IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA673/2024
[2025] NZCA 308

BETWEEN	RONALD SYDNEY WHAREPAPA Appellant
AND	THE KING Respondent

Hearing:	20 May 2025
Court:	Mallon, Jagose and Grice JJ
Counsel:	R M Gould for Appellant T C Didsbury and M H Cooke for Respondent
Judgment:	9 July 2025 at 11.30 am

JUDGMENT OF THE COURT

A The application to adduce further evidence is granted.

B The appeal is dismissed.

REASONS OF THE COURT

(Given by Grice J)

Introduction

[1] Ronald Wharepapa was convicted by a jury on five charges of assault with a weapon,[1] including one representative charge, and six charges of assault on a person in a family relationship,[2] two of which were representative. He was sentenced in the

1 Crimes Act 1961, s 202C — maximum penalty five years' imprisonment.
2 Crimes Act, s 194A — maximum penalty two years' imprisonment.

District Court at Napier on 8 October 2024 to three years and two months' imprisonment.[3]

[2] Mr Wharepapa appeals against that sentence on the grounds that the starting point was too high and insufficient discounts were given for deprivation and disadvantage, resulting in an end sentence that was manifestly excessive.[4] In particular, he says the Judge did not adequately take into account the contribution of his methamphetamine addiction to the offending. He contends that a two-year term of imprisonment with release conditions to address his alcohol and drug dependency would have been more appropriate.

Background

[3] At trial, Mr Wharepapa was found guilty of 11 of the 16 charges he faced and acquitted of five. The offending is summarised below.

[4] Mr Wharepapa was in an intimate relationship with the complainant. He regularly assaulted her, including with weapons, over the period of their 10-month relationship. On one occasion he tied her to a pole and gagged her so that she could not escape, before assaulting her. The complainant went to a Women's Refuge and gave a police evidential video interview, however later retracted her allegations. She continued to deny her initial allegations when giving evidence at trial.

District Court decision

[5] Judge Earwaker referred to the need to consider the purposes and principles of sentencing under the Sentencing Act 2002. He said there was "primarily" a need to hold Mr Wharepapa accountable for the harm done to the complainant.[5] The Judge also noted that there needed to be a "punishment side to the sentencing", in order to denounce Mr Wharepapa's conduct and stop others from committing similar offences.[6]

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3 *R v Wharepapa* [2024] NZDC 24620 [judgment under appeal].
4 The appellant initially sought to bring an appeal against conviction in addition to the sentence appeal, however that has since been abandoned.
5 Judgment under appeal, above n 3, at [8].
6 At [8].

In addition, Mr Wharepapa's remorse and rehabilitative prospects,[7] as well as the seriousness of his offending,[8] were relevant considerations.

[6] The aggravating features of the offending put forward by the Crown included the use of weapons, the scale of the offending, the fact that it had occurred on a regular basis, and that it had taken place in the family home where the complainant was entitled to be safe. It also involved numerous attacks to the head.[9] The Judge noted that the offending involved sustained violence over the 10-month period and "some degradation, particularly towards the end".[10] A global starting point of three and a half years' imprisonment was adopted for the offending.[11]

[7] A discount of six months was applied to reflect the fact that Mr Wharepapa had participated in alcohol and drug rehabilitation programmes while in prison, and was willing to attend further programmes for anger management.[12] An uplift of two months was applied for Mr Wharepapa's previous offending. This led to an overall end sentence of three years and two months' imprisonment.[13]

Approach on appeal

[8] Mr Wharepapa's appeal is brought pursuant to s 244 of the Criminal Procedure Act 2011. This Court must allow the appeal only if it is satisfied that there was an error in the sentence and that a different sentence should be imposed.[14] This assessment involves determining whether the sentence is manifestly excessive.[15] In *Tutakangahau v R*, the Court of Appeal noted that generally an appellate court "will not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles".[16] The focus is on the outcome of the final sentence, rather than "the route by which the judge reached that outcome".[17]

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7 At [9].
8 At [10].
9 At [11].
10 At [15].
11 At [15].
12 At [17].
13 At [20].
14 Criminal Procedure Act 2011, s 250(2).
15 *Kumar v R* [2015] NZCA 460 at [81].
16 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].
17 *Ripia v R* [2011] NZCA 101 at [15].

Further evidence on appeal — the alcohol and drug report

[9] There was no alcohol and drug assessment before the sentencing Judge. Mr Wharepapa seeks to adduce further evidence on appeal, being a comprehensive alcohol and other drug report (the AOD report).[18]

[10] The Court must be satisfied that the evidence is sufficiently fresh (in that it could not with reasonable diligence have been called at sentence), credible, and cogent in the sense that it might reasonably have led to a different outcome.[19]

[11] The AOD report gives an overview of Mr Wharepapa's background. He is now 54 years of age. He grew up in provincial New Zealand and reported that while his family household was "quite rough", the children "were loved and fed". His father was a heavy drinker and cannabis user, and introduced Mr Wharepapa to cannabis at the age of 12. He reported experiencing physical abuse from both his mother and father.

[12] Mr Wharepapa was sent to live at a boys' home from age 12 or 13, where he experienced further abuse, and his substance use increased. He began using methamphetamine in his twenties, which had a "devastating impact on his life and community". Mr Wharepapa gave up methamphetamine and nicotine for 13 years while he was raising his children. He then relapsed into heavy alcohol and methamphetamine use after his relationship ended in 2019. The report notes that Mr Wharepapa has been methamphetamine-free for the past 18 months and intends to maintain that on his release from prison. He is willing to attend a recommended residential treatment programme, and has support from family members including the complainant, whom he regards as his strongest supporter.

[13] The Crown raises no objection to the admission of the report. It notes while not fresh, the report is cogent. We agree. Although the report could possibly have been obtained for the sentencing, we are satisfied that it is credible and cogent given its direct relevance to the issues raised on appeal. Leave is granted for its admission.

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[18] The report is dated April 2025. Its authors are Dr Jarrod Gilbert, Sarah Hall and Dr Virginia Maskill.

[19] *R v Lundy* [2013] UKPC 28, [2014] 2 NZLR 273.

Starting point

[14] Ms Gould, for Mr Wharepapa, submits that the starting point of three and a half years (42 months) was unduly harsh, and a starting point of three years' imprisonment would have been appropriate.

[15] The Crown submits that the overall starting point could have been higher. It notes that a starting point of four to five years' imprisonment was sought at sentencing, to reflect the persistent and at times degrading nature of the family violence offending, and the fact that some of the charges were representative.

Assault with a weapon convictions

[16] In *Hirinui v R*,[20] the Court of Appeal confirmed that the *Nuku v R* methodology applies to the charge of assault with a weapon,[21] noting that it carries the same five-year maximum penalty as injuring with intent to injure.[22] *Nuku* relies on the aggravating features set out in *Taueki* in determining the appropriate sentencing band. The bands are:[23]

> (a) Band one: where there are few aggravating features, the level of violence is relatively low and the sentencing judge considers the offender's culpability to be at a level that might have been better reflected in a less serious charge, a sentence of less than imprisonment can be appropriate.
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> (b) Band two: a starting point of up to three years' imprisonment will be appropriate where three or fewer of the aggravating factors listed at [31] of *Taueki* are present.
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> (c) Band three: a starting point of two years up to the statutory maximum (either five or seven years, depending on the offence) will apply where three or more of the aggravating features set out in *Taueki* are present and the combination of those features is particularly serious. The presence of a high level of or prolonged violence is an aggravating factor of such gravity that it will generally require a starting point within band three, even if there are few other aggravating features.

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20 *Hirinui v R* [2014] NZCA 290 at [26].

21 *Nuku v R* [2012] NZCA 584, [2013] 2 NZLR 39. The Court of Appeal in that case provided guidance on the application of *R v Taueki* [2005] 3 NZLR 372 (CA) which is the tariff case for grievous bodily harm offending, to offending involving injuring with intent.

22 Crimes Act, s 189(2).

23 *Nuku v R*, above n 21, at [38].

[17] The relevant aggravating factors in relation to the assault with a weapon charges are the level of violence, use of weapons, attacks to the head, extent of the injuries, and vulnerability of the victim. These factors are present to varying degrees and overlap to some extent.

[18] Extreme violence is a relevant aggravating factor, particularly where it is prolonged or gratuitous.[24] Ms Gould submits that, without diminishing the violence, it was at a comparatively low level compared to some family violence offending which comes before the court. She noted that although Mr Wharepapa used a hammer to hit the complainant numerous times, this did not result in the serious injury that might be expected from such an assault.

[19] While we accept that the violence in this case was not extreme, it was serious family violence. Degradation and control of the complainant are also a feature. For instance, on one occasion Mr Wharepapa tied the complainant to a pole in the living room, bound her hands, and gagged her. He then poured water on her, directed a fan at her (presumably to chill her) and put a cigarette out on her leg. On another occasion he punched her hard in the genital area. He would also kick the complainant on regular occasions with his steel-capped boots. The complainant estimated that she was the victim of 100 assaults over the 10-month period.[25] Therefore, we view the level of violence as moderately aggravating in the circumstances.

[20] The use of weapons is also a relevant factor.[26] Mr Wharepapa used various weapons to attack the complainant, including a hammer, patu, firework, and cigarette. The hammer was used on a number of occasions.[27] The offending also involved attacks to the head.[28] Early in their relationship, Mr Wharepapa punched the complainant in the head to the point where she became dizzy and was knocked to the ground, injuring her ear.[29]

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24 *R v Taueki*, above n 21, at [31(a)]. See also Sentencing Act 2002, s 9(1)(a) and (e).
25 This estimate was made in the complainant's evidential interview.
26 *R v Taueki*, above n 21, at [31(d)].
27 In her evidential interview the complainant suggests that he would generally aim it at areas of her body to disable, such as her hands, knees, feet, and elbows.
28 *R v Taueki*, above n 21, at [31(e)].
29 In her evidential interview the complainant also suggests that Mr Wharepapa hit her with the hammer more than 20 times, including sometimes on the head.

[21] The injuries were at a lower level, so are not a significant aggravating feature of the offending.[30] Nevertheless, Mr Wharepapa did assault the complainant with a firework, aggravating an existing injury to her ear where she had just had stitches removed. Other injuries included a burn from the cigarette and bruising to her body.

[22] The complainant in this case was vulnerable. This Court confirmed in *Solicitor-General v Hutchinson* that the "family home is a place where an occupant is entitled to feel, and be, safe".[31] A victim in the home cannot realistically lock the door against a co-occupant. They are vulnerable to opportunistic breach of the family unit's social contract of mutual care and nurture by the use of physical violence.[32]

[23] While the complainant did not provide a victim impact statement, she had said in her evidential interview that she feared for her life on occasions.[33] She also referred to Mr Wharepapa taking steps to prevent her from leaving the house to seek help.

[24] Based on the aggravating factors, the Crown suggests that a starting point of three to four years' imprisonment was available. We consider that a starting point at the upper end of band two/the lower end of band three of *Nuku*, and of no less than three years, is appropriate to account for the charges of assault with a weapon.

[25] The Crown also submits that an uplift of at least 12 months would have been appropriate to account for the five convictions for assault on a person in a family relationship. The Crown referred to *Cunningham v R*,[34] in which the appellant was convicted of three charges of male assaults female and two charges of assault with intent to injure.[35] A starting point of two years' imprisonment was taken for the lead charge of assault with intent to injure, which involved strangulation of the complainant with a dog chain, to the point where she could not breathe and became dizzy.[36] A 12-month uplift was applied for three of the charges (assault with intent to injure, and two male assaults female), which involved the complainant being thrown on a concrete

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30 *R v Taueki*, above n 21, at [31(c)].
31 *Solicitor-General v Hutchinson* [2018] NZCA 162, [2018] 3 NZLR 420 at [27].
32 At [27].
33 Judgment under appeal, above n 3, at [12].
34 *Cunningham v R* [2019] NZCA 622.
35 The maximum penalty for male assaults female is two years' imprisonment, which is the same as for the charge of assault on a person in a family relationship: Crimes Act, s 194(b).
36 *Cunningham v R*, above n 34, at [20].

floor, punched in the eye causing a black eye as well as being struck or punched while inside a car.[37] A further uplift of 12 months was applied by the sentencing Judge for a representative charge of male assaults female. This involved the appellant punching the complainant in the head and neck over a six-month period, although the Judge said it was difficult to assess the nature and frequency of the assaults.[38] The uplift on the representative charge was reduced to eight months on appeal.[39]

[26] *Cunningham* has similarities to the present offending. There the offending occurred over a period of several months (six months rather than 10 as in this case), and some of the offending was described as degrading.

[27] Taking into account totality, we consider the global starting point of three years and six months taken by the Judge was well within the available range.

Personal factors

[28] Ms Gould takes no issue with the uplift of two months for Mr Wharepapa's previous offending. Nor does she take issue with the six-month discount applied for Mr Wharepapa's willingness to attend rehabilitative programmes and his initial progress made. However, she contends that a further discount of "eight to ten" months is warranted to account for his abusive background and its link to his present struggles with addiction.

[29] Ms Gould submits that the offending arose out of Mr Wharepapa's addiction to methamphetamine, in the sense that it was the underlying factor which contributed to his violent behaviour. She refers to *Berkland v R*, and submits that Mr Wharepapa's methamphetamine addiction had a "causative contribution" to his violent offending, such that it mitigated his culpability for that offending.[40] She says Mr Wharepapa falls into the category of offenders contemplated in *Berkland* whose offending is underpinned by a significant methamphetamine addiction and who have reached a point in their lives where they are genuinely willing to undertake rehabilitative

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37 At [22].
38 At [5].
39 At [28].
40 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109].

treatment.[41] Ms Gould also says that the Judge should have called for an alcohol and drug assessment, given the reference to it in the pre-sentence report. In addition, she points to the belated recognition of the state for its own role for abuse in state care. She says some degree of punishment is warranted, but that Mr Wharepapa also deserves significant mitigatory discounts for his disadvantaged background and his need for support in addressing his addiction issues.

[30] In addition, Ms Gould points to the need to focus on rehabilitation and the limited effect of deterrence in sentencing, particularly for those struggling with drug addiction, whose decisions are unlikely to be arrived at rationally. Ms Gould suggests that s 8(g) of the Sentencing Act, which requires the court to impose the least restrictive outcome that is appropriate in the circumstances, and s 8(i), which requires the court to take into account the offenders' personal background factors, were not given adequate weight at sentencing. She submits that the Judge erred in referring to the purposes and principles of the Sentencing Act as "primarily" to hold the offender accountable for harm done to the complainant.[42] Further, she says the purposes of sentencing under s 7, including to hold the offender accountable, are expressed as guidelines which the court "may" take into account, unlike the mandatory s 8 factors.

[31] As the Supreme Court noted, background factors such as addiction and deprivation can lead to discounts in sentencing where those factors have contributed causatively to the offending.[43] Providing material sentencing discounts is one way of encouraging offenders who have shown willingness to take up rehabilitative programmes to make the necessary changes in their lives.[44]

[32] At the same time, the Supreme Court also observed that the principles and factors in ss 8 and 9 of the Sentencing Act can pull in different directions.[45] The causative contribution of an offender's background may be displaced, in whole or in part, where the offending is particularly serious.[46]

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41 At [161].
42 Judgment under appeal, above n 3, at [8].
43 *Berkland v R*, above n 40, at [109].
44 At [161].
45 At [21].
46 At [111].

[33] This is a serious case of family violence. While, as Ms Gould points out, it is not in the worst category, the offending occurred over a long period of time and included regular assaults involving weapons. The later incidents of detention and assaults suggest escalation. Mr Wharepapa has an extensive history of offending, dating back to 1988. Many of his previous offences are not relevant to the present offending, including a number of property, cannabis, and driving offences. However, Mr Wharepapa's history does include some violent offending and, more recently, convictions for family violence.

[34] We bear in mind the concerns repeatedly expressed by this Court in relation to family violence.[47] It has been described as "one of the scourges of New Zealand society".[48] This Court in *Everett v R* referred to research noting that intimate partner violence is "the leading cause of female homicide death in New Zealand and the most common type of violence that New Zealand women experience".[49] That case involved manslaughter, but the Court commented on the "simple fortuity" which often lies between whether an act of violence results in a charge of wounding/injuring or manslaughter.[50] The same point can be made in relation to charges of assault with a weapon.

[35] The Judge cannot be criticised for referring to the purpose of sentencing which he considered most relevant in the circumstances, being accountability.[51] The Judge went on to note that the sentence also needed to denounce Mr Wharepapa's conduct and deter others from committing such offending. Given the prevalence of intimate partner violence offending by Mr Wharepapa and more generally, both are material considerations. His Honour explicitly recognised that he was required to impose the least restrictive outcome in the circumstances.[52]

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47 See, for instance, *Kengike v R* [2008] NZCA 32 at [23].

48 *Solicitor-General v Hutchinson,* above n 31, at [27].

49 *Everett v R* [2019] NZCA 68 at [17]. This cites the research of the Prime Minister's Chief Science Adviser.

50 At [20]. We note the Court there was expressing its concern in relation to sentencing for wounding or injuring with intent to cause grievous bodily harm on the one hand and manslaughter on the other hand.

51 See Mathew Downs (ed) *Adams on Criminal Law – Sentencing* (online looseleaf ed, Thomson Reuters) at [SA7], which notes that s 7 of the Sentencing Act "codifies the traditional purposes of sentencing and leaves Judges with the flexibility to determine which of those purposes should dictate the choice of sentence in the particular case".

52 Judgment under appeal, above n 3, at [10].

[36] In relation to s 8(i) (personal circumstances), while the AOD report expands on Mr Wharepapa's upbringing and addiction, it does not provide any additional basis for discounts over and above the factors relied upon at sentencing. The Judge had before him information regarding Mr Wharepapa's time spent in a boys' home as a child, his "lengthy history of substance abuse issues", and his early exposure to drugs and alcohol, which was part of the gang lifestyle surrounding him. The Judge acknowledged that Mr Wharepapa had "a troubled life".[53] Despite the fact there was no clear evidence before the Judge that Mr Wharepapa was affected by methamphetamine at the time of the offending, it was accepted that he was taking the drug during the period in which the offending occurred.

[37] The Judge recognised the impact of addiction contributing to Mr Wharepapa's offending, and the steps that he was taking to address that by attending rehabilitative programmes, in the six-month discount applied. He noted that one of "the key factors" behind the offending was Mr Wharepapa's alcohol and drug use,[54] but ultimately decided not to make further reductions to the sentence on that basis. This approach was one that was open to the Judge to take.

[38] The Judge was required to make an evaluation "based on a broad assessment of the seriousness of the harm, the culpability of the offender, the interests of the victim and the offender's personal circumstances or background".[55] The Judge did this and made no error. The end sentence is not manifestly excessive.

Result

[39] The application to adduce further evidence is granted.

[40] The appeal is dismissed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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53 At [9].
54 At [16].
55 *Berkland v R*, above at n 40, at [21].