

IN THE SUPREME COURT OF NEW ZEALAND

SC 2/2015  
[2015] NZSC 22

BETWEEN                      WALTER FITIKEFU  
   Applicant  
  
AND                              THE QUEEN  
   Respondent

Court:                          William Young, Glazebrook and O'Regan JJ

Counsel:                      Applicant in person  
   M G Wilkinson for the Respondent

Judgment:                      10 March 2015

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**JUDGMENT OF THE COURT**

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

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**REASONS**

**Introduction**

[1] Mr Fitikefu pleaded guilty to one charge of aggravated robbery in the District Court. The sentencing was transferred to the High Court because the Crown was seeking a sentence of preventive detention.

[2] In the High Court, Venning J imposed a finite sentence of four years and six months imprisonment with a minimum terms of two years and eight months.<sup>1</sup> He said that “by the narrowest of margins I consider that preventive detention is not required at this time”.<sup>2</sup>

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<sup>1</sup> *R v Fitikefu* HC Auckland CRI-2010-004-17106, 5 July 2011 (Venning J) (HC).

<sup>2</sup> At [23].

[3] Mr Fitikefu's appeal to the Court of Appeal was dismissed on 27 March 2014.<sup>3</sup> He now applies for leave to appeal to this Court.

### **Background**

[4] The aggravated robbery was of a Kiwibank Post Shop in Mt Eden in September 2010. Mr Fitikefu and one of his co-offenders went into the bank. A third co-offender stayed outside in the car which had been stolen that morning.

[5] Once inside, Mr Fitikefu stayed near the door while his co-offender climbed over the security barrier and demanded cash from the tellers (\$2,800 was taken). As Mr Fitikefu and his co-offender were making their way back to the getaway vehicle, Mr Fitikefu shouted threats at the bank staff.

[6] Mr Fitikefu has been convicted in Australia of seven offences similar to aggravated robbery from 1997 to 2004.<sup>4</sup>

### **The application for leave**

[7] Mr Fitikefu seeks leave to appeal on the basis that allegedly mitigating factors were not properly taken into account. The first factor he identifies relates to issues he had with Child, Youth and Family (CYF). The second is what he characterises as his "exceptional remorse".<sup>5</sup>

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<sup>3</sup> *Fitikefu v R* [2014] NZCA 99 (French, Ronald Young and Clifford JJ) (COA).

<sup>4</sup> He also has a total of 13 convictions in New Zealand since March 2008, mostly for property related offences: see COA at [9] and HC at [4].

<sup>5</sup> Mr Fitikefu also makes a submission claiming that CYF was mistakenly informed on a number of occasions that he remained subject to a home detention order, even though the sentence had been completed on 29 June 2010 and he also asserts that there had been an unlawful detention in 2010. This is irrelevant to the sentencing at issue in this application and therefore is not a matter we can deal with.

## **Discussion**

[8] Given Mr Fitikefu’s extensive criminal history, it was clearly open (as the Court of Appeal held) for the sentencing judge to “treat Mr Fitikefu’s claim of remorse with scepticism.”<sup>6</sup>

[9] Mr Fitikefu has drawn the Court’s attention to alleged gaps and errors in the High Court and Court of Appeal’s understanding of the CYF issues. The material placed before us does nothing to challenge the conclusion that these issues do not explain the offending.<sup>7</sup> More importantly, even if it did provide an explanation, this would not constitute a mitigating factor in the circumstances of this case (particularly in light of Mr Fitikefu’s extensive criminal history).

[10] This appeal raises no issues of general or public importance. There was no error in the Court of Appeal’s approach to the appeal. Nor is there a risk of a miscarriage of justice.

## **Result**

[11] The application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>6</sup> COA at [18]. The sentencing judge did, however, take into account a letter written to the Court by Mr Fitikefu which he considered showed some insight on Mr Fitikefu’s part into his offending. This was a factor taken into account in the decision not to impose a sentence of preventive detention: HC at [22]–[23].

<sup>7</sup> COA at [23]–[24].