

**NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF
NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF
COMPLAINANT IN OFFENDING OF 27 AUGUST 2009 REMAINS IN
FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 109/2017
[2017] NZSC 194**

BETWEEN GEORGE CHARLIE BAKER
 Applicant

AND THE QUEEN
 Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: W C Pyke for Applicant
 J E L Carruthers for Respondent

Judgment: 19 December 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] In 2010, the applicant was sentenced by Courtney J to preventive detention for kidnapping. A minimum period of imprisonment of 16 years was stipulated. Finite sentences were imposed for attempted kidnapping, assault with a weapon and threatening to kill. His appeal against sentence (for which an extension of time was granted) was dismissed by the Court of Appeal.¹ He seeks leave to appeal to this Court in respect of the minimum period of imprisonment.

¹ *Baker v R* [2017] NZCA 404 (Cooper, Brewer and Peters JJ).

[2] In 2006, the applicant was sentenced to a life sentence (with a minimum period of imprisonment of 18 years) for murder. Under that sentence the applicant is not eligible for parole until 2024.

[3] The offending for which he was sentenced to preventive detention arose out of two separate incidents both of which occurred after the imposition of the life sentence for murder. The effect of the minimum period of 14 years imposed by Courtney J is to defer his eligibility for parole until 2026.

[4] The primary basis for the proposed appeal is that the applicant is unlikely to change much between 2024 and 2026 and, for this reason, there is said to be no logical reason for deferring his eligibility for parole from 2024 to 2026. Counsel also stressed the difficulties of prediction and the fact that at 16 years the minimum period of imprisonment exceeded the maximum sentence for kidnapping (which is 14 years).²

[5] The imposition of a minimum period of imprisonment turns on an evaluative assessment by the sentencing judge and, where a long period is specified, there will be scope for debate as to the exact length. So when a minimum period of X years has been imposed, the claim can be made that a sentence of X-1 years should have been imposed on the basis that the offender will, in all probability, present the same risk of re-offending at X-1 years as at X years. Such an argument is unlikely to warrant a grant of leave to appeal to this Court.

[6] There is an additional factor which favours refusal of leave. The 18 year minimum period of imprisonment imposed for murder reflected a risk assessment made at the time the applicant was sentenced for murder. That the applicant subsequently offended while in prison in two separate incidents might be thought to have some bearing on that risk assessment.

² Crimes Act 1961, s 209.

[7] The applicant posed a very particular sentencing problem and we do not see the case as raising an issue of public or general importance. As well, we see no risk of a miscarriage of justice if leave to appeal is not granted. Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent