IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA549/2024
[2025] NZCA 193

BETWEEN	AREN THOMAS CURTIS Appellant
AND	THE KING Respondent

Hearing: 26 March 2025

Court: Woolford, Muir and Isac JJ

Counsel: W T Nabney for Appellant
J G Fenton for Respondent

Judgment: 28 May 2025 at 11 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Muir J)

Introduction

[1] Mr Aren Curtis appeals a sentence of five years and eight months' imprisonment imposed by the District Court in respect of 15 charges, namely, six burglaries, discharging a firearm with reckless disregard, two thefts, two instances of receiving, unlawfully getting into a motor vehicle, possession of LSD, attempting to dishonestly use a document and attempting to pervert the course of justice.[1] The

1 *R v Curtis* [2024] NZDC 17361 [sentencing notes].

sentence was imposed concurrently on all six burglary charges with Judge L M Bidois adopting a starting point of five years for the dishonesty offending, uplifted by two years and six months for the firearm offending and nine months for attempting to pervert the course of justice.[2] The sentence was also uplifted by three months for Mr Curtis's previous convictions and a further three months for the fact some of the offending was committed while absconding.[3] The sentence was then reduced by 20 per cent for his guilty plea, 10 per cent on account of background factors and seven per cent for remorse.[4]

[2] Mr Curtis submits that the starting point for the dishonesty offending was too high and should have been no more than four years, the uplift for the firearm offending was excessive and should have been two years only and that he should have received a 20 per cent discount for his background circumstances.

The offending

[3] Between August and September 2020, Mr Curtis carried out a spree of burglaries, targeting industrial areas late at night and destroying or stealing CCTV cameras and footage to avoid detection. He used stolen vehicles, on occasion with licence plates he had swapped out in order to further minimise his chances of detection.

[4] He pleaded guilty to all resulting charges and was released on bail. In March 2021 he absconded from the bail address and carried out a further spree of offending including, receiving stolen cheques, unlawfully getting into a stolen Audi motor vehicle worth $120,000 and burglary of a residential address (where the complainant was growing marijuana plants due to a medical condition and a confrontation ensued). Two or three days later he was involved in a police chase in the stolen vehicle. When eventually the vehicle was stopped the appellant fled into neighbouring properties. He was followed by a police officer through several addresses until the appellant raised a pistol and discharged it at the officer. Fearing he would be killed the officer ran from the area in a zigzag formation. Police found

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2 At [20] and [23]–[24].
3 At [25].
4 At [26]–[28].

34 tabs of LSD, 0.1 grams of methamphetamine and a glass pipe in the appellant's belt bag left at the scene.

[5] He was finally arrested on 23 March 2021 after he attempted to flee from a Hamilton address. While on remand at Spring Hill Correctional Facility he wrote a series of letters to his ex-girlfriend, who was to be a witness at his trial, attempting to convince her to lie in her evidence.

The starting point

[6] In setting the starting point at five years, the Judge referenced this Court's decision in *Sullivan v R* in which a six year starting point for a similar spree of dishonesty offending, involving seven burglaries and over $240,000 of property, was upheld.[5] The Judge acknowledged that *Sullivan* was a more serious case having regard to the scale of the loss and sought to make allowance for this by reducing the starting point to five years.[6] Mr Nabney, for Mr Curtis, says that by reference to decisions like *Arahanga v R*, *Lynn v R*, *Lawson v R* and *Burton v R* the starting point nevertheless remained too high.[7] He says that the burglaries in this case largely involved unoccupied commercial premises where there was reduced risk of confrontation.

[7] Stating the obvious, the range of circumstances in which a burglary can be committed are varied. Each case must be assessed in respect of relevant aggravating factors including the extent of the offending, premeditation, the presence of other offenders and the scale of loss. Both *Burton* and *Arahanga* involved considerably fewer burglaries, two as opposed to six in the present case. In addition, Mr Curtis's offending involved a high degree of premeditation and detection avoidance including using stolen vehicles, substituting licence plates and targeting security cameras. There is the added feature that, one of the burglaries was of a dwelling house where actual

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5 *Sullivan v R* [2016] NZCA 100. The sentencing notes (at [9] and [20]) reference the decision in "*Sinclair*" and "*O'Sullivan*" but the context indicates that the correct reference was *Sullivan*. In *Sullivan*, while much of the property was recovered, direct losses still exceeded over $50,000: see at [3].

6 Sentencing notes, above n 1, at [20]. In the present case the total value of the property stolen is uncertain but included a vehicle worth $30,000, workshop tools and CCTV hard drive.

7 *Arahanga v R* [2012] NZCA 480, [2013] 1 NZLR 189: starting point of four years upheld on appeal; *Lynn v R* [2020] NZCA 616: starting point of four years not challenged on appeal; *Lawson v R* [2013] NZCA 369: starting point of four and a half years identified as appropriate; and *Burton v R* [2018] NZCA 355: starting point of four years not challenged on appeal.

confrontation resulted. This burglary was conducted with an associate giving rise to the heighted risk of violence recognized in *Arahanga* and ended with the appellant telling the complainant that he was a member of the Head Hunters, presumably to discourage reporting.[8]

[8] Ultimately, this Court's task is to identify whether there was an error in the starting point adopted and if so, whether a different sentence should be imposed.[9] We consider the available range to have been between four and a half to five years. The Judge's starting point was firm but available.

Uplifts

[9] In addition to the two years and six months uplift for the reckless discharge, the Judge also uplifted the sentence by nine months for the attempted perversion of the course of justice and six months on account of previous convictions and offending while an absconder.[10] Only the uplift for the reckless discharge is challenged.

[10] Prior to the sentencing it was anticipated that there would need to be a disputed facts hearing as the appellant contended that the relevant firearm was a starter pistol incapable of causing any injury to the police officer. Reluctantly, the Crown accepted that it was unable to disprove that proposition and the sentencing therefore proceeded on this premise.[11]

[11] Mr Nabney submits that the uplift did not properly take this fact into account, nor the fact that no physical harm was caused and the charge involved a reckless disregard and not an intent to injure.

[12] At sentencing the Crown contended for an uplift of four years and nine months reduced to three years on account of totality for the firearms offending.[12] It did so by reference to two decisions: *Gathergood v R* and *R v Wells*.[13] The former involved

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8 *Arahanga v R*, above n 7, at [79].
9 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [28]–[36].
10 Sentencing notes, above n 1, at [23]–[25].
11 At [21]–[22].
12 At [12].
13 *Gathergood v R* [2010] NZCA 350; and *R v Wells* HC Auckland CRI-2003-092-026964, 30 April 2004.

discharge of a shotgun from a vehicle which was driving away from the complainants at the time, resulting in $2,500 of damage in the complainants' vehicle but no physical injury. The appellant was the driver and not the person who discharged the gun. He was charged as a party to the offending but on that basis, it was accepted in the amended statement of facts that "he took no deliberate steps to facilitate or encourage the discharge of the shotgun".[14] This Court concluded that a starting point of three years was appropriate as opposed to the three years and nine months identified by the District Court.[15] We consider the decision of limited relevance given the secondary role of the offender.

[13] *R v Wells* involved the discharge of a .22 calibre sawn-off rifle from the driver's window in the direction of a police vehicle which was in pursuit. At least three shots were fired. Harrison J considered a starting point of "at least six years" was appropriate referring to the "enormous" effect of the incident on the sole constable in the police vehicle and his family.[16] We acknowledge this as involving more serious offending than that of Mr Curtis. The gun was operational and of a calibre that could cause serious injury or death and multiple shots were fired.

[14] We do not consider that the two years and six month uplift adopted in this case was excessive, even allowing for totality. As the High Court observed in *Whiu v New Zealand Police* victims do not know whether, when a gun is discharged, live ammunition is involved and there is a significant risk of indirect endangerment or injury as a result of evasive action.[17] Moreover, Mr Curtis's submission fails to have regard to the significant psychological harm that can be caused to complainants in such circumstances. The officer's victim impact statement was compelling in this respect. The incident had severe psychological consequences for both himself, and his family. The seasoned officer with 17 years' experience in the police force described it as a "terrifying ordeal" which had him questioning his continued employment.

[15] We are not therefore persuaded by this ground of appeal.

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14 *Gathergood v R*, above n 13, at [14].
15 At [28].
16 *R v Wells*, above n 13, at [11]–[12].
17 *Whiu v New Zealand Police* [2024] NZHC 208, [2024] NZAR 45 at [37]–[45].

Discount for background circumstances

[16] The Court had available a s 27 report prepared for previous, but reasonably proximate, offending. We are left in no doubt that Mr Curtis's upbringing was dysfunctional with the all too familiar characteristics of parental neglect, sexual abuse, transient lifestyle, involvement with state agencies and exposure to drugs and alcohol from an early age.

[17] As the Supreme Court recently observed in *Berkland v R* where an offender's background makes a causative contribution to offending, that will be sufficient to merit some discount at sentencing, albeit that there is greater scope where the background is operative or proximate in the sense that there is a direct nexus between background and offending.[18] Even at the lower standard of causative contribution, there will also be a point at which background factors can no longer assist in explaining the offending. In addition, they will be considered most meaningful where the potential sentence is at the margin between imprisonment and a community based sentence.[19] Such was never the case in respect of Mr Curtis's offending.

[18] The Court also noted that:

> [94] The relevance of an offender's background does not in any way reduce the importance of acknowledging, through sentences, the harm caused by an offender, and particularly the harm to victims. … There are other sentencing purposes and principles such as deterrence, denunciation and community protection. Where offending is particularly serious these principles will usually be more powerfully engaged. …

[19] Although we consider a slightly higher discount (in the order of 15 per cent) would have been unobjectionable, our ultimate focus is on whether the final sentencing outcome was manifestly excessive rather than the particular route by which the Judge reached that outcome.[20] In that context, we agree with the Judge that in light of the appellant's very lengthy criminal history, including 12 previous burglary convictions and three convictions for being in an enclosed yard as well as a number of firearm charges and charges for resisting or obstructing police, the uplift on the

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18 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [16(c)].
19 At [110]–[112].
20 *Tutakangahau v R*, above n 9, at [36]; and *Repia v R* [2011] NZCA 101 at [15].

account of previous convictions was benign. Likewise, the three month uplift for having committed the second tranche of offending having absconded from bail and the seven per cent discount for remorse.

[20] The end sentence was not, in that context, manifestly excessive.

Result

[21] The appeal is dismissed.

Solicitors:
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