

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 70/2007  
SC 71/2007  
[2007] NZSC 104**

**DAMON JOHN EXLEY  
IAN KENNETH MCMILLAN**

v

**THE QUEEN**

Court: Tipping, McGrath and Anderson JJ

Counsel: T Ellis for Applicants  
B J Horsley for Crown

Judgment: 11 December 2007

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**JUDGMENT OF THE COURT**

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**The applications for leave to appeal are dismissed.**

**REASONS**

[1] Both these applicants wish to appeal to this Court against sentences of preventive detention following dismissal of their appeals by the Court of Appeal. In a joint submission they raise nine proposed grounds. These largely reflect the grounds which were rejected by the Court of Appeal. They are designed to attack the lawfulness of the sentence of preventive detention in itself. They also raise

various procedural issues; and, finally, they suggest that finite sentences should have been imposed.

[2] The suggestion that the sentence of preventive detention is unlawful in itself cannot withstand s 4 of the New Zealand Bill of Rights Act 1990. There is no bona fide interpretation issue so a “*Hansen*” analysis is not required. We do not regard the procedural complaints as fairly arguable. The Court of Appeal was clearly right in the conclusions it expressed in this area. Nor do we consider it fairly arguable that the Court of Appeal erred in what it said about risk evaluation. The contention that finite sentences should have been imposed, and that the minimum non-parole period in the case of Exley should have been shorter, raise no issue falling within s 13 of the Supreme Court Act 2003.

[3] In short, we are not satisfied that it is necessary in the interests of justice to give leave on any ground. The applications must therefore be dismissed.

Solicitors:  
Crown Law Office, Wellington