

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC86/2022
[2022] NZSC 118**

BETWEEN	RICHARD GENGE Applicant
AND	VISITING JUSTICE, CHRISTCHURCH MEN'S PRISON First Respondent
	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Second Respondent
	ATTORNEY-GENERAL Third Respondent

SC88/2022

BETWEEN	RICHARD GENGE Applicant
AND	VISITING JUSTICE, INVERCARGILL MEN'S PRISON First Respondent
	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Second Respondent
	ATTORNEY-GENERAL Third Respondent

Court: Glazebrook, O'Regan and Kós JJ

Counsel: Applicant in person
W S Taffs for Respondents

Judgment: 17 October 2022

JUDGMENT OF THE COURT

- A The applications for leave to appeal are dismissed.**
- B The applicant must pay the respondents (collectively) costs of \$2,500.**
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REASONS

[1] The applicant, a serving prisoner, seeks leave to appeal a decision of the Court of Appeal dismissing two applications for judicial review.¹ The applications concern decisions made by Visiting Justices upholding disciplinary charges brought for breaches of prison rules. The same conclusion had been reached by Gendall J in the High Court.²

[2] The first charge related to an incident when the applicant and another prisoner were found to be sparring in breach of a prison rule. The second related to an incident when the applicant was found to have refused to obey a lawful order to return to his cell following a lighting failure at the prison concerned.

[3] The applications for review challenged (1) the factual findings made (whether the prisoners had been “sparring”; whether the applicant refused to comply with a lawful order); (2) the validity of the no-sparring rule; (3) the fairness of the charging process in each case; and (4) whether the applicant had been properly informed about the circumstances of the power outage for the purposes of s 6(1)(f) of the Corrections Act 2004.

Our assessment

[4] Grounds (1), (3) and (4) engage intensely factual enquiries and do not raise questions of general or public importance.³ We do not consider the prospects of

¹ *Genge v Visiting Justice, Christchurch Men’s Prison* [2022] NZCA 371 (Cooper P, Courtney and Collins JJ) [CA judgment].

² *Genge v Visiting Justice, Christchurch Men’s Prison* [2021] NZHC 1727.

³ Senior Courts Act, s 74(2)(a).

success of the arguments the applicant wishes to advance against concurrent findings made by the Visiting Justices, High Court and Court of Appeal on these matters are sufficient to give rise to a risk of a substantial miscarriage of justice.⁴

[5] Ground (2) – relating to the first charge only – may perhaps raise a question of general importance. However, and essentially for the reasons given by the Court of Appeal,⁵ we do not consider the prospects of success of that now well-ventilated argument prevailing are sufficient to make it necessary in the interests of justice for this Court to reconsider it.

Result

[6] The applications for leave to appeal are dismissed.

[7] The applicant must pay the respondents (collectively) costs of \$2,500.

Solicitors:
Raymond Donnelly & Co, Christchurch for Respondents

⁴ Section 74(2)(b); and *Hookway v R* [2008] NZSC 21 at [4].

⁵ CA judgment, above n 1, at [20]–[22].