

**IN THE SUPREME COURT OF NEW ZEALAND
I TE KŌTI MANA NUI O AOTEAROA**

SC 157/2025

BETWEEN LORI-LEA WAIROA WADE TE WINI

Applicant/Appellant

AND THE KING

Respondent

SUBMISSIONS OF THE APPLICANT/APPELLANT

26 June 2026

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Counsel for Ms Te Wini certify that, to the best of their knowledge,
this submission contains no suppressed information and is suitable
for publication

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A. INTRODUCTION

1. Due to their vulnerability and lack of control over their immediate surroundings, children have a greater claim than adults to be forgiven for failing to escape the negative influences of their environment.¹
2. Ms Te Wini lost her childhood to gross abuse and deprivation. As a damaged child, she engaged in an attempted robbery of an elderly neighbour. He was assaulted during the robbery, and subsequently died. Although she did not have murderous intent, Ms Te Wini was sentenced to life imprisonment and jailed for her entire adolescence. Now, as an adult and a mother of two tamariki, she remains subject to a life sentence.
3. If Ms Te Wini had been sentenced today, however, with the subsequent developments in science and law, she would have received a finite sentence. Requiring her to serve a life sentence on the arbitrary basis that her offending occurred before these developments would be a “substantial injustice”.²
4. Leave is therefore sought for Ms Te Wini to bring an appeal out of time against her sentence of life imprisonment. A determinate sentence should instead be imposed.

B. BACKGROUND

5. By the age of 14, when this offending occurred, Ms Te Wini had been well and truly immersed in a brutal, chaotic and dysfunctional home life. [REDACTED] and grew up in a home that appears to have tolerated violence and drug use.

¹ *Roper v Simmons* 543 U.S. 551 (2005) at 570.

² *Taylor v R* [2018] NZCA 498 at [15]; *R v Hawkins* [1997] 1 Cr App R 234 at 240.

This was the sort of home life the United States Supreme Court observed that children cannot extricate themselves from: “horrific crime producing settings”.³ Unlike an adult, such children are prisoners to the life they are born into.

6. On 24 November 2008, Ms Te Wini and her cousin, Ms Churchward, were out searching for cannabis. They entered the home of John Rowe. As they searched the house, they encountered Mr Rowe sleeping in his bed. What they did next was “mindless, poorly thought out, and objectively irrational”.⁴ Fearing the consequences of being caught in his house, they struck Mr Rowe with wooden implements as he lay in bed – intending to knock him unconscious. Mr Rowe was elderly and frail. Tragically, he died from his injuries.⁵
7. Ms Te Wini stood trial – but was poorly represented. She was essentially a bystander to her own trial. As was later identified, on account of her extreme youth and compromised mental state (including: depression, complex post-traumatic stress disorder, suicidal ideation, negative cognitions, emotional dysregulation, self-harming, hallucinations, flashbacks and nightmares), Ms Te Wini was: *“likely to have struggled significantly with taking in and processing complex information, weighing up the possible consequences of her decisions, and constructing her defence”*.⁶

³ *Miller v Alabama* 567 U. S. 460 (2012) at 471.

⁴ To borrow the words used to describe the actions of youth offenders in *Huntley v R* [2024] NZHC 182 at [25] and *R v D and P* [2024] NZHC 2118 at [30] respectively.

⁵ *R v Te Wini* [2012] NZHC 1593 at [2]-[11] [**Sentencing Notes of Woolford J**]. These facts are similar but not identical to those outlined by Venning J in 2009: *R v Churchward & Te Wini* HC Rotorua CRI-2009-270-000361, 18 December 2009 [**Sentencing Notes of Venning J**].

⁶ *R v Te Wini* [2011] NZCA 405 at [30]. [**Conviction Appeal**].

8. Unsurprisingly, Ms Te Wini was convicted following trial. She successfully appealed her conviction. An adolescent psychiatrist, Dr Myers, reported that, on account of severe childhood trauma [REDACTED] which had caused damage to executive functioning of the brain (the ability to accurately foresee and process risk, and to regulate impulses), coupled with extreme youth, Ms Te Wini was most unlikely to have foreseen the risk of death occasioned by the assault on the victim.
9. Having received this report from Dr Myers, the Crown filed an amended indictment alleging not intentional nor reckless murder, but rather felony murder – i.e. a homicide without murderous intent at all. This pivot was distinctly unfair given the expert evidence received by Dr Myers. Ms Te Wini had no defence to felony murder and pled guilty. Despite objection, she was sentenced to life imprisonment with a minimum non-parole period of 10 years.⁷
10. Ms Te Wini appealed her sentence on the grounds that, given her extreme youth, diminished culpability and lack of murderous intent, a life sentence was manifestly unjust. The Court of Appeal rejected those propositions, holding that the level of violence in the offending was such that a life sentence remained appropriate.⁸

C. CHILDREN ARE NEUROLOGICALLY DIFFERENT TO ADULTS AND MUST BE SENTENCED ACCORDINGLY

11. Courts across the world now accept that children are neurologically different to adults.⁹ These differences must be recognised when

⁷ *R v Te Wini* [2012] NZHC 1593. [SC Casebook at 67-91].

⁸ *Te Wini v R* [2013] NZCA 201 [Sentence Appeal]. [SC Casebook at 16-35].

⁹ See: *KT v R* [2008] NSWCCA 51, (2008) 182 A Crim R 571 at 578 per McClellan CJ; *Centre for Child Law v Minister for Justice and Constitutional Development* [2009] ZACC 18, (2009) 2 SACR 477; *Roper v Simmons*, 543 U.S. 551 (2005).

children are sentenced for criminal offending. To this end, the United States Supreme Court has observed that young people are “constitutionally different from adults for purposes of sentencing”.¹⁰

12. This is reflected in the United Nations Convention on the Rights of the Child, which states that “in all actions concerning children ... the best interests of the child shall be a primary consideration.”¹¹ So too the New Zealand Bill of Rights Act 1990, which affirms “the right, in the case of a child, to be dealt with in a manner that takes account of the child’s age”.¹²
13. In *Churchward v R*, the Court of Appeal recognised that neurological differences between adults and children can lead to a reduction in the culpability of children.¹³ Moreover, the Court identified the following ways in which youth is relevant to the sentencing process:
 - a. There are age-related neurological differences between young people and adults, including that young people may be more vulnerable or susceptible to negative influences and outside pressures (including peer pressure) and may be more impulsive than adults.¹⁴

¹⁰ *Miller v Alabama* 567 U.S. 460 (2012) at 471, citing *Roper v Simmons* 543 U.S. 551 (2005) at 569-570.

¹¹ Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) at Article 3. The Convention also states that the imprisonment of a child shall be for the shortest appropriate period of time.

¹² New Zealand Bill of Rights Act 1990, s 25(i).

¹³ *Churchward v R* [2011] NZCA 531 at [81].

¹⁴ At 77(a). [**App Materials, page 453**].

- b. The effect of imprisonment on young people, including the fact that long sentences may be crushing on young people.¹⁵
 - c. Young people have greater capacity for rehabilitation, particularly given that the character of a juvenile is not as well formed as that of an adult.¹⁶
- 14. The science around the development of children has advanced further since *Churchward*. It is now well-known that the “areas of the brain related to higher-order executive functioning (such as impulse control, risk assessment and planning ability) are not fully developed until around the age of 25 years.”¹⁷
- 15. The Court of Appeal considered these advancements in *Dickey v R*.¹⁸ To assist the Court, Dr Ian Lambie provided two reports addressing the neurological differences between young people and adults. The Crown accepted that these were authoritative. The Court appeared to do the same. These reports explained:
 - a. “Research from developmental and neuropsychology overwhelmingly concludes that adolescents and emerging adults ... are different to adults”.¹⁹
 - b. “Young people have less self-control and are more impulsive than adults”. As a consequence, young people are “less able

¹⁵ At 77(b). [**App Materials, page 453**].

¹⁶ At 77(c). [**App Materials, page 453**].

¹⁷ *Dickey v R* [2023] NZCA 2 at [78]. [**App Materials, page 370**].

¹⁸ *Dickey*, above n 17.

¹⁹ At [77](a), citing: Elizabeth S Scott, Richard J Bonnie and Laurence Steinberg “Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy” (2016) 85 Fordham L Rev 641. [**App Materials, page 370**].

to consider the impact of their behaviour and consider alternative courses of action”.²⁰

- c. “Even when young people’s cognitive ability is similar to that of adults, they are less able to make the same mature decisions [as adults], and are more likely to engage in risky behaviour arising from that immaturity”.²¹
 - d. “Young people are more vulnerable to the influence of their peers, and lack the sense of autonomy that adults use to escape from these pressures”. Young people “are particularly susceptible to peer influence and impulsivity when provoked or in stressful situations”.²²
16. In addition to their susceptibility to engage in serious criminal offending, young people are more amenable to rehabilitation than adults: “[T]heir offending behaviour is less likely to be entrenched ... and they are very likely to desist from offending as adults, especially with appropriate intervention”.²³

²⁰ At [77](b), citing: Alexandra Cohen and others “When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts” (2016) 27 Psychological Science 549; Laurence Steinberg “A behavioral scientist looks at the science of adolescent brain development” (2010) 72 Brain Cogn 160.

²¹ At [77](c), citing: Laurence Steinberg “A behavioral scientist looks at the science of adolescent brain development” (2010) 72 Brain Cogn 160.

²² At [77](d), citing: Ian Lambie and Isabel Randell “The impact of incarceration on juvenile offenders” (2013) 33 Clin Psychol Rev 448; Elizabeth P Shulman, Kathryn C Monahan and Laurence Steinberg “Severe Violence During Adolescence and Early Adulthood and Its Relation to Anticipated Rewards and Costs” (2017) 88 Child Dev 16.

²³ *Dickey v R*, above n 17, at [80]. **[Appellant’s Authorities, Page 371]**.

17. For these reasons, several states in Australia either prohibit²⁴ or substantially restrict²⁵ the imposition of life sentences on individuals under the age of 18.

D. LIFE IMPRISONMENT IS CATEGORICALLY DIFFERENT TO A FINITE SENTENCE

18. All people sentenced to life imprisonment are subject to standard release conditions for the rest of their life.²⁶ These include, *inter alia*:²⁷

- a. reporting requirements;
- b. limitations on the released person's ability to move to a new residential address;
- c. a requirement to provide biometric information on request;
- d. the probation officer's authority to direct the released person, as required:
 - i. not to reside at a specified address;
 - ii. not to engage in specified employment;
 - iii. not to associate with a specific person, persons, or class of person; and
 - iv. to take part in a needs assessment.

19. In *Dickey*, the Court of Appeal described the standard release conditions as “onerous” and noted that the offender “may

²⁴ The Australian Capital Territory prohibits the imposition of life sentences for those aged less than 18 years. See *Dickey*, above n 17, at [126].

²⁵ In Victoria, persons under the age of 18 are “usually sentenced to a fixed term with an MPI” and, in New South Wales, it appears that all sentences imposed for murder since 1999 have been finite sentences.

²⁶ Parole Act 2002, s 32 and 86(3).

²⁷ Section 14(1)(a)-(i).

experience them as punitive”.²⁸ Moreover, the ongoing risk of being recalled into custody “always hangs over the offender, however long ago their offence and however complete their rehabilitation.”²⁹

20. The New Zealand Parole Board *may* discharge life parole conditions upon application.³⁰ However, only two people have ever successfully achieved this.³¹ Both had obtained doctorates and had made “outstanding contributions to society”.³² The overwhelming majority of life-time parolees are not discharged, despite long-standing compliance.

Ms Te Wini’s experience as a lifetime parolee

21. Ms Te Wini has filed an affirmation explaining the ongoing impact of her life sentence. She was released in 2019 after spending 12 years in custody. She is now settled in a home of her own with her long-term partner and their two tamariki – Iousua Tawhitinui Conour Te Wini, aged three, and Tai-ora Manu Te Wini Hall, aged one.
22. Because Ms Te Wini remains on life-time parole, she must still report to probations every month. In her affirmation, she explains that, in 2021, she underwent an emergency caesarean and delivered twins. Sadly, one of the twins died after five months.³³ Ms Te Wini was in hospital for nine months. Even during this difficult period, she had to report to her probation officer every month. She explains that she “would often suffer panic attacks”

²⁸ *Dickey v R*, above n 17, at [185]. [**App Materials, page 403**].

²⁹ At [190].

³⁰ Parole Act 2002, s 56-58.

³¹ *Dickey v R*, above n 17, at [186].

³² At [186].

³³ Affirmation of Lori-Lea Te Wini, dated 15 October 2025, at 12. [**App Materials, page 5**].

because she was “constantly afraid of being breached” when she had to visit the hospital late at night.³⁴

23. Moreover, Ms Te Wini cannot travel, even domestically, without prior approval. As she explains:³⁵

47. I must apply for Probations and provide addresses, names of occupants for Probations to contact. It is quite intrusive. They then will disclose to the occupants my situation, seek the names of all those in the home and give them details of where I am not supposed to go and why.

48. Those addresses and occupants are relatives of my partner Alex, so this has felt humiliating for me. My history is being dragged up constantly as though I somehow pose a threat to the safety of my new in-laws and the family of my children when I do not. I feel embarrassed and it puts me off making those trips, which further isolates me and my children from enjoying wider connections with extended whanau.

49. I find that because of this, I tend to pull myself away and struggle to hold social conversations. I feel exposed and tend to hide in the car or take myself off to the room to avoid socialising with others. I then feel guilty for distancing myself and I am arguing with Alex because he is trying to encourage me to involve myself and this triggers my anxiety further which leads to the panic attacks.

24. Ms Te Wini hails from the Bay of Plenty. Because of these reporting requirements, she cannot take her tamariki on spontaneous trips to their whenua, where her deceased child is buried. She says that “[s]ometimes trying to organise simple visits to family for the children and [herself] is more of a hassle than it would be worth”.³⁶

25. She concludes with the following:³⁷

60. My offending is something I live with and will deal with for the rest of my life. It is hard to be constantly reminded when to get a job or take a simple trip to visit extended family. I want to move on, but I feel like I cannot.

...

³⁴ At 13. [App Materials, page 5].

³⁵ At 47-49. [App Materials, page 12].

³⁶ At 46.

³⁷ At 60, 65-68. [App Materials, page 14-15].

65. Even though it has been almost 6 years since my release, I am still quite institutionalised and I struggle with social anxiety and on occasion, panic attacks. I work through my anxiety to leave the house and do the things I need to for my tamariki, but a lot of that anxiety stems from the stigma attached to my crime and the ongoing need to consult and get permission for everything I do.

66. I want to be able to make memories with my family and travel to my haukainga without needing to have all my movements pre-approved and applied for.

67. Since my release I have not had any trouble with the law. I have passed all my random drug tests and met my requirements with Probations. I do not have any issues dealing with them. However, I do carry an unreasonable fear of getting pulled over while driving or for another minor reason. Just the thought of having that happen makes me feel very nervous and triggers my anxiety. I feel it is something I struggle with more because, as a mother, I cannot imagine having to ever leave my children.

68. I have done everything that Probations have ever asked of me, on top of all the complications and everything I have been through since my release. I just want to move on in my life.

26. Because of the profound difference between a life sentence and a determinate sentence, an appeal against a sentence of life imprisonment is not an ordinary sentence appeal. Rather, it is analogous to a conviction appeal or an appeal against preventive detention. The approach to determining leave to appeal out of time should reflect this.

E. THE EFFECT OF DICKEY v R

27. In *R v Rapira*, the Court of Appeal held that youth carried little weight when balanced against the principles of denunciation and accountability.³⁸
28. This was interpreted by sentencing courts as effectively preventing a determinate sentence for murder where youth was a primary

³⁸ *R v Rapira* [2003] 3 NZLR 794 (CA) at [121]. [App Materials, page 511].

mitigating factor. This remained binding authority until 2023.³⁹ Accordingly, in the 20 years following *Rapira*, only one case resulted in a determinate sentence due, at least in part, to the defendant's age.⁴⁰

29. *Rapira* remained binding despite the Court of Appeal's decision in *Churchward v R*, which related to the imposition of a 17-year minimum non-parole period under s 104 of the Sentencing Act 2002. Indeed, in *Churchward*, the Court said it was "highly optimistic" to even suggest there were "arguments that, because of Ms Churchward's youth and mental state, life imprisonment did not need to be imposed".⁴¹
30. This changed, radically, in *Dickey v R*. There the Court of Appeal held that it was "no longer correct to say, as the Court did in *Rapira*, that youth can carry little weight when balanced against the public interest in denunciation and accountability".⁴² The presumption of life imprisonment could, therefore, be displaced by a combination of factors relevant to the offending and the offender. And contrary to *Rapira*, the defendant's youth could be afforded significant weight in that assessment.

³⁹ In *Dickey v R*, above n 17 at [171] the Court of Appeal recognised that *Rapira* remained "the leading authority on s 102 [of the Sentencing Act 2002]".

⁴⁰ *R v Nelson* [2012] NZHC 3570.

⁴¹ *Dickey v R*, above n 17, at [103]. the Court recognised that *Churchward* "was a s 104" and therefore "*Rapira* [remained] the leading authority on s 102".

⁴² At [177]. [**App Materials, page 400**].

31. This was a substantial change in the law, as the outcomes of later cases have made clear.⁴³ In the three years since *Dickey*, at least 12 young people have received a finite sentence for murder.⁴⁴

F. LEAVE TO APPEAL SHOULD BE GRANTED

32. Ms Te Wini seeks leave to bring an appeal against her sentence of life imprisonment. Because she was charged in 2008, her appeal is pursuant to s 383A of the Crimes Act 1961.⁴⁵
33. The timeframe for bringing an appeal was 20 working days from the decision of the Court of Appeal.⁴⁶ That period ended on 2 July 2013. This appeal was filed on 20 October 2025 – 12 years, 3 months, and 23 days out of time. Although the appeal is brought out of time, this Court can – and should – exercise its discretion to grant leave.

The approach for determining leave out of time

34. Section 25(h) of the New Zealand Bill of Rights Act 1990 guarantees a right of appeal against sentence. Whilst statutory time limits are imposed, the Court retains an open-ended discretion to “at any time, extend the time allowed for filing a notice of appeal”.⁴⁷

⁴³ In the recent case of *Kriel v R* [2024] NZCA 45, the Court of Appeal commented at [103] that *Dickey v R* “applied similar reasons which had found favour in *Churchward* in the context of s 104”. That may be correct but, prior to *Dickey*, the position in *Rapira* remained binding in respect of s 102. The Court in *Dickey* recognised this at [171]. [**App Materials, page 399**].

⁴⁴ See: *R v Jetson* [2025] NZHC 1022; *R v Lo* [2024] NZCA 359; *R v Messervy* [2024] NZHC 3770; *R v Ronaki* [2024] NZHC 3019; *R v D and P* [2024] NZHC 2118; *R v Huntley* [2024] NZHC 182; *R v Ormsby-Turner* [2023] NZCA 601; *M v R* [2023] NZCA 319; *R v Yu* [2023] NZHC 1391; *R v TH* [2023] NZHC 630; *R v Faires* [2023] NZHC 3368.

⁴⁵ This appeal pathway is preserved by s 397(2) of the Criminal Procedure Act 2011.
⁴⁶ Supreme Court Rules 2004, r 11.

⁴⁷ Criminal Procedure Act 2011, s 231(3).

35. The principles governing applications for extensions of time to appeal were set out by a Full Bench of the Court of Appeal in *R v Knight*.⁴⁸ The touchstone is the interests of justice in the particular case.⁴⁹ This assessment requires balancing various factors, which include:
- a. the strength of the proposed appeal;
 - b. the practicality of the remedy sought;
 - c. whether the liberty of the subject is involved;
 - d. the length of time and the reasons for the delay;
 - e. the impact on others similarly affected and on the administration of justice (“floodgates” consideration); and
 - f. the absence of prejudice to the Crown.
36. In more recent decisions, the Court of Appeal has observed that an extension of time application will “invariably reduce to two questions”: First, why the appeal was filed late? Second, what merit if any, the prospective appeal point appears to have?⁵⁰ In some cases, the focus appears to have been entirely on the merits of the appeal.⁵¹

⁴⁸ *R v Knight* [1998] 1 NZLR 583 (CA). [**App Materials, page 285**].

⁴⁹ At 587: “The overall interests of justice in a particular case may call for balancing the wider interest of society in the finality of decisions against the interests of the appellant in having the conviction reviewed.” [**App Materials, page 290**].

⁵⁰ See: *Mikus* [2011] NZCA 298 at [26]; *R v Slavich* [2008] NZCA 116 at [14].

⁵¹ *Smith v R* [2020] NZCA 221 at [4]: “Whether the application for an extension of time appeal should be granted depends on the merits of the proposed appeal”.

An extension of time can be granted due to a change of law

37. The mere fact that the law has changed will not alone justify an extension of time.⁵² In *Knight*, the defendant had been convicted of benefit fraud. Approximately two years later, the Court of Appeal restated the law on living in a relationship in the nature of marriage. Under this new interpretation, she would not have been convicted.
38. The Court of Appeal granted an extension of time to appeal her conviction. Writing for the Court, Richardson P said the following:⁵³

Leave to appeal out of time on the ground that there has been a restatement of the applicable law should be granted only where **special circumstances** can be shown to justify a departure from the principle of finality.

[Emphasis added]

39. This approach broadly aligned with the position in the United Kingdom. In *R v Hawkins*, the applicant sought an extension of time to appeal his conviction on the basis of an intervening House of Lords decision. Lord Bingham CJ said:⁵⁴

It is plain, as we read the authorities, that there is no inflexible rule on this subject, but the general practice is plainly one which sets its face against the reopening of convictions recorded in such circumstances. Counsel submits—and in our judgment submits correctly—that the practice of the Court has in the past, in this and comparable situations, **been to eschew undue technicality and ask whether any substantial injustice has been done.**

[Emphasis added]

⁵² See: *R v Mitchell* [1977] 1 WLR 753; (1977) 65 Cr App 185 at 189: “the fact that there has been an apparent change in the law ... does not afford a proper ground for allowing an extension of time in which to appeal”.

⁵³ *R v Knight*, above n 48, at 588-589. [**App Materials**, page 292-293].

⁵⁴ *R v Hawkins* [1997] 1 Cr App R 234.

40. A ‘substantial injustice’ will likely occur where the change of law may legitimately affect the outcome.⁵⁵ In *R v Mitchell*, for example, the appellant was in custody and could demonstrate that he would not have been convicted under the restatement of the law. The Court accordingly concluded:⁵⁶

If we were to refuse him the extension of time in which to appeal against conviction, we should be keeping him in prison, so to speak, when we as a court were convinced that he had not committed an offence.

41. The issue was considered further in *R v Johnson*, which involved several conviction appeals following the House of Lords’ restatement on the law of joint enterprise.⁵⁷ The England and Wales Court of Appeal confirmed that an applicant needs to demonstrate that a “substantial injustice would be done”.⁵⁸ In that assessment, the court will “primarily and ordinarily have regard to the strength of advance that the change in the law would, in fact, have made a difference.”⁵⁹ Importantly, however, the Court of Appeal said: “[i]f there was a substantial injustice, it is irrelevant whether that injustice occurred a short or long time ago. It is and remains an injustice”.⁶⁰
42. This sentiment was shared by the Court of Appeal of Newfoundland and Labrador in *R v White*: “The principle of

⁵⁵ See, for example, in *Kentwell v R* [2014] 252 CLR 601 at [33], the High Court of Australia declined to grant leave because there was: “no prospect that a lesser sentence would be imposed were the appeal entertained.”

⁵⁶ *R v Mitchell*, above n 52. [App Materials, page 346].

⁵⁷ *R v Johnson* [2016] EWCA Crim 1613 at [21]. The restatement occurred in *R v Jogee* [2016] UKSC 8.

⁵⁸ *R v Johnson*, above n 57, at [20]-[21]. [App Materials, page 304].

⁵⁹ At [20].

⁶⁰ At [21]. [App Materials, page 304].

finality is not absolute. When its rigid application might lead to a miscarriage of justice, the finality principle must yield.”⁶¹

43. The domestic case of *Taylor v R* provides a helpful illustration.⁶² The defendant had been sentenced to preventive detention for offending committed when he was aged 20. Eight years later, the Supreme Court held that the qualifying age for preventive detention was 21 at the date of the *offending*, rather than conviction.⁶³ Mr Taylor elected not to seek an extension of time to appeal. Twelve years later, he changed his mind.
44. The Court of Appeal traversed the relevant authorities and considered the “essential question” to be whether:⁶⁴

... preserving finality of a judicial decision in a criminal case (here, a sentencing decision) in the face of later judicial recognition of evaluative error in that decision would work a substantial injustice.

45. In the circumstances of that case, the Court concluded that “the retention of finality in the circumstances of this case would be objectionable and work a substantial injustice”.⁶⁵ Three reasons were given:
 - a. ***First***, the case concerned “simply the sentence that should have been imposed on an offender”. Mr Taylor sought no unfair advantage – he simply sought the finite sentence that would have been imposed on him.⁶⁶

⁶¹ *R v White* [2023] NLCA 28.

⁶² *R v Taylor* [2018] NZCA 498. [**App Materials, page 81**].

⁶³ *R v Mist* [2005] NZSC 77, [2006] 3 NZLR 145 at [5] per Elias CJ and Keith J, at [62] per Gault J and at [107] per Blanchard and Tipping JJ. This decision represented a change in the interpretation of s 75 of the Criminal Justice Act 1985. [**App Materials, page 238**].

⁶⁴ *R v Taylor*, above n 62, at [28]. [**App Materials, page 92**].

⁶⁵ At [16]. [**App Materials, page 88**].

⁶⁶ At [17].

- b. ***Second***, the one potentially relevant action (or, rather, inaction) of Mr Taylor was not to bring the application earlier. At the time, he was advised that he might well have grounds to appeal. He instead waited 12 years. The delay was “explicable, does not represent any sort of formal election, and does not materially diminish the injustice of Mr Taylor serving a sentence which, had the law been correctly understood at the time, could not have been imposed”.⁶⁷
- c. ***Third***, no issue of floodgates arose. There was only one other serving prisoner sentenced prior to *Mist*, who was under 21 years at the time of offending but received a sentence of preventive detention.⁶⁸

46. An extension of time was granted and Mr Taylor’s sentence of preventive detention was substituted for a determinate sentence.

Leave should be granted in this case

47. Applying the criteria contained in the authorities, Ms Te Wini should be granted leave to appeal her sentence of life imprisonment.

(a) *Merits of the appeal*

48. For the reasons outlined in detail at [62]-[126] below, the merits of the appeal are high. Had Ms Te Wini been sentenced post-*Dickey*, she would have received a determinate sentence.

⁶⁷ At [18].

⁶⁸ At [19].

(b) *Practical utility of remedy sought*

49. Ms Te Wini is currently serving a period of life imprisonment. As explained above, this sentence involves a substantial incursion into her privacy and family life, freedom of movement, and freedom of association.
50. Like in *Taylor*, Ms Te Wini seeks an order substituting an indeterminate sentence for a determinate sentence. This would carry immense utility for Ms Te Wini, as it would allow her to finally move on with her life.
51. There are no practical difficulties with the remedy sought. Appellate courts regularly quash sentences and substitute new ones. This involves substituting sentences of life imprisonment for determinate sentences.⁶⁹

(c) *Length of delay and reasons*

52. It is accepted that the delay – 12 years – is long. Ms Te Wini appealed her sentence in 2013, but this was dismissed by the Court of Appeal.⁷⁰
53. At that time, *Rapira v R* was the binding authority and firmly stated that “youth carried little weight when determining whether or not a life sentence for murder would be manifestly unjust”.⁷¹ As noted, in the 20 years between *Rapira* and *Dickey*, only one young person received a determinate sentence. There was, effectively, a bar against relying upon youth to demonstrate that a life sentence

⁶⁹ See: *R v Lo* [2024] NZCA 359.

⁷⁰ *Te Wini v R* [2013] NZCA 201.

⁷¹ *Kriel v R* [2024] NZCA 45 at [74]. [App Materials, page 56].

would be manifestly unjust. Since *Dickey*, that is no longer the case.

54. Ms Te Wini’s position is the same as the applicant in *Lo v R*.⁷² Mr Lo’s application for leave to appeal his life sentence was nine years out of time. Nevertheless, the Court of Appeal considered that “it [was] possible that, if Mr Lo was sentenced post-*Dickey*, he may have received a finite sentence”.⁷³ The same applies to Ms Te Wini – the imposition of her life sentence was and remains an injustice.

(d) Administration of justice

55. In *Kriel v R*, the Court of Appeal heard five applications from young people who had been sentenced for murder pre-*Dickey*. The Court accepted that the risk of “floodgates” is not particularly relevant because there was “no evidence that if the applications were granted this Court would be inundated with similar applications”.⁷⁴ The same applies here.

(e) Liberty of subject

56. In *Lee v R*, the Court of Appeal emphasised “the respect which is traditionally shown for the liberty of the subject.”⁷⁵ Although she is not presently in custody, Ms Te Wini’s liberty remains infringed.
57. As a life-time parolee, her ability to travel, work, and associate is subject to the approval of her probation officer. And so long as she serves a life sentence, she remains in jeopardy of being recalled into custody.

⁷² *Lo v R*, above n 69.

⁷³ *Kriel v R*, above n 71, at [113]. [App Materials, page 67-68].

⁷⁴ At [105].

⁷⁵ *R v Lee* [2006] 3 NZLR 42 (CA) at [97]-[99]., citing *R v Hawkins*, above n 54, at 239. [App Materials, page 156].

(f) *Prejudice to the Crown and victims’ interests*

58. As in *Taylor*, this appeal concerns only “the sentence that should have been imposed on an offender”.⁷⁶ Even if Ms Te Wini’s appeal is successful, her murder conviction will remain. Imposing a determinate sentence would not make her any less responsible for her offending.
59. Ms Te Wini seeks no unfair advantage – she simply seeks the determinate sentence that would have been imposed on her, had she been sentenced today. Accordingly, the appeal will cause limited – if any – prejudice to the Crown and the family of the victim.

G. THE SENTENCE APPEAL SHOULD BE GRANTED

60. Ms Te Wini was sentenced to life imprisonment. She served 12 years in custody and has now spent six years on parole.
61. As things stand, Ms Te Wini will remain under this sentence for the rest of her life. Had she been sentenced today, however, with the benefit of modern scientific understanding of young people, she would have received a finite sentence.

Ms Te Wini would have received a determinate sentence today

62. In *Dickey v R*, the Court of Appeal confirmed that the presumption of life imprisonment could be displaced by a combination of factors relevant to the offending and the offender. In that case, each of the appellants:⁷⁷

... was able to identify a number of factors that reduced their culpability. Those factors included their age, their profound social

⁷⁶ As in *Taylor*, above n 62, at [17]. [App Materials, page 88].

⁷⁷ *Kriel v R*, above n 71, at [104]. [App Materials, page 64].

disadvantages and, in the case of Mr Brown, significant cognitive limitations. It was the combination of those factors when assessed in the context of the offending, that enabled the Court to conclude life sentences were manifestly unjust in those cases.

63. The same applies here. As outlined in detail below, there are numerous factors which reduced Ms Te Wini's culpability for the present offending. These include: lack of murderous intent, the lesser role she played in the offending, her extreme youth, systemic deprivation, addiction, and mental health issues.
64. Comparison with other cases decided after *Dickey* confirms that a determinate sentence would have been imposed.

The offending

65. On the evening of 24 November 2008, Ms Churchward arrived at Ms Te Wini's home. They wanted some weed and went searching for it. After roaming around Opotiki for some time, they returned to Ms Te Wini's house and decided to try the house belonging to Mr Rowe.
66. They first broke into Mr Rowe's garage but located nothing of value. After observing him leave the toilet and go into his bedroom, they broke into his home.⁷⁸ While searching through the sitting room Ms Te Wini accidentally caused a noise by opening a small container. They panicked, fearing the consequences of being found inside Mr Rowe's house. This fear caused Ms Te Wini and Ms Churchward to arm themselves with whatever items they could find.⁷⁹

⁷⁸ Second Sentence Appeal at [4].

⁷⁹ Sentencing Notes of Woolford J at [6]. [CA Casebook at 89].

67. Ms Churchward grabbed a long, solid piece of wood and handed it to Ms Te Wini.⁸⁰ Ms Te Wini handed it back and instead picked up a thinner piece of wood, more akin to a broom handle.⁸¹ The plan “seems to have been to knock the victim out.”⁸²
68. The pair then entered Mr Rowe’s bedroom. They hesitated and returned to the sitting room.⁸³ After a brief discussion, they returned to the bedroom. Ms Churchward struck the first blow. Using the solid piece of wood, she struck Mr Rowe several times. Ms Te Wini struck Mr Rowe with the smaller stick.⁸⁴
69. After they turned on the light, the pair saw the harm they had caused.⁸⁵ They panicked again. In an impulsive and unsophisticated attempt to conceal their actions, they ransacked the house to look like a burglary gone wrong. They attempted to start Mr Rowe’s car but were unsuccessful. They ultimately climbed back over the fence to Ms Te Wini’s home.
70. It is accepted that the offending involved aggravating factors, including the intrusion into Mr Rowe’s house and his vulnerability as he lay in bed.⁸⁶
71. There are, however, relevant mitigating factors.

⁸⁰ Sentencing Notes of Woolford J at [6].

⁸¹ Sentencing Notes of Woolford J at [6].

⁸² Sentencing Notes of Woolford J at [6].

⁸³ Sentencing Notes of Woolford J at [6].

⁸⁴ Sentencing Notes of Woolford J at [55]. [**CA Casebook at 104**].

⁸⁵ Sentencing Notes of Venning J at [8].

⁸⁶ It is accepted that s 104 was engaged. However, some cases post-*Dickey* have resulted in determinate sentences despite s 104 being engaged. See: *R v Yu* [2024]; *R v Ronaki* [2024] NZHC 3019.

There was no murderous intent

72. Ms Te Wini pleaded guilty to felony murder under s 168 of the Crimes Act 1961. She therefore did not have any murderous intent. As observed at Ms Te Wini’s sentencing, the plan “seems to have been to knock the victim out.”⁸⁷ The pair stopped after they switched on the lights and saw Mr Rowe’s injuries.⁸⁸
73. Felony murder is not without its detractors. Many courts and law commissions in Commonwealth jurisdictions have grappled with how to position the culpability of an offender under the so-called felony murder or constructive murder rule. The Supreme Court of Canada in *R v Martineau* went so far as to hold that felony murder is contrary to the principles of fundamental justice:⁸⁹

In a free and democratic society that values the autonomy and free will of the individual, the stigma and punishment attaching to murder should be reserved for those who choose intentionally to cause death or who choose to inflict bodily harm knowing that it is likely to cause death. Requiring subjective foresight of death in the context of murder maintains a proportionality between the stigma and punishment attached to a murder conviction and the moral blameworthiness of the offender. ... A special mental element with respect to death is necessary before a culpable homicide can be treated as murder and gives rise to the moral blameworthiness that justifies the stigma and punishment attaching to a murder conviction. It is a principle of fundamental justice that a conviction for murder cannot rest on anything less than proof beyond a reasonable doubt of subjective foresight of death.

74. There can be no doubt that, in the case of felony murder, culpability is less than offenders acting with murderous intent. Accordingly, the crime of murder without murderous intent must attract a lower sentence on account of the reduced moral blameworthiness. That is not to diminish the seriousness of what occurred. There are,

⁸⁷ Sentencing Notes of Woolford J at [6]. [CA Casebook at 89].

⁸⁸ Sentencing Notes of Venning J at [8]. [SC Casebook at 94].

⁸⁹ *R v Martineau* [1990] 2 SCR 633.

however, gradations of culpability, from a deliberate premeditated killing involving further aggravating factors, to this case, which involved a mentally disordered child being a party to grievous bodily harm committed in the course of an aggravated robbery.

75. As recorded in the Crown Summary of Facts, whilst it was Ms Te Wini who suggested the deceased as a target for a robbery, Ms Churchward was plainly the protagonist. She handed Ms Te Wini a long solid heavy piece of wood to use as a weapon, which Ms Te Wini refused, taking the smaller weapon. It was then Ms Churchward who stated they were going to knock the victim out. And it was Ms Churchward, armed with the heavy weapon, who struck the blows to the victim's head and upper torso. Ms Te Wini only joined in when Ms Churchward pressed her to do so.⁹⁰
76. The lack of murderous intent substantially lessened Ms Te Wini's culpability. As the United States Supreme Court said in *Graham v Florida*: “[w]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability”.⁹¹
77. A lack of murderous intent was also present in *R v Jetson*, where a sentence of life imprisonment was held to be manifestly unjust.⁹²

Ms Te Wini culpability was lower than Ms Churchward's

78. Ms Te Wini was the less culpable offender. When Ms Churchward suggested that she use the solid wooden staff as a weapon, Ms Te Wini refused. Instead she grabbed a thinner piece of wood, “more

⁹⁰ See: Crown Summary of Facts at para 21 and 26. [CA Casebook at 72].

⁹¹ *Graham v Florida* 560 U.S. 58 (2010) at 2016.

⁹² *Jetson v R* [2025] NZHC 1022.

akin to a broom handle”.⁹³ In the bedroom, it was Ms Churchward who struck Mr Rowe first, on more occasions,⁹⁴ and, in all likelihood, delivered the fatal blow.

79. At the time of the offending, Ms Churchward was 17 years old while Ms Te Wini was just 14. As noted below, Ms Te Wini idolised her older cousin and “wanted to be like her”.⁹⁵ This is likely because she lacked protective or supportive adults, or any positive role models.

80. A Child Youth and Family entry dated 30 March 2007 described the following observations:⁹⁶

Lorilea had refused to attend interview without Courtney being present. Robin Harris DP described them as being joined at the hip. Courtney took control of the interview and did much of the speaking for Lorilea.

81. Moreover, Dr Meyers reported that Ms Te Wini “had been significantly influenced by [Ms Churchward] over several years”.⁹⁷

82. Whilst Ms Te Wini was a willing and active participant, she was also uniquely vulnerable to the influence of her older cousin, Ms Churchward, as a consequence of her extreme youth, lack of role models, and deprived upbringing. This further reduces her culpability, in a manner similar to *R v Jetson*⁹⁸ and *R v Yu*,⁹⁹ discussed further below.

⁹³ Sentencing Notes of Woolford J at [6]. [CA Casebook at 89].

⁹⁴ Sentencing Notes of Woolford J at [55]. [CA Casebook at 104].

⁹⁵ Pre-Sentence Report, 22 June 2012. [CA Casebook at 15].

⁹⁶ Report of Dr Elizabeth Myers at 059. [CA Casebook at 61].

⁹⁷ Report of Dr Elizabeth Myers at 013. [CA Casebook at 71].

⁹⁸ *R v Jetson* [2025] NZHC 1022.

⁹⁹ *R v Yu* [2023] NZHC 1391.

The offender – Lori-Lea Te Wini

83. Lori-Lea Te Wini’s upbringing was nothing short of harrowing. She was raised by her mother and stepfather,¹⁰⁰ with her seven siblings. [REDACTED]

84. The physical abuse perpetrated by her step-father involved belts, sticks, a jug cord, pipes, or his steel capped boots.¹⁰⁵ She recalled that these beatings were regular and were worse if her mother was out of the house.¹⁰⁶

85. By the time she was 12 years old, Ms Te Wini dealt with this trauma by “sniffing solvents to block the negative thoughts”.¹⁰⁷ She described first using cannabis at the age of nine and that “for years she had used cannabis to help her eat and sleep”.¹⁰⁸

86. Ms Te Wini lived a somewhat “transient lifestyle” through her adolescence. She was taken into the care of Child Youth and Family

¹⁰⁰ Ms Te Wini’s father was a patient at the Mason Clinic (Forensic Psychiatric Service) at the time of sentencing, with a diagnosis of schizophrenia. See: Report of Dr Elizabeth Myers, dated 28 June 2012.

¹⁰¹ Pre-Sentence Report, 22 June 2012. [CA Casebook at 15].

¹⁰² Report of Dr Jeremy Skipworth. [CA Casebook at 77].

¹⁰³ Report of Dr Elizabeth Myers. [CA Casebook at 77].

¹⁰⁴ Report of Dr Jeremy Skipworth. [CA Casebook at 78].

¹⁰⁵ Report of Dr Jeremy Skipworth. [CA Casebook at 78].

¹⁰⁶ Report of Dr Jeremy Skipworth. [CA Casebook at 78].

¹⁰⁷ Pre-Sentence Report, 22 June 2012. [CA Casebook at 13].

¹⁰⁸ Report of Dr Elizabeth Myers. [CA Casebook at 61].

services before returning into her mother's care.¹⁰⁹ Despite initially excelling at school, she was expelled from college at a young age and did not continue any form of education thereafter. As Venning J described:¹¹⁰

If you weren't sleeping, you smoked cannabis, that's what you did each day, every day. If you needed cannabis or a drink you'd give money to your brother or boyfriend and they'd get it for you.

87. At the age of 14, Ms Te Wini had been in relationships with two men, both of whom were affiliated with gangs. One was much older and was physically abusive towards her, making her "too scared to leave the house unless she was with her mother due to her jealousy."¹¹¹ During this period, she resorted to self-harm. She would cut herself to "replace the emotional pain for physical pain".¹¹² Ms Te Wini attempted suicide on three occasions (one time the rope broke and another time she was found before completing the process).¹¹³
88. After reviewing the above history and meeting with Ms Te Wini whilst she was in custody, Dr Elizabeth Myers concluded that:¹¹⁴

The picture suggests a significant substance use disorder, emotional dysregulation, some behavioural problems, mood symptoms, and possible eating disorder symptoms. There is also evidence that Ms Te Wini had a life characterised by repeated exposure to violence, with a lack of protective adults around her. It is highly likely that some of these difficulties were secondary to experiencing trauma (sexual, physical, witnessing violence).

89. Dr Myers also confirmed that Ms Te Wini experienced chronic post-traumatic stress disorder (relating to her past [REDACTED]),

¹⁰⁹ Report of Dr Elizabeth Myers. [CA Casebook at 61].

¹¹⁰ Sentencing Notes of Venning J at [13]. [SC Casebook at 96].

¹¹¹ Report of Dr Elizabeth Myers. [CA Casebook at 62].

¹¹² [CA Casebook at 18].

¹¹³ Report of Dr Jeremy Skipworth. [CA Casebook at 78].

¹¹⁴ Report of Dr Elizabeth Myers. [CA Casebook at 62].

major depression, and substance abuse. Ms Te Wini, therefore, had numerous personal mitigating factors.

Youth

90. Ms Te Wini was just 14 years old at the time of the offending. Her extreme youth was evident in her offending, which bore many hallmarks of an impulsive and impressionable young person.

91. Generally, there are three differences between adults and people under 18, which demonstrate that “*juvenile offenders cannot with reliability be classified among the worst offenders*”. First, they lack maturity and have an underdeveloped sense of responsibility. These qualities often result in impetuous and ill-considered actions and decisions. Second, juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure:¹¹⁵

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. ... [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting.

92. Third, the character of a juvenile is not as well formed as an adult:¹¹⁶

The personality traits of juveniles are more transitory, less fixed. ... **These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult.** ... Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. ... The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile

¹¹⁵ *Roper v Simmons* 543 U.S. 551 (2005) at 569.

¹¹⁶ At 570. [App Materials, page 679].

is evidence of irretrievably depraved character. **From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that minor's character deficiencies will be reformed. Indeed, [t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.**

(Emphasis added)

93. Young people are “particularly susceptible to peer influence and impulsivity when provoked or in stressful situations”.¹¹⁷ Ms Te Wini’s decision to participate in the assault on Mr Rowe was impulsive and undoubtedly influenced by the presence of her older cousin, Ms Churchward.
94. Ms Te Wini’s actions were “mindless, poorly thought out and on any analysis, objectively irrational.”¹¹⁸ They were an illustration of how young people have “less self-control ... than adults” and are “less able to consider the impact of their behaviour and consider alternative courses of action”.¹¹⁹ Her extreme youth was a significant mitigating factor.

Deprived upbringing

95. Deprivation – social, cultural, or economic – is empirically linked with criminal offending.¹²⁰ Indeed, some social scientists consider

¹¹⁷ *Dickey v R*, above n 17, at [77](d), citing: Ian Lambie and Isabel Randell “The impact of incarceration on juvenile offenders” (2013) 33 Clin Psychol Rev 448; and Elizabeth P Shulman, Kathryn C Monahan and Laurence Steinberg “Severe Violence During Adolescence and Early Adulthood and Its Relation to Anticipated Rewards and Costs” (2017) 88 Child Dev 16. [**App Materials, page 370**].

¹¹⁸ To borrow the words used by Moore and Johnstone JJ to describe the actions of youth offenders in *Huntley v R* [2024] NZHC 182 at [25] and *R v D and P* [2024] NZHC 2118 at [30] respectively.

¹¹⁹ At [77](b), citing: “When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts” (2016) 27 Psychological Science 549; and Laurence Steinberg “A behavioral scientist looks at the science of adolescent brain development” (2010) 72 Brain Cogn 160.

¹²⁰ Emad H. Atiq and Erin L. Miller “The Limits of Law in the Evaluation of Mitigating Evidence” (2018) 45 Am. J. Crim. L. 167-202 at 181. [**App Materials, page 740**].

the correlation between deprivation and offending to be “axiomatic”.¹²¹

96. Growing up in a deprived environment can impair the development of key behavioral capacities, which are critical to pro-social decision-making. These include the “capacity to empathise with others” as well as capacities for self-regulation such as “impulse control and anger management.”¹²² This, in turn, can inhibit basic executive brain function, which can impact an individual’s ability to consider and evaluate the consequences of their actions.
97. Ms Te Wini’s childhood was “characterised by repeated exposure to violence, with a lack of protective adults around her.”¹²³ Rather than protecting her, the adults around Ms Te Wini abused her.
98. As with many of the young people who have received determinate sentences post-*Dickey*,¹²⁴ there was a strong causative contribution between Ms Te Wini’s deprived upbringing and her impulsive and seemingly thoughtless offending.

Addiction

99. Ms Te Wini was experiencing substance abuse at the time of the offending. She was addicted to cannabis. Some nuance is required when considering the “link” between drug use and motivation for the offending. That is because the drug use itself was a consequence

¹²¹ Craig Haney “Evolving Standards of Decency: Advancing the Nature and Logic of Capital Mitigation” (2008) 36 Hofstra L. Rev. 835 at 856-857.

¹²² Emad H. Atiq and Erin L. Miller, above n 120, at 181. [**App Materials, page 754**].

¹²³ Tina Malti & Sophia F. Ongley, On Moral Reasoning and Relationship with Moral Emotions, in Handbook of Moral Development Research, 166-169, 171-172 (Melanie Killen & Judith G Smetana eds, 2 ed., 2014).

¹²⁴ See, for example: Katrina Epiha (CA645/2020); Soldier Huntley (*R v Huntley* [2024] NZHC 182); Ephron Ronaki (*R v Ronaki* [2024] NZHC 3019); Bailey Messervy (*R v Messervy* [2024] NZHC 3770).

of the horrific home life to which Ms Te Wini was a prisoner. As the renowned addiction expert Dr Gabor Maté explains: “The question is not why the addiction, but why the pain. The source of pain is always and invariably to be found in a person’s lived experience, beginning with childhood. Childhood trauma is the template for addiction—any addiction.”

100. As Venning J noted, smoking cannabis “what [she] did each day, every day”.¹²⁵ Her cannabis addiction underpinned her decision to enter Mr Rowe’s house on the night of the offending. Indeed, the Probation Report recognised that drugs were “the main cause that motivated” Ms Te Wini’s offending.¹²⁶
101. Like in *R v Jetson*, *R v Messervy*, and *Dickey v R*,¹²⁷ there was a strong causative contribution between Ms Te Wini’s cannabis addiction (itself as a coping mechanism from extreme abuse), and her offending.

Mental health

102. At the time of the offending, Ms Te Wini was suffering from chronic post-traumatic stress disorder and major depression. Dr Myers also reported that Ms Te Wini was “known to experience dissociative episodes, particularly when emotionally distressed”.¹²⁸
103. As Dr Myers explained in her report, post-traumatic stress disorder impacts on an individual’s executive functions. This includes their ability to initiate and stop actions, to control impulses and regulate

¹²⁵ Sentencing Notes of Venning J at [13].

¹²⁶ Pre-Sentence Report, 22 June 2012. [CA Casebook at 18].

¹²⁷ See: *R v Jetson* [2025] NZHC 1022; *R v Messervy* [2024], and *Dickey v R* [2023] NZCA 2. In each of these cases, the young person’s addiction contributed to the conclusion that life imprisonment was manifestly unjust.

¹²⁸ Report of Dr Elizabeth Myers. [CA Casebook at 71].

emotions, to monitor and change behaviours as needed, and to plan future behaviour.¹²⁹

104. Given the intensity of the situation inside Mr Rowe’s house, it is likely that Ms Te Wini’s chronic post-traumatic stress disorder limited her ability to regulate her emotions and to think and act rationally. This further reduced her culpability.

Guilty plea

105. Ms Te Wini pleaded guilty when the charge was amended to felony murder under s 168 of the Crimes Act 1961.

Minimal previous criminal history

106. Ms Te Wini had only two previous convictions. Both were minor. She did not have any history of violent or aggressive offending.

Recent comparable cases

107. Below are summaries of three cases decided after *Dickey*.¹³⁰ When Ms Te Wini’s case is compared with these cases, it confirms that she would have received a determinate sentence today.

R v Jetson [2025] NZHC 1022

108. Cycle Jetson was 20 years old when he murdered Mr Raviola.¹³¹ On 23 March 2017, he gathered with his girlfriend (“M”) and two associates. One of the associates, Ms Tihema, asked Mr Jetson to assist robbing Mr Raviola of his car.

¹²⁹ Report of Dr Elizabeth Myers. [CA Casebook at 66].

¹³⁰ Spatial constraints have limited this comparative analysis to three cases. Also relevant are: *Lo v R* [2024] NZCA 359; *R v D and P* [2024] NZHC 2118; *R v Messervy* [2024] NZHC 3770; *Dickey v R* [2023] NZCA 2, *Epiha v R* CA645/2020.

¹³¹ *R v Jetson* [2025] NZHC 1022. [App Materials, page 942].

109. That evening, Ms Tihema invited Mr Raviola to her address. She escorted him into her bedroom, where Mr Jetson, M, and another associate were hiding. An altercation unfolded. Mr Jetson punched Mr Raviola at least twice to the side of the head. These blows knocked him out. After Mr Jetson left the room, M bashed Mr Raviola in the head with a shotgun stock. These blows killed him.
110. Mr Jetson and his co-offenders taped Mr Raviola's hands and feet and carried his unconscious body into the rear of his car. They dumped his body in a car park. Eaton J described this as "callous conduct".¹³²
111. At sentencing, Eaton J described Mr Raviola as a "vulnerable man".¹³³ He was "much older than the group that set upon him" and was "heavily outnumbered".¹³⁴ Nevertheless, Eaton J considered that a sentence of life imprisonment would be manifestly unjust for the following reasons:
- a. **No foresight of death:** Mr Jetson pleaded guilty to felony murder. It was therefore "not alleged that [he] foresaw the possibility of Mr Raviola's death".¹³⁵ What eventually transpired went beyond Mr Jetson "had ever contemplated".¹³⁶
 - b. **Role:** Although he played an important role in the plan, Mr Jetson was not the "ringleader". His role was to act as "muscle".¹³⁷

¹³² At [40].

¹³³ At [36].

¹³⁴ At [36].

¹³⁵ At [35].

¹³⁶ At [36].

¹³⁷ At [36].

- c. **Youth:** Mr Jetson was only 20 years old at the time. The offending had “a number of the characteristics of youth offending”.¹³⁸
- d. **Personal factors:** Mr Jetson’s cognitive functioning was significantly below his numerical age. He was also suffering from “post-traumatic stress disorder, anxiety, and a range of developmental, medical, and behavioural problems”.¹³⁹ Moreover, he had a “traumatic childhood” which “set [him] on a path that inevitably led to early exposure to drugs and ultimately to gangs”.¹⁴⁰

112. Looking at the combination of these factors, Eaton J imposed a finite sentence of 11 years’ imprisonment.

R v Huntley [2024] NZHC 182

- 113. Soldier Huntley was 17 years old when he murdered Taeao Ola and wounded Ruepena Tomasi and Covette Tuaumu.¹⁴¹ On 13 November 2022, approximately 50 people were gathered in a car park. Mr Huntley arrived shortly before 4:00am armed with a 30cm kitchen knife.¹⁴²
- 114. When Mr Huntley arrived, members of his group were already involved in a fight with two individuals – Mr Tomasi and Mr Ola.¹⁴³ Mr Huntley approached Mr Tomasi and stabbed him in the abdomen. He then challenged others in the car park, waving his knife around.

¹³⁸ At [42].

¹³⁹ At [43].

¹⁴⁰ At [44].

¹⁴¹ *R v Huntley* [2024] NZHC 182. [App Materials, page 850].

¹⁴² At [6].

¹⁴³ At [7].

115. Mr Huntley approached Mr Ola and stabbed him once in the chest.¹⁴⁴ This penetrated his heart and killed him.¹⁴⁵ Mr Huntley kicked Mr Ola after he had collapsed to the ground. Finally, Mr Huntley joined others who were attacking Mr Tuaumu – stabbing him a number of times to the head, neck, shoulder, and hands.
116. Moore J held that a sentence of life imprisonment would be manifestly unjust for the following reasons:
- a. **No foresight of death:** Moore J was not persuaded that Mr Huntley intended to kill Mr Ola. Rather, he intended to cause grievous bodily harm and was reckless as to death.
 - b. **Youth:** Mr Huntley was 17 at the time of the offending. His conduct on that evening was “mindless, poorly thought out and on any analysis, objectively irrational”.¹⁴⁶
 - c. **Personal factors:** Mr Huntley had neurological difficulties that were exacerbated by his upbringing, which was marred by violence, deprivation and neglect. He was regularly assaulted in his home and had early exposure to gang violence. Because of this, Moore J considered “an indeterminate sentence would be almost certainly extremely harmful both in terms of [his] psychological well-being and risk of recidivism”.¹⁴⁷
117. Moore J concluded that life imprisonment would be manifestly unjust, explaining that:¹⁴⁸

¹⁴⁴ At [9].

¹⁴⁵ At [9].

¹⁴⁶ At [25].

¹⁴⁷ At [26].

¹⁴⁸ At [28].

[28] Weighing the circumstances of your offending and your personal circumstances, particularly your age, prospects of rehabilitation and profound social and cultural deprivation, I was satisfied that a sentence of life imprisonment with a MPI of 10 years would be manifestly unjust. **I noted however, and note again, that this was a decision I did not come to lightly. Rather, it was one I considered was required because of the Court of Appeal’s guidance in *Dickey*. And that is a case that is binding on me.**

[Emphasis added]

118. A finite sentence of 16 years’ imprisonment was imposed.

R v Yu [2023] NZHC 1391

119. Gaoxiang Yu was 20 when he murdered Wang Baochang (“**Mr Wang**”). Mr Yu had been a member of an organised crime syndicate which manufactured and supplied methamphetamine. Mr Wang was also a member.¹⁴⁹

120. Sometime in August 2017, Mr Yu learnt that Mr Wang planned to kidnap another member of the syndicate, Mr Zhao. Mr Yu passed this information onto Mr Zhao.

121. On 19 August 2017, Mr Yu met with Mr Zhao, G, and an unnamed associate. Mr Zhao revealed his plan to kill Mr Wang. A plan was formed whereby Mr Yu would stand behind Mr Wang, hold him down and cover his mouth whilst G would stab him with a knife.¹⁵⁰

122. Later that evening, under a false pretext, Mr Zhao drove Mr Wang to the address. Mr Yu met Mr Wang at the door. Mr Zhao ordered Mr Wang to sit in a chair. He bound his hands and feet. Mr Yu was armed with an unloaded gun, which he pointed at Mr Wang.

¹⁴⁹ *R v Yu* [2023] NZHC 1391 at [5]. [App Materials, page 790].

¹⁵⁰ At [7].

123. Shortly thereafter, G gave Mr Yu a previously agreed signal to cover Mr Wang's mouth. Mr Yu did so. G then stabbed Mr Wang in the chest and abdomen. Mr Wang died from his injuries.
124. Mr Yu assisted with the clean-up of the property and, along with others, drove the body to the Desert Road near Taupō. They placed Mr Wang's body in a shallow grave and covered the body in quick setting concrete.
125. Moore J accepted that s 104 of the Sentencing Act 2002 was engaged, due to the calculated planning and the high level of brutality and callousness. His Honour held, however, that a 17-year minimum non-parole period was manifestly unjust.
126. Moore J also considered that a sentence of life imprisonment would be manifestly unjust. This was, in part,¹⁵¹ because such a sentence would be "unjust as a matter of overall impression" having regard to Mr Yu's "culpability, age, vulnerability and the purposes and principles of sentencing."¹⁵²
127. A finite sentence of 15 years' imprisonment was imposed.

H. THE APPROPRIATE DETERMINATE SENTENCE

128. In recent cases, sentencing courts have imposed starting points which "fully reflect" the gravity and culpability of the offending.¹⁵³

¹⁵¹ Other considerations included: (1) the fact that a life sentence would require Mr Yu serve a minimum 10-year MPI, when Moore J had considered an MPI of 7 years and 3 months' imprisonment was appropriate, and (2) his co-defendant, Mr Zhao, was serving a total effective sentence of 14 years and 3 months' imprisonment.

¹⁵² At [88], citing *Dickey*, above n 17, at [197].

¹⁵³ See the discussion of Johnstone J in *R v D and F* [2024] NZHC 2118 at [40]-[41]. This approach has been adopted in *R v Jetson* [2025] NZHC 1022 (24 year starting point); *R v Messervy* [2024] NZHC 3770 (35 year starting point); *R v Ronaki* [2024] NZHC 3019 (38 year starting point).

129. Adopting this approach, Ms Te Wini's starting point would be approximately 35 years' imprisonment. The appellant does not agree with the approach outlined at [128] above. However, it is accepted that it is presently the prevailing approach.
130. From a starting point of 35 years' imprisonment, the following reductions ought to be applied:
 - a. **Youth:** 25%¹⁵⁴
 - b. **Deprivation, mental illness, addiction:**¹⁵⁵ 25%
 - c. **Guilty plea:**¹⁵⁶ 15%
131. An appropriate final sentence would therefore be 12 years and two months' imprisonment.

I. CONCLUSION

132. Lori Lea Te Wini's rehabilitation has been nothing short of remarkable. She is emblematic of the hope courts have for youths when sentencing them. Despite chronic abuse within a crime-producing childhood, she has developed into a gentle, caring, crime-free mother of two. Her criminogenic traits were truly transient and situational. She has a powerful claim to be forgiven for what she did as a damaged 14-year-old child.

¹⁵⁴ Ms Te Wini was substantially younger than the defendants in *Dickey*, *Huntley*, *Jetson*, *Lo*, and *Messervy*. One comparator was the defendant in *M v R* [2023] NZCA 319, who was also 14 years old. He received a 40% reduction for his youth and associated rehabilitative prospects (see: [110]).

¹⁵⁵ Ms Te Wini's personal circumstances were analogous to Ms Epiha in *Dickey v R*, above n 17, who received a 25% discount to reflect her disadvantaged background.

¹⁵⁶ *R v Jetson* [2025] NZHC 1022 provides a helpful comparison. The defendant was convicted of murder and successfully appealed against his conviction. The Crown amended the charge to felony murder under s 168 of the Crimes Act 1961. The defendant pled guilty to the amended charge and received a 15% reduction.

133. If she were sentenced today, a determinate sentence would be imposed. It would be a substantial miscarriage of justice to allow a sentence of life imprisonment – with all of its attendant prejudices – to endure.

Dated: 26 June 2026

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To: The Registrar
And: The Respondents