Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

19 November 2026

MEDIA RELEASE

THOMPSON v R

(SC 76/2024) [2026] NZSC 178

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Suppression

High Court order prohibiting publication of the names of the appellant's eldest children remains in force.

What this judgment is about

Under s 104 of the Sentencing Act 2002, a person sentenced to life imprisonment for murder must be sentenced to a minimum period of imprisonment (MPI) of at least 17 years if one or more of the circumstances set out in s 104(1A) apply. There is an exception to the requirement where the court is satisfied that to do so would be "manifestly unjust".

The appeal raises issues as to the correct approach to s 104, including the meaning of manifestly unjust, particularly as it applies when the s 104(1A) circumstance in issue is vulnerability because of the victim's age, and the impact of the appellant Ms Thompson's mental state and other mitigating factors.

Background

Ms Thompson pleaded guilty to the murder of her 18-month-old daughter, Comfort, and to two charges of ill-treatment along with one charge of injuring with intent to injure.

Comfort was the middle child of three. In the months leading up to her death, Ms Thompson and her partner were living with other family members in squalid conditions. She also often cared for a family member's young child. A few months before Comfort's death, another child who was also living in the house died.

Ms Thompson was sentenced in the High Court to life imprisonment with an MPI of 17 years on the charge of murder. Ms Thompson had initially pleaded not guilty and, in that context, a number of reports about her mental state were prepared.

Ms Thompson appealed to the Court of Appeal against the length of the MPI on the basis that the sentence was manifestly unjust. The Court of Appeal dismissed the appeal.

On 5 March 2026, the Supreme Court granted Ms Thompson leave to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeal.

Supreme Court decision

The Supreme Court has unanimously allowed the appeal. In determining whether the threshold of manifest injustice was met in this case, the Court was required to form an overall impression of the various factors that had contributed to the tragic death and suffering of Comfort, a vulnerable child who should have been kept safe.

The Court concluded that an MPI of 17 years was manifestly unjust. That was the correct outcome where the facts and the expert evidence, some of which was not before the Courts below, showed that there were powerful factors that reduced Ms Thompson's agency and hence her culpability for her offending. The Court remitted the proceeding back to the High Court for Ms Thompson to be resentenced.

In terms of the facts, there were a number of relevant factors that had not been adequately weighed. These included the appellant's dysfunctional childhood, and the conditions of overcrowding and poverty in which her whānau lived, which deteriorated further following the birth of Ms Thompson's third child. Nor was adequate weight given to her mental state (at [60]).

In terms of her mental state, the Court noted that the picture emerging from the expert evidence was that the violence towards Comfort began after the birth of Ms Thompson's third child in January 2018 and none of her other children showed signs of neglect or abuse (at [62]–[65] and [90]). Importantly, as part of that deterioration, the evidence was that she developed disordered thinking. That narrative was consistent with postnatal depression and the expert evidence, particularly a further report from a consultant psychiatrist who had interviewed Ms Thompson, indicated there are parallels with infanticide.

The partial defence of infanticide is an alternative to murder to meet the circumstances that may confront a woman following recent childbirth. These circumstances may be a mix of social, economic, mental and physiological stresses (at [75]).

In terms of sentencing outcomes, where there are factual parallels with infanticide, those parallels should be taken into account in the mitigation of sentence. In Ms Thompson's case, the potential relevance of the parallels with infanticide in terms of sentencing outcomes was not addressed. This led to an error in principle. The importance placed on consistency in sentencing means it is not correct to ignore the fact that, in very similar factual situations, sentencing outcomes for one mother would be completely different from those of another (at [82]–[84] and [112]).

Ms Thompson's resentencing was remitted to the High Court to allow sentencing to take place with the full factual picture.

Contact person:
Sue Leaupepe, Supreme Court Registrar (04) 914 3613