

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 48/2022  
[2022] NZSC 72

BETWEEN                      MICHAEL SHANE HENRY LIHOU  
   Applicant  
  
AND                                THE QUEEN  
   Respondent

Court:                            Winkelmann CJ, O'Regan and Williams JJ

Counsel:                        Applicant in person  
   B J Thompson for Respondent

Judgment:                      10 June 2022

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**JUDGMENT OF THE COURT**

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**The application for an extension of time to apply for leave to  
appeal against sentence is dismissed.**

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**REASONS**

[1]     The applicant was convicted after a High Court jury trial of abduction for the purpose of sexual connection, assault, rape and sexual violation of a 17 year old female complainant. He was sentenced to preventive detention with a minimum period of imprisonment of nine years and four months.<sup>1</sup>

[2]     His appeal to the Court of Appeal against conviction and sentence was dismissed.<sup>2</sup>

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<sup>1</sup>     *R v Lihou* [2013] NZHC 2032 (Gendall J).

<sup>2</sup>     *Lihou v R* [2015] NZCA 227 (French, Simon France and Clifford JJ) [CA judgment].

[3] He applied to this Court for leave to appeal against the Court of Appeal conviction decision but that application was dismissed.<sup>3</sup> He did not apply for leave to appeal against the Court of Appeal sentence decision at that time.

[4] The applicant now seeks an extension of time to apply for leave to appeal against the Court of Appeal's sentence decision and, if the extension is given, for leave. The application is opposed by the respondent.

[5] The decision of the Court of Appeal was delivered in June 2015, and the application now before this Court was received on 7 January 2022, so it is over six years out of time.

[6] In support of his application for an extension of time, the applicant filed over 150 pages of supporting material. This includes historic material relating to earlier convictions, psychiatric assessments that have been undertaken recently and the applicant's submission to the Royal Commission of Inquiry into Abuse in Care, correspondence with the Royal Commission and correspondence relating to the settlement of his claim against the Crown for the abuse he suffered while in State care. Some of this material is historic (and therefore would have been available at the time of the applicant's sentencing) but as is apparent, the material relating to the recent psychological assessments and the applicant's submission to the Royal Commission are fresh evidence.

[7] The recent psychological assessments and the applicant's submission to the Royal Commission outline the traumatic events of the applicant's childhood and teenage years and the effects that has had on his mental well-being. It is clear that the applicant's treatment in his childhood and youth was extremely traumatic and that this has affected him profoundly.

[8] The applicant wishes to pursue an appeal against the Court of Appeal decision rejecting his sentence appeal on the basis that the sentence was manifestly excessive when taking into account this material.

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<sup>3</sup> *Lihou v R* [2015] NZSC 161. That decision also dismissed the applicant's application for leave to appeal against a pre-trial decision of the Court of Appeal relating to propensity evidence.

[9] Both the sentencing Judge and the Court of Appeal had before them information about the applicant's traumatic upbringing and the impact this had on him. The applicant did not cooperate with the preparation of reports by a consultant psychiatrist and clinical psychologist under s 88 of the Sentencing Act 2002 for the purposes of his sentencing.

[10] The sentence appeal to the Court of Appeal was advanced on the basis that the sentencing Judge had given insufficient weight to the applicant's personal factors, but this was not accepted by the Court of Appeal which described the case for preventive detention as "clear-cut".<sup>4</sup> That was because the applicant's history of offending, including 1988 offending of a similar character to the offences for which he was being sentenced, amounted to a pattern of very serious offending, with significant consequences for the victims and the wider community. The applicant was assessed as posing a high risk of committing further serious offences. The Court of Appeal concluded that this was not a borderline case where an extended supervision order might tip the balance in favour of a finite sentence.<sup>5</sup> Nor did the Court of Appeal consider that the minimum period of imprisonment was manifestly excessive.<sup>6</sup>

[11] We have addressed the material that the applicant has filed in this Court. He does provide additional information in relation to his personal circumstances — as we have noted above, it is clear that his childhood in State care was traumatic and has affected the course his life has taken. Nevertheless we are not satisfied that the merits of the proposed appeal justify the granting of leave. The matters the applicant wishes to raise are particular to his case and do not give rise to any matter of general or public importance.<sup>7</sup> We do not consider there is any indication of a miscarriage of justice in the way the Court of Appeal assessed the appeal against sentence.<sup>8</sup> Whatever weight is given to the applicant's personal circumstances, this could not outweigh the consideration which was appropriately determinative of his sentence — the high risk that he would commit further serious offences.

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<sup>4</sup> CA judgment, above n 2, at [48].

<sup>5</sup> At [48].

<sup>6</sup> At [50].

<sup>7</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>8</sup> Section 74(2)(b).

[12] In view of our conclusion that the application for leave to appeal does not meet the leave criteria in the Senior Courts Act 2016, there is no point in granting an extension of time to make an application for leave. We therefore dismiss the application for an extension of time.

Solicitors:  
Crown Law Office, Wellington for Respondent