
IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

BETWEEN **COURTNEY PAULINE CHURCHWARD** **SC 158/2025**

Applicant

AND **THE KING**

Respondent

BETWEEN **LORI-LEAH TE WINI** **SC 157/2025**

Applicant

AND **THE KING**

Respondent

**RESPONDENT'S SUBMISSIONS ON APPLICATIONS FOR
EXTENSION OF TIME TO APPEAL SENTENCE**

23 July 2026



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SUMMARY

1. In late 2008 Ms Courtney Churchward (aged 17) and Ms Lori-Leah Te Wini (aged 14) broke into the home of Ms Te Wini's neighbour, retired schoolteacher John Rowe. He was elderly, frail and vulnerable. Armed with weapons, together they beat Mr Rowe to death. Both were convicted of murder.
2. Given the aggravating features they were initially sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 17 years. Following a comprehensive review by the Court of Appeal of the relevance of youth to sentencing, their MPIs were reduced to 13 years (for Ms Churchward) and 10 years (for Ms Te Wini). The presumption of life imprisonment was maintained: considering both the seriousness of the offending and personal factors (including youth), life was not manifestly unjust.
3. Neither sought leave to bring a second sentence appeal to this Court at the time. Both now seek to do so, more than a decade late.
4. Society is entitled to expect that judicial decisions will generally be final, subject to narrow exceptions. A high threshold must be crossed before a historic sentence is re-opened, particularly on a second appeal. Where (as here) an extension is sought based on developments in the law in the intervening years a substantial injustice must be demonstrated to justify the interference with finality. This is not evident in this case.
5. Mr Rowe was targeted because of his vulnerability, his home was invaded at night, and he was brutally beaten to death: this was unquestionably a murder that would attract a 17-year minimum term for an adult – whether the murder occurred in 2008 or 2026. The applicants' youth and background factors provided important mitigation, but they did not (and do not) require the displacement of the presumption of life imprisonment.
6. The Court of Appeal did not err in its approach to manifest injustice, whether this is viewed through the lens of case law at the time, or

contemporary standards. The fact there are other young murderers who have received determinate sentences in recent years does not mean these life sentences should be revisited. In any event, past sentences should not be re-opened for assessment in light of contemporary sentencing practices unless there is a clear case of substantial injustice.

7. Both applicants are now on parole and are subject to the supervision of the Parole Board. Given the sheer length of time that has passed, and the fact each has had the opportunity to have their sentence reviewed by the first appeal court, this is a case where the societal interest in the finality of court decisions should prevail and the applications for leave should be declined.

BACKGROUND

The offending (November 2008)

8. On the night of 25 November 2008, Ms Churchward (17) and Ms Te Wini (14, shortly to turn 15) were out looking for money to buy cannabis. They had broken into a number of properties to steal money or valuables and decided to break into the house of the victim, John Alan Rowe. Ms Te Wini knew him as “the old man through the fence” whom she had previously asked for oranges from his tree. He was 78 years old and weighed only 57 kilograms. He had recently been discharged from hospital. He had restricted movement and, living alone, relied on the district nurse and neighbours for assistance. Ms Te Wini thought he might have money or valuables they could steal.
9. Ms Churchward and Ms Te Wini broke into Mr Rowe’s garage. They observed Mr Rowe through the window, leaving the toilet and going to his bedroom. They broke into Mr Rowe’s home. They looked through Mr Rowe’s lounge and put on surgical gloves they had found. They had earlier taken steps to ensure they would not leave fingerprints, and they covered their mouths with scarves.
10. Ms Churchward and Ms Te Wini went to Mr Rowe’s bedroom because they thought he might have valuables there. Ms Churchward picked up a solid wooden walking staff and gave it to Ms Te Wini. Ms Te Wini gave the staff

back to Ms Churchward and instead armed herself with a wooden rod that Mr Rowe used to close his curtains.

11. Once in Mr Rowe's room, Ms Churchward raised the staff above his head, intending to hit him. However, she did not go through with it. Ms Churchward and Ms Te Wini left the bedroom, went out into the passage or back to the lounge where they encouraged each other to go back and hit Mr Rowe.
12. In sentencing Ms Churchward in 2009,¹ following trial, Venning J found the following facts:²
 - 12.1 Ms Churchward and Ms Te Wini went back into Mr Rowe's bedroom. Ms Churchward stood above Mr Rowe's bed by Mr Rowe's head, held the staff above him and brought it down on his head. Mr Rowe tried to get up and defend himself. Ms Churchward continued to hit Mr Rowe with the staff. Ms Churchward tried to beat him down and to stop the noise he was making.
 - 12.2 Ms Te Wini joined the attack with the stick she had. She hit Mr Rowe hard enough and often enough with the stick that the end of it broke. Even after the stick broke, Ms Te Wini continued to strike Mr Rowe. The broken end of the stick was soaked in blood by the end of the assault.
 - 12.3 Ms Churchward and Ms Te Wini engaged in a vicious assault on Mr Rowe, moving around the bed to follow him as he tried to sit up. When they switched on the light, they saw the terrible injuries they had inflicted on him. There was blood spatter up the walls and over the ceiling.

¹ *R v Churchward* HC Tauranga CRI-2008-270-000361, 18 December 2009 (**2009 Sentencing Notes**). 01 SC Casebook at 92.

² These findings are binding on Ms Churchward, but not Ms Te Wini.

- 12.4 Ms Churchward and Ms Te Wini panicked and left Mr Rowe for dead. They took his wallet, car keys and CD radio player.
- 12.5 Ms Churchward said she tried to get help by calling 111 from Mr Rowe's phone but his phone was not working, but Venning J did not accept this. There was no record of any fault with the phone, and the phone was working a few days later when the Police arranged for a security system to be installed at the property.³
13. Ms Te Wini's conviction was overturned by the Court of Appeal, and she later pleaded guilty to an amended charge (as is explained below). In 2012, Woolford J sentenced Ms Te Wini on an agreed factual basis:⁴
- 13.1 Ms Churchward struck a number of blows to Mr Rowe's head, chest and arms. After that Ms Te Wini joined in and struck the victim several times. Ms Te Wini's weapon was broken during the assault, although it is unclear whether it was due to the force employed or through contact with the weapon wielded by Ms Churchward.
- 13.2 Exactly how long the attack took or how many blows were struck was not clear but after a short time it seems that the victim, who had tried at one point to raise himself up, fell back onto the pillows and became still. The offenders then dropped their weapons and left the victim in his bed.
- 13.3 They then searched the house and found the victim's wallet and his car keys. They also ransacked the house.
14. Ms Churchward and Ms Te Wini tried to start Mr Rowe's car but were unable to do so. They returned home and divided up the money they had

³ 2009 Sentencing Notes at [9]. 01 SC Casebook at 95.

⁴ *R v Te Wini* [2012] NZHC 1593 (2012 Sentencing Notes). 01 SC Casebook at 67.

taken from his property. They spent the money over the next few days and weeks.

15. Ms Churchward and Ms Te Wini took steps to cover up their involvement in what they had done by throwing away items of clothing worn during the events.
16. Mr Rowe died from respiratory failure caused by the head injuries and blood loss. Expert evidence indicated he received over 20 blows to his body, and those blows had been struck from up to seven different positions around the bedroom. There were at least 12 separate injuries to Mr Rowe's head and face area. The front of his skull was fractured "like an egg shell". There were a number of defensive injuries – his arm and elbow were broken, as well as a number of bones in his hands.

Trial and sentencing (2009)

17. In November 2009, following a trial before Venning J and a jury, Ms Churchward and Ms Te Wini were found guilty of reckless murder (under s 167 Crimes Act 1961). At sentencing in the High Court neither suggested the presumption of life should be displaced.⁵ Justice Venning found that s 104 of the Sentencing Act 2002 applied in respect of both offenders, calling for MPIs of at least 17 years, because of the unlawful entry into a home, Mr Rowe's vulnerability, the robbery and the high level of brutality.⁶
18. Justice Venning found that Ms Te Wini and Ms Churchward were equally responsible for the death of Mr Rowe.⁷ Ms Te Wini identified Mr Rowe as the target, and both encouraged and "hyped" one another up to attack him. Justice Venning described the offending as "a savage attack of the

⁵ 2009 Sentencing Notes at [21]. 01 SC Casebook at 98. "I turn to the sentence I must impose. The presumption is the sentence for murder is imprisonment for life. Neither of your counsel suggest that is not appropriate. Nor could they. This is a brutal murder. Your own personal circumstances cannot weigh against that. The appropriate sentence is life imprisonment."

⁶ Ibid. at [24]. 01 SC Casebook at 98.

⁷ 2009 Sentencing Notes at [35]. 01 SC Casebook at 101.

worst kind by both of you”.⁸ Both were aware of Mr Rowe’s “situation”, particularly Ms Te Wini.⁹

19. Justice Venning declined to find that their youth gave rise to manifest injustice under s 104, but took youth into account in setting the MPI: “Given the features of the offending I have described were it not for your ages a figure of 19 or 20 years could be appropriate.”¹⁰ Both received MPIs of 17 years.

Court of Appeal (*Churchward* 2011)

20. On 19 October 2011, the Court of Appeal dismissed Ms Churchward’s appeal against conviction and allowed her appeal against sentence, reducing her sentence to life imprisonment with a MPI of 13 years.¹¹ Ms Te Wini’s conviction was overturned because trial counsel had erred when advising Ms Wini as to whether to give evidence, and that this led to a miscarriage of justice. The Court ordered a retrial for her.
21. Ms Churchward filed new evidence from a clinical psychologist, Ms Bellve-Wack,¹² and from a psychiatrist, Dr Chaplow.¹³ These reports provided more detail about Ms Churchward’s background than the pre-sentence report had, explaining she had depression and symptoms of PTSD.¹⁴ The reports also outlined scientific research relating to the development of young people’s brains. Compared to adults with developed brains, young people are more prone to making impulsive decisions without due regard to future consequences. They are also more easily influenced by others.¹⁵

⁸ Ibid. at [35]. 01 SC Casebook at 101.

⁹ Ibid. at [24], 01 SC Casebook at 98.

¹⁰ Ibid. at [25]. 01 SC Casebook at 99.

¹¹ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446. 01 SC Casebook 36.

¹² Report of Ms Bellve-Wack dated 16 September 2009.

¹³ Report of Dr Chaplow dated 14 May 2011. 01 SC Casebook at 180.

¹⁴ Report of Ms Bellve-Wack dated 16 September 2009, p. 18. Report of Dr Chaplow dated 14 May 2011. 01 SC Casebook at 185.

¹⁵ Report of Dr Chaplow dated 14 May 2011. 01 SC Casebook at 181 – 183.

22. These reports formed the foundation of a critical judgment that recognised the age-related neurological differences between young people and adults and became the leading authority how an offender's youth should be treated as a mitigating feature at sentencing.
23. As a result of the analysis of Ms Churchward's youth and mental health issues, her prospects of rehabilitation and the "crushing" effect of a 17-year minimum term, the Court of Appeal determined that a MPI of 17 years was manifestly unjust.¹⁶ An MPI of 13 years was substituted on the basis her culpability was lower than that of a mature adult, with the Court noting that her "mental health issues, her upbringing, her immaturity and her attachment to her cousin may at least partly explain what is otherwise an inexplicable crime."¹⁷
24. The Court of Appeal nevertheless declined to find the sentence of life imprisonment was manifestly unjust.¹⁸
25. Ms Churchward sought leave from this Court to bring a second appeal against her conviction, but not sentence. This Court dismissed the application.¹⁹

Ms Te Wini's re-sentencing (2012)

26. Following the success of her conviction appeal in the Court of Appeal, the Crown amended the charge against Ms Te Wini to one of murder under s 168 of the Crimes Act 1961. Ms Te Wini pleaded guilty on that basis and was sentenced by Woolford J to life imprisonment with an MPI of 10 years.²⁰

¹⁶ Ibid. at [104]. 01 SC Casebook at 64.

¹⁷ Ibid. at [100]. 01 SC Casebook at 63.

¹⁸ Ibid. at [63]. 01 SC Casebook at 50. "Mr Tennet's first submission on the sentence appeal is highly optimistic. He submits that there are arguments that, because of Ms Churchward's youth and mental state, life imprisonment did not need to be imposed."

Ibid. at [65]. 01 SC Casebook at 50. "We reject Mr Tennet's submission that life imprisonment was inappropriate. This was a brutal murder committed in the course of a premeditated home invasion for the purpose of robbery."

¹⁹ *Churchward v R* [2012] NZSC 25.

²⁰ 2012 Sentencing Notes. 01 SC Casebook at 67.

27. Psychiatric reports²¹ indicated that Ms Te Wini's traumatic experiences while growing up left her with a significant case of PTSD, evidenced by nightmares, flashbacks and emotional instability.²² There were also symptoms of a pre-existing, underlying mood disorder which appears to have manifested itself in major depression.²³ Dr Myers also said that childhood trauma, depression, and substance abuse inhibited Ms Te Wini's brain development and the executive functioning of her mind. This had a considerable impact on Ms Te Wini's decision-making, risk perception, appreciation of the consequences of her behaviour and her ability to make decisions when under conditions of strong emotion.²⁴
28. Justice Woolford set out the aggravating features of the offending at [51] of his judgment, similar to those identified by Venning J in 2009. His Honour declined to find that Ms Te Wini's culpability was materially less than that of Ms Churchward:²⁵

[55] While not a mitigating feature of the offending per se, Ms Te Wini's reduced role in comparison to her co-offender was a matter that was put in issue. It seems reasonably clear from the material before the Court that, at the very least, Ms Te Wini wielded a lighter weapon and dealt fewer blows to the victim.

[56] Ultimately, the more limited role of Ms Te Wini can only be of limited importance given her participation in the all (sic) stages of the offending and her acting substantially in concert with Ms Churchward. The two of them agreed on a course of criminal conduct and were each sources of encouragement for the other. Little recognition can be given on the basis that she played a somewhat different role in the offending. Only in a situation where an offender's behaviour stands quite apart from that of the principal, such as in *R v McNaughton* should prime recognition be given to the difference.

29. Justice Woolford identified Ms Te Wini's mitigating factors as her youth, deprived background, mental health issues, guilty plea, and rehabilitative

²¹ Justice Woolford considered a report from a psychiatrist, Dr Myers dated 1 May 2011 and a report from another psychiatrist, Dr Skipworth dated 2 July 2012. 2012 Sentencing Notes at [26]. 01 SC Casebook at 72.

²² Dr Myers Report dated 1 May 2011. 02 CoA Casebook SC 157.2025 at 58.

²³ Ibid. 02 CoA Casebook SC 157.2025 at 63.

²⁴ Ibid. 02 CoA Casebook – SC 157.2025 at 71 – 72.

²⁵ 01 SC Casebook at 82.

prospects. While Ms Te Wini suffered from a deprived background and mental health issues, Woolford J declined to find that there was a “tangible” and “close” link between these personal factors and the offending. His Honour distinguished the facts from *R v Wihongi*,²⁶ in which Ms Wihongi, who suffered from cognitive impairments, murdered an abusive former partner after he asked her for sex. The Court of Appeal held Ms Wihongi may not have offended in this particular way but for these features.²⁷

30. Justice Woolford observed that several of the s 104 Sentencing Act factors were engaged, but it was not disputed that an MPI of 17 years would be manifestly unjust.
31. But Woolford J rejected counsel’s submission that the sentence should be less than life imprisonment:²⁸

[66] This case is a particularly sad one for all involved. Ms Te Wini has suffered a great deal as a child and now demonstrates some hope for the future. However, it is hard to get away from those matters addressed in the cases I have cited. The offending is of a similar level of seriousness as *Rapira* and *O’Brien* and the Court of Appeal has made it clear that, in such circumstances, exceptional matters both in the circumstances of the offending and the offender will be necessary to displace the presumption. There are also similarities to *R v Wihongi* in respect of the offender’s traumatic history of victimisation. But in that case there was a tangible link between the offender’s personal difficulties and the result of the offending. No such close link can be shown in this case and the Court of Appeal has made it clear that lesser connections or impairments of function which do not directly relate will be unlikely to affect the presumption. The offender’s age and remorse can only have limited effect as well. The sentence must be one of life imprisonment.

²⁶ *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775. Respondent’s Bundle of Authorities, Tab 17.

²⁷ *Ibid.* at [88]. “We consider that this history of abuse contributed to the extreme reaction Ms Wihongi had to the situation confronting her immediately before the events leading to the victim’s death. The history of abuse, at the hands of the victim and others, when added to the intellectual deficits to which we have already referred support the displacement of the presumption of life imprisonment.”

²⁸ 01 SC Casebook at 87-88.

32. Taking into account Ms Te Wini's personal mitigating factors, a MPI of 12 or 13 years was appropriate. In light of Ms Te Wini's ultimate guilty plea, Woolford J imposed a MPI of 10 years.

Court of Appeal (*Te Wini* 2013)

33. Ms Te Wini appealed the sentence of life imprisonment. The Court of Appeal remarked that the murder of Mr Rowe was a "dreadful crime"²⁹ and as to manifest injustice:

[67] ... were the circumstances of Ms Te Wini as offender the sole consideration, it may have been manifestly unjust to sentence her to imprisonment for life. But we agree with the Judge that the circumstances of the offence, and Ms Te Wini's involvement in it, were such that a sentence of life imprisonment was not manifestly unjust.

34. While the Court accepted that Ms Te Wini suffered from mental health issues, it found: "no fault in Woolford J's conclusion that there was not a sufficiently close connection between Ms Te Wini's impairments and the murder to affect the s 102 presumption of imprisonment for life."³⁰ The Court did not disagree with Woolford J that there was no basis to conclude that Ms Te Wini's culpability was materially less than that of Ms Churchward.³¹ Ms Te Wini's 10 year MPI, compared with Ms Churchward's 13 year MPI, gave adequate recognition to Ms Te Wini's more extensive personal mitigating factors, including her younger age and her guilty plea.³²

Release on parole

Ms Te Wini

35. Ms Te Wini was released on parole on 16 December 2019. She is subject to standard release conditions (this includes reporting to a probation officer when required to do so).³³ Over the years there have been several amendments to her special conditions.³⁴ Her curfew was removed in

²⁹ *Te Wini v R* [2013] NZCA 201 at [58]. 01 SC Casebook 32.

³⁰ *Ibid.* at [40]. 01 SC Casebook at 27.

³¹ *Ibid.* at [46]. 01 SC Casebook at 29.

³² *Ibid.* at [51]. 01 SC Casebook at 31.

³³ Parole Act 2002, s 14. Respondent's Bundle of Authorities, Tab 4.

³⁴ On 20 November 2020, the Parole Board varied Ms Te Wini's residence condition to recognise her move

September 2022.³⁵ Her current conditions include a condition not to travel to the Eastern Bay of Plenty (east of Tauranga) without prior written approval. The Parole Board has declined to remove this condition.³⁶

... we have told her how significant it is for the victims to hear that she may be coming to the Bay of Plenty area and that this is something they have specifically asked not to occur, as part of their desire not to have contact with Ms Te Wini.

Ms Churchward

36. After Ms Churchward became eligible for parole in 2022, she was refused parole on four occasions. On 11 August 2025, the Parole Board described Ms Churchward as “someone with low self-esteem who can self-sabotage” who was “assessed as posing a moderate risk of violent and general re-offending”.³⁷
37. Ms Churchward was released on parole on 13 November 2025 in a “finely balanced decision.”³⁸ In addition to the standard conditions, her special conditions include partial residential restrictions (similar to a curfew), and electronic monitoring.³⁹ The Board observed that Ms Churchward was “assessed as at a moderate risk of violent and general re-offending.” It said that “Any relationships need to be closely monitored.”⁴⁰

Subsequent legal developments

38. The Court of Appeal’s *Churchward* decision in 2011 became a foundational one for the recognition of youth in sentencing. Not only did it recognise that youth was an important consideration in whether a 17-year MPI was manifestly unjust, it is also authority for the relevance of youth as a mitigating factor in sentencing more generally.

to Auckland. 01 SC Casebook at 110. On 27 September 2022, the Board removed Ms Te Wini’s curfew. 01 SC Casebook at 108. On 8 November 2024, the Board reimposed two conditions relating to Ms Wini’s mental health and a third condition as to her whereabouts. 01 SC Casebook at 104.

³⁵ Decision of the Parole Board dated 27 September 2022 (Te Wini). 01 SC Casebook at 108.

³⁶ Decision of the Parole Board dated 8 November 2024 (Te Wini) at [8]. 01 SC Casebook at 104.

³⁷ Decision of the Parole Board dated 11 August 2025 (Churchward). 01 SC Casebook at 125.

³⁸ Ibid. at [11]. 01 SC Casebook at 127.

³⁹ Decision of the Parole Board dated 13 November 2025 (Churchward). 01 SC Casebook at 125.

⁴⁰ Ibid. at [10]. 01 SC Casebook at 127.

39. The relevance of youth to the presumption of life imprisonment was reconsidered in the 2023 decision of *Dickey v R*.⁴¹ The Court drew upon recent knowledge and jurisprudence about youth. Much of the evidence before the Court was essentially the same as that before the Court in *Churchward*.⁴² Further information about social deprivation was before the Court also. The Court was asked to create a “category exception” for young people convicted of murder – but declined to do so as this was plainly inconsistent with the statutory scheme.⁴³ The legislative policy is that the normal sentence for murder is life imprisonment and any exception to that is “Parliament’s domain”.⁴⁴
40. The Court also affirmed the previous approach in many respects, finding that “[t]he seriousness and culpability of the offending remain centrally important” and “youth alone is not enough to establish manifest injustice.”⁴⁵ The Court reaffirmed that the fact a life has been taken, deliberately or recklessly, is a weighty consideration.⁴⁶
41. The Court in *Dickey* expressly disavowed this was a guideline judgment. No “categories” or tariffs were created, and the Court did not attempt to prescribe when life imprisonment would be manifestly unjust. The Court mandated a “more flexible” approach to manifest injustice than had been taken in earlier authorities.⁴⁷ The Court held referred to a passage in the 2003 decision in *Rapira*⁴⁸ to the effect that youth could carry little weight in the s 102 assessment and held this was “no longer correct”.
42. The appellants in *Dickey* had their life imprisonment sentences quashed and replaced with determinate sentences. However, none of the murders triggered s 104 of the Sentencing Act; and each appellant, in addition to

⁴¹ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405. App Materials (Te Wini) at p. 351.

⁴² See *Dickey* at [77]. The further research since *Churchward* is summarised at [86].

⁴³ *Ibid.* at [169].

⁴⁴ *Ibid.* at [169].

⁴⁵ *Ibid.* at [177].

⁴⁶ *Ibid.* at [171].

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at [177].

being young, came from a deprived background and/or suffered from serious mental health issues.

43. The scope and nature of the manifest injustice exception was also examined by this Court in the 2023 decision of *Van Hemert v R*.⁴⁹ This Court clarified that either the circumstances of the offending *or* the circumstances of the offender could trigger the manifest injustice exception. The Court said that “it remains possible that the circumstances of the offence may tend towards life imprisonment but be outweighed by overwhelmingly mitigatory circumstances of the offender.”⁵⁰ The Court also approved of the Court of Appeal’s comment in *Dickey* that “manifest injustice is most likely to be found where the offender can point to both mitigating circumstances of the offending and a combination of substantial personal mitigating factors”.⁵¹
44. The Court upheld Mr Van Hemert’s life sentence for murder. While Mr Van Hemert suffered from serious mental illness, which reduced his culpability, he posed a risk of reoffending which could be addressed through a life sentence. The Sentencing Act purpose of community protection⁵² told against the manifest injustice exception.
45. Over the 2010s and 2020s, courts in New Zealand have also developed the approach to the treatment of personal mitigating factors in sentencing more generally. Mental health and cognitive impairments are now more readily accepted to be connected to offending,⁵³ as is drug addiction⁵⁴ and social/cultural deprivation.⁵⁵ Although the seriousness of the offending

⁴⁹ *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412. Intervening Counsel Bundle of Authorities, Tab 10.

⁵⁰ *Ibid.* at [59].

⁵¹ *Ibid.* at [60].

⁵² Sentencing Act 2002, s 7(1)(g).

⁵³ In *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 the Court held that mental health / cognitive impairment may be a mitigating factor if there is a causal link between the offender’s condition and the offending which reduces the offender’s moral culpability. Respondent’s Bundle of Authorities, Tab 19.

⁵⁴ See *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [147]. Respondent’s Bundle of Authorities, Tab 14, p. 250. And *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109].

⁵⁵ See *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109]. Respondent’s Bundle of Authorities, Tab 9, p. 143 – 144.

may still outweigh these factors,⁵⁶ the courts are more willing to infer that those factors causatively contributed to offending in a way which reduces culpability (in comparison to earlier authorities in particular regarding commercial drug offending,⁵⁷ aggravated robbery,⁵⁸ and gang rape⁵⁹).

APPLICATIONS FOR LEAVE TO APPEAL AND EXTENSIONS OF TIME

46. Against the above background, the applicants now seek an extension of time to bring a further sentence appeal.⁶⁰
47. The applicants both filed their applications for leave to bring second appeals against sentence to this Court in 2025. Given they were more than a decade out of time, they seek extensions of time. The Crown opposes leave to appeal⁶¹ and the extensions of time. This Court has indicated all issues are to be heard together.⁶²
48. The applicants assert the interests of justice favour an extension. They point to the Court of Appeal's 2023 decision in *Dickey* as having "corrected" an earlier error in the law (in *Rapira*) and this applies retrospectively. Ms Churchward asserts she falls into the "category" described in *Dickey* for which life imprisonment is manifestly unjust.⁶³ Ms Te Wini compares her situation to sentencings for more recent murders committed by young people and says that if she was sentenced today, she would have received

⁵⁶ Ibid. at [16](c).

⁵⁷ See, e.g., *R v Pope* [2008] NZCA 284 at [33]: "Personal circumstances count for little when it comes to drug offending"; *Jarden v R* [2008] NZSC 69, [2008] 3 NZLR 612 at [12]: "... in sentencing those convicted of dealing commercially in controlled drugs the personal circumstances of the offender must be subordinated to the importance of deterrence..."

⁵⁸ *R v Mako* [2000] 2 NZLR 170 (CA) at [65]: "Offenders, and there seem a disturbing number, who have accumulated considerable lists of convictions while still in their teens cannot expect leniency in sentencing for serious aggravated robbery offences."

⁵⁹ *R v Misitea* [1987] 2 NZLR 257 (CA): "personal circumstances can carry little weight against the gravity of crimes of this kind ... [they] do have to be relegated to the background. Whatever can reasonably be done to deter others from this type of gang conduct must be done now."

⁶⁰ Other young people who are subject to life imprisonment have made similar applications to the Court of Appeal (for first appeals): see in particular *Kriel v R* [2024] NZCA 45. App Materials (Te Wini) at p. 38.

⁶¹ See leave submissions dated 17 November 2025.

⁶² Minute of Miller J dated 26 February 2026. 01 SC Casebook at 14.

⁶³ Ms Churchward's submissions at [8.2].

a determinate sentence, so it would be a substantial injustice not to re-sentence her today.

49. *Dickey* did not “correct” an error in the interpretation of the law, rather it changed the prevailing view as to the *weight* that youth is capable of carrying in the assessment of manifest injustice under s 102. Subsequent decisions to sentence young murderers to determinate sentences reflect that change, and also the more general developing recognition by sentencing courts of the relevance of other background factors.

50. In these circumstances an extension of time is not warranted. In summary:

50.1 The finality principle weighs strongly against re-opening past sentences, particularly many years after the fact, where the delay is sparsely explained, the applicants are no longer in prison, and where victim interests are high.

50.2 Where an extension of time to appeal is sought on the basis of a subsequent change in case law the merits must be strong to justify the appeal: a *substantial* injustice is required. While a substantial injustice can arise in the context of a sentence appeal, this is likely to be rare. An even stronger argument is required where the request is for a second appeal, especially in circumstances where the first appeal had already reduced the determinate sentence so substantially to better recognise the weight that youth required.

50.3 Here, the merits of the proposed appeals are not sufficiently clear to justify re-opening the sentences. In the ordinary course, the appellate task is to correct errors, not re-sentence an offender, much less to decide what an offender “would be sentenced to today”. In the present cases the Court of Appeal did not disregard or give “little weight” to youth – it is by no means clear there is an error to be corrected here. Even on a contemporary analysis the presumption of life imprisonment should not be displaced in the context of this particularly serious murder.

THE TEST FOR EXTENSION OF TIME

General principles

51. The principles governing applications for extensions of time were set out by the Court of Appeal in *R v Knight*⁶⁴ in 1998, *R v Lee*⁶⁵ in 2006 and more recently in *Kriel v R*⁶⁶ in 2024. The interest of society in the finality of litigation is fundamental. In order to justify a departure from the principle of finality, “[t]he applicant must demonstrate some special feature or features particular to the case that lead to the conclusion that in all the circumstances justice requires that leave be given”.⁶⁷ As the applicants have acknowledged, the test under the former s 383A of the Crimes Act 1961 (applicable in this case) is material the same as it is today.⁶⁸
52. Those convicted of criminal offences have a right to an appeal against sentence,⁶⁹ which has long been reflected in the criminal jurisdiction (currently Part 6 of the Criminal Procedure Act 2011 and, formerly, Part 13 of the Crimes Act 1961). That right is of course subject to reasonable limits: convicted people have a first appeal as of right, with any second appeal being only by leave, and there are time frames within which appeals must be filed. Defendants are not afforded a perpetual right to appeal.⁷⁰ This system enables the right to appeal to be exercised effectively and maintains public confidence in the justice system (as will be outlined in further detail below).

⁶⁴ *R v Knight* [1998] 1 NZLR 583 (CA). App Materials (Te Wini) at p. 285.

⁶⁵ *R v Lee* [2006] 3 NZLR 42 (CA). App Materials (Te Wini) at p. 122.

⁶⁶ *Kriel v R* [2024] NZCA 45. App Materials (Te Wini) at p. 38.

⁶⁷ *R v Knight* [1998] 1 NZLR 583, 589 (CA). App Materials (Te Wini) at p. 285.

⁶⁸ Now see the Criminal Procedure Act 2011 s 248(2).

⁶⁹ New Zealand Bill of Rights Act 1990, s 25(h). Respondent’s Bundle of Authorities, Tab 3.

⁷⁰ As was argued, and rejected in *Kriel v R* [2024] NZCA 45 at [91]: “We also do not accept Mr Kirby’s submission that the right of appeal exists in perpetuity. Reasonable time limits for criminal appeals have been recognised by the European Court of Human Rights. A similar approach has been taken by the Court of Appeal of England and Wales when, in *R v Ballinger*, the Court held there was nothing incompatible with the European Convention on Human Rights in putting time limits in place to commence criminal appeals, provided the time limits are not too short or too rigorously enforced.” The Court referred to the decision of the European Court of Human Rights in *Laaksonen v Finland*, App. No. 36321/97 (Sept. 7, 1999), <http://echr.coe.int/echr/en/hudoc> and the decision of the Court of Appeal of England and Wales in *R v Ballinger* [2005] 2 Cr App R 29. In *Ballinger*, the Court held there was nothing incompatible with the European Convention on Human Rights in the imposition of time limits for the institution of appellate proceedings, providing they are not too short or too rigorously enforced.

53. Time limits for filing an appeal serve a self-evidently important function in the administration of justice. In compelling cases in which a miscarriage of justice has occurred, the process of requiring leave to appeal will ensure an extension of time is granted so that errors are corrected. In the present case, the applicants chose not to exercise their right to seek leave to bring a second appeal within the (reasonable) prescribed time limits. Importantly, these are not cases which on their facts raise the spectre of injustice.

“Change in the law” cases

54. In this case the applications for extensions of time are made as a result of developments in the law since they were sentenced. However, legal developments do not ordinarily justify an extension of time – unless to refuse to do so would occasion a “substantial injustice”.
55. The test applied by the Court of Appeal in 2011 and 2013 in the applicants’ cases has not subsequently been found to be wrong or an error. The concern the Court had with *Rapira* did not impact these applicants. New Zealand sentencing law has evolved and developed to give more weight to mitigating factors, particularly youth. *Churchward* itself was part of those developments. As will be demonstrated, change over time in sentencing practice does not ordinarily warrant the re-opening of past sentences.
56. Before this argument is outlined in detail some background on legal change and retrospectivity is necessary.

Law change and retrospectivity generally

57. An offender is generally sentenced in accordance with the law applicable at the time they offended.⁷¹ Where there has been a change to the *penalty*

⁷¹ *R v Poumako* [2000] 2 NZLR 695 (CA) at [4]: “From well before New Zealand’s ratification of the International Covenant and the enactment of the Bill of Rights Act it was an established principle of law that persons convicted of a criminal offence should not receive any greater punishment than that provided for the offence at the time it was committed: see *Blackstone’s Commentaries on the Laws of England* (1st ed), 1765, vol 1, p 46: “Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust.” And at [73]: “It is a fundamental right that no one should be held criminally liable for

between the time of the offending and sentencing the offender receives the benefit of the lesser penalty.⁷² This is an exception to the usual principle that legislative changes should be prospective only.

58. Where the law has changed through the evolution of case law, it can be retrospective. It is generally accepted in New Zealand that “judge-made law is “generally both prospective and retrospective”; this is based on “the declaratory theory of law, which holds that judges do not make law but only discover what was always there to be found”.⁷³

Sentencing context

59. In the sentencing context, a Judge sentencing an offender for historic offending *must* sentence by reference to the lesser maximum penalty (if it has changed), and where there has been a significant change to the “tariff” or pattern of sentencing in the intervening time, as a matter of “good sentencing practice and fairness” New Zealand courts “take a conservative sentencing approach and adopt the sentencing patterns that were applicable at the time of offence”.⁷⁴ This does not extend to a requirement to sentence in the exact same way as a Judge would have at the time: the Judge is not *required* to “reconstruct the sentencing mores” of the time.⁷⁵

an act or omission which did not constitute an offence at the time it was committed, or be subjected to a sentence which was not in force at that time. A defendant's conduct is to be judged by the law at the time of the conduct; not in retrospect”. Respondent's Bundle of Authorities, Tab 23.

⁷² Sentencing Act 2002, s6(1): “An offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.” Respondent's Bundle of Authorities, Tab 5.

New Zealand Bill of Rights Act 1990, s 25(g): “Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights...(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.” Respondent's Bundle of Authorities, Tab 3.

Earlier, s 4(1)(b) of the Criminal Justice Act 1985 provided that where a maximum penalty was altered between the time when the offender committed the offence and the time “when sentence is to be passed”, the maximum penalty should be, in the case of a reduction, the maximum penalty “that can be imposed on the day on which sentence is to be passed”.

⁷³ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [22]. Respondent's Bundle of Authorities, Tab 13.

⁷⁴ *G (SC 130/2024) v R* [2026] NZSC 19 at [73] approving the reasoning in Mathew Downs (ed) *Adams on Criminal Law – Sentencing* (looseleaf ed, Thomson Reuters) at [SA6.07]. Respondent's Bundle of Authorities, Tab 7.

⁷⁵ See *R v Accused* (CA463/97) (1998) 15 CRNZ 602 (CA) at 609: “The starting point for any sentence must be fixed in the context of the maximum penalty available at the time and generally by reference to any discernible sentencing regime of that era. However, that does not involve attempting to reconstruct the sentencing mores of an earlier time. For example, if a particular type of offending was formerly regarded less seriously than now, present day attitudes must govern the sentencing approach.” Respondent's Bundle of Authorities, Tab 24.

For instance, the “structured” sentencing approach⁷⁶ endorsed today is still the process followed for historic offending even though the approach to sentencing was different at the time.

60. It has been the practice of the Court of Appeal when it issues a “guideline” judgment to specify the extent of its application – ordinarily that it applies only to sentences imposed after a given date,⁷⁷ and perhaps also to appeals that had been filed prior to the decision being issued.⁷⁸

61. As the Court of Appeal explained in *Cheung*:⁷⁹

It will be seen that sentencing guideline judgments do apply to past conduct unless it has been the subject of a criminal proceeding that ended in a sentence passed before the guideline took effect. To that extent they are retrospective. They do not apply, however, to most sentences that were imposed in the past. To that extent they are prospective.

62. Where a change to the law has occurred *after* the offender has been sentenced the position is different. The principle of finality steps in to prevent the re-opening of past cases that have already been resolved. It can be said that “[t]he principle of finality of judgment trumps the declaratory principle which applies the revised law retrospectively”.⁸⁰

63. This principle is similarly reflected in the limits to the statutory right an offender has to the benefit of a lesser maximum penalty. Where a maximum penalty has decreased *after sentencing* but before an appeal an appellate court is not required to apply the lesser penalty – the right to the lesser penalty arises only where the change is between the offence and sentencing (not any appeal).⁸¹

⁷⁶ Following the Sentencing Act 2002, *R v Taueki* [2005] 3 NZLR 372 (CA), *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607, and *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.

⁷⁷ See *R v AM (CA272/2009)* [2010] NZCA 114, [2010] 2 NZLR 750 at [125] and *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [187] as outlined in *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [38]–[39].

⁷⁸ See *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [188]. Respondent’s Bundle of Authorities, Tab 14.

⁷⁹ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [40]. Respondent’s Bundle of Authorities, Tab 13.

⁸⁰ See *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38 at [4]. App Materials (Te Wini) at p. 83.

⁸¹ See *Oran v R* (2003) 20 CRNZ 87 (CA). The offender was sentenced in June 2002 for kidnapping involving home invasion. The maximum penalty at the time was 19 years imprisonment. Not long after sentencing the Sentencing Act 2002 came into force and the maximum penalty was reduced to 14 years

64. The principle of finality is of course subject to exceptions.⁸² The key one at issue in this case is the possibility of an application for an extension of time to appeal. An offender who seeks such an extension is said to be seeking the “indulgence”⁸³ of the Court. The decision whether to grant that extension must be “exercised in a principled way”.⁸⁴
65. Where – as here – the relevant “change” in the law has occurred after the offender exercised their right to appeal, but without making any application for leave to bring a second appeal, the ability to bring an appeal must be more limited. The statutory scheme in New Zealand affords only one “right” of appeal to a convicted person and “once exercised, it is spent”.⁸⁵ The applicants in this case therefore have two hurdles to cross. They must establish the interests of justice warrant re-opening their case, and also that a second appeal is justified.

Extension of time based on “change in law”

66. Where an extension of time is sought on the basis of a “change in law” a “substantial injustice” or “special circumstances” is required. As the Court of Appeal said in *Knight*:⁸⁶

... the starting point must be the principle that a conviction obtained according to law as it was then understood and applied should stand. 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.

imprisonment. The offender argued he should have the benefit of the lesser maximum given s 6 Sentencing Act and s 25(6) NZBORA. The Court of Appeal disagreed, finding that “sentence” in those provisions did not include an appeal. Thus, he was not entitled to the benefit of the change. The structure of the legislation and the parliamentary materials made this interpretation clear. Respondent’s Bundle of Authorities, Tab 21.

⁸² See the discussion in *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38 at [5] – [15].

⁸³ *R v Lee* [2006] 3 NZLR 42 (CA) at [102]. App Materials (Te Wini) at p. 157.

⁸⁴ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [50]. Respondent’s Bundle of Authorities, Tab 13.

⁸⁵ *Ibid.* at [31].

⁸⁶ *R v Knight* [1998] 1 NZLR 583, 587 (CA). App Materials (Te Wini) at p. 285.

67. The approach in England and Wales is instructive.⁸⁷ In *R v Mitchell* the Court of Appeal held:⁸⁸

It should be clearly understood, and this court wants to make it even more abundantly clear, that the fact that there has been an apparent change in the law or, to put it more precisely, that previous misconceptions about the meaning of a statute have been put right, does not afford a proper ground for allowing an extension of time in which to appeal against conviction.

68. The United Kingdom Supreme Court subsequently approved this passage, observing that the approach has been repeated in a number of decisions since *Mitchell*.⁸⁹ The Court of Appeal in *Johnson* went on to summarise the approach in this way:⁹⁰

As the Supreme Court [in *Jogee*] stated at [100], a long line of authority clearly establishes that if a person was properly convicted on the law as it then stood, the court will not grant leave without it being demonstrated that a substantial injustice would otherwise be done. The need to establish substantial injustice results from the wider public interest in legal certainty and the finality of decisions made in accordance with the then clearly established law. The requirement takes into account the requirement in a common law system for a court to be able to alter or correct the law upon which a large number of cases have been determined without the consequence that each of those cases can be re-opened. It also takes into account the interests of the victim (or the victim's family), particularly in cases where death has resulted and closure is particularly important.

69. The Court in *Johnson* was considering the situation after the United Kingdom Supreme Court had “corrected” the law relating to party liability. In those cases, the applicants were arguing that they would not have been *convicted* under the Supreme Court’s analysis of the law, yet the Courts held that it would not be appropriate to grant extensions of time to permit their cases to be re-examined. The case for reconsidering sentences is far less compelling, although it is of course acknowledged that the difference

⁸⁷ The High Court of Australia has disavowed the application of the “substantial injustice” test in relation to sentence appeals. The Court held that, where the applicant is still serving a sentence, finality is not a “discrete reason” for refusing an application to bring an out-of-time sentence appeal. However, the applicant in that case was serving a sentence of imprisonment and was ineligible for parole and would be ineligible for parole for many years into the future. See *Kentwell v The Queen* [2014] HCA 37, (2014) 252 CLR 601. Respondent’s Bundle of Authorities, Tab 27.

⁸⁸ *R v Mitchell* [1977] 1 WLR 753 (CA) at 189.

⁸⁹ *R v Jogee* [2016] UKSC 8, [2017] 1 AC 387 at [100]. Respondent’s Bundle of Authorities, Tab 26.

⁹⁰ *Ibid.* at [19].

between a life sentence and a finite sentence is significant. That said, it will not usually be significant as the difference between a person being convicted or not (depending on the seriousness of the offence).

70. Substantial injustice is a high threshold.⁹¹ In determining whether the threshold has been met the court will primarily have regard to the “strength of the case advanced that the change in law would, in fact, have made a difference”.⁹²
71. While it is not disputed that the erroneous imposition of a sentence of life imprisonment *may* amount to substantial injustice, these appeals cannot be said to be analogous to conviction appeals.⁹³
72. A case must be clear and compelling in order to warrant re-examination of the sentence in a case where there has been a substantial delay. It must be remembered that to allow an appeal out of time following an interpretive change in the law disadvantages those whose appeals were brought within time and dismissed and thus exhausted their appeal rights.⁹⁴
73. The courts should be reluctant to re-open appeals where the change to the law has occurred more subtly over time, in response to changing values and developing evidence, rather than a correction of a previously erroneous interpretation of the law. In this context, youth and background factors have always been relevant to sentence – and were considered in these cases. The fact those factors tend to be given more weight in 2026 than they were in 2011/13 does not amount to a substantial injustice.

APPLICATION OF PRINCIPLES TO THESE CASES

74. It is not in the interests of justice for these applicants to be granted the extensions of time sought. Finality should prevail given the length of the delay, limited explanations for the delay, and the fact they are no longer in

⁹¹ Ibid. at [20].

⁹² Ibid. at [21].

⁹³ As Ms Te Wini argues at paragraph 26 of her submissions, and see similarly Ms Churchward’s submissions at paragraph 6.1.

⁹⁴ *R v Knight* [1998] 1 NZLR 583, 587 (CA). App Materials (Te Wini) at p. 285.

prison. The merits of the proposed appeals are not strong – a substantial injustice is not apparent.

Societal interest in the final determination of litigation

75. The finality principle has been introduced above. It reflects the view that “litigation, at some point, must end so the courts can hear other business and the parties can move on with their lives”.⁹⁵ This principle gives certainty to judicial decisions and supports public faith in the administration of justice. Finality reflects a view that after cases are decided and appeals determined “parties are entitled to bank the outcome and organise their affairs accordingly”.⁹⁶ Likewise, “[w]ithout a certain end to litigation, the judicial system could come to a standstill, those parties with vast resources could postpone a final judgment and thwart justice”.⁹⁷ Continued review or “second guessing” of judicial decisions risks eroding public acceptance of judges’ decisions.
76. In the criminal law context finality enables victims, and their families, to have a measure of closure. Finality also supports the deterrent power of the criminal justice system.⁹⁸ Offenders may also be assisted by knowing their position with finality. If they remain subject to a sentence, they (and those administering their sentence) can plan rehabilitation and other aspects of their sentence once the outcome is known.⁹⁹
77. Finality is in part founded on convenience and policy decisions about allocation of resources. In the present context, the statutory framework

⁹⁵ Sigmund G. Popko “Putting Finality in Perspective: Collateral Review of Criminal Judgments in the DNA Era” *Law Journal for Social Justice* Vol 1.1 (2011) 75 at 75. Professor Popko discusses the finality principle and warns that care must be taken not to place too much weight on finality considerations in innocence cases (in light of DNA exonerations). Respondent’s Bundle of Authorities, Tab 31.

⁹⁶ *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38 at [7]. App Materials (Te Wini) at p. 83.

⁹⁷ Sigmund G. Popko “Putting Finality in Perspective: Collateral Review of Criminal Judgments in the DNA Era” *Law Journal for Social Justice* Vol 1.1 (2011) 75. Respondent’s Bundle of Authorities, Tab 31.

⁹⁸ “Surely it is essential to the educational and deterrent functions of the criminal law that we be able to say that one violating that law will swiftly and certainly become subject to punishment, just punishment. Yet this threat may be undermined if at the same time we so define the processes leading to just punishment that it can really never be finally imposed at all.”: Paul M. Bator, “Finality in Criminal Law and Federal Habeas Corpus for State Prisoners”, 76 Harv. L. Rev. 441, 452 (1963). Respondent’s Bundle of Authorities, Tab 32.

See also Ryan Scott “In defence of the finality of criminal sentences on collateral review” 4 Wake Forest J. L. & Policy (2014) 179 at 188. Respondent’s Bundle of Authorities, Tab 30.

⁹⁹ See *R v Williams* [2010] EWCA Crim 3289.

(one appeal as of right with the possibility of a second appeal by leave, and with time limits for appeals) reflects a “legislative policy decision about the resources the community should devote to error correction”.¹⁰⁰

78. Finality also supports a judge’s sense of responsibility for their decisions. It has been said that “the evolutionary capacity of the common law should not be constrained by the potential for previously resolved cases to rear up again”.¹⁰¹
79. The need to maintain finality is manifested in other aspects of the criminal justice system more generally. It underpins double jeopardy: “The rule against double jeopardy [...] places a high value on the importance of finality in criminal proceedings.”¹⁰² The same policy constrains the Crown from appealing acquittals in the ordinary course (limited statutory exceptions¹⁰³ “enable[...] the prosecution [...] to challenge the finality of an acquittal by way of an appeal.”¹⁰⁴).
80. While not absolute, finality is a strong consideration in this case. Other factors must weigh heavily against it to justify re-consideration of these sentences (and they do not, as will be submitted below).
81. Although not directly raised by the applicants, there is scope to draw some distinction as to how finality should operate in sentence appeals as opposed to conviction appeals. This has been a matter of academic debate.¹⁰⁵ Concerns about the loss of evidence over time are less acute than in conviction appeals, and re-sentencing is more straightforward than a re-trial. But given the greater number of sentencings than trials (given guilty pleas), retrospective application of sentencing practices can be said

¹⁰⁰ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [32]. Respondent’s Bundle of Authorities, Tab 13.

¹⁰¹ *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38 at [7]. App Materials (Te Wini) at p. 83.

¹⁰² *Rangitonga v Parker* [2016] NZCA 166, [2018] 2 NZLR 796 at [19].

¹⁰³ See Criminal Procedure Act 2011, s 151 (order for retrial if acquittal tainted).

¹⁰⁴ *Rangitonga v Parker* [2015] NZHC 1772, [2016] 2 NZLR 73 at [70].

¹⁰⁵ This has been a matter of academic discussion in the United States, as summarised in Ryan Scott “In defence of the finality of criminal sentences on collateral review” 4 Wake Forest J. L. & Policy (2014) 179 at 181. Respondent’s Bundle of Authorities, Tab 30. The High Court of Australia placed weight on the absence of prejudice to the Crown in sentence appeals in terms of the lack of a need to re-try the defendant in *Kentwell v R* (2014) 252 CLR 601 (HCA). Respondent’s Bundle of Authorities, Tab 27.

to have has far greater potential resource implications.¹⁰⁶ And re-opening either type of appeal risks damaging the reputation of the criminal justice system.

The length of the delay and the reasons for it

82. The delay is lengthy in this case: more than a decade since the Court of Appeal decisions in their cases¹⁰⁷ and almost three years since *Dickey*.¹⁰⁸ This is a heavy factor weighing against the grant of leave.¹⁰⁹
83. In *Dempsey v R*, also an application to extend time to appeal against a sentence imposed for murder, the Court of Appeal held that “[s]omeone who has waited more than five years to bring an appeal should offer a very good explanation for their delay”.¹¹⁰ The Court emphasised “[t]he longer the delay the more likely it is that the public interest, and that of other participants, in finality will outweigh the merits of the appeal”.¹¹¹
84. While explanations have been offered by the applicants, they are insufficient to justify the length of delay here:

84.1 To the extent the applicants imply they did not have the opportunity to appeal before the 2023 decision of the Court of Appeal in *Dickey*, this should be put to one side given it was always open to them to urge on this Court the arguments which ultimately found favour with the Court in *Dickey*.¹¹² It is unclear when they first became aware of the *Dickey* decision, nor why the

¹⁰⁶ See the discussion in Ryan Scott “In defence of the finality of criminal sentences on collateral review” 4 Wake Forest J. L. & Policy (2014) 179 at 181. Respondent’s Bundle of Authorities, Tab 30.

¹⁰⁷ Ms Churchward’s appeal period expired in 2011 and Ms Te Wini’s in 2013.

¹⁰⁸ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 was delivered in January 2023 and the present applications were filed in October 2025 (2 years and 9 months). App Materials (Te Wini) at p. 351.

¹⁰⁹ In *R v Lee* [2006] 3 NZLR 42 (CA) at [115], the Court that it will be much more inclined to grant leave where the delay is short (and explained) than in cases where the delay is longer: “A long delay is a major factor weighing against leave being granted and, if unexplained, would usually be decisive”. App Materials (Te Wini) at p. 161.

¹¹⁰ *Dempsey v R* [2023] NZCA 461 at [13], applying *Lee* at [115].

¹¹¹ *Ibid.*

¹¹² See *R v Welsh* (Christopher Mark) [2015] EWCA Crim 1516 at [71]: “Where there is a true change in the law, the applicant can do nothing until the law is changed. Where, as here, the applicants were able at all times to argue for the law as it has now been declared to be, their failure to do so counts against them on their extension of time application.” Respondent’s Bundle of Authorities, Tab 28.

application was not filed more swiftly after 2023.¹¹³ The Court of Appeal’s comments in *Rapira* were never binding on this Court so could not have prevented the arguments made in *Dickey* having been made earlier in this forum.

84.2 In her evidence in this Court, Ms Te Wini outlines aspects of her life post-release on parole and her desire to “move on in my life”.¹¹⁴ She does not address her decision not to seek leave to appeal to this Court following the dismissal of her appeal to the Court of Appeal in 2013. It can be inferred, though, that she was aware of the ability to seek leave to bring a second appeal given she had earlier sought leave to appeal to this Court on another issue.¹¹⁵

84.3 Ms Churchward has offered little more explanation for why she delayed applying for a second appeal. She was plainly aware of the ability to bring a further challenge – she did file an application for

¹¹³ See *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [56] where the Court of Appeal commented that if the case was one in which “change in the law is said to excuse delay” the time period that had elapsed since that change “would be very relevant”. Respondent’s Bundle of Authorities, Tab 13.

¹¹⁴ Affirmation of Ms Te Wini dated 15 October 2025. Te Wini Bundle, Tab 1, p. 4. Evidence about an offender’s life post-sentencing is not generally admissible on a sentence appeal. These events are relevant to the Parole Board’s tasks. This is because it is an appeal, not a re-sentencing.

Polyanszky v R [2011] NZCA 4 at [17]. Respondent’s Bundle of Authorities, Tab 20. See also *Levy v R* [2014] NZCA 87 at [13] and *Rubick v R* [2016] NZCA 8.

See also the way this point is made in the Court of Appeal for England and Wales in *R v Noorkoiv (Leo Robert)* [2002] 2 Cr. App. R. (S.) 91 (EWCA Crim) at [27] – [28]. In a case where the Court declined to take into account evidence as to the applicant’s “good progress since his sentence”, the Court said: “[27] We are, of course, very pleased to hear how well he has been doing. We hope and expect that that will be reflected in the judgments made about his release by the Parole Board and the appropriate authorities. But the question of risk or danger, we consider, falls in this case to be decided at the time of sentencing. Once sentence has been passed, an important object of the prison regime and the release procedures is, as far as possible, to reduce or eliminate risk within the statutory framework. [28] The fact that the regime and the procedures have been successful in this case does not, in our judgment, vitiate the original sentence. It is true that the court may be prepared to look at more recent evidence and give weight to it. But that is, in our view, only to the extent that it may shed light on matters as they were judged to be at the time of the sentence.” Respondent’s Bundle of Authorities, Tab 29.

In the US context it has been said that “any time a court vacates a sentence and begins again from scratch, new and helpful information may be available to improve the accuracy of the court’s predictions. But the proper way to take account of that new information is through sentence modification procedures designed for that purpose”. See Ryan Scott “In defence of the finality of criminal sentences on collateral review” 4 Wake Forest J. L. & Policy (2014) 179 at 207. Respondent’s Bundle of Authorities, Tab 30.

¹¹⁵ An inference she was aware of the possibility can be drawn from the fact Ms Te Wini filed an application for leave to appeal to this Court dated 25 January 2012 in respect of the Court of Appeal’s decision in *Te Wini v R* [2011] NZCA 617, in which the Court declined leave to hear an appeal in relation Ms Te Wini’s change of trial venue application. The application for leave to this Court was signed by Ms Te Wini.

leave in respect of her *conviction* only.¹¹⁶ She says she “didn’t even think about trying to challenge the life sentence again in 2011.”¹¹⁷

85. Evidence as to any advice given by counsel at the time about the possibility of an appeal and its prospects, and the instructions of the defendant, are usually relevant where applications for extensions of time are sought.¹¹⁸ In the absence of a waiver of privilege on these issues a court may assume the applicants made decisions informed by appropriate legal advice.¹¹⁹ In this case, while the Crown did not initially seek the comment of counsel who represented the applicants at the time the appeal period expired, but did so following this Court’s indication it would hear the merits.¹²⁰ Ms Te Wini has declined to waive privilege and appears content for this Court to assume she was aware of the ability to apply for a second appeal and received appropriate advice. Ms Churchward waived privilege,¹²¹ but the response from counsel has been received at the last minute and not in a form in which it can be filed.¹²²
86. Counsel for the Law Association invites this Court to find that youth is a relevant factor favouring granting an extension of time to appeal given “the decision making of young people makes it more likely they will not avail themselves of their appeal rights in time”.¹²³ The respondent accepts youth may be taken into account where it has been shown to have played a part in the reasons why an appeal was not pursued in a timely fashion.¹²⁴ It is

¹¹⁶ *Churchward v R* [2012] NZSC 25. Respondent’s Bundle of Authorities, Tab 10.

¹¹⁷ Affirmation of Ms Churchward dated 27 August 2025 at [80].

¹¹⁸ See for instance, *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38 at [2]; *R v Slavich* [2008] NZCA 116 at [27]; *McCarthy v R* [2023] NZCA 399 at [16].

¹¹⁹ See *Waters v R* [2018] NZCA 84 at [21]. Respondent’s Bundle of Authorities, Tab 15. And *E v R* [2010] NZCA 544 at [23]. This is essentially an adjunct of the fact it is for an appellant to establish an error on appeal.

¹²⁰ Letters from Crown Law dated 21 April 2026.

¹²¹ Waiver of legal professional privilege signed by Ms Churchward dated 9 June 2026.

¹²² The Crown received an affidavit from Mr Tennet on 22 July 2026. While he confirms he provided advice to Ms Churchward to pursue a second appeal against conviction only, the Crown considers the remainder of his affidavit is inadmissible.

¹²³ Intervener’s submissions at [11].

¹²⁴ This point was made by the Court of Appeal in *Davis v R* [2011] NZCA 380 at [2]. The appellant had filed an appeal against his murder conviction 20 months late. He explained in his affidavit the difficulties he had in securing legal representation. The Court had regard to the explanation “as well as the age of the appellant” (he had just turned 20 at the time of the application) and granted the extension of time. Respondent’s Bundle of Authorities, Tab 18.

difficult to apply that proposition to this case given the limited evidence before this Court as to the applicants' decision making at the time.

87. Plainly, the applicants' youth could only be relevant in relation to the initial decision not to appeal and could not bear upon the failure to file an appeal in more recent years (particularly the delay since 2023). In other words, the recognition youthfulness may have an impact on an applicant's capacity to realise they can seek leave, or to act on it – but this cannot apply continuously into adulthood.

Impact on the wider community and victims in particular

88. The Court must take account of the impact on the community, and victims in particular, of an appeal being re-opened years after appeal periods have expired. Every victim will have a different experience, but for many (particularly those victims whose loved ones have been murdered) the crime will have an impact that long outlasts the criminal proceedings. The finality principle is of particularly high importance in cases such as the present where offending has had tragic consequences.¹²⁵
89. While criminal proceedings in New Zealand are brought by the Crown, it has long been recognised that victims have a special interest in understanding and following the process to its conclusion. Of course, victims will vary in the extent to which they wish to be informed about, and involved in, the criminal process. It is no answer to assert victims have a "choice" not to be involved in the process.
90. The Victims' Rights Act 2002 and the related Victims Code¹²⁶ emphasise the right of victims to be treated with respect, courtesy and compassion.

¹²⁵ See for example the discussion in *R v Lory* [2002] 1 NZLR 462 (CA), where the appellant sought to appeal seven years out of time against a sentence of life imprisonment for manslaughter and arson after setting fire to a sofa inside a hotel, in which six people were killed and many others seriously injured. In respect of the effect on the victims, the Court of Appeal held at [9]: "Time objections to sentence appeals are seldom taken in this Court. It is, however, not usual for an offender to wait seven years before seeking leave to appeal. This seven year delay is no light matter. We say this particularly given the likely feelings of those who were injured in the fire but survived and the relatives and loved ones of the six people who died. Given the tragic consequences of the appellant's offending, the finality principle is of high importance and we would require much persuasion before allowing the case to be re-opened." Respondent's Bundle of Authorities, Tab 22.

¹²⁶ <https://victimsinfo.govt.nz/assets/Victims-code/Victims-Code.pdf>

Victims must be supported to understand and have some involvement in the justice system. Informational rights support transparency and public confidence in the justice system more generally. Prosecutors have an obligation to keep victims¹²⁷ informed of the progress of proceedings.¹²⁸ These “informational” rights are also aimed at reducing stress and supporting well-being.¹²⁹

91. As the Chief Victims Advisor to Government has stated:¹³⁰

The effectiveness of a justice system depends on the trust, confidence, engagement and participation of victims. The criminal justice system asks victims to make statements and give evidence during the investigation, prosecution, sentencing and release of offenders. All victims need to feel confident and safe to report crime and engage with the justice system.

Because an effective system relies on victims’ trust and confidence, there is an obligation to treat all victims with respect and dignity. This includes giving victims’ voices a place at the heart of decision-making about the future of the New Zealand justice system.

92. In this case, the Rowe family, like many others, followed the applicants’ trials and appeals. Mr Rowe’s children referred to the impact of the drawn-out court procedures on them in their 2012 Victim Impact Statements. Mr Rowe’s son Patrick¹³¹ described the trial and appeals as “a long period of emotional upheaval” meaning he had spent 3 ½ years of “a roller coaster period that has meant we have had to relive the torment time and again”.¹³² Mr Rowe’s daughter Wendy Rowe¹³³ referred to being “unable to get on with my life because of all the court procedures” and her anxiety levels peaking every time she was contacted about the case. Distressingly, her father was killed on her birthday.

¹²⁷ The definition of “victim” includes members of the immediate family of a victim who has died as a result of the offence: Victims Rights Act 2002, s 4. Respondent’s Bundle of Authorities, Tab 6.

¹²⁸ Victims Rights Act 2002, s 12. Respondent’s Bundle of Authorities, Tab 6.

¹²⁹ Providing information to victims is aimed at reducing stress for victims and supporting their wellbeing, see Solicitor-General’s Prosecution Guidelines (2024) Victims Guideline at 17.

¹³⁰ Website of the Chief Victims Advisor to Government: <https://chiefvictimsadvisor.justice.govt.nz/rights-and-system/heart-of-the-system/>

¹³¹ Patrick Rowe Victim Impact Statement, 03 COA Victim Impact Statements at 6.

¹³² Ibid.

¹³³ Wendy Rowe Victim Impact Statement, 03 COA Victim Impact Statements at 2.

93. To state the obvious, not all victims will be impacted by a late appeal in the same way.¹³⁴ Some may support the offender's sentence being reduced,¹³⁵ others may no longer wish to hear updates about justice system processes about a case they have attempted to put behind them. But it can reasonably be assumed that, in general, the filing of an appeal and resurrection of legal proceedings "out of the blue" will be shocking and upsetting for the families of the deceased.
94. For many victims, the fact the person who killed their loved one is subject to conditions for "life" is an important symbol of the value of the life that was taken.¹³⁶ Likewise, many are comforted by the existence of parole conditions to minimise risk to others, and to avoid the risk of inadvertent contact between them and the offender.¹³⁷ Victims should be entitled to trust the Parole Board will manage the re-integration of offenders into the community at the appropriate time, and manage any ongoing risk they present to the community.¹³⁸
95. There are almost never specialist reports before a sentencing court referring to the impact on family members of violent crime against their loved ones, especially when a case comes against before a court years after it was thought to be disposed. It can surely be accepted, however, that there is enormous trauma to any individual who learns their vulnerable elderly father has been needlessly and brutally killed. Sentencing courts accept that unrelated trauma to defendants from years earlier plays a part in their current life events, emotional well-being and offending. The courts can also, on the same basis, accept that trauma to victims must scar and

¹³⁴ The Rowe family have been advised of the current applications. To date they have not expressed a view on the impact of this application on them.

¹³⁵ For instance, in cases of intra-familial violence where the victim and offender are connected to the same family group.

¹³⁶ As the Court of Appeal commented in *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [171]: "[S]ociety has always placed special value on human life and condemned those who take life deliberately or with reckless disregard. A life sentence is seen as "just deserts". This is a weighty consideration that must be taken into account when considering manifest injustice under s 102." App Materials (Te Wini) at p. 399.

¹³⁷ This has been a factor in the present case. See for example the Parole Board decision dated 16 December 2024 for Ms Churchward which notes a request from the victims that she not be released to Auckland or Opotiki. 01 SC Casebook at 133.

¹³⁸ Parole Act 2002, s 7(1) "When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Board in every case is the safety of the community."

harm them, and that pain and harm will be renewed and reinforced when they are required by justice processes to confront again a terrible event. Victim interests must be given true weight, including where issues are raised years after the fact.

Impact on others (“floodgates”)

96. In deciding whether to grant an extension, the Court will consider, *inter alia*, “... the extent of the impact on others similarly affected and on the administration of justice, that is floodgates considerations.”¹³⁹
97. If these applications are successful, it may encourage applications for other out-of-time appeals. This issue arises in both a specific and more general way:
 - 97.1 Applications by other young murderers who consider they would be sentenced differently following *Dickey*. This issue is somewhat limited. In *Dickey* it was noted that 169 adolescents and emerging adults have been sentenced to life imprisonment for murder since the Sentencing Act came into force.¹⁴⁰ Since *Dickey*, there has been at least eight applications for extensions of time to appeal dealt with by the Court of Appeal.¹⁴¹
 - 97.2 Other cases where offenders have received sentences that would be approached differently in the contemporary context. As has been outlined above, sentencing practices and continue to change and develop as social values and attitudes evolve. Here it is simplistic to suggest that there is one clear “change” in the law (i.e. *Dickey*) that would result in different sentences today.

¹³⁹ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [51]. Respondent’s Bundle of Authorities, Tab 13.

¹⁴⁰ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [153]. App Materials (Te Wini) at p. 394.

¹⁴¹ *Whiting-Roff v R* [2024] NZCA 530; *Kriel v R* [2024] NZCA 45 (Mr Kriel, Mr Nattrass-Bergquist, Mr Wallace-Lotetz, Mr Lo, Mr Morris); *Renata v R* [2024] NZCA 469 (Respondent’s Bundle of Authorities, Tab 12); *Kingz v R* [2025] NZCA 390 (Respondent’s Bundle of Authorities, Tab 11).

Prejudice to the Crown

98. The possibility of prejudice to the Crown is a key factor in the decision whether to grant an extension of time to appeal. It will be most acute where the application is for a conviction appeal: evidence may have been lost and memories will have faded so the delay compromises the Crown's ability to defend the appeal or to prosecute a re-trial. While less powerful in the sentence appeal context, this factor can nevertheless still be relevant given disputed factual issues can still arise and will also be more difficult to resolve following the passage of time.¹⁴²
99. Generally speaking, unless there are contemporaneous records, it is very difficult for a Court in 2026 to assess the level of remorse of an offender back in 2011, or to assess prospects of rehabilitation retrospectively. To the extent the findings of experts relevant to sentence might be relevant and contested on appeal there is the risk of prejudice to the parties' ability to do so, given the passage of time, lost evidence and faded memories. A Court re-sentencing many years later is more likely to make errors as a result of the passage of time.
100. In this case, the applicants were sentenced separately on slightly different factual bases. It is very difficult, if not impossible, for this Court to re-assess factual findings now, such as the assertion now made by Ms Churchward that she did not know Mr Rowe was vulnerable.¹⁴³

The practicality of the remedy and the extent of continuing consequences

101. It is trite to say that an extension of time is less likely to be in the interests of justice where to do so would have little practical effect. This is an extension of the general principle that appellate courts do not ordinarily entertain appeals where the issue is "moot".¹⁴⁴ The extent to which a

¹⁴² "Sentencing also implicates finality interests in the accuracy of proceedings because it depends, in part, on backward-looking factual determinations." See Ryan Scott "In defence of the finality of criminal sentences on collateral review" 4 Wake Forest J. L. & Policy (2014) 179 at 203. Respondent's Bundle of Authorities, Tab 30.

¹⁴³ Ms Churchward's submissions at paragraph 8.11. This contrasts with Venning J's factual finding she was aware of Mr Rowe's "situation" (although Ms Te Wini was more aware).

¹⁴⁴ *G v Commissioner of Police* [2024] NZCA 472 at [25] – [26], quoting *Thornley v Ford* [2024] NZCA 154 (2024) 25 NZCPR 422 at [45] – [48].

defendant's liberty interest is still engaged is plainly relevant to whether time should be extended.

102. This factor is essentially neutral in this case. Neither applicant remains in prison, so their liberty is not *directly* affected. They are on parole conditions that provide supervision over their lives, and some limits to their movement. The safety of the community is a key consideration, and the Board must take into account the need to ensure conditions do not last longer than is consistent with the safety of the community.¹⁴⁵ Parole conditions also support reintegration and rehabilitation. While recall is possible, it is speculative at this point. A successful appeal would have practical effect – it would effectively remove the parole conditions for both (as any determinate sentence is likely to have been served).
103. An appeal to this Court is not the only means by which the applicants could receive that result. As the Court of Appeal held in *Kriel*,¹⁴⁶ parole conditions may not necessarily remain for life. The Parole Board has jurisdiction to amend conditions, as it has done so for Ms Te Wini over the years.
104. Section 56(1) of the Parole Act allows an offender to apply for discharge from parole conditions, and s 58 gives the Parole Board jurisdiction to determine an application.¹⁴⁷ In *Dickey*,¹⁴⁸ the Court observed that discharges have been rare – it recorded only two instances where the Parole Board discharged all conditions, and only after many years. However, the Court said that “These two examples do not justify adopting an assumption that a youth offender who is paroled after serving a minimum period for murder will remain on parole conditions for life.” The Court went on to say that “we must address the present appeals in the

¹⁴⁵ Parole Act 2002, s 7(2)(a). Respondent's Bundle of Authorities, Tab 4.

¹⁴⁶ *Kriel v R* [2024] NZCA 45 at [106](e), where the Court of Appeal noted that the Parole Board would be able to consider any application by Mr Kriel to remove the parole conditions imposed on him. App Materials (Te Wini) at p. 65.

¹⁴⁷ The jurisdiction is unfettered, if exercised with effect six months or more after release, but it must be exercised for the statutory purposes, notably those of ensuring release conditions are not more onerous, and last no longer, than is consistent with community safety. Parole Act 2002, s 7(2)(a). Victims must be notified and their views given due weight.

¹⁴⁸ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [187]. App Materials (Te Wini) at p. 403.

expectation that the Board will exercise its jurisdiction to discharge conditions of parole for offenders who no longer pose a risk to public safety. If it does not do so, there is a remedy under the Parole Act itself.” The Court referred to s 67 of the Parole Act, which enables review of decisions of the Parole Board by the chairperson or a panel convenor. Judicial review may also be considered.

105. Plainly, Ms Churchward’s assertion she should receive a determinate sentence because “it is so hard to go through parole channels”¹⁴⁹ should be disregarded.
106. As to Ms Churchward’s submission that life parole means that, for her, the presumption of innocence is “reversed”,¹⁵⁰ this is misconceived. If Ms Churchward is charged with an offence in the future and she pleads not guilty, the prosecution will have the duty of proving Ms Churchward’s guilt to the beyond reasonable doubt standard, as with any other defendant. While a charge may provide a basis for the Chief Executive of the Department of Corrections to make an application to recall Ms Churchward to prison¹⁵¹ (in which case the onus lies on the Chief Executive to make out the application), this is an aspect of the life sentence which was imposed on Ms Churchward for murdering Mr Rowe.

The strength of the proposed appeals

107. The strength of the appeal grounds is an important consideration in an application for extension of time. But the merits must not be elevated to the sole consideration. To do so would be to unfairly treat applicants for extensions of time the same as those who have appealed within time.¹⁵² Indeed, in *Lee* the Court of Appeal held there may not even need to be an

¹⁴⁹ Affirmation of Ms Churchward dated 27 August 2025 at [83].

¹⁵⁰ Churchward submissions at [6.12].

¹⁵¹ Parole Act 2002, s 60. Respondent’s Bundle of Authorities, Tab 4.

¹⁵² As was held in *R v Lee* [2006] 3 NZLR 42 (CA) at [102], that cannot be the right approach. App Materials (Te Wini) at p. 157.

enquiry into the merits of the appeal in any detail,¹⁵³ it is but one consideration in determining where the balance lies.

108. The merits of the proposed appeals must be considered through the lens of the appellate test: an appeal must only be allowed if the court is satisfied that for any reason there is an error in the sentence and a different sentence should be imposed.¹⁵⁴ The appellate court does not start afresh or simply substitute its own opinion for that of the original sentencer: “An appeal is not generally a second shot at sentencing.”¹⁵⁵ The appellate court may only form its own view of the appropriate sentence if an error has been established.

No error

109. Together, *Dickey* and *Van Hemert* make clear that personal mitigating circumstances must always be looked at carefully and they may contribute to triggering the manifest injustice exception. However, it remains true that the strong presumption of life imprisonment will not be overcome if that is required in the interests of accountability, denunciation, deterrence, and community protection.
110. In 2011 and 2013 the Court of Appeal considered the applicants’ youth in the assessment of whether life was a manifestly unjust outcome, and did not err in doing so. It cannot be said that the Court erred by failing to take into account a relevant consideration, nor that the decisions resulted in substantial injustice.

- 110.1 For Ms Churchward the argument for rebutting the presumption was based on her “youth and mental state”. The Court of Appeal cited its earlier decision in *Rapira* for the proposition that the assessment of whether life imprisonment is “manifestly unjust is

¹⁵³ Ibid. at [106].

¹⁵⁴ This is how the test is currently framed in s 250 of the Criminal Procedure Act 2011. In *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 the Court of Appeal confirmed that it was not intended to change the approach taken to sentence appeals under the previous law (which applies here, s 385(3) of the Crimes Act 1961). Respondent’s Bundle of Authorities, Tab 16.

¹⁵⁵ *R v Polyanszky* [2011] NZCA 4 at [17]. Respondent’s Bundle of Authorities, Tab 20.

made on the basis of all the circumstances of the offence and the offender but that it is a conclusion likely to be reached in exceptional cases only.”¹⁵⁶ The Court then upheld life imprisonment as this “was a brutal murder committed in the course of a premeditated home invasion for the purpose of robbery”.¹⁵⁷ This formulation is not inconsistent with how s 102 has been interpreted by this Court in *Van Hemert*.¹⁵⁸ There is no indication from the decision in *Churchward* that the Court considered itself precluded from placing weight on Ms Churchward’s youth (the view expressed in *Rapira* that youth could carry little weight was not mentioned).

110.2 Two years later, Ms Te Wini argued in the Court of Appeal that her youth and other mitigating factors justified departure from the presumption of life imprisonment. The Court disagreed, noting that departure from the presumption was “constrained”.¹⁵⁹ Again, there is no indication the Court of Appeal considered itself prevented from carefully considering Ms Te Wini’s youth. In fact, the argument was analysed in light of the “comprehensive consideration of the effect of youth in *R v Churchward*”.¹⁶⁰ The Court proceeded on the basis that there was no “automatic displacement on the basis of youth alone”¹⁶¹ – another proposition undisturbed by *Dickey*. In sum, even viewing this decision in light of *Dickey* (and *Van Hemert*) the Court of Appeal did not err in its conclusion.

111. The life sentences do not otherwise represent substantial injustice. This was a murder triggering a number of factors under s 104 of the

¹⁵⁶ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [64], 01 SC Casebook at 50.

¹⁵⁷ *Ibid.* at [65], 01 SC Casebook at 50.

¹⁵⁸ In *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [59] – [62], this Court held the circumstances of offence and offender must both be considered, they are not conjunctive mandatory requirements. Intervening Counsel Bundle of Authorities, Tab 10.

¹⁵⁹ *Te Wini v R* [2013] NZCA 201 at [16], 01 SC Casebook 21.

¹⁶⁰ *Ibid.* at [27]. 01 SC Casebook at 23.

¹⁶¹ *Ibid.* at [26]. 01 SC Casebook at 23.

Sentencing Act, which demonstrates this was a case Parliament has characterised as so repugnant that it would generally attract a heftier presumptive minimum period of imprisonment. In recognition of that, the Court of Appeal has held that the applicability of s 104 remains relevant, following *Dickey*, to the assessment of manifest injustice for youth murderers.¹⁶²

112. The submission on behalf of the Law Association suggests that for young people it would be a “more rights consistent approach” for the courts to consider manifest injustice under s 102 first, followed by s 104 factors. It is difficult to see why this approach would be necessary. The key points are that young people are not a category of offenders who are presumptively treated differently from others, and that the factors in s 104 must be considered.

Comparison to other cases

113. It is trite to observe that decisions of other courts are not binding in this Court. Nonetheless, the applicants’ assertion that other cases show they would receive determinate sentences if sentenced today requires a response. While it is statistically correct that more young people have received determinate sentences in recent years than before *Dickey*, each case must be considered on its own facts. Any pattern from decisions post-*Dickey* cannot be said to create the category exception the Court in *Dickey* declined to find. In any event, there are others who are broadly comparable who have received life sentences in recent years (or had extensions of time declined):

- 113.1 Fifteen-year-old Mr Williamson-Atkinson unlawfully entered a tent and stabbed a vulnerable sleeping man. He’d experienced a difficult upbringing and had FASD and ADHD. The High Court

¹⁶² See the discussion in *Kriel v R* [2024] NZCA 45 at [117] where the Court referred to the life sentence imposed on Mr Morris as “conform[ing] with the principles that continue to govern the sentencing of young persons convicted of murder in cases that engage s 104 of the Sentencing Act”. App Materials (Te Wini) at p. 68.

nevertheless sentenced him to life imprisonment (with an 11-year MPI) in 2024.¹⁶³

113.2 Mr Natrass-Bergquist and Mr Wallace-Loretz (both aged 17) murdered Mr Gillman-Harris in 2014 in the course of plan to seriously injure and rob him. They attacked him with a baseball bat, causing injuries that were ultimately fatal. Both were found guilty of murder (under s 168) and s 104 applied. They received sentences of life imprisonment with an MPI of 10 years and nine months. After *Dickey* they sought extensions of time to appeal sentence (seven years out of time). They both had deprived backgrounds and Mr Natrass-Bergquist met the criteria for PTSD. The Court of Appeal declined an extension as the sentences would likely have been the same if they were sentenced now.¹⁶⁴

113.3 Fourteen-year-old Mr Kriel murdered Liberty Templeman in 2008 by punching her in the head, attempting to strangle her, before removing her clothing and laying her face down in a stream where she died. The Court of Appeal declined to extend time for an appeal against the sentence of life imprisonment (with an 11-year MPI).¹⁶⁵

113.4 Sixteen-year-old Mr Renata, together with two associates, attacked Jamaine Wharton and stabbed him while on the ground. He was influenced by older co-offenders but his culpability was high. The offending was in 2021 and he was declined an extension of time to appeal his sentence of life imprisonment (with a 10-year MPI).¹⁶⁶

¹⁶³ *R v Williamson-Atkinson* [2024] NZHC 611 (he appealed both conviction and sentence, the Court of Appeal's decision is reserved). Respondent's Bundle of Authorities, Tab 25.

¹⁶⁴ *Kriel v R* [2024] NZCA 45 at [109](d): "We are concerned that the seven-year delay between sentencing and the filing of the applications before us, significantly undermines the principle of finality". App Materials (Te Wini) at p. 66.

¹⁶⁵ *Kriel v R* [2024] NZCA 45.

¹⁶⁶ *Renata v R* [2024] NZCA 469. Respondent's Bundle of Authorities, Tab 12.

113.5 When he was 18 Mr Kingz murdered Chevy Koltai. He'd seen Mr Koltai kiss his former partner, and he went and got a knife and stabbed him. He was sentenced to life imprisonment (with an 11-year MPI) in 2005. He had experienced a "very unfortunate upbringing". While the Court of Appeal in 2025 did not consider life imprisonment was inevitable, the delay was too long to justify an extension of time.¹⁶⁷

114. It was not otherwise wrong for the Court of Appeal to uphold the sentences of life imprisonment based on individual factors.

Ms Churchward

115. Ms Churchward's personal factors do not support the conclusion the Court of Appeal was wrong to conclude the presumption of life imprisonment should remain:

115.1 As to youth, at 17 and a half she was in the mid-range of young offenders, not the juvenile end. The Court of Appeal has declined to disturb life sentences imposed on younger or same age offenders in *Kriel* (Mr Kriel was aged 14; Mr Natrass-Bergquist and Mr Wallace-Loretz were aged 17) and *Renata* (16 years) and *Te Tomo* (17 years).

115.2 There was not a direct link between Mr Churchward's background/diagnoses to the offending in the sense there was for Ms Epiha in *Dickey* (for example) who attacked because of a perceived threat or slight in circumstances where her perception was distorted by "deep-seated psychological issues" caused by her "violent and abusive upbringing".

115.3 As to social /cultural deprivation, Ms Churchward had a relatively stable upbringing in Piha and Massey and Glen Innes¹⁶⁸ until she

¹⁶⁷ *Kingz v R* [2025] NZCA 390. Respondent's Bundle of Authorities, Tab 11.

¹⁶⁸ See report of Ms Bellve-Wack dated 16 September 2009 "At the time of Ms Churchward's birth the family lived in Piha but soon moved to Massey. She recalls that they did not have much money, but that her stepfather worked hard and new acquisitions such as furniture and a TV were events that were duly celebrated. She and her brother started Primary School in Massey and both were good students. She

moved to Opotiki when she was 13. Things in Opotiki were less settled, but there were some positives.¹⁶⁹ While there were undoubtedly difficulties in Ms Churchward's life,¹⁷⁰ her background compares favourably to others such as Ms Epiha, who began using drugs and alcohol when she was six and was in state care by seven, and Mr Natrass-Bergquist, who was sexually abused from the age of seven.

115.4 Importantly, Ms Churchward did not plead guilty, and there was no clear expression of remorse at the time. A pre-sentence report of 10 December 2009 states "She asserts that she was 'straight and sober' at the time. She did not evince remorse or express empathy for the victim."¹⁷¹ A Parole Board decision from 2022 notes she "rather underplays her part in the offending".¹⁷² In her affirmation in this Court she makes little mention of the murder, other than to say that she wanted to take ownership of what she had done and to "take responsibility for the part I played".¹⁷³

115.5 The pre-sentence said that Ms Churchward was "not at high risk of re-offending". However, Ms Bellve-Wack report says: "Given the above history as well as the index offence it is obvious that Ms Churchward poses a risk to self and others without

states that their mother was encouraging and placed importance on school performance. Ms Churchward states that her mother taught her right from wrong and the difference between 'good touch and bad touch'. (p. 3). "... she liked many of the teachers at Glen Taylor Primary and withdrew into her studies, spending much time in the library. Both Ms Churchward and her brother were inducted into the gifted programme." (p. 4)

¹⁶⁹ "A review held by CYFS in early December 2006 revealed that Ms Churchward had made an excellent adjustment at home and at school. Her school performance was good and she was talking about her plans for the future, i.e. going to university upon finishing school. She appeared happy and settled and had joined the aunt's church. She abided by curfews and was compliant with requests for chores around the house..." Report of Ms Bellve-Wack dated 16 September 2009, p. 7. Ms Churchward also attended a hairdressing course at which she excelled. She was accepted into the New Zealand Performing Arts School with a "real sense of achievement."

¹⁷⁰ [REDACTED] and she fell in with an abusive partner and abused alcohol and drugs.

¹⁷¹ Churchward pre-sentence report (2009). 04 CoA Casebook SC 158.2025 at 51.

¹⁷² Decision of the Board 26 January 2022, 01 SC Casebook at 144.

¹⁷³ Affirmation of Ms Churchward dated 27 August 2025 at [70]. A similar comment is referenced in a Parole Board decision: "the psychologist said that Ms Churchward felt shame and guilt about the offending and had wanted to accept personal responsibility from the outset but apparently felt compelled to appeal the sentence out of the sense of loyalty to the family" (01 SC Casebook at 136).

interventions.”¹⁷⁴ One aspect of Ms Churchward’s risk profile are her significant anger issues.¹⁷⁵ Ms Churchward was denied parole on four occasions. When she was released, in 2025, this was a “finely balanced” decision.¹⁷⁶ All of this suggests that Ms Churchward may continue to pose a risk to the public, and that life parole is necessary to mitigate this risk.

116. Continued life parole for Ms Churchward does not present a substantial injustice.

Ms Te Wini

117. Given her younger age and the fact of her eventual plea of guilty the argument that Ms Te Wini might now receive a determinate sentence is stronger than for Ms Churchward. However, it does not follow that the merits are sufficiently strong to mean the continuation of life parole is a substantial injustice.
118. Ms Te Wini’s level of social/cultural deprivation is relatively high. Her upbringing lacked the periods of stability that Ms Churchward had at times. [REDACTED]. She has a PTSD diagnosis, but this was properly found to not be directly connected to the offending. (Again, in contrast to Ms Epiha.) While drug and alcohol issues will plainly have been part of the context, the offending itself lacks any direct trigger.¹⁷⁷ Ms Te Wini suggested her elderly neighbour as a target for a robbery.

¹⁷⁴ Report of Ms Bellve-Wack dated 16 September 2009, p. 19.

¹⁷⁵ Report of Ms Bellve-Wack dated 16 September 2009, p. 14. “Ms Churchward stated that one of the remnants of her rape trauma is that she feels very sensitive about being ‘stared at’ and that this makes her feel violent. She states that she ‘can feel the anger rise up my spine and my head feels like exploding’. She stated that she had to talk to an officer recently when another inmate was looking at her and she was on the verge of becoming violent. She also states that she has difficulties being around men since that time ... Ms Churchward said that ever since the rape she had had angry and violent fantasies frequently (some of which she related in her police interview) ...”

¹⁷⁶ Decision of the Parole Board dated 13 November 2025 at [11]. 01 SC Casebook at 127.

¹⁷⁷ See *Te Wini v R* [2013] NZCA 201 at [40]: “we see no fault in Woolford J’s conclusion that there was not a sufficiently close connection between Ms Te Wini’s impairments and the murder to affect the s 102 presumption of imprisonment for life.” 01 SC Casebook at 26.

119. To the extent this Court is prepared to consider post-sentencing events, the fact Ms Te Wini has been on parole conditions, without incident, for a number of years, is in her favour (in contrast to Ms Churchward who has only recently been released and for whom the sudden removal of all conditions is likely to present risks). Equally, this is an argument that stands her in good stead to continue to apply to the Parole Board to have those conditions reduced or removed.
120. As to culpability, Ms Te Wini received a lower sentence than her cousin, reflecting her younger age and eventual guilty plea. But the extent of the culpability of each of the offenders cannot now be easily re-examined, given the passage of time. Ms Te Wini's assertion now that she "only joined in [on the assault on Mr Rowe] when Ms Churchward pressed her"¹⁷⁸ contrasts with the agreed Summary of Facts which records they "got 'hyped up' encouraging each other to get the confidence to strike the deceased".¹⁷⁹ Woolford J found they acted "substantially in concert" and "were each sources of encouragement for the other".¹⁸⁰ There is no basis to disturb the High Court's findings in this respect.
121. At her High Court sentencing Woolford J carefully considered, and rejected, the argument that a murder under s 168 materially reduced her moral culpability such as to disturb the presumption of life imprisonment.¹⁸¹ Similarly, it was considered by the Court of Appeal.¹⁸² The presumption of life imprisonment applies to all murders, whether under s 167 or s 168. Overseas cases are of limited relevance given the different formulations of the offence. Section 168 requires the offender to "mean to cause grievous bodily injury" for the purpose of facilitating an offence. This issue was thoroughly considered at the time and there is no basis to re-open it now.

¹⁷⁸ Ms Te Wini's submissions at [75].

¹⁷⁹ Summary of Facts at paragraph 24, 02 CoA Casebook SC 157.2025 at 10. See also 2012 Sentencing Notes at [7]. 02 CA Casebook at 90.

¹⁸⁰ 2012 Sentencing Notes at [56] (02 CoA Casebook SC 157.2025 104 and the Summary of Facts at paragraph 24. 02 CoA Casebook SC 157.2025 at 10.

¹⁸¹ See 2012 Sentencing Notes at [37] (02 CoA Casebook SC 157.2025 at 97), [47] (02 CoA Casebook SC 157.2025 at 100) and [52]-[56] (02 CoA Casebook SC 157.2025 at 103).

¹⁸² *Te Wini v R* [2013] NZCA 201 from [21] 01 SC Casebook at 22.

122. The 2009 pre-sentence report indicated that Ms Te Wini’s remorse was initially equivocal: “She appeared blasé about the offence and became excited when describing events of that night, laughing when recapping certain events, minimising the seriousness of certain events”¹⁸³ and “...although she has experienced her remorse for her offending behaviour, she did not appear to realise the seriousness of her actions, and found recalling events that took place amusing.” However, Ms Te Wini presented as more remorseful in 2012. Woolford J said: “The tone of the interview with the Probation Officer demonstrates that Ms Te Wini has insight into her offending. One matter that is also mentioned in all of the reports is a sense of remorse and a willingness to speak with and engage in any restorative justice process with which the victims might feel comfortable.”¹⁸⁴

CONCLUSION

123. The applications should be dismissed as the applicants fail to cross the high threshold for an extension of time following a lengthy delay. It is not a substantial injustice for the applicants to remain subject to life parole.

23 July 2026

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Counsel for the respondent

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The applicants.

AND TO: The Law Association (intervenors)

¹⁸³ Te Wini pre-sentence report (2009).

¹⁸⁴ 2009 Sentencing Notes at [23]. 01 SC Casebook at 71.