Te Tari Ture o te Karauna
Crown Law

04 February 2025

McSkimming sentencing appeal consideration – Summary of reasoning

Introduction

Following the sentencing of former Deputy Police Commissioner Jevon McSkimming, several requests have been made by members of the public to the Solicitor-General, requesting an appeal or raising concerns with the outcome and the Judge's reasoning.

Decisions in relation to Solicitor-General appeals are made independently from external influences (e.g. public opinion) and are made in accordance with the Solicitor-General Prosecution Guidelines[1] and any relevant case law that applies.

Having reviewed the matter, the Solicitor-General will not be appealing the sentence.

While we do not usually publish our reasons for decisions on appeal requests, in this case we recognise the high level of interest from both the public and the media and have decided to summarise the key points. We do not propose to provide further information or comment on the decision.

The requirement for consent and the test for a Crown appeal

Under s 246 of the Criminal Procedure Act 2011, consent of the Solicitor-General is required prior to any prosecution appeal against sentence. The Deputy Solicitor-General (Criminal) acts on the Solicitor-General's behalf (under delegated authority) to decide whether consent should be given in any such case.

On any appeal against sentence, the Crown must satisfy the Court both of an error in the sentence imposed and that a different sentence should be imposed.

For a different sentence to be imposed, case law is clear that the appellate Court will intervene on a Crown appeal and impose a higher sentence only if the sentence is considered "manifestly inadequate" when viewed against other cases of its kind and on its facts.[2] A close factual comparison is required. This test sets a high threshold, and it is not enough to say a different Judge may have imposed a higher sentence - the sentence imposed must be so low as to be outside the range of acceptable legal outcomes for that type of case.

---

1 Solicitor-General's Prosecution Guidelines – Appeal Guidance Prosecution Guidelines » Crown Law

2 *McCaslin-Whitehead v R* [2023] NZCA 259 at [30], citing *R v Muavae* [2000] 3 NZLR 483 (CA) at [10] which, in turn, cited *R v Pue* [1974] 2 NZLR 392 (CA).

The Solicitor-General's Prosecution Guidelines otherwise make it clear that appeals against a sentence of home detention will only be considered where imprisonment was the only available sentence.[3]

The decision

The Deputy Solicitor-General (Criminal), Ms Laracy, knew about the sentence at the time it was imposed and did not view it to be manifestly inadequate or wrong in principle. Since then, the Deputy Solicitor-General and the Acting Deputy Solicitor-General, Mr Baker, have both considered the matter. Having reviewed the case in light of the specific concerns raised by members of the public the Deputy Solicitor-General's view remains unchanged.

In any sentencing a Judge is required to consider any direction or guidance from the higher Courts, cases involving similar offending, the purposes and principles of sentencing, the facts of the individual case and factors personal to the offender. This means there is usually a range of permissible sentences within the discretion of the sentencing Judge. In this particular area, there is some difficulty in comparing cases "given the varying circumstances and the different combinations of charges that are often brought before the courts".[4] The exact nature and volume of objectionable material and "how" it was possessed (e.g. whether downloaded, filed, organised, shared etc), varies in each case. A close comparison of these factors with other cases is important and often not well understood by the general public. Such factors were among the many that the Judge took into account.

While questions have been raised as to whether Mr McSkimming's former position as Deputy Police Commissioner resulted in a more favourable sentence than someone in a comparable position, it was an undisputed part of the sentencing process that Mr McSkimming's role as Deputy Police Commissioner aggravated the offending, especially as it related to undermining public trust and confidence in the police. This was not disputed by counsel for Mr McSkimming and was reflected in the starting point of three years' imprisonment adopted by the Judge.

The Judge's combined 50% discount for all mitigating features was not subject to the new legislative 40% "cap" on reductions for mitigation as the offending occurred before that cap came into force.[5] The Judge's process in identifying each factor in mitigation, and specifying the weight to be put on it, was appropriate. A court on appeal would be reluctant to interfere with the Judge's discretion as it relates to these discounts for personal mitigating features.

Home detention is an available sentencing outcome in all cases where the end sentence is two years or less.[6] Whether home detention is imposed in any individual case will be assessed on the facts and circumstances as against the relevant purposes and principles of sentencing

---

3 Solicitor-General Prosecution Guidelines – Appeal Guidance at [26].

4 *Robinson v Police* [2017] NZHC 2655 at [50]. See also *Snell v R* [2022] NZHC 1627 at [2]; *Webb v R* [2016] NZHC 2966 at [57].

5 Sentencing Act 2002, s 9Q, in force from 29 June 2025 but only applies to offending committed after that date (Schedule 1AA, cl 26).

6 Sentencing Act 2002, ss 15A and 80A.

set out in the Sentencing Act 2002. Among them are the purposes of accountability, denunciation, acknowledgement of responsibility, assisting rehabilitation and reintegration and the principle that Judges should impose the least restrictive sentence that is appropriate in the circumstances.[7] In this case the early guilty plea, acceptance of responsibility and evidence of commitment to treatment and rehabilitation are considerations that supported a sentence of home detention being imposed. Accordingly, it was open to the Judge, having reached an end sentence of less than two years, to impose a sentence of home detention.

Likewise, it was also open to the Judge not to register Mr McSkimming under the Child Protection (Child Sex Offender Government Agency Registration) Act 2016. To have made an order the Judge needed to be satisfied that Mr McSkimming posed a risk to the lives or sexual safety of one of more children, or of children generally. The risk must be real or genuine, and the nature and seriousness of the risk posed must be sufficient to warrant the making of an order.[8] Having regard to the statutory test and the facts of other cases, including the leading authority from the Supreme Court, the Deputy Solicitor-General did not think that the Judge erred in this assessment.

In summary, having reviewed the process, all aspects of the sentence were open to the sentencing Judge.

---

7 Sentencing Act 2002, ss 7 and 8(g).

8 *D (SC31/2019) v New Zealand Police* [2021] NZSC 2.