appeal remains consistent (submissions at [3.14]–[3.17]).
- 7 The rights-based process mandated by the Immigration Act 2009, which requires the decision maker to consider a broad factual matrix, means

that were deportation to occur in the present case, it ought properly and “in a very real sense” to be viewed as a consequence of the offending (submissions at [2.4]–[2.13]).

**The test to be applied**

- 8 That consequence must be balanced against the fact that Ms Bolea pleaded guilty to an offence with a maximum sentence of ten years’ imprisonment, in circumstances that attracted a starting point of 18 months’ imprisonment (submissions at [2.1]–[2.2] and [4.13]–[4.17]). In those circumstances, exposure to liability for deportation is not out of all proportion to the offending (submissions at [3.11], and see also appellant’s submissions at [93]).

**Even if deportation is the correct consequence to consider, deportation would not be disproportionate in this case**

- 9 In the alternative, were the Court to view deportation as a consequence of the conviction, deportation following the rights-based process referred to above would not be out of all proportion to the offending (submissions at [4.1] and [4.18]–[4.25]; see also *Truong v R* [2023] NZSC 119; respondent’s authorities at tab 2 and submissions at [4.3]–[4.12]).

Date: 30 October 2023

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Robin McCoubrey | Maddy Nash  
Counsel for the respondent

**TO:** The Registrar of the Supreme Court of New Zealand

**AND TO:** The appellant