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<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 123/2021
[2021] NZSC 175**

BETWEEN	PENISIMANI TAAKIMOEAKA Applicant
AND	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: M Starling for Applicant
M R L Davie for Respondent

Judgment: 10 December 2021

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] An extended supervision order (ESO) was imposed on Mr Taakimoeaka for a term of five years commencing December 2020.¹ His appeal against that decision was dismissed by the Court of Appeal.² He now seeks leave to appeal to this Court.

¹ *Chief Executive of the Department of Corrections v Taakimoeaka* [2020] NZHC 3454 (Osborne J).

² *Taakimoeaka v Chief Executive of the Department of Corrections* [2021] NZCA 467 (Gilbert, Ellis and Peters JJ) [CA judgment].

Background

[2] In 2005, Mr Taakimoeaka, then aged 17, was convicted of serious sexual offending against a 16-year-old young woman after entering her house without consent. He was sentenced to six and a half years' imprisonment for that offending and released in October 2010.

[3] In 2013, five months after the expiry of his release conditions, Mr Taakimoeaka climbed through a window where two 16-year-old young women were sleeping and sexually assaulted one of them. He was sentenced to concurrent sentences of seven years and six months for assault with intent to commit sexual violation by rape, five years and six months for sexual violation by unlawful sexual connection and 12 months for each of the three charges of indecent assault. The sentencing Judge said Mr Taakimoeaka had come "perilously close" to being sentenced to preventive detention.³

[4] During his last period of imprisonment, while attending a sexual treatment programme, the co-ordinators noted that Mr Taakimoeaka continued to minimise his actions.⁴

Grounds of appeal

[5] Mr Taakimoeaka seeks leave to appeal to this Court. He submits that the two incidents of sexual offending fail to reach the "pervasive pattern" threshold required under the amended s 107I(2)(a) of the Parole Act 2002.⁵ He then submits that the Court of Appeal placed too much weight on the views of the health assessor in concluding there was a pervasive pattern. He also submits that the Court of Appeal erred by deciding that there was an intense drive and a predilection for serious sexual offending on the basis of his prior offending alone as opposed to undertaking a current assessment of the individual.

³ *R v Taakimoeaka* [2014] NZHC 1654 (Collins J) at [21].

⁴ See CA judgment, above n 2, at [13].

⁵ Amended by the Parole (Extended Supervision Orders) Amendment Act 2014.

Court of Appeal judgment

[6] The Court of Appeal considered there was sufficient evidence for the judge to establish that there was a pervasive pattern.⁶ It also found that the test set out in *Kiddell v Chief Executive of the Department of Corrections*⁷ was correctly applied and the fact that there were only two incidents of offending did not mean a pattern could not be established.⁸ In particular, the Court considered that the two sets of offending had common distinctive features.⁹

[7] In terms of whether there was a risk of future serious sexual offending, the Court was not persuaded that the Judge was wrong to accept the opinion of the senior psychologist on this point.¹⁰

Our analysis

[8] The matters Mr Taakimoeaka seeks to raise are essentially issues related to the particular facts of this case. No point of general or public importance arises.¹¹ His challenge to the imposition of the ESO was carefully considered by the Court of Appeal and nothing raised suggests that the Court's analysis may have been wrong. There is thus no risk of a miscarriage of justice.¹²

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent

⁶ CA judgment, above n 2, at [29].

⁷ *Kiddell v Chief Executive of the Department of Corrections* [2019] NZCA 171.

⁸ CA judgment, above n 2, at [29].

⁹ At [29].

¹⁰ At [39].

¹¹ Senior Courts Act 2016, s 74(2)(a).

¹² Section 74(2)(b).