

children, mostly on the chest and legs, with a piece of wood similar to a broom handle. In February 2021, he pleaded guilty to eight charges of assault on a child.¹ For reasons we come to later, sentencing was delayed until 20 September 2022. Judge Forrest imposed a sentence of six months' supervision.² Mr Wiremu appeals his conviction and sentence.

[2] Mr Wiremu's appeal was filed out of time. The delay was at least in part because Mr Wiremu initially filed his appeal in the High Court but, because he had never withdrawn his election to a jury trial, he was directed to file his appeal in this Court. Mr Wiremu said he filed his appeal in the High Court on the advice of a court official. No other reasons have been given for the delay. The question of an extension of time was heard simultaneously with the appeal. Since Mr Wiremu is self-represented and was apparently erroneously advised by a court official to file his appeal in the High Court, we grant the extension of time to appeal.

[3] The primary ground of the conviction appeal is that Mr Wiremu does not accept the jurisdiction of this Court. This argument was advanced on a combination of the "sovereign citizen" theory and the proposition that, through his whakapapa, he is not subject to the jurisdiction of the courts. Mr Wiremu's second ground of appeal was that whether his actions were right or wrong was a question of perception and, based on his perception and world view, he did nothing wrong and/or the school has at least some responsibility.

[4] We treat the appeal as brought under s 232(2)(c) of the Criminal Procedure Act 2011 (CPA), under which an appeal against conviction must be allowed if "in any case, a miscarriage of justice has occurred for any reason". "Miscarriage of justice" is defined in s 232(4) of the CPA as any error, irregularity or occurrence in or in relation to or affecting the trial that either created a real risk that the outcome of the trial was affected or resulted in an unfair trial or a trial that was a nullity.

[5] The sentence appeal was advanced on the basis that the appropriate way of disposing of the charges was through a restorative justice process. The sentence appeal

¹ Crimes Act 1961, s 194(a).

² *R v Wiremu* [2022] NZDC 20044 [sentencing notes] at [14].

falls to be determined in accordance with s 250 of the CPA. Mr Wiremu must satisfy us that, for any reason, there was an error in the sentence imposed and that a different sentence should be imposed.

The procedural history

[6] Mr Wiremu was represented by counsel, Mr Merrick, when he entered his guilty pleas on 4 February 2021. We are advised by counsel for the respondent that: the following month, Mr Merrick sought and was granted leave to withdraw as counsel; Mr Wiremu's new counsel, Ms Hughes, filed a change of representation notice with the Court on 16 April 2021; and on 1 July 2021, Ms Hughes sought and was granted leave to withdraw as counsel. Mr Wiremu represented himself from that point.

[7] Mr Wiremu was scheduled to appear for sentencing in the Manukau District Court on 11 August 2021 but failed to appear and a warrant was issued for his arrest. He appeared a few days later, having been arrested for failing to appear at the sentencing, but sentencing could not proceed due to the lack of a te reo Māori interpreter. Mr Wiremu was remanded on bail to appear on 19 August 2022.

[8] As a result of delays attributable to Covid, the assignment of new counsel and consideration being given to an application to discharge without conviction, Mr Wiremu finally appeared for sentencing on 18 March 2022. He was relying on documents he had filed styled as a "counterclaim — reply to Crown memorandum for sentencing" and an "affidavit of truth". It was evident from the "affidavit" that Mr Wiremu wished to apply to vacate his guilty pleas. Judge McIlraith recorded Mr Wiremu's wish to vacate his guilty plea and his broader challenge to the jurisdiction of the Court. Sentencing was adjourned to allow Mr Wiremu to file an application to vacate his guilty pleas. However, Mr Wiremu took no steps to advance an application to vacate the guilty pleas.

[9] The issue of Mr Wiremu's challenge to jurisdiction was set down for hearing on 23 June 2022. For the purposes of that hearing he relied on documents styled as a "secured creditor memorandum on next steps" and a "memorandum in response to

Crown jurisdictional challenge”. This set out Mr Wiremu’s whakapapa as the basis on which he rejected the Court’s jurisdiction.

[10] The Judge gave an oral decision declining the challenge to the Court’s jurisdiction. In subsequent written reasons, the Judge recorded Mr Wiremu’s submission that:³

... he is not a New Zealander and is Tūhoe and is Ngāti Ranginui. He states he and his people have lived here on the whenua from time immemorial. He submits the jurisdiction of this Court does not apply to him. He also submits that since the dissolution of Parliament in 2002, legislation can be viewed as nothing more than corporate policy.

[11] The Judge held that Parliament has sovereign power to legislate and the Crimes Act 1961 applies to all persons present in New Zealand, including Mr Wiremu.⁴

[12] The Judge set the matter down for hearing on hearing on 20 September 2022 to deal with any application to vacate the guilty pleas and, if that was not pursued, then sentencing. Mr Wiremu still took no steps towards an application to vacate the guilty pleas. He appeared on 20 September 2022 before Judge Forrest. The Judge invited him to apply for a discharge without conviction orally, but Mr Wiremu declined to do so and maintained his protest to the jurisdiction of the Court. Judge Forrest sentenced Mr Wiremu to six months’ supervision.⁵

Conviction appeal

[13] Mr Wiremu advanced a “dual persona” argument, seeking to distinguish between the “living man” before the Court and the legal entity “the PERSON CHRIS KARAITIANA WIREMU”. He submitted that the “living man” did not enter the guilty pleas and the Crown was required, but had failed, to prove jurisdiction over the legal entity. Mr Wiremu also holds a view that, as a descendant of his ancestors, he is not subject to the jurisdiction of the New Zealand laws of Parliament, nor of the Courts.

³ *R v Wiremu* [2022] NZDC 11826 [pre-trial ruling of Judge Y Yelavich] at [3].

⁴ At [5]–[7], citing: *Bracken v R* [2022] NZCA 237 at [15]–[18]; and *Wallace v R* [2011] NZSC 10 at [2].

⁵ Sentencing notes, above n 2, at [14].

[14] This Court has consistently rejected both kinds of arguments. In *Warahi v Chief Executive of the Department of Corrections*, this Court summarised the position as follows:⁶

[11] Acts of Parliament, including criminal enactments, are binding on all persons within the geographical territory of New Zealand. The Courts of New Zealand must uphold all Acts of Parliament as enacted. The Crimes Act 1961 is one such Act of Parliament. The courts have the power to deal with all actions that may amount to criminal offences in this country. No person within New Zealand is able to dissociate themselves from their “legal persona” so as to remove themselves from the jurisdiction of the courts.

[15] Mr Wiremu also argued that the quality of his acts was a matter of perception. He had been engaged by the school to teach the children and he was doing so in accordance with his ancestors’ protocols and should not be held accountable for what happened — or at least not alone. We cannot accept this argument. It is not disputed that Mr Wiremu hit the children. He pleaded guilty to the charges with the benefit of legal advice and, despite being given the opportunity to make an application to vacate those pleas, did not do so. No miscarriage of justice occurred.

Sentence appeal

[16] We understood Mr Wiremu’s essential complaint to be that the manner in which he was dealt with was culturally inappropriate and that a restorative justice process would have been better. We do not express a view about whether a restorative justice process of the kind Mr Wiremu had in mind could have been pursued. The Judge had no choice but to sentence on the basis that Mr Wiremu had pleaded guilty to the offences and had not applied for a discharge without conviction.

[17] Mr Wiremu clearly had a good record to draw on (as indicated by the Judge’s preparedness to consider granting a discharge without conviction). However, the offending was moderately serious — physical assaults with a weapon on a number of children, with visible bruising in two cases. There could be no complaint that the sentence was excessive, given the nature and number of charges. We consider that the sentence of six months’ supervision was a lenient one.

⁶ *Warahi v Department of Corrections* [2022] NZCA 105.

Result

[18] We grant Mr Wiremu's application for an extension of time to appeal.

[19] The appeal against conviction is dismissed.

[20] The appeal against sentence is dismissed.

Solicitors:
Crown Solicitor, Manukau for Respondent