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**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 32/2018  
[2018] NZSC 58**

BETWEEN                      JOSEPH WARREN LEPPER  
   Applicant  
  
AND                              THE QUEEN  
   Respondent

Court:                      Glazebrook, O'Regan and Ellen France JJ  
  
Counsel:                      Applicant in person  
   K S Grau for Respondent  
  
Judgment:                      26 June 2018

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**JUDGMENT OF THE COURT**

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**The application for an extension of time to file an application for leave to appeal is dismissed.**

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**REASONS**

**Introduction**

[1] Mr Lepper applies for leave to appeal nearly two years out of time against a Court of Appeal decision dismissing his appeal against the imposition of the sentence of preventive detention.<sup>1</sup>

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<sup>1</sup> *Lepper v R* [2016] NZCA 209 (Wild, Courtney and Gilbert JJ).

## **Background**

[2] The sentence of preventive detention was imposed after Mr Lepper pleaded guilty to abduction with intent to commit unlawful sexual connection.<sup>2</sup> Mr Lepper and a young man drove from Christchurch to Dunedin on 19 October 2013. That evening they tried to force a woman they had passed by into the van. She struggled sufficiently to fend them off until nearby residents came to help after which Mr Lepper and the co-offender left. The victim was bruised and lost handfuls of hair.

[3] This incident occurred about seven months after Mr Lepper was released from prison (in March 2013) where he had been serving a sentence of 10 years imprisonment. That sentence related to an incident in 2002 when Mr Lepper forced a woman off the street and into a park where he raped her. Whilst in prison serving his sentence in relation to the 2002 offending, Mr Lepper was involved in various incidents, including two threats to kill female staff members. Mr Lepper was also charged but acquitted of assaulting another inmate with a pool cue.

[4] Mr Lepper was diagnosed with schizoaffective disorder in 2009. He was assessed fit to stand trial in a report prepared by Dr David Bathgate, a consultant psychiatrist, in November 2013. Dr Bathgate records that Mr Lepper told him that after his release in March 2013 he stopped taking his anti-psychotic medication.

[5] The High Court Judge was satisfied, given the fact the offending occurred so soon after Mr Lepper's release and in similar circumstances to the 2002 offending, that a pattern of serious sexual offending was established. The Judge also considered the health assessors' reports and concluded there was a high risk of re-offending in a sexual way. Preventive detention was seen as preferable to protect the community from harm by guaranteeing Mr Lepper would not be released until the risk of re-offending had been adequately addressed. The sentence was also seen as providing an incentive for Mr Lepper to finally decide to seek the treatment needed.

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<sup>2</sup> *R v Lepper* [2014] NZHC 3015 (Gendall J).

## **The proposed appeal**

[6] The main point Mr Lepper wishes to raise on appeal is that the sentence of preventive detention was manifestly excessive because he did not understand what he was doing at the time of the offending so he is being punished for being unwell. Mr Lepper also wishes to argue it was wrong for the pool cue incident to have been referred to in one of the health assessor's reports.<sup>3</sup>

[7] These matters were considered by the Court of Appeal although, in that Court, Mr Lepper relied on insight into his offending and challenged the emphasis on the incentive preventive detention would provide to ensure he engaged with treatment options.

[8] The Court of Appeal noted Mr Lepper's expressed insight was "a relatively recent development".<sup>4</sup> The Court said it may be too much to expect that frame of mind would last. Further, Mr Lepper had been offered but declined treatment on parole although at that point he was in a stable state of mind. The Court said there must be "serious concern" he would act in the same way in the future.<sup>5</sup>

[9] On the pool cue incident, the Court noted the High Court Judge made no reference to it. While the Judge may have considered it when he accepted the conclusions of the health assessor who referred to the incident, the Court of Appeal observed Mr Lepper does have convictions for assault and recorded incidents of threatening behaviour in prison.<sup>6</sup> Further, the main focus of the Judge was on the likelihood of future sexual offending rather than future violent offending.

## **Our assessment**

[10] Mr Lepper's explanation for the delay in filing the present application includes difficulties in obtaining legal representation and mental health issues. These matters

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<sup>3</sup> Mr Lepper suggests also that the victim in the 2013 incident is related to a judge and this may have had some influence on sentence.

<sup>4</sup> At [41].

<sup>5</sup> At [41].

<sup>6</sup> At [36]. Section 88(3) of the Sentencing Act 2002 deals with the ability of the health assessor to consider such information.

do not adequately explain the lengthy delay. But, in any event, the proposed appeal does not meet the threshold for leave.<sup>7</sup>

[11] Whether preventive detention should have been imposed in this case was a question of the application of well-settled principles to the particular facts. No question of general or public importance arises.

[12] As to the risk of a miscarriage of justice, the only potential issue relates to the submission that Mr Lepper was not capable of understanding the nature and quality of his act at the time. However, as counsel for the Crown submits, the only evidence is to the contrary. Dr Bathgate, on whose report Mr Lepper relies, concluded that Mr Lepper's auditory hallucinations did not appear to have made him incapable of knowing what he was doing. Further, Mr Lepper had "provided clear information that he ... knew the moral nature of what he was doing at that time". None of the matters raised by Mr Lepper gives rise to an appearance of a miscarriage of justice.

[13] In these circumstances, the application for an extension of time to file an application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>7</sup> Senior Courts Act 2016, s 74(2); Supreme Court Act 2003, s 13(2).