NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF CD PROHIBITED BY SS 203 AND 204 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA629/2021
[2022] NZCA 416

BETWEEN	MANASSEH APANUI JONES Appellant
AND	THE QUEEN Respondent

Hearing:	7 June 2022
Court:	Katz, Thomas and Woolford JJ
Counsel:	R O Gowing and A E de Villiers for Appellant A J Pollett and D P Coulson for Respondent
Judgment:	6 September 2022 at 10:00 am

JUDGMENT OF THE COURT

A The appeal is allowed.

B The sentences imposed in the District Court on charges 3, 8 and 12 in respect of CRI-2018-047-570 are set aside.

C On charge 3, a sentence of one year and eight months' imprisonment is substituted.

D On charge 8, a sentence of six months' imprisonment is substituted, cumulative on charge 3.

E On charge 12, a sentence of one year and seven months' imprisonment is substituted, to be served concurrently.

F The sentence imposed in the District Court on charge 1 in CRI-2020-070-4562 is set aside and a sentence of five months' imprisonment is substituted, cumulative on charge 8.

G The concurrent sentences imposed in the District Court in respect of charges 1, 2, 4, 5, 6, 9, 10, 11, 13, 14 and 15 in CRI-2018-047-570 remain in force.

REASONS OF THE COURT

(Given by Katz J)

Introduction

[1] Manasseh Jones was convicted of violent offending against two former partners, AB and CD. He was also convicted of wilfully attempting to pervert the course of justice in relation to the offending against AB,[1] and of sexual connection with a young person (CD).[2]

[2] Judge Mabey QC sentenced Mr Jones to five years and 10 months' imprisonment.[3] Mr Jones now appeals that sentence on the basis that it is manifestly excessive.

Approach on appeal

[3] This first appeal against sentence is brought as of right pursuant to s 244 of the Criminal Procedure Act 2011.[4] This Court must allow the appeal only if it is satisfied

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1 Crimes Act 1961, s 117(e).

2 Section 134(1).

3 *R v Jones* [2021] NZDC 12564 [Sentencing notes].

4 Mr Jones' appeal was filed out of time. An extension of time to appeal was granted by Collins J: *Jones v R* CA629/2021, 2 February 2022 (Minute of Collins J). Mr Jones has a right of appeal to this Court in respect of category 3 offences to which he pleaded not guilty, and of which he was convicted following jury trial: Criminal Procedure Act 2011, ss 244 and 247. We note that Mr Jones pleaded guilty to several of the charges he faced, and that one charge to which Mr Jones pleaded guilty was a category 2 offence (wilful damage). This Court has jurisdiction to hear the sentence appeal on those charges, as Mr Jones has a related right of appeal in respect of those charges: Criminal Procedure Act, ss 320(1)(a)(ii) and 321.

that there was an error in the sentence and a different sentence should have been imposed.[5] Otherwise, the appeal must be dismissed.[6]

The offending

Offending against AB

[4] The violence charges relating to AB arose from an incident that occurred on the night of 16–17 December 2018. Mr Jones was aged 20 at the time. In his sentencing notes, the Judge summarised what took place that evening as follows:

> [10] Your offending against [AB] arose from a short relationship which you had with her and which escalated in December 2018, to events where she was driving in a certain direction. You cut her off. She got out of her car. You dragged her back to the car. You smashed her car with a weapon. You forced her into the front seat of your car. You drove to Ōpōtiki assaulting her as she sat next to you. She tried to escape but you held her in the car. She made excuses to get out but you ignored her. The assaults continued on another part of the road when she ran away but you tackled her to the ground.
> …

[5] Mr Jones pleaded guilty to three of the violence charges relating to AB at the outset of trial — two charges of male assaults female (dragging AB and headbutting her);[7] and intentionally damaging AB's motor vehicle.[8] Mr Jones was subsequently found guilty at trial of four additional charges — kidnapping AB (dragging her into his car and driving off);[9] two further charges of male assaults female (hitting her with his hand while in the car and tackling her to the ground when she was trying to run away);[10] and one charge of assault with a weapon (hitting AB with a pole when he was also smashing her car).[11]

[6] AB made a police complaint shortly after these events. Mr Jones sent her a number of messages telling her to withdraw her complaint. He threatened to commit suicide if she did not. He told AB what she should say and said that he did not want

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5 Criminal Procedure Act, s 250(2).
6 Section 250(3).
7 Crimes Act, s 194(b).
8 Section 269(2)(a).
9 Section 209.
10 Section 194(b).
11 Section 202C(1)(a).

to go to jail. Mr Jones pleaded guilty to a charge of attempting to pervert the course of justice at the outset of trial in relation to this conduct.

Offending against CD

[7] Mr Jones' relationship with CD commenced about a year after the offending against AB. CD was aged 14 at the time their relationship began, and Mr Jones was aged 21. The Judge summarised Mr Jones' violent offending against CD as follows:

> [14] As with your relationship with [AB], violence came into the picture. … On a particular occasion you drove her back to your address to spend the evening together. You were intoxicated. When driving home you drove erratically and at increased speed, you cut corners, you were on the wrong side of the road and you frightened her. You laughed when she expressed her fear and when you got home you made accusations of infidelity and cheating …
>
> …
>
> [16] Back at the address in Ōpōtiki, and in pursuit of your irrational enquiries of infidelity by a 14 year old girl you took her phone. You continued to question her. Overnight it went on. She tried to get her phone back. You assaulted her. She tried to get away. You assaulted her. You threatened to shoot her family. You threatened to kill yourself and her as you drove her back to her property. …

[8] At the outset of his trial Mr Jones pleaded guilty to a charge of wilful damage (smashing CD's iPhone) in relation to this incident.[12] At trial he was found guilty of five additional charges:

(a) two charges of male assaults female (holding his fist at CD in a threatening manner and applying pressure to CD's throat and neck when she tried to get her cell phone back);[13]

(b) kidnapping (ordering CD to get into his vehicle and driving her to his address);[14]

(c) threatening to kill CD if she blocked him on Facebook;[15] and

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12 Summary Offences Act 1981, s 11(1)(a).
13 Crimes Act, s 194(b).
14 Section 209.
15 Section 306(1)(a).

(d) threatening to do grievous bodily harm (threatening to drive the car off the bank into the river if CD did not stop screaming).[16]

[9] At the outset of his trial on the violence charges, Mr Jones also pleaded guilty to a representative charge of sexual connection with a young person (CD). The trial date in relation to the sexual offending (which had been severed from the violence charges relating to AB and CD) had not yet been allocated.

The sentencing process in the District Court

[10] The Judge adopted a starting point of three years and six months' imprisonment for the violent offending against AB.[17] The Judge considered that, for the charge of attempting to pervert the course of justice, a starting point of around two years would have been appropriate on a standalone basis. He reduced this to a nine-month uplift, however, to account for totality. This produced an overall starting point of four years and three months' imprisonment for the totality of the offending against AB.[18]

[11] The Judge adopted a starting point of two years and six months' imprisonment for the violent offending against CD.[19] He added a further three years to this in respect of the charge of sexual connection with a young person. This resulted in a global starting point of five years and six months' imprisonment for all of the offending against CD.[20] This was then reduced by two years, to three years and six months' imprisonment, to reflect the principle of totality.[21] The final starting point was therefore one of seven years and nine months' imprisonment (four years and three months for the offending against AB, plus three years and six months for the offending against CD).[22]

[12] No discount was afforded for the fact that Mr Jones had pleaded guilty to some of the charges at the outset of the violence trial. A global discount of 25 per cent was

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16 Section 306(1)(a).
17 Sentencing notes, above n 3, at [9]–[10].
18 At [12].
19 At [17]. It appears that the Judge was referring to the appropriate starting point on the violence charges against CD, described at [16]. The reference to "the sexual offending" at the beginning of [17] appears to be an error.
20 At [18].
21 At [18]–[19] and [33].
22 At [19] and [33].

applied, however, to reflect the matters set out in a report prepared pursuant to s 27 of the Sentencing Act 2002 (including Mr Jones' immaturity), remorse, and rehabilitative efforts.[23] Applying this discount to the cumulative starting point of seven years and nine months' imprisonment resulted in an end sentence of five years and 10 months' imprisonment.[24]

Was the starting point for the offending against AB too high?

[13] Mr de Villiers, counsel for Mr Jones, submitted that the starting point of three years and six months' imprisonment for the violent offending against AB was too high, with reference to the decisions of *Cassidy-Gugich v R,*[25] *Joe v R*[26] and *Hayes v R.*[27] He submitted that the appropriate starting point was two years and nine months' imprisonment. The Crown, on the other hand, submitted that the starting point was within range, with reference to the cases of *Moffatt v R,*[28] *Mahutoto v Police*[29] and *R v Nevin*.[30]

[14] The lead violence offence is the kidnapping charge (the other violence charges were sentenced concurrently). There is no guideline decision in relation to kidnapping, due to the wide range of circumstances in which kidnapping can arise. While it is important not to understate the seriousness of Mr Jones' offending, we note that many cases of kidnapping in a domestic context involve conduct that is considerably more serious, and prolonged, than what took place here (which occurred over a period of about a couple of hours on one night).

[15] Taking into account all of the circumstances of this case, we accept Mr de Villiers' submission that a starting point of two years and nine months' imprisonment would more appropriately reflect Mr Jones' level of culpability in relation to this charge.

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23 At [28]–[29].
24 At [34]–[37].
25 *Cassidy-Gugich v R* [2016] NZHC 3027.
26 *Joe v R* [2019] NZCA 394.
27 *Hayes v R* CA171/06, 20 July 2006.
28 *Moffatt v R* [2015] NZHC 107.
29 *Mahutoto v Police* HC Auckland CRI-2011-404-111, 20 June 2011.
30 *R v Nevin* HC Auckland CRI-2005-004-18658, 12 September 2007.

Were appropriate discounts applied?

[16] The Judge applied a global discount of 25 per cent to reflect the personal mitigating factors referred to in the s 27 report, Mr Jones' remorse and his rehabilitative efforts. He declined to award a further discrete credit for youth as, in his view, there was some overlap in the credit for immaturity and the matters set out in the s 27 report.[31]

[17] Mr de Villiers submitted that a 45 per cent discount for personal mitigating factors is appropriate, calculated as follows:

(a) 20 per cent for the personal background factors referred to in the s 27 report;

(b) five per cent for remorse;

(c) five per cent for rehabilitative efforts; and

(d) 15 per cent for youth.

[18] Mr de Villiers further submitted that a discount of 15 per cent (approximately five months) should have been deducted from the starting point adopted for the sexual offending, to reflect Mr Jones' early guilty plea in relation to that offending.

[19] The Crown submitted that the discount of 25 per cent for personal mitigating factors was appropriate and in line with recent authority, in particular *Westall v R*[32] and *Williams v R*.[33] Further, the Judge's approach of applying a discount for youth and the s 27 report together was appropriate on the basis that the two factors overlap. A global discount therefore avoided "discount creep".[34]

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31 Sentencing notes, above n 3, at [28]–[29].

32 *Westall v R* [2021] NZHC 3440 (global discount of 25 per cent).

33 *Williams v R* [2020] NZHC 3104 (global discount of 20 per cent).

34 The Crown referred to *R v LB* [2020] NZHC 94 at [53], in which Downs J defined "discount creep" as "a phenomenon by which closely related or interrelated mitigating features are artificially disaggregated, then each awarded full and discrete discount to achieve a desired result".

Mr Jones' personal circumstances

[20] Three reports before the Court contain background information regarding Mr Jones' personal circumstances. First, there is the s 27 report. Second, Dr Peta Ruha, with input from Mr Jones' whānau, has prepared a helpful report entitled "Whānau Ora Report". Third, the pre-sentence report prepared by the Department of Corrections contains further relevant information.

[21] Mr Jones is of Māori descent and is affiliated with Whakatohea iwi through the maternal side of his family and Nga iwi o Tūhoe through his paternal family. The s 27 report writer summarised Mr Jones' background as including "a distinct culture of family violence, a dysfunctional relationship with his father, social deprivation, drug and alcohol dependence and, later, gang association". Mr Jones' father was aged 19 and his mother only 15 when he was born. They subsequently had another four children.

[22] During his childhood Mr Jones was subjected to considerable violence, intimidation and controlling behaviour by his father. As the eldest child he bore the brunt of much of the family violence. He was also traumatised by witnessing ongoing and repeated extreme violence being meted out to his mother, who was also subjected to other forms of coercive and controlling behaviour. The s 27 report writer expresses the view that Mr Jones "has learnt violent, controlling and manipulative behaviour from his father and has continued to weave this into his own life and his own relationships". In our view that is a fair assessment.

[23] Growing up in a violent and dysfunctional home had a devastating impact on Mr Jones, who attempted suicide several times in his early teenage years. At the age of 14, unable to cope with the violence at home any longer, Mr Jones ran away. He lived on the streets for about nine months and started using cannabis, alcohol and methamphetamine during this period. Subsequently, Mr Jones relocated to live with his maternal grandmother and tried to return to school. The transition proved to be too difficult, however, and he was excluded.

[24] When he was aged about 16, Mr Jones had what appears to have been his first serious relationship. He was devastated when it ended as it had provided "a sense of

stability and belonging for him". He started to self-harm. Mr Jones' difficulty with intimate relationships has been a continuing theme since then, and this theme also underpins his current offending.

[25] Perhaps surprisingly, given his difficult background, Mr Jones displays considerable insight into the fact that he lacks relationship skills and his relationships have been dysfunctional. In his discussions with the s 27 report writer he admitted that in most, if not all, of his intimate relationships the issues that have arisen have been caused by him. He describes his partners in positive terms, referring to them as well-spoken, kind, and attractive. He notes that none of them have been drug users. Of himself, he says:

> I remind myself of my Dad and I'm really controlling. My behaviour, that's what's toxic. Yep I'm what's wrong with the relationship. I go out with these kind girls and I'm "out the gate" insecure and paranoid, scared and vulnerable.

[26] Mr Jones says that he would like to have a relationship where he is loved and cared for, but that his paranoid and controlling behaviour usually leads to his partners not wanting to continue a relationship with him. This further perpetuates his feelings of jealousy and insecurity. He is keen to break the cycle of dysfunction and violence.

[27] Mr Jones' level of insight is further reinforced by the pre-sentence report, from which it is apparent that Mr Jones has considerable insight into his offending and feels genuine remorse. He acknowledged his own insecurities in relationships and describes his offending as "outrageous". He says that he has reflected on his behaviour while in prison, and the impact it has had on his victims.

[28] As noted above, Mr Jones started drinking alcohol at a young age. The pre-sentence report writer notes that he has possible alcohol dependence issues. Whether or not that is so, it is apparent from the s 27 report that "alcohol is the drug that is the most problematic" for Mr Jones. He is aware of this and acknowledges that when he is intoxicated he is far more likely to become paranoid, controlling, angry and/or distressed. A family member notes that he makes "stupid decisions" when he is under the influence of alcohol and/or drugs.

[29] Given this background, Mr Jones' risk of re-offending and his risk of harm was assessed by the pre-sentence report writer as high. The report writer noted, however, that Mr Jones is motivated to engage in rehabilitative programmes both in prison and when released into the community.

[30] The Whānau Ora report identifies that Mr Jones has many strengths. He is said to be generally sociable, kind, caring, intelligent, gentle and a good communicator. He can also suffer from severe anxiety, however, and when in this state can be volatile and quick to anger. He has low self-esteem due to past trauma. In relationships Mr Jones can be very possessive. The lack of a relationship with his father is seen by the extended whānau as a key issue, giving rise to abandonment issues and a difficulty in forming healthy relationships with women. Mr Jones clearly has a very supportive whānau on his mother's side. His maternal grandparents are apparently both social workers who are widely respected in their local community. They were keen to have Mr Jones live with them on an electronically monitored sentence. That was not possible, however, due to the seriousness of his offending.

What is the appropriate discount(s) for personal factors?

[31] The Judge applied a global discount of 25 per cent to reflect the matters set out in the s 27 report, remorse, and Mr Jones' rehabilitative efforts. In our view, however, this discount was insufficient. We consider that the discount applied by the Judge failed to give appropriate recognition to the full range of mitigating factors in this case.

[32] The personal background factors we have summarised above warrant a discrete sentencing discount of 20 per cent, particularly as there is a very clear causal nexus between Mr Jones' violent and dysfunctional upbringing and his current offending.[35]

[33] Mr Jones is also entitled to some additional discount for youth, remorse and rehabilitative prospects. He was aged between 20 and 21 at the time of the offending and clearly lacked maturity.[36] Against this, he is not a first-time offender, and has relevant criminal history. As we have noted above, however, Mr Jones has

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35 See generally *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [162].
36 See *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77]–[90] and [98].

demonstrated a high degree of insight into his offending. He is motivated to try and change. His level of insight increases his rehabilitative prospects. Mr Jones has also demonstrated genuine remorse and takes full responsibility for his actions. In our view a further discount of 15 per cent is appropriate to reflect Mr Jones' youth, genuine remorse, and rehabilitative prospects. We consider that these factors are worthy of distinct recognition and do not present a risk of double counting.

[34] The total discount available for personal mitigating factors is therefore 35 per cent, rather than the 25 per cent applied in the District Court.

Should the Judge have applied one or more guilty plea discounts?

[35] As noted at [5] above, Mr Jones pleaded guilty to three of the violence charges relating to AB at the outset of trial. Mr Jones was subsequently found guilty at trial of three additional violence charges. Although the guilty pleas were belated, they narrowed the scope of the Crown case. Mr Jones is entitled to at least some credit for this.[37] In our view a five per cent discount to the starting point for the violent offending against AB is appropriate. This takes into account that the guilty pleas were belated, and related to only three of the six violence charges he was ultimately convicted of in relation to AB.

[36] Mr Jones also pleaded guilty at the outset of trial to wilful damage (smashing CD's iPhone) in relation to the violent offending against CD. At trial he was found guilty of five further charges relating to the violent offending against CD (as set out at [7] and [8] above). Hence, in relation to CD, Mr Jones only pleaded guilty to one relatively minor charge, and it was at the outset of trial. In our view the Judge did not err in failing to discount the starting point for the violent offending against CD to reflect this, as any discount would have been de minimis in the circumstances.

[37] Mr Jones also pleaded guilty to the perversion of justice charge in relation to the offending against AB at the outset of trial. This was a discrete charge, involving separate evidence. In our view a 10 per cent discount is appropriate to reflect Mr Jones' guilty plea to that charge.

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[37] See *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [57], [65] and [70]–[77].

[38] A more significant guilty plea discount is warranted for Mr Jones' guilty plea to the charge of sexual connection with a young person. That charge had been severed from the violence charges. At the time of Mr Jones' trial on the violence charges, no trial date had yet been set for the alleged sexual offending. By pleading guilty Mr Jones spared CD from having to go through a second trial, at which she would have had to give evidence of a highly personal nature, focussed on her sexual relationship with Mr Jones. It is our view that a guilty plea discount of 20 per cent is appropriate in relation to this charge.

Were the adjustments for totality sufficient?

[39] The final issue is whether the adjustments made by the Judge to reflect totality were sufficient. Although this was not a focus of Mr de Villiers' written submissions, in oral submissions (partly in response to questioning from the Court) Mr de Villiers submitted that the overall adjustments for totality were insufficient, and that a more appropriate approach in this case would have been for the violent offending to have been sentenced concurrently rather than cumulatively.

Multiple offending — sentencing principles

[40] Sentencing for multiple offending can be a challenging process. Such sentences can be structured in different ways. In *R v Xie* this Court endorsed[38] the continuing application of the following key principles of sentencing for multiple offending stated in the earlier cases of *Williams v R*[39] and *Barker v R*:[40]

(a) With multiple offences the sentence must reflect the totality of the offending.[41]

(b) In respect of multiple offences the Court will not insist that the total sentence be arrived at in any particular way.[42] Sometimes there is advantage in imposing cumulative sentences on some or all of the

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38 *R v Xie* [2007] 2 NZLR 240 (CA) at [16]–[18].
39 *Williams v R* CA91/00, 31 May 2000.
40 *Barker v R* CA57/01, 30 July 2001.
41 At [10].
42 At [10]; and *R v Williams*, above n 39, at [11].

charges, whereas others are more appropriately dealt with by one major sentence which subsumes all matters, with concurrent sentences imposed.[43]

(c) The total sentence, however, must represent the overall criminality of the offending and the offender.[44]

[41] The Court noted in *Xie* that these principles survive the enactment of the Sentencing Act, and indeed are endorsed by it:[45]

> Having endorsed it, Parliament then goes on in ss 84 and 85 [of the Sentencing Act] to describe when concurrent sentences and cumulative sentences "are generally appropriate". The guidelines do not have the effect of trumping the central principle of sentencing for multiple offending, namely that the total sentence must represent the overall criminality of the offending and the offender.

[42] Section 84 of the Sentencing Act provides guidance as to the general circumstances in which it will be appropriate to impose cumulative or concurrent sentences:

> **84 Guidance on use of cumulative and concurrent sentences of imprisonment**
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> (1) Cumulative sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are different in kind, whether or not they are a connected series of offences.
>
> (2) Concurrent sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are of a similar kind and are a connected series of offences.
>
> (3) In determining for the purpose of this section whether 2 or more offences committed by 1 offender are a connected series of offences, the court may consider—
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> (a) the time at which they occurred; or
>
> (b) the overall nature of the offending; or
>
> (c) any other relationship between the offences that the court considers relevant.

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43 *Williams v R*, above n 39, at [11].
44 *Barker v R*, above n 40, at [10].
45 *R v Xie*, above n 38, at [18].

[43] While s 84 provides general guidance on the approach to be adopted when considering cumulative or concurrent sentences of imprisonment, s 85 emphasises that the court must also have regard to the totality of the offending:

> **85 Court to consider totality of offending**
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> (1) Subject to this section, if a court is considering imposing sentences of imprisonment for 2 or more offences, the individual sentences must reflect the seriousness of each offence.
>
> (2) If cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.
>
> (3) If, because of the need to ensure that the total term of cumulative sentences is not disproportionately long, the imposition of cumulative sentences would result in a series of short sentences that individually fail to reflect the seriousness of each offence, then longer concurrent sentences, or a combination of concurrent and cumulative sentences, must be preferred.
>
> (4) If only concurrent sentences are to be imposed,—
>
> (a) the most serious offence must, subject to any maximum penalty provided for that offence, receive the penalty that is appropriate for the totality of the offending; and
>
> (b) each of the lesser offences must receive the penalty appropriate to that offence.

[44] The twin requirements in s 85 of meaningful individual sentences, subject only to the totality principle, override the general guidance given by s 84 as to when concurrent and cumulative sentences are to be imposed.[46] Hence:[47]

> [a]s [a] general rule … consecutive sentences should not be such as to result in an aggregate term wholly out of proportion to the gravity of the offences, viewed as a whole.

[45] Where the totality of the sentences imposed appears to be excessive, and some adjustment is seen as necessary on appeal, it will usually be preferable for that adjustment to be made by ordering sentences to run concurrently, or by a combination of concurrent and cumulative sentences, rather than by reducing the length of the

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46 *O'Leary v R* CA258/05, 3 March 2006 at [23].
47 *R v Bradley* [1979] 2 NZLR 262 (CA) at 263.

individual sentences and permitting them to remain consecutive.[48] This reflects, amongst other things, that the use of cumulative sentences in such cases may result in the imposition of inappropriately short sentences in order to keep the final sentence within the totality principle. This may create the wrong public impression as to the true gravity of the component offences. Difficulties may also arise in the event of a successful conviction appeal on one (or some) of the charges if the total sentence comprises a number of short consecutive sentences.[49]

Were sufficient adjustments made for totality?

[46] The Judge applied a combination of concurrent and cumulative sentencing approaches. The Judge made two discrete adjustments for totality (one was applied to the perversion of justice charge and the other to the global starting point for the offending against CD). In our view, however, the adjustments that were made for totality were insufficient. The end result of the Judge's approach was a global starting point of seven years and nine months' imprisonment. This was too high in all the circumstances and resulted in an end sentence that did not accurately represent the overall criminality of the offending and the offender with regard to the facts that: the violent offending was of limited duration, comprising two discrete (but nevertheless very serious) incidents; the sexual offending related to consensual (albeit unlawful) sexual activity; and Mr Jones comes from a severely disadvantaged background, which has a clear causal nexus to his offending. Given Mr Jones' background, youth, level of insight, and considerable extended whānau support, it is our view that primacy should have been given to the principle of rehabilitation when structuring Mr Jones' overall sentence.[50]

[47] As noted above, there are a number of ways in which sentencing for multiple offences can be approached. In accordance with the principles we have set out at [45] above, it is our view that the violent offending against AB and CD should be sentenced concurrently rather than cumulatively. Specifically, if we were to further reduce the

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48 Geoff Hall (ed) *Hall's Sentencing* (online ed, LexisNexis) at [SA85.4], citing *R v Brown* (1969) 54 Cr App R 176 (CA); *R v Simpson* [1972] Crim LR 383; and *R v Williams* [1988] 1 NZLR 748 (CA).

49 *Hall's Sentencing*, above n 48, at [SA85.4], citing *R v Smith* [1975] Crim LR 468.

50 See Sentencing Act 2002, ss 7(1)(h) and 8(i).

global starting points for the violent offending against each victim in order to maintain a cumulative sentencing approach that is consistent with totality, that may result in individual sentences that are inappropriately short. That would give the wrong impression as to the true gravity of the offending. Instead, the principle of totality can best be achieved in this case by greater use of concurrent rather than cumulative sentences, structured as follows:

(a) As set out at [15] above, it is our view that the appropriate global starting point for the violent offending against AB is two years and nine months' imprisonment. For the reasons we have set out at [31]–[35] above, this should be discounted by 40 per cent[51] to one year and eight months' imprisonment.

(b) The Judge was correct to determine that the appropriate starting point for the violent offending against CD was two years and six months' imprisonment. For the reasons set out at [31]–[34] and [36] above, this should be discounted by 35 per cent[52] to one year and seven months' imprisonment, to be served concurrently with the sentence for the violent offending against AB.

(c) An 11-month starting point is appropriate for the perversion of justice offending.[53] For the reasons set out at [31]–[34] and [37] above, this should be discounted by 45 per cent.[54] This results in an end sentence of six months' imprisonment. Given the different nature of the offending, this sentence should be served cumulatively.

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51 A 35 per cent discount for personal mitigating factors and a five per cent guilty plea discount.

52 No guilty plea discount applies to the violent offending against CD.

53 We take into account that there were several messages over a period of three days. They did not include any direct threats against the victim or anyone associated with her. Rather, they were emotionally manipulative, as Mr Jones expressed his fears of going to prison and threatened suicide.

54 A 35 per cent discount for personal mitigating factors and a 10 per cent guilty plea discount.

(d) The sexual offending, given its different nature, should also be sentenced cumulatively. In our view the appropriate starting point is one year's imprisonment.[55] It is necessary to discount this by 55 per cent for the reasons set out at [31]–[34] and [38] above.[56] This results in an end sentence on the sexual connection charge of five months' imprisonment.

[48] The effective end sentence on this approach is two years and seven months' imprisonment. In our view this sentence appropriately reflects the totality of the offending and does not require any further totality adjustment.

[49] This approach does not require any amendment to the six-month concurrent sentences imposed by the Judge in relation to each of charges 1, 2, 4, 5, 6, 9, 10, 11, 13, 14 and 15[57] in CRI-2018-047-570 and we therefore do not propose to set aside those sentences. It is, however, necessary to impose new sentences in respect of charges 3, 8 and 12 in CRI-2018-047-570, as well as charge 1 in CRI-2020-070-4562, being the charge of sexual connection with a young person (CD).

Result

[50] The appeal is allowed.

[51] The sentences imposed in the District Court in respect of charges 3, 8 and 12 in CRI-2018-047-570, as well as charge 1 in CRI-2020-070-4562, are set aside.

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55 With reference to the factors identified in *Philpot v R* [2015] NZCA 212 at [40], n 17, we note that the victim was aged 14, but not otherwise especially vulnerable; there was no breach of trust; Mr Jones does not appear to have used alcohol or drugs to facilitate the offending; the duration of the sexual relationship was relatively limited (24 days); and there was no demeaning or degrading sexual behaviour. We also note Mr Jones' relative youth (he was aged 21 at the time of the offending) and immaturity, and that the sexual activity took place within the context of a consensual boyfriend/girlfriend relationship (rather than a more predatory/exploitative relationship with a large age disparity). The impact on the victim is not known, as she has not provided a victim impact statement. We note, however, that it appears from the evidence that the victim was relatively sophisticated for her age including (amongst other things) expressing a preference for a "no strings" relationship. This does not, of course, excuse or justify Mr Jones' criminal conduct.

56 A 35 per cent discount for personal mitigating factors and a 20 per cent guilty plea discount.

57 Although charge 15 (which resulted in Mr Jones' conviction for assaulting AB with a pole when Mr Jones was smashing her car) is not expressly referred to in the Judge's sentencing notes, it is apparent from the warrant of commitment that Mr Jones was sentenced to a concurrent term of six months' imprisonment in relation to this charge.

[52] The following sentences are substituted:

(a) On charge 3[58] we impose a sentence of one year and eight months' imprisonment.

(b) On charge 8[59] we impose a sentence of six months' imprisonment, cumulative on charge 3.

(c) On charge 12[60] we impose a term of one year and seven months' imprisonment, to be served concurrently.

(d) On charge 1[61] in CRI-2020-070-4562 we impose a term of five months' imprisonment, cumulative on charge 8.

[53] The concurrent sentences imposed in the District Court in respect of charges 1, 2, 4, 5, 6, 9, 10, 11, 13, 14 and 15 in CRI-2018-047-570 remain in force.

Solicitors:
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58 Kidnapping of AB.
59 Attempting to pervert the course of justice in relation to the offending against AB.
60 Kidnapping of CD.
61 Sexual connection with a young person (CD).