IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA647/2024
[2025] NZCA 292

BETWEEN	CARLOS HARRIS Appellant
AND	THE KING Respondent

CA94/2025

BETWEEN	BERNADETTE RAWIRI Appellant
AND	THE KING Respondent

Hearing:	14 May 2025
Court:	Woolford, Jagose, and Powell JJ
Counsel:	E P Priest and S V Wood for Appellant in CA647/2024 S Thode and W T Main for Appellant in CA94/2025 K S Li and R N Benic for Respondent
Judgment:	2 July 2025 at 2:30 pm

JUDGMENT OF THE COURT

The appeals are dismissed.

REASONS OF THE COURT

(Given by Powell J)

[1] On the evening of 12 June 2023, the victim in this matter was kidnapped from her home by a group of armed men who also threatened her partner. Over the next

24 days she was held captive at three different addresses where she was threatened, assaulted and tortured in an attempt to extort cryptocurrency. Only when she escaped did what appears to be the longest kidnapping in New Zealand history come to an end.

[2] Not all those responsible have been identified. Four have been charged, including the two appellants, Carlos Harris and Bernadette Rawiri. Both pleaded guilty to a single charge of kidnapping,[1] and both were sentenced by Judge Gibson as follows:

(a) In sentencing Mr Harris, Judge Gibson adopted a starting point of 13 years and six months' imprisonment.[2] An allowance of 25 per cent was given for an early guilty plea and 15 per cent for Mr Harris' personal and background factors.[3] The latter included "to [a] very limited extent", the effect of Mr Harris' imprisonment on his two children living with him.[4] The end sentence was eight years' imprisonment with a minimum period of imprisonment (MPI) of four years.[5]

(b) In sentencing Ms Rawiri, Judge Gibson adopted a starting point of eight years and six months' imprisonment on the kidnapping charge.[6] An uplift of one year was applied for a burglary committed subsequent to the kidnapping, with a reduction for totality of six months.[7] Allowances of 20 per cent were given for the guilty plea, five per cent for "some indications of discrete remorse", and 10 per cent for personal background factors which had a "nexus to the offending".[8] An uplift of two months was made to recognise that the offending occurred on bail, and a further two-month uplift was applied to recognise previous

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1 Crimes Act 1961, s 209. Maximum penalty: 14 years' imprisonment.
2 *R v Harris* [2024] NZDC 22607 [Harris sentencing notes] at [31].
3 At [31].
4 At [31].
5 At [31] and [37].
6 *R v Rawiri* [2025] NZDC 2872 [Rawiri sentencing notes] at [15].
7 At [15]–[17]. Ms Rawiri was sentenced by Judge Gibson to six months' imprisonment for the burglary, to be served concurrently with the kidnapping sentence.
8 At [18]–[19].

convictions. This led to an end sentence of six years and two months' imprisonment.[9] An MPI of 50 per cent was also imposed.[10]

[3] Both now appeal their sentences on the grounds they were manifestly excessive. On behalf of Mr Harris, Ms Priest contended Judge Gibson erred by:

(a) adopting a starting point that was too high;

(b) failing to recognise Mr Harris' rehabilitative efforts;

(c) placing insufficient weight on the impacts of imprisonment on Mr Harris' children; and

(d) imposing a 50 per cent MPI.

[4] In Ms Priest's submission, a 12-year starting point was appropriate, less total discounts of 50 per cent, resulting in an end sentence of six years' imprisonment for Mr Harris and no MPI.

[5] On behalf of Ms Rawiri, Mrs Thode submitted Judge Gibson erred by:

(a) adopting a starting point that was too high;

(b) applying insufficient discounts for personal mitigating factors; and

(c) imposing an MPI.

[6] In Mrs Thode's submission, a four-year starting point was appropriate, less total discounts of 45 per cent, resulting in an end sentence of two years and three months' imprisonment for Ms Rawiri with no MPI.

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9 At [19].
10 At [21].

[7] Mr Benic, for the Crown, submitted neither sentence was excessive given that:

(a) The kidnapping was a very serious example of its kind which justified a starting point close to the maximum penalty available for a principal offender.

(b) The Judge's assessment of both Mr Harris and Ms Rawiri's culpability was available from the summary of facts. The starting points appropriately reflected their individual roles in the offending.

(c) The allowances applied for personal mitigating factors were within the appropriate range and accorded with the material placed before the District Court at sentencing.

(d) An MPI was justified as release after only one-third of their sentence would not adequately serve the applicable sentencing principles.

[8] This Court must allow an appeal if it is satisfied that there is an error in the sentence imposed and a different sentenced should be imposed.[11] Otherwise, the Court must dismiss the appeal.[12] A starting point that is too high is an example of an error justifying appellate intervention.[13] Whether the end sentence is "manifestly excessive" is a useful guide in determining whether there is an error.[14]

[9] An appeal court will generally not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles.[15] That approach reflects the idea that the appellate decision focusses on the final sentence rather than the process by which it was reached. Assessing whether the sentence is manifestly excessive similarly reflects the focus on the end result.

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11 Criminal Procedure Act 2011, s 250(2).
12 Section 250(3).
13 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [32].
14 Simon France (ed) *Adams on Criminal Law — Sentencing* (online ed, Thomson Reuters) at [SAB5.01].
15 *Tutakangahau v R*, above n 13, at [36]. See also *Te Aho v R* [2013] NZCA 47 at [30].

The offending

[10] The following account is taken from the summary of facts:[16]

> Mr Harris and [another co-offender] are members of the Nomads gang. Ms Rawiri is Mr Harris's cousin. [The victim] was kidnapped in order to obtain cryptocurrency from [the victim] and/or her partner at the time … [Another co-offender] is an associate of [the victim's partner].
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> …
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> In June 2023, [the victim] resided with [the victim's partner] at an address [in Birkenhead].
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> On Friday 9 June 2023, a number of males came to [the victim's partner] and [the victim]'s home address. They spoke to [the victim's partner] about obtaining money, and [the victim] assisted them with how Binance (an online cryptocurrency exchange) and online cryptocurrency wallets worked. One of the males asked [the victim] if she could help them find their money.
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> After a period of time, the males left. They told [the victim] and [the victim's partner] that they would return.
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> …
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> [On 12 June 2023 at] approximately 10 pm, [the victim] was at her Birkenhead address with [the victim's partner], asleep in bed.
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> …
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> Between approximately 10pm and 10:35pm, a group of men, including Mr Harris [and another co-offender] entered [the victim]'s home and then her bedroom. They were wearing black balaclavas, some with "NOMADS" written on it. They were in possession of a firearm.
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> One of the males told [the victim] not to move and that he would shoot her if she screamed. Another male walked around [the victim]'s bedroom and asked, "where is it", and asked for their money back.
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> One of the males grabbed [the victim], pulled her top over her head and said if she screamed, he would stab her. The male holding [the victim] pointed to [the victim's partner] and told the male holding the gun to "finish him" (referring to [the victim's partner]).
>
> The male with the gun remained while the other males took [the victim] downstairs. The male with the gun told [the victim's partner] to take off his shirt and lie down on the bed. He wrapped a pillow around the gun and told [the victim's partner] he would shoot [the victim's partner]. [The victim's partner] was terrified and pleaded with the male not to shoot. After a short period, the male ran from the [room] and also left the house.

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16 Emphasis in original.

The males forced [the victim] into one of the vehicles parked outside her address. She screamed and said that she did not have their money, but the males told her to "shut up" and that she was coming with them. The males held her head down to make sure she could not see where they were going.

[The victim's partner] went downstairs and saw a car speeding away.

…

[At] 10:38 pm, Ms Rawiri texted Mr Harris *"Blindfold her k i'm on my way home nw."*. At 10:55 pm, Ms Rawiri texted Mr Harris *"Ring I'm home"*. At 11:03 pm she texted *"Close back gate wen use come through k its all open music playing"*. At 11:04 pm she texted *"Ima open th garage use park in Thea and bring her inside"*.

[The victim] was driven by the males to [Ms Rawiri's home].

When [the victim] arrived, she was put into a garage and had a bandana tied around her eyes. Her kidnappers tied her to a chair with a shower curtain or sheet laid on the ground. There were a large number of people, both males and females, present. They told [the victim] to give back their money.

On 13 June 2023 at 2:40 am, Ms Rawiri texted Mr Harris "*She keeps saying she dnt know"*.

[The victim] was unable to provide any money. While at [the address], [the victim] was told to choose a finger to be cut off, and the finger would be cut off at 7am in the morning.

At 6:35 am on 13 June 2023, Ms Rawiri texted Mr Harris "*Just on our way back from dropping liddy off too south on our way back nw*". Mr Harris replied at 6.35 am and 6:37 am *"Can u get some plyers please… something that will cut a finger off cuz"*.

While at [the address], [the victim] was physically assaulted by multiple people, including with a baseball bat on her ribs by a female and a hammer to her hands by a number of males.

…

[The victim] took an opportunity to try to run from this address, but she was caught by one of the males who told her not to run or they would kill her.

[The victim] was moved from the [Ms Rawiri's address] to a different address. The kidnappers told her to keep her head down or else they would stab her.

…

On or about 15 June 2023, [the victim] was taken to [Mr Harris' home address]. She was kept at this address for the longest period, approximately two weeks. She was locked in a bathroom for the majority of the time.

The kidnappers continued to ask her if she was ready to sign over money from a cryptocurrency account. They also gave her a laptop for period of time and asked her to transfer money. [The victim] was not able to transfer any money.

The bathroom where [the victim] was kept was extremely cold. At one point, her kidnappers took her clothes and deprived her of any food for a period of approximately five days, after she was unable to transfer cryptocurrency to them. [The victim] kept warm [by] filling up empty shampoo bottles she found in the bathroom with hot water.

Mr Harris and [another] came and went from [the address] while [the victim] was kept there.

[The victim] was subjected to at least three significant assaults at this address:

(a) While sitting on a chair in the bathroom, one male demanded her clothes be taken away, then kicked and punched her repeatedly to her ribs and stomach, causing her to lose consciousness. The male returned 2 hours later with a meat cleaver and said he would cut off her arms and legs if she did not sign the money over. The male threatened [the victim] with the meat cleaver and asking her "which side do you want me to take"? as he held it to her shoulder.

(b) On one occasion, two of the kidnappers held [the victim] down while the third waved a blow torch over her head, face, and legs which burnt her hair and eyebrows. The kidnappers threatened to burn her eyeballs out.

(c) On one occasion after the kidnappers again aske[d] her for money, [the victim] said she was not able to help. One of the kidnappers responded by kicking her to the stomach about five times while she was curled onto the ground. A second kidnapper also hit her. This assault again caused [the victim] to lose consciousness.

From this address, [the victim] was moved north of Auckland via the boot of a vehicle. She was told not to scream or else she would be shot.

…

Between approximately 29 June 2023 and 2 July 2023, [the victim] was taken to an unknown rural address in the Far North District …

To get to this property, [the victim] was made to walk approximately 20 minutes from the vehicle. She was placed in the corner of an abandoned house.

While here, she was told that one of the males had dug a hole for her grave. [The victim] was made to help with the digging.

…

On or around 2 July 2023, [the victim] was moved to [an address in Whangārei].

…

A missing person report was made to Police on 27 June 2023 after [the victim's partner] told his Probation Officer that his girlfriend had been kidnapped. Police commenced an investigation, which included requesting account data

for [the victim]'s Google account. The results of that request showed [the victim]'s account was active at IP addresses which corresponded with the addresses that included [Ms Rawiri and Mr Harris' home addresses]. [The victim] had been provided with a laptop as part of the demand for money, for her to log into her cryptocurrency account and transfer her kidnappers funds.

…

At some point prior to 6 July 2023, [the victim] was transferred to the boot of [a vehicle]. When [the victim] was placed into the boot, she was bound with cable ties and a bandana around her mouth. The car was alarmed to notify her kidnappers if she tried to escape. The vehicle was parked on the driveway outside [the Whangārei address].

On 6 July 2023, [the victim] observed the alarm on the vehicle appeared to be off. She was subsequently able to escape from the boot of the vehicle. She ran and flagged down a passing ambulance, and was taken to safety.

During the 24 days that [the victim] was detained against her will, she was subject to the following:

(a) Repeated assaults, including assaults to her face and head.

(b) Having tools applied to her fingers, toes and hands, causing lacerations.

(c) Being stripped down to her underwear and not given any blankets.

(d) Her wrists and ankles were tied with cable ties.

…

[The victim] was taken to hospital for assessment. She had ligature marks on her wrists and ankles.

Harris appeal

The case for Mr Harris

Starting point

[11] Ms Priest accepted the offending involved aggravated violence and an extended period of detention, and that Mr Harris played a significant role in the offending and is liable for the offending inflicted by others. She nevertheless submitted that care needs to be taken not to overstate his involvement given that the identities of those who actually inflicted the violence have not been ascertained. Ms Priest accepted a starting point in excess of 10 years' imprisonment was warranted,

but submitted the starting point of 13 years and six months' imprisonment adopted by Judge Gibson was too high. She noted it exceeded that submitted by both parties at sentencing, with the Crown seeking a starting point of 13 years, and the defence 12 years.[17] Overall she submitted 12 years' imprisonment was appropriate.

[12] Ms Priest submitted the error resulted from Judge Gibson's reliance on *R v Li* in setting the starting point.[18] The offending in *Li* involved the assault and immobilisation of two elderly persons during a home invasion which had been carefully planned, with the victim being taken to a pre-arranged premises.[19] The defendants in *Li* each faced one charge of kidnapping and one charge of aggravated burglary.[20]

[13] Ms Priest submitted the kidnapping in the present case does not have the same level of pre-planning. In Ms Priest's submission, the present offending was "unsophisticated and evolving" in comparison, and continued to develop over the three weeks that the victim was being held.

[14] Ms Priest submitted three cases, *R v Blackett*, *R v Dixon*, and *R v Liev* were comparable.[21] In her submission the present offending is less serious than *Liev* and *Blackett*, which resulted in death and permanent disability respectively. Instead, she submitted the closest comparator was *Dixon*. In accepting that overall the present offending was more serious than *Dixon,* she noted the victim in this case was detained for longer, but that the violence inflicted in *Dixon* was significantly more serious given that the victim in this case had no permanent physical injuries. However in Ms Priest's submission, Ms Dixon was the instigator and a principal offender who also inflicted violence, whereas Mr Harris was neither an instigator, nor did he partake in violence, although he accepts that he assisted others in perpetrating violence.

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17 Harris sentencing notes, above n 2, at [27]–[28] and [31].
18 *R v Li* CA299/05, 1 November 2006.
19 At [4]–[5].
20 At [1].
21 *R v Blackett* [2017] NZHC 1120; *R v Dixon* [2021] NZHC 3490; and *R v Liev* [2017] NZHC 739. See also *Liev v R* [2019] NZCA 242.

Allowance for rehabilitation

[15] In terms of Mr Harris' rehabilitation, Ms Priest submitted Judge Gibson erred in not addressing the "significant" efforts Mr Harris had made as a remand prisoner to address the underlying causes of his offending. Her submissions noted Mr Harris had completed seven rehabilitative workbooks and two "Life101's" programmes, and that he took steps to continue a tikanga Māori course (which he subsequently completed) by delaying having his conviction entered until sentencing. In Ms Priest's submission, a further five per cent deduction was warranted for these efforts.

Effect of imprisonment on Mr Harris' children

[16] Likewise, Ms Priest submitted Judge Gibson placed insufficient weight on the impacts of Mr Harris' incarceration on his children. She submitted in reliance on s 8(h) of the Sentencing Act 2002, a number of cases, and various socio-scientific articles, that a discrete discount of a further five per cent should have been made to recognise this.[22]

[17] Ms Priest noted that Mr Harris was the full-time caregiver to two of his six children (aged 12 and 17) at the time of the offending. He remains in contact with them and his two youngest children, aged one and eight. While Ms Priest accepted that Judge Gibson considered the 15 per cent discount for Mr Harris' personal circumstances set out in a s 27 report also encapsulated the "very limited extent there should be any discount" for the effects of Mr Harris' imprisonment on the two children living with him at the time of the offending, she submitted it did not take into account the two youngest children.[23]

[18] Ms Priest also took issue with Judge Gibson's comments at sentencing that Mr Harris' own removal from his family as a child had a positive impact on him, and that it was his return home that caused his subsequent problems. Ms Priest submitted that this is at odds with the academic evidence and lacks evidential foundation. As a child, Mr Harris was subjected to physical, sexual, and psychological abuse in his

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22 These include *Campbell v R* [2020] NZCA 356; *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571; and *C (CA 153/2023) v Police* [2024] NZCA 136.

23 Referring to Harris sentencing notes, above n 2, at [31].

home,[24] but this is entirely irrelevant to the relationship Mr Harris shares with his children, which she submitted will be damaged by a sentence of imprisonment.

Imposition of MPI

[19] Ms Priest submitted in imposing an MPI, Judge Gibson placed too much weight on the seriousness of the offending and the requirement to protect the community without giving enough consideration to personal mitigating factors.

[20] Ms Priest relied on the decision of this Court in *Zhang v R*, where it was held that imposing an MPI solely due to the seriousness of offending is contrary to s 86 of the Sentencing Act, which is to be applied unfettered to each case.[25] As she submitted, the purposes and principles of sentencing, and the aggravating and mitigating factors in s 9 of the Act, are all relevant to the assessment.[26]

[21] In Ms Priest's submission, the findings of the psychological assessment prepared by Sarah Bramhall for sentencing, Mr Harris' rehabilitative efforts, the responsibility taken, and previous criminal history — all of which were acknowledged by Judge Gibson — do not support the imposition of an MPI. In particular, Ms Priest noted Mr Harris was the first of the identified offenders to plead guilty and has demonstrated remorse and a willingness to make amends — while showing insight into his offending and the harm he has caused the victim. Likewise, she submitted his risk of violent reoffending is only moderate, and notes he has a clear rehabilitative pathway. In contrast, Ms Priest took issue with what she describes as the Judge's reliance on "the risk that Mr Harris reconnects with previous gang associates",[27] despite acknowledging that he has left the gang.[28]

[22] Ms Priest's submission is that Mr Harris' starting point, being near the maximum penalty, satisfies the need for deterrence, denunciation and community

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24 Ms Priest refers to the psychological assessment prepared by Sarah Bramhall.
25 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [172]–[174].
26 Referring to *R v Nguyen* [2009] NZCA 239; *R v Gordon* [2009] NZCA 145; *R v Walsh* (2005) 21 CRNZ 946 (CA); and *FF v R* [2017] NZCA 294 at [28], where this Court acknowledged that while aggravating and mitigating factors are in effect counted twice, this is not a concern as the common factors are being considered for different reasons in each exercise.
27 Referring to Harris sentencing notes, above n 2, at [36].
28 At [18].

protection. The Parole Board will be best placed to assess Mr Harris' risk as he continues on this path. In her submission, early parole will ensure Mr Harris can access appropriate support and will preserve the positive momentum he has already achieved.

Discussion

Starting point

[23] We begin our analysis of the appropriate starting point by rejecting Ms Priest's submissions about the seriousness of the offending and Mr Harris' responsibility for it.

[24] On the first issue, Ms Priest placed heavy emphasis on the lack of serious or permanent physical injuries suffered by the victim. As Mr Benic submitted on behalf of the Crown, there can be no doubt that the kidnapping was of the most serious kind, justifying a starting point near the maximum available for a principal offender. The length of detention alone puts the present offending into that category. Indeed, counsel were unable to point to any other example of kidnapping in New Zealand longer than a single day. That was not the only aggravating factor however, as the summary of facts makes clear:

(a) The offending was clearly premeditated to a significant degree.[29]

(b) The victim was abducted at gunpoint from her home late at night by a group of disguised men. [30]

(c) The victim's partner was threatened with violence during the abduction.[31]

(d) The offending was gang related.[32]

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29 See Sentencing Act 2002, s 9(1)(i).
30 See s 9(1)(a) and (b).
31 See s 9(1)(a).
32 See s 9(1)(hb).

(e) Throughout the offending the victim was subjected to actual or threatened violence,[33] applied with particular cruelty,[34] including:

(i) multiple physical assaults with weapons; and

(ii) being threatened with serious violence including:

1. on numerous occasions being told she would be killed if she did not do as instructed;

2. cutting off a finger of her choice with pliers;

3. severing her arms and legs with a meat cleaver;

4. burning her eyeballs out with a blow torch;

5. inserting the barrel of a firearm into her mouth; and

6. forcing her to dig a hole in the ground and telling her it was her grave.

(f) Otherwise treating the victim with particular cruelty throughout the offending, including starving her for extended periods, removing her clothes, keeping her without access to heating, and keeping her in confined spaces including both a toilet and a car boot.[35]

[25] In the circumstances, the lack of permanent physical injuries cannot possibly diminish the seriousness of the offending. Such a proposition ignores the acknowledged serious psychological trauma suffered by the victim. It is likewise significant that the offending was only brought to an end when the victim herself escaped and not as a result of any action on the part of the offenders. Given this position we do not find the cases relied upon by Ms Priest to be helpful. In each of

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33 See s 9(1)(a).
34 See s 9 (1)(e).
35 See s 9(1)(e).

those cases there was other significant offending, and apart from *Liev*, the lead offending was serious violence offences rather than kidnapping, with the kidnapping in the present case manifestly more serious than the kidnapping in any of these cases cited. Indeed, we are satisfied that this offending was near to the most serious of cases on the charge of kidnapping, and we therefore conclude Judge Gibson was correct in finding that the offending warranted close to the maximum penalty available in terms of s 8(d) of the Sentencing Act.

[26] We likewise accept that in concluding that Mr Harris' role was significant, Judge Gibson effectively reached the correct decision that Mr Harris was indeed a principal offender alongside other equally culpable co-offenders, not all of whom have been charged. It follows we do not accept Ms Priest's submissions attempting to minimise Mr Harris' involvement in the offending.

[27] In particular, it is clear that:

(a) Mr Harris was a key part of the armed group who entered the victim's home, threatened and abducted her, and threatened her partner. Mr Harris' suggestions, recorded in the Provision of Advice to Courts (PAC) report, that the kidnapping was not premeditated, and "not supposed to happen, we went to scare them but one thing [led] to another" are entirely inconsistent with what took place. As the summary of facts makes clear, after the victim was woken up, she was given no chance to explain or otherwise comply with any demands. Instead she was blindfolded and, almost immediately, forced outside and into one of the waiting vehicles.

(b) Having abducted the victim, within a matter of minutes Mr Harris was coordinating her delivery to Ms Rawiri's home. It is clear from the texts and Mr Harris' actions immediately following the abduction that this could only have been arranged in advance.

(c) Although the exact extent of Mr Harris' involvement while the victim was at Ms Rawiri's house is unclear, it is clear that he remained

involved with both the initial attempts to force the victim to provide cryptocurrency and the ongoing kidnapping. This is apparent from Ms Rawiri's text report to him on the interrogations in the early hours of 13 June 2023 that "she keeps saying she dnt know", and later the same morning his polite but chilling request to Ms Rawiri "can u get some plyers please … something that will cut a finger off cuz".

(d) After the victim unsuccessfully escaped and was recaptured, Mr Harris took responsibility for holding the victim for the next 14 days, more than half of the total time she was detained and abused, by holding her prisoner at his own home where he lived with his children.

(e) Finally, after Ms Rawiri had apparently warned Mr Harris that the police had executed a search warrant looking for the victim, Mr Harris was clearly involved in attempting to cover up the offending along with Mr Yukich and Ms Rawiri.

[28] From this analysis, it follows that we must also reject Ms Priest's submission that it was another of Mr Harris' co-defendants, who was the leader/principal offender because he was identified as committing various specific acts of violence. The offender who commits the most violence is not necessarily the leader, and there is no evidence to suggest such an assertion is true in this case.

[29] Taking these various matters together, and given the seriousness of the offending and Mr Harris' role in it, we conclude that the starting point adopted by Judge Gibson was within range, notwithstanding that for obvious reasons it was at the very highest end available.

Rehabilitation

[30] We acknowledge the courses completed by Mr Harris while on remand. Except for the tikanga course, it is difficult to see any causal connection between the rehabilitation undertaken and the offending or indeed Mr Harris' extensive criminal history. Equally, for all apart from the tikanga course, we have only been provided with the completion certificates, and absolutely no information as to what each

workbook or course entailed, how long each took to complete, or how it was assessed. With regard to the tikanga course, this was clearly more substantive, and the completion notes show Mr Harris engaged well, and appears to have been challenged in completing the course.

[31] Overall however, we consider the 15 per cent allowance given by Judge Gibson for all of Mr Harris' personal factors was within range and cannot be faulted. Regardless, we do not consider any further allowance is required for the reasons set out in the overall assessment section below at [38]–[40].

Effect of imprisonment on Mr Harris' children

[32] It is not in dispute that Mr Harris has six children to four different partners. What little information there is about them before the Court is somewhat fragmentary and largely contained within Ms Bramhall's psychological report. At the time of the offending it appears that two children, aged 12 and 17, were living with Mr Harris and that he was in regular contact with his two youngest children, said by Ms Priest from the bar to be aged one and eight. Mr Harris apparently had minimal or no contact with another child aged 17 at the time, and there is no information at all about the sixth child, or his or her relationship with Mr Harris.

[33] It is well established that the effect of an offender's imprisonment on their children is a relevant factor when considering their personal circumstances during the sentencing process. As this Court stated in *Campbell v R*:[36]

> The weight to be accorded that factor depends on the circumstances. The relevant circumstances include the type of the offending and the circumstances of the child or children.

[34] However, Judge Gibson noted when a discrete discount was sought by Mr Harris for the effect of imprisonment on his children:[37]

> I really know nothing about your children, and they were of course present for at least two weeks when the [victim] was held at your property. I do not know what effect your imprisonment will have on them …

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[36] *Campbell v R* [2020] NZCA 356 at [41] (footnote omitted). See also *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571 at [50].

[37] Harris sentencing notes, above n 2, at [30].

[35] As Ms Priest accepted, simply having children does not give rise to an allowance at sentencing. As the Supreme Court noted, the circumstances of the child or children are relevant.[38] As a seminar presented by Fiona Guy Kidd KC, relied upon by Ms Priest in this case, explained in 2023:[39]

> In order for judges to take the impacts for children into account they will need information. There are different sources of information but counsel will be a primary conduit for information. Counsel will need to endeavour to establish trust with their clients and ask the right questions of the defendant from an early point/immediately. Indeed duty solicitors who first see defendants on arrest will need to be particularly "alive" to the issue.
>
> Relevant information may include:
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> - how many children does the person have responsibility for? NB It may not be their own biological children.
> - what are their ages?
> - do any of the children have special needs/mental health issues?
> - for mothers of infant children, are they breastfeeding?
> - what are the usual care arrangements?
> - have any arrangements been made for immediate care of the child/ren?
> - how long can that arrangement be in place for?
> - does the parent financially support the children?
> - do the children have special events or external examinations coming up that would be disrupted by incarceration?
> - if incarcerated/remanded in custody, how far away from the children would the parent be? This is particularly relevant for women who may be taken to a prison quite a distance from their home.

[36] No information of that nature was placed before Judge Gibson, and no attempt has been made to elaborate on any of these issues on appeal, or indeed the effect on the two children living with Mr Harris of the victim having been held at their home for two weeks.

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38 *Philip v R,* above n 36, at [50].

39 Fiona Guy Kidd "The impacts of parental incarceration and the points in the criminal justice system where it can be considered" (paper presented to New Zealand Law Society Impact of Parental Incarceration on Children Webinar, October 2023) at 4.

[37] In the circumstances, we are simply not in a position to go beyond the limited allowance provided by Judge Gibson as part of the overall 15 per cent deducted for Mr Harris' personal circumstances. We instead conclude no specific discount is appropriate on the evidence before us.

Overall assessment of sentence

[38] As Judge Gibson observed during sentencing:[40]

> [19] I must take into account various mitigating factors, but overall the effect of the discounts available cannot mean a proper sentence can be diminished and the sentence must require me to stand back and look at the overall criminality and see whether the sentence I impose is appropriate and reflects the gravity of the offending.

[39] We agree. While Ms Priest has focussed on two aspects of Mr Harris' personal factors which she submitted had not been adequately taken into account by Judge Gibson at sentencing, it is important to reconfirm that, as the Judge recognised, sentencing has never been simply a mathematical exercise of making deductions. It is still necessary for judges to exercise their judgement in determining the appropriate end sentence. As this Court noted in *R v Xie*:[41]

> The fundamental tenet of the totality principle is that the final sentence must reflect "the totality of the offending". How the total sentence is made up has never been important.

[40] In this case, we are satisfied that the overall allowances given by Judge Gibson were within range and appropriate. They have resulted in an end sentence that fairly reflects both the seriousness of the offending and Mr Harris' culpability for it, having regard to his personal circumstances.

MPI

[41] The final issue raised on behalf of Mr Harris is whether an MPI should have been imposed.

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40 Harris sentencing notes, above n 2.

41 *R v Xie* [2007] 2 NZLR 240 (CA) at [16], citing *R v Williams* CA 91/00, 31 May 2000.

[42] It is well established, as this Court has emphasised in other cases, that MPIs should not be imposed as a matter of routine or in a mechanistic way.[42] It is not sufficient to simply recite the statutory provisions. A reasoned analysis is required.[43]

[43] Having considered Ms Priest's submissions, we see no error in the imposition of the MPI on Mr Harris. Once again it is important to bear in mind the seriousness of the offending and Mr Harris' significant role in it. It was clearly open for Judge Gibson to conclude, as he did, that standard eligibility for parole after serving one-third of the sentence—being some two years and eight months' imprisonment—was insufficient to hold Mr Harris accountable for what he had done, and would be insufficient to denounce his offending, and deter others.[44] Likewise, while Judge Gibson noted that it was unclear exactly what risk Mr Harris would pose on release, he was entitled to find that if Mr Harris were to "revert to [his] gang affiliation or if [he continues] to associate with antisocial persons then [his] risk is increased".[45]

[44] In our view, given the particular circumstances of this offending which, as detailed, involved a gang putting significant resources into extorting cryptocurrency and the particularly serious offending that resulted, it is important to denounce Mr Harris' role in the offending and to deter similar offending in the future. Only serving one-third of the sentence before being eligible for parole would be insufficient for that purpose. Likewise, given we do not accept Mr Harris' rehabilitative efforts justified a discrete allowance, we do not consider that factor can override the need for an MPI in this case. We therefore conclude an MPI was appropriate for Mr Harris.

[45] As a result, this final limb of Mr Harris' appeal must also fail.

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42 *Blackler v R* [2019] NZCA 232 at [38], citing *Tamati v R* [2018] NZCA 463 at [15], *R v Parker* CA179/03, 21 August 2003 and *R v Gordon* [2009] NZCA 145.
43 *Blackler v R*, above n 42, at [38].
44 Harris sentencing notes, above n 2, at [33]–[34].
45 At [35].

Rawiri appeal

The case for Ms Rawiri

Starting point

[46] Mrs Thode submitted that the starting point adopted by Judge Gibson failed to "appropriately individualise" Ms Rawiri's role and relative culpability with that of her co-defendants. While Mrs Thode accepted serious kidnapping cases warrant starting points of more than 10 years' imprisonment,[46] she nevertheless submitted that this observation must be context-dependent and cannot be transplanted without reference to the facts. She acknowledged that Ms Rawiri's starting point was five years lower than that applied to Mr Harris' sentence, but nevertheless submitted that this differential was insufficient when viewed against Ms Rawiri's actual role in the offending. In Mrs Thode's submission, Judge Gibson erred by applying a sentence based on the total gravity of the offending, rather than individual culpability—contrary to the principles enumerated in s 8 of the Sentencing Act.

[47] In particular, Mrs Thode submitted that Ms Rawiri's involvement was limited to the early stages of the victim's ordeal and did not include the escalated violence that took place at subsequent addresses. She submitted there was no evidence as to Ms Rawiri's involvement in "direct acts of violence, or exercising leadership or direction over others". Likewise, she submitted Ms Rawiri's involvement was driven by coercive influence from gang affiliates", and as a result her culpability is not fairly reflected in the starting point that was applied. Developing these themes in her oral submissions, Mrs Thode went so far as to suggest Ms Rawiri was only pulled into the offending at the last minute as a result of her close relationship with Mr Harris, leading her to make her home available as the first place the victim was held after her abduction.

[48] Mrs Thode contrasted Ms Rawiri's culpability to the offending in *R v Salt*, in which there was an orchestrated abduction for the purposes of recovering drug debt owed by the victim's father.[47] The victim was detained for several hours, beaten with

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46 Referring to *R v McIntyre* [2019] NZHC 1162.
47 *R v Salt* [2017] NZHC 1979 at [5] and [8].

an aluminium pipe, stabbed with a scalpel, and shot in the hands after being blindfolded.[48] In that case, Mr Salt did not inflict the violence personally but was nevertheless an active planner who played a supervisory role. He received a starting point of four years and six months' imprisonment.[49]

[49] Mrs Thode also referred to *R v Johnson*, where starting points of five years and six months' imprisonment and six years' imprisonment were adopted respectively for the lead offenders, who both played central roles in a prolonged home-invasion-style kidnapping.[50] There were four victims and the offenders inflicted protracted violence, including stabbing, cutting, and burning the victims.[51] Mr Johnson was described as the most violent and his co-offender Mr Rota as the leader of the operation.[52] In Mrs Thode's submission, the offending in *Johnson* was significantly more severe than the present offending. As a result, she submitted a starting point of three years and six months' imprisonment for Ms Rawiri was within range on the facts of the present case and "appropriately reflects her role and culpability".

Personal mitigating factors

[50] Mrs Thode submitted, with reference to relevant authorities, that Judge Gibson failed to recognise the full range of Ms Rawiri's personal mitigating factors, noting there was considerable material available before the Judge.

[51] She noted the reports before the Judge detailed that Ms Rawiri's offending was "linked to a life marked by trauma, violence and systemic deprivation". This included being "raised in a household shaped by gang dynamics, intergenerational control and physical abuse, with her father being a violent gang member". From a young age she was exposed to environments that normalised coercion and subordination. Those patterns continued into her adult relationships and directly influenced her involvement in this offending (particularly her inability to disengage from Mr Harris, despite recognising his volatility and the risk he posed). Mrs Thode therefore submitted that

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48 At [13]–[14].
49 At [37].
50 *R v Johnson* [2019] NZHC 111 at [47] and [55].
51 At [18].
52 At [45] and [53].

a discrete discount of 15 per cent for personal background and history would be appropriate in the circumstances.

[52] Mrs Thode also took issue with Judge Gibson's description of Ms Rawiri's remorse as "discrete" but then only giving an allowance of five per cent for that factor.[53] Mrs Thode submits that the remorse was genuine, as evidenced by Ms Rawiri's willingness to participate in restorative justice and take responsibility for the harm caused. It is further submitted that Ms Rawiri's steps toward rehabilitation also deserved credit and that a discount of 10 per cent should have been provided.

Imposition of MPI

[53] Mrs Thode submits the imposition of a 50 per cent MPI was not necessary to meet the purposes and principles of sentencing set out in ss 7 and 8 of the Sentencing Act.

[54] While Judge Gibson relied on the serious nature of the kidnapping and Ms Rawiri's risk of reoffending, Mrs Thode submitted that the parole system already assesses this risk, but does so in light of rehabilitative progress at the relevant time. This, she submitted, is particularly pertinent in the present case given Judge Gibson accepted Ms Rawiri had the potential to change, had acknowledged her offending, and demonstrated remorse.[54] Finally, Mrs Thode noted there was no evidence to suggest that parole eligibility at one-third of the total sentence would have undermined public safety or failed to hold Ms Rawiri to account.

Discussion

Starting point

[55] As with Mr Harris' appeal, we begin our analysis of the appropriate starting point by rejecting Mrs Thode's submissions about Ms Rawiri's role in, and responsibility for, the offending.

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53 Rawiri sentencing notes, above n 6, at [18].
54 Referring to Rawiri sentencing notes, above n 6, at [10] and [21].

[56] While, as Judge Gibson clearly accepted, Ms Rawiri's role in the offending was at a lower level than that of Mr Harris—as reflected by a significantly lower starting point—we do not accept the summary of facts establishes Ms Rawiri's culpability was at the level submitted by Mrs Thode. In particular, it is clear:

(a) The texts between Mr Harris and Ms Rawiri immediately after the abduction show that Ms Rawiri was not put on the spot to make her home available as she claimed to various report writers. Instead, they demonstrate that Ms Rawiri must have been aware of the proposed abduction and planned use of her property in advance, and to that extent the offending was premeditated. Consistent with this, Ms Rawiri actively facilitated the transfer of the victim to her property after the abduction, including directing that the victim be blindfolded prior to her arrival and putting music on to mask the sounds of the arrival.

(b) Although the exact extent of Ms Rawiri's involvement while the victim was at her house is unclear, she was clearly directly involved with the initial interrogation evidenced by her text report to Mr Harris at 2:40 am on the first morning that "[the victim] keeps saying she dnt know".

(c) She continued to provide assistance to Mr Harris, evidenced by his request to her for pliers suitable to remove one of the victim's fingers.

(d) Even if Ms Rawiri was only directly involved with the first phase of the kidnapping, that initial three-day period by itself represents an exceptionally long and serious kidnapping in its own right.

(e) In any event, Ms Rawiri remained in touch with Mr Harris after the victim was removed from her house, evidenced by her warning to Mr Harris after the police had executed a search warrant looking for the victim at Ms Rawiri's home.

[57] In light of this, it is clearly contrary to the summary of facts to suggest, as Ms Rawiri did to the authors of the PAC and Alcohol and Drug (AOD) reports, that

she only got involved after the abduction had already occurred due to her closeness with Mr Harris and his request to her to help. There is simply no evidence to suggest Ms Rawiri was anything other than a willing participant in the offending.

[58] The cases referred to by Mrs Thode are also clearly distinguishable. Although a firearm was used in *Salt* for the purposes of threatening the victim, the period of detention sets the offending apart.[55] Even the first period at Ms Rawiri's home was of much greater duration, while as noted, the overall length of the kidnapping puts the current offending into an entirely different category. Likewise, the matters specifically attributable to Ms Rawiri are more serious than those attributed to the defendant in *R v Salt*. Similarly, *R v Johnson* involved no premeditation, the kidnapping took place over a much shorter period and the offender most responsible for the violence was not identified and not charged.[56] Moreover and significantly, because party liability had been specifically excluded in that case each defendant was sentenced only for their own direct involvement, with specific acts of violence for which particular defendants were responsible being charged separately.[57] Overall, we are satisfied that the present offending was substantially more serious than that in either *Salt* or *Johnson*, and we accept Mr Benic's submission that Ms Rawiri was a significant participant in the early stages of the victim's detention.

[59] Taking these matters together, we conclude that the starting point adopted by Judge Gibson was easily within range.

Personal mitigating factors

[60] In relation to personal background, and remorse and rehabilitative efforts, we are satisfied that the 15 per cent allowance for personal factors was appropriate.

[61] First, and contrary to Mrs Thode's submissions, we consider the discount provided by Judge Gibson for remorse over and above that inherent in the guilty plea was generous. This is because, while remorse is expressed in both the PAC and AOD

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55 *R v Salt*, above n 47, at [13]–[14].
56 *R v Johnson*, above n 50, at [34]–[35].
57 At [35].

reports, Ms Rawiri appears to do her best to minimise her role in the offending; suggesting that any expressed remorse is somewhat insincere.

[62] Likewise, we accept that it was open for Judge Gibson to decline to give any discrete allowance for Ms Rawiri's rehabilitative efforts to date. As Mr Benic submitted, those appear to be at an early stage; noting Ms Rawiri's lengthy criminal history, which included the burglary committed while on bail for the kidnapping.

[63] Even more significantly, and as Judge Gibson recorded in the sentencing notes, was that the drivers of Ms Rawiri's offending were noted in the PAC report to be "unhealthy relationships, anti-social friends and associates and offending … attitudes".[58] It was therefore appropriate for Judge Gibson to decline to place any great weight on the limited rehabilitative steps taken to date, being the completion of a few courses, or to conclude as he did that Ms Rawiri did not have a "stable and pro-social" support network. On the contrary, we consider there was a strong foundation for Judge Gibson's conclusion that Ms Rawiri would continue to reoffend, given it is clear from both the Hōkai Tapuwae and PAC reports before the Court that Ms Rawiri retains a significant affiliation to the Crips gang. According to the Hōkai Tapuwae report, Ms Rawiri considers "being associated with the gang has only brought positive experiences for her".

Overall conclusions

[64] As with Mr Harris' appeal, in this case we are satisfied that the allowances given by Judge Gibson in sentencing Ms Rawiri were within range and appropriate. They have resulted in an end sentence that fairly reflects both the seriousness of the offending and Ms Rawiri's individual culpability, having regard to her personal circumstances.

MPI

[65] Likewise, and for similar reasons to those set out above in relation to Mr Harris, we see no error in the imposition of an MPI on Ms Rawiri. Once again, it is important

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[58] Rawiri sentencing notes, above n 6, at [12].

to bear in mind the seriousness of the offending and Ms Rawiri's role in it. It was clearly open for Judge Gibson to conclude, as he did, that standard eligibility for parole after one-third of the sentence, being just over two years' imprisonment, was insufficient to hold Ms Rawiri accountable, denounce the offending and her part in it, and deter others.[59] This is particularly so in circumstances where Ms Rawiri's criminal history and ongoing gang affiliations provide a moderate to high risk of reoffending with a high risk of causing harm to others.[60]

[66] We repeat our view that, given the circumstances of this offending which, as detailed, involved a gang putting significant resources into extorting cryptocurrency, and the particularly serious harm to the victim that resulted, it is important to denounce Ms Rawiri's role in the offending and to deter similar offending in the future. Only serving one-third of the sentence before being eligible for parole would be insufficient for that purpose. We therefore conclude an MPI of 50 per cent was clearly appropriate for Ms Rawiri.

[67] As a result, this final limb of Ms Rawiri's appeal must also fail.

Result

[68] The appeals are dismissed.

Solicitors:
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59 At [20].
60 At [21].