

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 72/2018
[2018] NZSC 87

BETWEEN RICHARD LYALL GENGE
Applicant

AND CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
First Respondent

ATTORNEY-GENERAL
Second Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
H M Carrad, D J Perkins and H M L Farquhar for Respondents

Judgment: 5 October 2018

JUDGMENT OF THE COURT

- A The application for an extension of time to appeal is allowed.**
- B The application for leave to appeal is dismissed.**
- C No order as to costs.**
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REASONS

[1] Mr Genge seeks leave to appeal out of time directly to this Court from a judgment of Clark J dismissing his application for judicial review which sought a declaration he is arbitrarily detained in prison and damages.¹

¹ *Genge v Chief Executive of the Department of Corrections* [2018] NZHC 1447 [HC decision].

[2] The background to the present application is that Mr Genge is a serving prisoner having been sentenced in 1995 to life imprisonment for murder.² Mr Genge is eligible for parole but parole has been declined on numerous occasions. The primary basis of his proposed appeal to this Court is that Clark J erred in rejecting his argument that the Parole Act 2002 is wrongly applied to him because it came into force after he was sentenced.

[3] In dealing with this aspect of the judicial review proceeding, Clark J noted that Mr Genge had made the same claim unsuccessfully in other proceedings. The Judge found this ground was an abuse of process given the decisions in other proceedings.³

[4] Mr Genge filed an appeal from the decision of Clark J in the Court of Appeal. He was directed to pay security for costs of \$6,600. Mr Genge then sought dispensation of payment of security. The Deputy Registrar declined to dispense with security. Mr Genge did not seek a review of that decision⁴ but instead has sought leave to appeal directly to this Court. He says there are exceptional circumstances justifying a direct appeal, namely, that he could not pay the security for costs and the Deputy Registrar declined his application for dispensation.

[5] As Mr Genge seeks to appeal directly to this Court, in addition to the usual criteria,⁵ he must establish that there are exceptional circumstances justifying that course.⁶ The situation in which Mr Genge finds himself does not meet the threshold for an exceptional circumstance.⁷

² And a concurrent term of imprisonment of 12 years for sexual violation by rape.

³ HC decision, above n 1, at [76] and [77] citing *Genge v Superintendent of Christchurch Men's Prison* [2017] NZSC 40. See also *Genge v Chief Executive of the Department of Corrections* [2015] NZSC 88.

⁴ The Deputy Registrar advised him of the right to do so.

⁵ Supreme Court Act 2003, s 13; Senior Courts Act 2016, s 74.

⁶ Supreme Court Act 2003, s 14; Senior Courts Act 2016, s 75(b).

⁷ *Siemer v Brown* [2015] NZSC 41 at [6]; *Siemer v Brown* [2015] NZSC 62; and *Rabson v Judicial Conduct Commissioner* [2015] NZSC 96; and see *Siemer v Heron* [2012] NZSC 56 and *Siemer v O'Brien* [2015] NZSC 23.

[6] There is no opposition to the Court granting Mr Genge an extension of time. The application for an extension of time to appeal is allowed. The application for leave to appeal is dismissed. We make no order as to costs.

Solicitors:
Crown Law Office, Wellington for Respondents