IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 92/2026
[2026] NZSC 174

BETWEEN		RHYS RICHARD NGAHIWI WARREN Applicant
AND		THE KING Respondent

Court: Ellen France and Williams JJ

Counsel: Applicant in person
J E Mildenhall for Respondent

Judgment: 11 November 2026

JUDGMENT OF THE COURT

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

B The application for leave to appeal is dismissed.

C The application for bail is dismissed.

REASONS

Introduction

[1] Mr Warren filed a notice of application for leave to appeal. This is the second time he has sought leave to appeal against conviction from this Court. His first application was dismissed in a judgment delivered on 5 July 2021.[1]

[2] We decided that the current application should be treated as an application for leave to appeal from the decision of the Court of Appeal dismissing Mr Warren's

1 *Warren v R* [2021] NZSC 79 (O'Regan, Ellen France and Williams JJ).

application for leave to withdraw his abandonment of his appeal against conviction and sentence to that Court.[2] That Court of Appeal decision post-dates this Court's 2021 judgment.

[3] Mr Warren has also filed an application for bail.

Background

[4] The background is as follows. Mr Warren was convicted after trial in 2017 of attempted murder of two police officers (Sergeant White and Sergeant Marsh), using a firearm against a third officer (Constable Mauheni), and of wounding a fourth officer with intent to cause grievous bodily harm (Constable Flinn). The incidents giving rise to the charges took place when police moved to destroy cannabis plants on a property occupied by Mr Warren. The police heard gunshots in the vicinity of Mr Warren's house and the Armed Offenders Squad (AOS) were called. AOS personnel, after unsuccessful attempts to get anyone inside to come out, then went into the house.

[5] As we shall discuss, Mr Warren challenges various aspects of the police evidence but the Court of Appeal described the events giving rise to the charges in this way:[3]

> [13] Mr Warren was hiding, holding a loaded rifle, some distance from the point of entry. At close range he fired at the leading armed officer, Sergeant White. The Judge found on the evidence at trial that Mr Warren had pointed the rifle at the officer's head. Fortuitously, the bullet deflected off the officer's rifle with a number of fragments of the bullet wounding the officer in the face. Other fragments of the bullet struck a second officer, Constable Mauheni who was behind Sergeant White, who was badly wounded. Numerous other officers, in adjoining rooms to where Mr Warren was, fired through walls in the direction of Mr Warren's shot, intending to prevent Mr Warren from firing further shots.
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> [14] Mr Warren fired two further shots in this initial exchange, fragments of one of which struck a third officer, Constable Flinn, in the leg. All the police officers who had entered the house then left, but armed officers remained in the area to continue observing the house.
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> [15] On exiting the house, one of the officers had dropped a police-issue Glock pistol and approximately an hour after the first altercation Mr Warren

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2 *Warren v R* [2022] NZCA 179 (Dobson, Woolford and Hinton JJ) [CA judgment]. The present application is dealt with by the two remaining members of the Court on the panel, O'Regan J having retired.

3 Footnotes omitted.

> used it to shoot at another officer, Sergeant Marsh, who was lying prone on the ground some 35 metres from the front of the house. Although Mr Warren denied firing the pistol, the Judge was satisfied on the evidence at trial that he had fired two shots from the pistol in this aspect of the offending. One of the shots wounded Sergeant Marsh in the hand.

[6] Mr Warren was sentenced on 11 August 2017 to preventive detention with a minimum period of imprisonment of 10 years.[4]

[7] In September 2017, Mr Warren filed an appeal to the Court of Appeal against conviction and sentence. That appeal was then abandoned.[5] Prior to the first application for leave to this Court, Mr Warren filed an application in the Court of Appeal to withdraw his abandonment. In the decision declining leave, this Court said that he should not be able to pursue a leapfrog from the High Court at the same time as he was pursuing his appeal in the Court of Appeal. It was for the Court of Appeal process to run its course first. As indicated, the Court of Appeal subsequently declined the application for leave to withdraw the earlier abandonment.[6]

The current application

[8] Mr Warren explains that he has found it hard over the years to put his case together properly whilst in prison. He notes that he was only in his early 20s when first incarcerated. Mr Warren makes the point that he has moved from arguments based on sovereignty matters to what he says is evidence showing a miscarriage of justice has occurred. He wishes to raise various points including the following:

(a) He did not mean to shoot Sergeant White and he did not shoot Constable Mauheni at all.

(b) He has concrete evidence proving evidence was fabricated to frame him for the two charges of attempted murder. He refers in this context to what he says is a fabricated forensic imaging reconstruction of where Sergeant White and Constable Mauheni were positioned just before the

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4 *R v Warren* [2017] NZHC 1913 (Brewer J).

5 At the time, Mr Warren was self-represented, but standby counsel, Mr Ewen KC, was appointed to assist. Ms Kincade KC was later appointed as counsel to assist the Court in Mr Warren's application for leave to withdraw the abandonment.

6 CA judgment, above n 2.

first discharge from Mr Warren's gun. He says this evidence does not fit with his recollection of their positions and that his view is consistent with other evidence. He also says he had a defence of self-defence in relation to some of the charges.

[9] In opposing leave, the respondent submits that there is no jurisdiction for this Court to consider the proposed appeal. The respondent says that, as this Court found in *Palmer v R*, unless the abandonment in the Court of Appeal had been found to be a nullity, there was no appeal in respect of which the Court of Appeal could have made a decision.[7] The respondent submits that although *Palmer* was decided under the Crimes Act 1961 appeal provisions, the position remains the same under the Criminal Procedure Act 2011, as the Court of Appeal found in *A v Auckland Council*.[8] Even if there is jurisdiction, the respondent submits that the proposed appeal has no merit. The Court of Appeal's assessment was sound.

Our assessment

[10] We doubt that we have jurisdiction to hear the proposed appeal. We do not, however, need to decide that point because we also agree with the respondent's submission that the proposed appeal has insufficient prospects of success.

[11] The Court of Appeal considered two possible bases for allowing the withdrawal of the notice of abandonment. The first was that the notice was null and void at the time. The Court rejected that. Second, the Court considered whether there were exceptional circumstances that required the notice to be set aside in the interests of justice. Under this heading, the Court analysed the case from the perspective of whether there would be "a substantial prospect that a miscarriage of justice would occur" if the appeal was not reinstated.[9]

[12] The Court addressed the matters raised by Ms Kincade KC who was appointed to assist Mr Warren. We focus on self-defence as that is an issue still pursued.[10] In the

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7 *Palmer v R* SC CRI 13/2004, 12 October 2004.
8 *A (CA629/2025) v Auckland Council* [2026] NZCA 328 at [21].
9 CA judgment, above n 2, at [24].
10 The Court also addressed Ms Kincade's submissions about the trial Judge's lies direction.

Court of Appeal various aspects were raised in this context. The first argument was that the Judge's directions on the defence Mr Warren advanced in relation to the first shot were not correct. The Court noted that Mr Warren's evidence at trial and his closing address to the jury had raised both the prospect that the rifle had gone off by accident on the first occasion and the possibility that he fired in self-defence. The submission was that the Judge's directions conveyed that Mr Warren had raised inconsistent or contradictory explanations in his defence. The Court rejected this, noting that the passages in the summing up were an "accurate reflection of what Mr Warren had said in evidence, and in his closing address".[11] The Court also dismissed a challenge to the way the Judge had directed on the elements of self-defence.

[13] Nothing raised by Mr Warren calls into question the Court's assessment of these matters. As to the suggestion evidence has been fabricated or concealed, we have nothing to provide a basis for those claims. We add that there is material on the file indicating an application has been made to the Criminal Cases Review Commission, which would be a better forum for consideration of these claims. Accordingly, even assuming there is jurisdiction, we do not consider it is in the interests of justice to grant leave to appeal.

[14] As we have noted, Mr Warren has made a bail application to this Court. The respondent says the Court has no jurisdiction to consider that. But, in any event, the application falls away given we have declined leave to appeal.

Result

[15] The application for an extension of time to apply for leave to appeal is dismissed. The application for leave to appeal is dismissed. Finally, the application for bail is dismissed.

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

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11 CA judgment, above n 2, at [39].