

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 81/2010  
[2010] NZSC 116**

**GARY MAUI ISHERWOOD**

v

**THE QUEEN**

Court: Blanchard, McGrath and William Young JJ

Counsel: T Ellis for Applicant  
K A L Bicknell for Crown

Judgment: 21 September 2010

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] The Court of Appeal agreed to hear a very belated appeal by the applicant against a sentence of preventive detention imposed upon him in 2004 on several counts of sexual offending, a count of kidnapping and two counts of administering a class B drug. However, the Court, while quashing the preventive detention sentence in relation to the drug offending for want of jurisdiction, otherwise dismissed the sentence appeal.<sup>1</sup>

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<sup>1</sup> *Isherwood v R* [2010] NZCA 347.

[2] The applicant now seeks leave to appeal to this Court. His counsel, Mr Ellis, seeks to make a general challenge to New Zealand's preventive detention regime on the basis that it involves arbitrary detention contrary to Article 9 of the International Covenant on Civil and Political Rights, as affirmed in s 22 of the New Zealand Bill of Rights Act 1990. This argument is sought to be pursued notwithstanding its rejection both by the Courts of this country and by the Human Rights Committee of the United Nations, in particular in *Rameka v New Zealand*<sup>2</sup> and *Dean v New Zealand*.<sup>3</sup> Counsel has drawn attention to the Committee's decisions in *Fardon v Australia*<sup>4</sup> and *Tillman v Australia*<sup>5</sup> and to the decision of the European Court of Human Rights in *M v Germany*.<sup>6</sup>

[3] It is apparent, however, on perusing these recent decisions that they involve situations in which someone was sentenced to a term of imprisonment with a maximum term and then, while that term was being served, the law in the jurisdiction in question was changed, with retrospective effect in the particular case, so that the person could be held after the original sentence term had expired. Nothing of this sort has occurred in the present case where Mr Isherwood's sentence of preventive detention was imposed following his conviction. He is not affected by any retrospective amendment to the law extending the term of his sentence. There is nothing in the recent decisions casting any doubt on New Zealand's preventive detention regime.

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<sup>2</sup> *Rameka v New Zealand* (2003) 7 HRNZ 663 (UNHRC).

<sup>3</sup> *Dean v New Zealand* HRC Communication No. 1516/2006, 17 March 2009.

<sup>4</sup> *Fardon v Australia* HRC Communication No. 1629/2007, 18 March 2010.

<sup>5</sup> *Tillman v Australia* HRC Communication No. 1635/2007, 18 March 2010.

<sup>6</sup> *M v Germany* (19359/04) ECHR 17 December 2009.