

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 34/2026
[2026] NZSC 132

RE

FRIEDRICH JOACHIM FEHLING
Applicant

Counsel: Applicant in person

Judgment: 15 September 2026

JUDGMENT OF COOKE J

The application for review of the decision of the Registrar not to accept the application for an extension of time to apply for leave to appeal for filing is dismissed.

REASONS

[1] The applicant seeks review of a decision of the Registrar dated 30 July 2026 declining to accept an application for an extension of time to apply for leave to appeal for filing.

Background

[2] The applicant was convicted of a charge of offensive behaviour following a judge-alone trial and was fined \$300.¹ The relevant behaviour involved an argument between the applicant and a customer services officer of a local Council in which the applicant allegedly said he would blow up the Council building and set fire to the Council staff. The applicant appealed against his conviction and sentence.

¹ *New Zealand Police v Fehling* [2025] NZDC 21256 (Judge Zohrab).

By judgment dated 25 March 2026, the High Court dismissed the appeal.² The applicant then applied for leave to bring a second appeal against conviction and sentence to the Court of Appeal. By minute dated 1 July 2026, Palmer J directed that the application for leave would be considered on the papers by a Divisional Court separately from the substantive appeal.

[3] By application dated 26 July 2026, the applicant sought an extension of time to appeal to this Court against Palmer J's decision.

[4] In her letter of 30 July 2026, the Registrar declined to accept the application for filing under r 5A(1)(b)(ii) of the Supreme Court Rules 2004 on the basis that the Court has no jurisdiction to consider an appeal from Palmer J's minute. By application dated 7 and 8 August 2026, the applicant seeks review of this decision. A judge's ability to review such a decision arises under r 5A(3) of the Rules.

Assessment

[5] I consider that the Registrar was right to decline to accept the applicant's application for filing. The minute of Palmer J did no more than direct that the proposed application for leave to appeal to the Court of Appeal be determined on the papers by a Divisional Court. As a consequence of s 71(a) of the Senior Courts Act 2016, the rights of appeal in criminal proceedings are those in pt 6 of the Criminal Procedure Act. These do not include the right to appeal against procedural directions of a second appeal court.

[6] In the minute, Palmer J also stated that the Court of Appeal did not have jurisdiction to address the applicant's proposed appeal against a High Court decision upholding a finding of contempt of court, and it is this aspect of the minute that is the focus of his application for leave to appeal. That issue arises because, during the course of the judge-alone trial in the District Court, the applicant refused to abide by the Court's procedural decisions, and the Judge ordered the applicant into custody.

² *Fehling v New Zealand Police* [2026] NZHC 741 (Dunningham J).

That occurred shortly before a lunch adjournment. The applicant was subsequently released shortly after the lunch adjournment after he had spoken to a duty lawyer.³

[7] One of the applicant's grounds of appeal to the High Court related to these events. The High Court Judge found that the applicant could not advance any appeal in relation to them. That was because there was no finding of contempt under s 11 of the Contempt of Court Act 2019, and accordingly there was nothing for the applicant to appeal to the High Court.⁴ It was in this context that Palmer J observed in the minute that there was no finding of contempt in the District Court, and no decision upholding a finding of contempt made by the High Court that could be appealed against. That may well be so. But whether or not these observations are correct, it remains open for the applicant to contend in his application for leave to appeal to the Court of Appeal that leave should be granted to challenge this aspect of the High Court judgment.

[8] In any event, I agree with the decision of the Registrar that this Court has no jurisdiction to consider an application for leave to appeal the directions given in Palmer J's minute relating to the application for leave to appeal to that Court.

[9] The application to review the decision of the Registrar is dismissed.

³ At [12]–[15].

⁴ At [54]–[73].