

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 80/2025
[2025] NZSC 139

BETWEEN PETER MATEHAERE KEEPA
Applicant

AND NEW ZEALAND POLICE
Respondent

SC 84/2025

BETWEEN KIRIWAI TAHAU
Applicant

AND NEW ZEALAND POLICE
Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: K H Cook and H C Coutts for Applicant in SC 80/2025
N P Chisnall KC and H V Bennett for Applicant in SC 84/2025
R K Thomson and M J R Blaschke for Respondent

Judgment: 16 October 2025

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed.

REASONS

[1] This judgment responds to two applications for leave to appeal from the judgment of the Court of Appeal in *Tahau v New Zealand Police*.¹

¹ *Tahau v New Zealand Police* [2025] NZCA 278, [2025] 3 NZLR 1 (French P, Thomas and Campbell JJ) [CA judgment].

[2] The proposed appeals concern s 81(1) of the Land Transport Act 1998, which relevantly provides that if any provision of the Act requires a court to disqualify a person from driving for a period not less than a specified minimum, the court must so order “unless for special reasons relating to the offence it thinks fit to order otherwise”.²

[3] Each of the applicants appeared separately in the District Court on 27 February 2024 for sentence on a charge of driving with excess alcohol, contrary to s 56 of the Act.³ Because these were third or subsequent offences for both of them, the court was required to order that they be disqualified from driving for more than one year.⁴

[4] Each of the applicants had a number of convictions (12 in Mr Keepa’s case, and five in Ms Tahau’s) for the same offence. In each case, there had been a long period of more than a decade since their last offence. For that reason, Judge Wills treated them as first offenders and imposed disqualifications of six months, the minimum for a first offender, relying on s 81(1).⁵

[5] The Judge also backdated the commencement of the disqualification imposed on a third offender, Kohu Piripi, so that he could apply at once for a limited licence.⁶ The Judge must have relied on s 85(1), which relevantly provides that a period of disqualification starts on the day the order is made, unless the court directs otherwise. Mr Piripi was party to the appeal to the Court of Appeal, but he has not sought leave to appeal to this Court.

[6] The Police appealed to the High Court, where Harland J held that a gap in offending could amount to special reasons relating to the offence but a 10-year gap

² The exception is s 63, and s 81 is subject to s 94.

³ *New Zealand Police v Keepa* [2024] NZDC 7953 (Judge Wills); and *New Zealand Police v Tahau* [2024] NZDC 4570 (Judge Wills). See Land Transport Act 1998, s 56(1) and (2).

⁴ Section 56(4).

⁵ In Ms Tahau’s case the Judge instead cited s 85. The High Court and Court of Appeal found that s 85 could not be employed in that way. The High Court was uncertain whether the Judge intended to invoke s 81 instead; the Court of Appeal found that the Judge did: *New Zealand Police v Piripi (aka Phillips)* [2024] NZHC 2596 (Harland J) [HC judgment] at [93] and [98]; and CA judgment, above n 1, at [20]. We do not understand Ms Tahau to contest that latter finding in this Court.

⁶ *New Zealand Police v Phillips (aka Piripi)* [2024] NZDC 4702 at [6].

was not sufficient.⁷ She accordingly substituted disqualifications of one year and one day in each case, from the date of sentence. By that time, the shorter disqualifications imposed in the District Court had expired.

[7] The applicants then sought leave to appeal to the Court of Appeal,⁸ which noted a conflict of High Court authority on whether a temporal gap in offending might amount to special reasons relating to the offence.⁹ The Court analysed the legislation and surveyed the authorities, and concluded that such a gap could not be a special reason relating to the offence.¹⁰ Although not necessary to its decision, the Court added that to backdate disqualification for reasons related to an offender's personal circumstances would generally be a misuse of s 85.¹¹ The Court also dismissed an argument that because the sentence was "fixed by law" for purposes of s 246(1) of the Criminal Procedure Act 2011 the High Court had no jurisdiction to entertain the Police sentence appeal.¹²

[8] The proposed grounds of appeal are that:

- (a) the High Court lacked jurisdiction;
- (b) a temporal gap may amount to special reasons relating to the offence under s 81(1);
- (c) a court may backdate commencement of disqualification for a variety of reasons and the Court of Appeal improperly limited the scope of the discretion to do so; and
- (d) the imposition of a longer period of disqualification after the period set in the District Court had expired was a miscarriage of justice.

⁷ HC judgment, above n 5, at [67], [73], [81] and [91].

⁸ The applications for leave to appeal were heard together with the substantive appeals.

⁹ CA judgment, above n 1, at [50].

¹⁰ At [70].

¹¹ At [26]–[30].

¹² At [46].

[9] With respect to the first of these proposed grounds, the Court of Appeal held that a disqualification is a sentence and, because s 56 merely imposes a minimum disqualification period and ss 81 and 94 confer discretions on the sentencer, it is not fixed by law.¹³ The contrary argument has insufficient prospects of success to justify leave.¹⁴

[10] With respect to the second ground, the Court of Appeal reasoned that Parliament chose to draw a deliberate and well-established distinction between reasons relating to the offending and reasons relating to the offender.¹⁵ The weight of High Court authority is to the same effect.¹⁶

[11] This is a question of law, but we agree with the Crown that there is a substantial body of authority to the effect that previous convictions relate to the offender's circumstances unless, of course, they are an element of the offence, which is not the case here.¹⁷ The Land Transport Act adopts that distinction.¹⁸ The contrary argument has insufficient prospects of success to warrant leave.

[12] The third question is too broadly framed. The question which arises on these facts is whether it would be a misuse of the s 85 power to reduce the effective disqualification period by backdating its commencement in circumstances where s 56(4) of the Act applies but there has been a temporal gap in offending. It follows from our response to the second question that this question also has insufficient prospects of success to warrant leave. We add that although both applicants raised this question it appears only to concern Ms Tahau and she confronts a further difficulty, in that the Court of Appeal and High Court agreed that the District Court did not actually backdate the disqualification in her case.¹⁹

¹³ At [41] and [46].

¹⁴ See Senior Courts Act 2016, s 74(1).

¹⁵ CA judgment, above n 1, at [49] and [52].

¹⁶ See at [50].

¹⁷ *R v Cameron* CA329/02, 29 November 2002 at [3]. For the general proposition that previous convictions relate to the offender's circumstances, see *The King v Casey* [1931] NZLR 594 (CA) at 597; and *Orchard v R* [2019] NZCA 529, [2020] 2 NZLR 37 at [39].

¹⁸ See, for example, Land Transport Act, s 94(1)(b).

¹⁹ See above n 5.

[13] The fourth question is peculiar to the facts of these cases. We agree with the Crown that there is no appearance of a miscarriage in circumstances where the Court of Appeal has done no more than increase the sentence to the minimum that the legislation requires.

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

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent