IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 52/2025
[2025] NZSC 140

BETWEEN	KAYLEB RENATA Applicant
AND	THE KING Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: C A Gentleman and T J Conder for Applicant
J M Pridgeon for Respondent

Judgment: 15 October 2025

JUDGMENT OF THE COURT

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

REASONS

Introduction

[1] The applicant, Mr Renata, was convicted of murder after a jury trial and sentenced in October 2022 to life imprisonment with a minimum period of imprisonment (MPI) of 10 years.[1] At the time of the murder (February 2021), he was 16 years old.

[2] Some 17 months out of time, the applicant sought leave to appeal to the Court of Appeal against his sentence (relying on the 2023 decision of *Dickey v R*) on the basis that his age at the time of the offending and his personal circumstances meant

[1] *R v Renata* [2022] NZHC 2745 (Davison J) [sentencing judgment].

that a life sentence was manifestly unjust.[2] The Court of Appeal declined the application for leave to appeal out of time.[3] He now seeks leave to appeal to this Court directly from the 2022 sentencing decision in the High Court.[4] An extension of time to do so is accordingly required.

Background

[3] The incident giving rise to the murder charge is summarised by the Court of Appeal in this way:[5]

> [7] The offending occurred at a birthday party. Mr Renata's two associates, Mr Tutakangahau and Mr Raina, were somewhat older than Mr Renata. All three were Mongrel Mob associates and gang culture was a feature of the evening.
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> [8] Mr Wharton, who was not associated with the Mongrel Mob, was targeted by Mr Tutakangahau in the mistaken belief that he was a Black Power member. He was challenged to a fight but declined. Later Mr Renata and his associates — encouraged by Mr Tutakangahau's mother — pressed for a fight. Mr Tutakangahau punched Mr Wharton and others joined in, including Mr Renata. Mr Wharton got away and ran towards the kitchen. A group began barking and chasing after him. Mr Raina caught him as he reached the kitchen and punched him again, knocking him to the floor. Mr Raina kicked him.
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> [9] Mr Wharton got up and reached the kitchen but was caught again by either Mr Tutakangahau or Mr Renata. The two then continued to punch him, knocking him to the ground and stomping on him. Those who tried to intervene were, themselves, assaulted. Mr Wharton got up again. Mr Tutakangahau yelled at Mr Renata to "get him" and the three resumed the chase. Mr Renata caught up to Mr Wharton, punched him and then stabbed him twice in the chest. Mr Wharton fell to the ground. Mr Renata stabbed him a third time, in his abdomen. Mr Wharton tried again to run but was caught and kicked and punched by Mr Raina and Mr Tutakangahau.
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> [10] Finally other partygoers intervened and set off with Mr Wharton to hospital. As already noted, Mr Wharton died on his way to hospital.

[4] In sentencing Mr Renata, Davison J explained why he considered life imprisonment would not be manifestly unjust in these terms:[6]

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2 Sentencing Act 2002, s 102; and *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405.

3 *Renata v R* [2024] NZCA 469 (Courtney, Mander and Walker JJ) [CA judgment].

4 The applicant accepts there is no jurisdiction to appeal to this Court against the refusal of the Court of Appeal to grant an extension of time: see, for example, *Ratima v R* [2024] NZSC 126 at [3], n 4.

5 CA judgment, above n 3.

6 Sentencing judgment, above n 1 (footnotes omitted).

> [45] I consider that a sentence of life imprisonment would not be manifestly unjust. Simply put, your offending involved a senseless and savage beating of an innocent man who had done nothing whatsoever to provoke you, who posed no threat whatsoever to you, and who was outnumbered by you and your associates three to one. It culminated with you stabbing him three times to the chest, inflicting the final blow while he lay vulnerable and utterly defenceless on the ground. Your personal circumstances, including your youth, do not render a sentence of life imprisonment manifestly unjust. Such a sentence is appropriate to meet the principles and purposes of sentencing.
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> …
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> [47] It remains to fix an appropriate minimum period of imprisonment. By law the minimum term may not be less than 10 years. Again, both the Crown and your counsel are in agreement as to the appropriate outcome. They both submit that a 10 year MPI is warranted and appropriate in your case. I agree. The circumstances of your offending together with your personal circumstances, and in particular your youth, are such than an MPI of 10 years is sufficient to meet the principles and purposes of sentencing.

[5] As is apparent from this excerpt, this sentence was agreed to be appropriate by both the Crown and defence.

[6] The Court of Appeal, in declining to grant leave to appeal out of time, reached the view that applying *Dickey* would not have been likely to lead to a different sentencing outcome.

The proposed appeal

[7] On appeal to this Court the applicant wishes to argue two points. The first of these points concerns the approach to be taken to granting an extension of time in a case such as this where the misapplication of the law is corrected by a later decision. This is a challenge to the approach of the Court of Appeal in *Kriel v R*.[7] The Court in that case dealt with the relevant principles for an extension of time in the context of other applications for leave to appeal against sentence out of time which relied on *Dickey*. The applicant also suggests the Court of Appeal has not been willing to grant leave to appeal out of time in these types of cases.[8]

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7 *Kriel v R* [2024] NZCA 45.

8 Leave to appeal out of time was granted and the sentence appeal allowed in relation to one of the five applicants in *Kriel*.

[8] The second point the applicant wishes to raise is when, if ever, young people who commit murder should be sentenced to life imprisonment. The applicant says this is a challenge to the correctness of *Dickey*.

[9] On the first point, the Court of Appeal in the present case summarised the relevant principles from *Kriel* in these terms:[9]

> The ultimate consideration is the interests of justice and, in determining whether it would be in the interests of justice to allow an appeal to be brought out of time, the Court must consider the societal interest in the finality of litigation, as well as the interests of the prospective appellant in having their sentence reviewed. The length of the delay and the reasons for it, and the strength of the proposed appeal, will be relevant.

[10] The Court in *Kriel* had cited in support of its approach cases such as *R v Knight*, *R v Jogee* and *Mikus v R*.[10] Nothing raised by the applicant suggests this Court should re-visit the well-settled principles discussed in those authorities, in this case. In any event, the applicant's complaint appears directed rather to the way in which these principles have been applied. As to that, as the respondent notes, the inquiry is essentially a fact-specific one requiring an assessment of where the interests of justice lie in the particular case.

[11] On the second point, the applicant says the appeal would challenge the correctness of *Dickey*.[11] The proposed appeal however would principally turn on whether the applicant was likely to have his sentence amended following *Dickey*. That would be resolved on the facts. We are not satisfied any question of general or public importance arises.[12]

[12] Nor do we see an appearance of a miscarriage of justice. The Court of Appeal explained its conclusion that applying *Dickey* would not have led to a different sentence in this way:[13]

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9 CA judgment, above n 3, at [3] (footnote omitted).

10 *R v Knight* [1998] 1 NZLR 583 (CA); *R v Jogee* [2016] UKSC 8, [2017] AC 387; and *Mikus v R* [2011] NZCA 298.

11 The respondent notes the observations made by a majority of this Court in relation to *Dickey*, in considering the application of s 102 in cases involving mental health issues: *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [60] per Glazebrook, O'Regan, Ellen France and Kós JJ.

12 Senior Courts Act 2016, s 74(2)(a).

13 CA judgment, above n 3 (footnote omitted).

> [22] On the one hand, we accept that potentially mitigating factors such as remorse and progress towards rehabilitation are absent, at least in part, because of Mr Renata's probable conduct disorder. However, even with the benefit of *Dickey*, the sentencing Judge would have been bound to carefully consider whether the purposes and principles of the Sentencing Act, particularly deterrence and public protection, could be achieved by a finite sentence. Mr Renata displays very concerning characteristics, including his lack of interest in rehabilitation, poor behaviour in custody to date and an aspiration to be a patched gang member, which mean he will present a risk to the community for some time to come. Mr Renata will need substantial rehabilitative efforts but, as Ms Gentleman acknowledged, the outcome of that is uncertain.
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> [23] In our view, Mr Renata's level of culpability was high, even allowing for his age and personal circumstances. We are satisfied that a different sentencing outcome would have been unlikely under *Dickey*. We do not consider that it is in the interests of justice to grant the extension sought.

[13] Nothing advanced by the applicant calls into question that assessment given the nature of the offending and the other matters referred to by the Court of Appeal. The various factors influencing Mr Renata (and so affecting his culpability) were taken into account. There are no exceptional circumstances justifying a direct appeal.[14]

Result

[14] The application for an extension of time to apply for leave to appeal is dismissed.

Solicitors:
Holland Beckett, Tauranga for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

[14] Senior Courts Act, s 75(b).