IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 86/2025
[2025] NZSC 143

BETWEEN	TYSON-TANUI RUKUWAI TE TOMO Applicant
AND	THE KING Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: W C Pyke for Applicant
K B Bell for Respondent

Judgment: 16 October 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Te Tomo was convicted in 2015 of murder (having shot the victim) and sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 10 years and six months.[1] The jury, by their verdict, rejected Mr Te Tomo's contention at trial that there was a reasonable possibility that the gun went off accidentally.

[2] On 30 July 2016 (some nine months out of time), Mr Te Tomo filed an appeal against conviction and sentence in the Court of Appeal. He was granted an extension of time to appeal and in 2017 his appeal against conviction was dismissed.[2]

---

1 *R v Te Tomo* [2015] NZHC 2671 (Hinton J) [Sentencing notes].
2 *Te Tomo v R* [2017] NZCA 338 (Winkelmann, Brewer and Peters JJ) [Conviction appeal].

The conviction appeal was advanced on the basis that self-defence should have been left to the jury. This contention was rejected by the Court because:[3]

> … the factual narrative supports neither the existence of an imminent threat to life (Mr Te Tomo's or his friends'), nor a connection between any perceived acts and Mr Te Tomo's use of the firearm.

[3] The sentence appeal was not dealt with at the same time as the conviction appeal for reasons which are unclear. In March 2024, Mr Te Tomo took steps to bring the sentence appeal on for hearing. The sentence appeal was dismissed by the Court of Appeal on 3 July 2025.[4]

[4] The Court declined an application to adduce further evidence on appeal in the form of affidavits from Mr Te Tomo and a neuropsychologist, Dr Erin Eggleston. This was on the basis that the evidence was not sufficiently fresh or cogent to be admitted. This material was, however, considered by the Court in its decision.[5]

[5] Mr Te Tomo now seeks leave to appeal to this Court against the Court of Appeal's decision on his sentence appeal. He wishes to argue that he should not have been sentenced to life imprisonment.

Background[6]

[6] Mr Te Tomo (affiliated with the Mongrel Mob and then aged 17) was with a friend, Mr Williams, at a property in Hamilton. The victim, Mr Thompson (then aged in his late 20s), and his friend, Mr Apanui, (both affiliated with Black Power) arrived in a car intending to visit the next door property. An altercation occurred between Mr Thompson and Mr Apanui and Mr Williams.

[7] Mr Te Tomo went inside the house and came out with a slug gun, which he knew was unloaded. He was intending to chase Mr Thompson and Mr Apanui off the

---

3 At [35].
4 *Te Tomo v R* [2025] NZCA 295 (Woolford, Jagose and Powell JJ) [Sentence appeal].
5 At [35].
6 For a fuller background, see Conviction appeal, above n 2, at [3]–[15]. These paragraphs were quoted by the Court of Appeal in the Sentence appeal, above n 4, at [7]. The background in the Sentencing notes, above n 1, at [2]–[7] is different in some respects but the factual differences between the two accounts are not material for the purposes of deciding Mr Te Tomo's application for leave to appeal.

property. Mr Thompson took the slug gun, pointed it at Mr Te Tomo and pulled the trigger. There is no indication that Mr Thompson knew that the slug gun was not loaded.

[8] Mr Te Tomo and Mr Williams returned to the house, then came back out carrying ceremonial swords. Mr Thompson took the sword from Mr Williams and Mr Te Tomo dropped his sword. Mr Te Tomo and Mr Williams went back inside.

[9] Mr Te Tomo then came out with a .22 calibre rifle. Mr Te Tomo fired one shot into the air. Mr Te Tomo tried to reload the gun but was having trouble doing so. Seeing this, Mr Apanui began chasing him and Mr Te Tomo retreated into the house. He then reloaded the gun and came back outside. Mr Thompson was on the street edge of the section behind a large power box. Mr Te Tomo pulled the trigger and shot Mr Thompson in the face, killing him.

High Court sentencing decision

[10] It was not suggested by either counsel at sentencing that a sentence of life imprisonment would be inappropriate.[7] Mr Te Tomo was therefore sentenced to life imprisonment.[8]

[11] The issue was the appropriate MPI. The Judge did not consider that the conduct of Mr Thompson and Mr Apanui mitigated the level of offending.[9] The aggravating features were the actual use of a weapon, leading to loss of life, and that the victim was to a degree vulnerable (shielding himself behind a power box).[10] The Judge accepted there was little premeditation and planning but said that Mr Te Tomo's actions were "cold-blooded and callous".[11]

[12] The Judge took a starting point MPI of 12 years, reduced by 1.5 years primarily for Mr Te Tomo's youth, but also for his background (growing up around gang

---

7 Sentencing notes, above n 1, at [25].
8 At [50].
9 At [42].
10 At [41].
11 At [43].

members and his lack of pro-social role models).[12] She did not consider Mr Te Tomo genuinely remorseful and therefore gave no further discount.[13]

Court of Appeal sentencing decision

[13] The Court of Appeal acknowledged that, since Mr Te Tomo's sentencing, that Court had issued its decision in *Dickey v R*, where the Court said that it was no longer the case that:[14]

> … youth can carry little weight when balanced against the public interest in denunciation and accountability. The seriousness and culpability of the offending remain centrally important. It also remains generally true to say that youth alone is not enough to establish manifest injustice. However, young persons may present with a combination of mitigating circumstances relevant to the offending and personal mitigating factors which together are capable of establishing manifest injustice. For these reasons, we accept the Crown's submission that when sentencing a young person for murder a court must always undertake a s 102 analysis, giving careful consideration to whether life imprisonment is manifestly unjust.

[14] The Court outlined a number of aspects of the factual narrative in Mr Te Tomo's case it said "demonstrated a significant degree of deliberation, persistence and commitment on his part".[15]

[15] The Court was satisfied that nothing in Mr Te Tomo's personal circumstances would have changed the position. The proposed new evidence contained nothing of substance with regard to Mr Te Tomo's background that was not before the High Court at sentencing, and none of the matters identified in Dr Eggleston's assessment suggested the presumption of a life sentence should have been displaced.[16]

---

12 At [44]–[45].
13 At [46]–[47].
14 Sentence appeal, above n 4, at [20] citing *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [177].
15 Sentence appeal, above n 4, at [24]–[25].
16 At [27]–[28].

[16] The Court said that:[17]

> … Mr Te Tomo has now nearly served his MPI without any apparent difficulty deriving from the personal circumstances on which his arguments rely. It is likewise difficult to see that the other consequences of a life sentence — the possibility of recall and lifetime parole conditions — result in a manifestly excessive sentence, given recall is not ordered unless necessary,[18] and he may apply to vary or discharge those conditions in the future.[19]

[17] The Court of Appeal held that the cases referred to by Mr Te Tomo in support of his case were clearly distinguishable.[20] In conclusion, the Court said that the sentencing was consistent with the law at the time of sentencing but also with the law after *Dickey*:

> [34] Taken together, we are satisfied there is simply no basis for concluding that the imposition of life imprisonment for Mr Te Tomo and the resulting MPI was manifestly unjust. Likewise, it did not result in a sentence that was manifestly excessive. Instead, we accept Ms Hoskin's submission that Mr Te Tomo's sentence is consistent with both the law at the time of sentencing and the law today. As a result, the appeal must be dismissed.

Submissions

Mr Te Tomo

[18] On behalf of Mr Te Tomo, it is submitted that the Courts have been applying *Dickey* inconsistently. Counsel also submits that young people, including those with low IQs in gang situations, do not behave as adults do, particularly in stressful and violent situations. It is submitted that the Court of Appeal did not take sufficient account of the actions of Mr Apanui and Mr Thompson leading up to the fatal shot. It is also submitted that Mr Te Tomo's personal circumstances were minimised by the Court of Appeal ("moderate neglect").

---

17 At [29].

18 *Dickey v R*, above n 14, at [190].

19 Parole Act 2002, s 56.

20 Sentence appeal, above n 4, at [30]–[31] citing *R v D* [2024] NZHC 2118, *Dickey v R*, above n 14, *Kriel v R* [2024] NZCA 45 and *Lo v R* [2024] NZCA 359, and see at [32] citing *M (CA434/2022) v R* [2023] NZCA 319.

The Crown

[19] The Crown submits that there is no point of general or public importance. Mr Te Tomo does not suggest the decision in *Dickey* was wrong and the other cases referred to by counsel can be readily distinguished.

[20] There is also no risk of a miscarriage of justice in the Crown's submission. The Crown refers to the fact that life imprisonment was accepted as appropriate at sentencing and points to the long delay before it was challenged. The Crown submits, relying on the findings of the High Court, that:

> The conduct of the deceased did not mitigate culpability.[21] The High Court [found] there was "too major a disconnect between the actions of Mr Apanui and Mr Thompson and what [the applicant] did when [the applicant] shot Mr Thompson in the face."

[21] The High Court also had evidence of Mr Te Tomo's background before it. The Crown submits that the new evidence may show a low IQ and ADHD but the report said there was "no observable evidence of cognitive impairment" and "no evidence of more severe mental disorder".

Our assessment

[22] Neither party asks us to reconsider *Dickey*. Further, we agree with the Court of Appeal that the cases said to demonstrate that *Dickey* is being applied inconsistently can be distinguished from this case.[22] It follows that even if there are such inconsistencies (a matter upon which we make no comment), they do not assist Mr Te Tomo's case. This means that no point of general or public importance arises.[23] Further, we do not consider there to be a risk of a miscarriage of justice,[24] essentially for the reasons set out at [29] of the Court of Appeal decision.[25]

---

21 Sentencing notes, above n 1, at [42].
22 See Sentence appeal, above n 4, at [30]–[32].
23 Senior Courts Act 2016, s 74(2)(a).
24 Section 74(2)(b).
25 See above at [16]. We make no comment on the other reasons given by the Court of Appeal in the Sentence appeal, above n 4.

Comment

[23] One of the factors Mr Te Tomo relied on before this Court is that he has been serving most of his time as a maximum security prisoner where he is locked down for 23 hours of the day, seeing other inmates only one hour per day. Mr Te Tomo acknowledges that whether this is cruel and unusual punishment for a young person is a point not yet argued in these proceedings. Nor does it appear to have been argued in the Court of Appeal that this was relevant to his sentence appeal.

[24] We acknowledge that the above arguments would likely be of general or public importance.[26] However, we do not consider that it would be appropriate for these arguments to be considered for the first time on a second appeal without the benefit of full consideration by the Court of Appeal.

Result

[25] The application for leave to appeal is dismissed.

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

[26] Senior Courts Act, s 74(2)(a).