IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA436/2024
[2025] NZCA 51

BETWEEN	DAVID JOHN RAWIRI BODY Appellant
AND	THE KING Respondent

Hearing: 24 February 2025

Court: French P, Campbell and Peters JJ

Counsel: G A Walsh for Appellant
J A A Mara for Respondent

Judgment: 12 March 2025 at 11.00 am

JUDGMENT OF THE COURT

The appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by Campbell J)

[1] Mr Body pleaded guilty to eight charges relating to a high-speed police car chase: breach of parole conditions, aggravated assault, failing to stop for red and blue flashing lights, dangerous driving (x2), unlawful possession of a firearm, presenting a prohibited firearm at a person, and robbery. He was found guilty at trial of two further charges: dangerous driving and conspiring to pervert the course of justice.

[2] On 21 June 2024, Judge Snell sentenced Mr Body to seven years and 11 months' imprisonment and disqualified him from driving for two years from the

time of his release from prison.[1] Mr Body appeals against the sentence of imprisonment. He says that sentence was manifestly excessive and should instead have been five years and four months' imprisonment.

The offending

[3] At the time of the offending, Mr Body was on parole. His parole conditions included that he wear an electronic monitoring ankle bracelet. Shortly before the offending, he cut off his bracelet.

[4] On 27 October 2021, Mr Body was driving a car between Te Kūiti and Taumarunui. He had two female passengers with him. He drove the car dangerously at speeds of up to 160 kilometres per hour.

[5] The next day, Mr Body was driving a stolen car towards Taupō. One of the women who had accompanied Mr Body the previous day was a passenger in the car. Police saw the car and signalled Mr Body to stop by activating their red and blue flashing lights. Mr Body pulled over and stopped. When police pulled in behind him, Mr Body reversed into the front of the police car and then drove off at high speed. Police initially gave chase but abandoned their pursuit because of Mr Body's extremely dangerous driving. Meanwhile, an officer up ahead had laid tyre spikes. Mr Body's car struck the spikes, causing the front two tyres to deflate and eventually disintegrate. Mr Body continued to drive on the tyre rims and on the wrong side of the road into oncoming traffic.

[6] As Mr Body headed directly towards an oncoming car, both cars came to a stop. Mr Body then got out of his car with a pump-action shotgun. He raised the shotgun and pointed it at the elderly occupants of the other car as he walked directly toward them. They ducked. The driver then accelerated heavily and managed to drive away.

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1 *R v Body* [2024] NZDC 14477 [judgment under appeal].

[7] While that was happening, the female passenger ran away from Mr Body's car and toward bushes on the side of the road. However, Mr Body noticed she was fleeing and, holding the shotgun, ordered her back into the car. She complied.

[8] Mr Body drove the car a short distance before exiting (leaving the shotgun behind) and approaching another car which had come to a stop. The occupants were another elderly couple. When he reached their car, Mr Body opened the driver's door, sat on top of the female driver and began to drive the car. The driver struggled to breathe with Mr Body on her. Mr Body drove the car at speed, causing other police officers to take evasive action to avoid a collision. When the couple attempted to stop the car, Mr Body threatened to kill them by driving into an oncoming logging truck.

[9] Mr Body eventually stopped the car and let the couple out. However, he did so only very briefly and drove off as one of them was still exiting the car. This resulted in her injuring her foot.

[10] Mr Body drove a further 25 kilometres or so until he reached a dead end down a forestry road. He abandoned the car and ran into the forest, where he was eventually located by the Armed Offenders Squad.

[11] On 7 and 9 April 2022, while he was in custody awaiting trial, Mr Body made a total of three phone calls to two associates outside the prison seeking that they intervene on his behalf in relation to a complainant in the trial.

District Court sentencing

[12] The Judge identified starting points for each set of charges before adjusting for totality.[2]

[13] It was agreed that robbery was the lead offence. The Judge considered it an "extremely serious robbery involving violence, threats to kill, significant vulnerability,

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2 At [59]–[65].

psychological and physical injuries".[3] He settled on a starting point of four years' imprisonment.

[14] The Judge next considered the presentation of firearm offence. Mr Body had brandished a shotgun while approaching another car, obviously wanting to steal it. In the Judge's view, this justified a starting point of between two and a half and three years.[4] The unlawful possession of a firearm offence occurred during other criminal offending and therefore warranted a starting point of two and half years' imprisonment.[5]

[15] The Judge dealt with the three dangerous driving offences together with the aggravated assault (Mr Body reversing into the police car). The Judge considered that the degree of endangerment and the extreme nature of the offending warranted a starting point of between 16 to 20 months on a standalone basis.[6]

[16] As for conspiring to pervert the course of justice, the Judge considered that a firm response was required and that a standalone sentence of two to two and a half years' imprisonment could be imposed.[7]

[17] The sum of these starting points gave a range of 13 to 14 and a half years' imprisonment. After considering totality, the Judge settled on an overall starting point of eight years' imprisonment. This was composed of four years for the lead charge of robbery, a two-year uplift for the two firearm offences, a six-month uplift for the three driving-related offences, the aggravated assault and the breach of parole conditions, and an 18-month uplift for conspiring to pervert the course of justice.[8]

[18] As regards personal aggravating factors, the Judge imposed an uplift of 12 months for Mr Body's "appalling" criminal history and for offending while on parole and after having cut off his bracelet.[9]

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3 At [58].
4 At [59].
5 At [61]–[62].
6 At [63].
7 At [64]–[65].
8 At [66]–[72].
9 At [73]–[74].

[19] The Judge allowed Mr Body 10 per cent credit for his guilty pleas.[10] That credit was applied to the starting point of six and a half years for the offences to which Mr Body had pleaded guilty. The credit was thus eight months.

[20] The Judge also reduced the starting point for Mr Body's personal circumstances. These were set out in a report prepared under s 27 of the Sentencing Act 2002. The Judge said there were cultural factors that led Mr Body to becoming involved in the Mongrel Mob (of which Mr Body was a patched member and had formerly held the office of sergeant of arms).[11] The Judge considered, however, that given how regularly Mr Body had offended and how many opportunities he had been given to turn his life around, the reduction should be five per cent of the starting point.[12] This reduction amounted to five months.

[21] This meant that Mr Body's end sentence was seven years and 11 months' imprisonment.[13]

Mr Body's appeal

[22] Mr Body says his end sentence is manifestly excessive because the individual starting points were too high, there was insufficient adjustment for totality, the uplift for personal aggravating factors was excessive, and there should have been greater adjustment for personal mitigating factors.

Approach on appeal

[23] We must allow Mr Body's appeal only if satisfied there is an error in the sentence and a different sentence should be imposed.[14] For the appeal to succeed the sentence generally must be shown to be manifestly excessive or wrong in principle.[15] The Court will not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles. Whether a sentence is manifestly

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10 At [78].
11 At [82].
12 At [82]–[83].
13 At [90].
14 Criminal Procedure Act 2011, s 250(2).
15 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [26]–[27] and [31]–[35].

excessive generally depends on the end sentence imposed, rather than the process by which it was reached.[16]

Is the sentence manifestly excessive?

Starting points and totality

[24] Mr Walsh, on behalf of Mr Body, submitted that the appropriate starting points for the various offences (or sets of offences) were, on a standalone basis:

(a) robbery: four years;

(b) presenting a firearm and unlawful possession of a firearm: 18 months;

(c) dangerous driving, aggravated assault and breach of parole conditions: 18 months; and

(d) conspiracy to pervert the course of justice: 18 months.

[25] Mr Walsh's proposed starting points totalled eight and a half years. He submitted that an adjustment for totality would then be required. He said an overall starting point of six years' imprisonment would reflect Mr Body's culpability.

[26] When sentencing for multiple offences, this Court will not insist on the end sentence being reached in any particular way. The "central principle" — endorsed by ss 84 and 85 of the Sentencing Act — is that the total sentence must represent the overall criminality of the offending and the offender.[17]

[27] We are satisfied that the Judge's overall starting point appropriately represented the overall criminality of Mr Body's offending. We explain why by addressing the starting point for the lead offence of robbery and then the uplifts for the other offending.

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16 At [36].
17 *R v Xie* [2007] 2 NZLR 240 (CA) at [17]–[18].

[28] The Judge was justified in adopting four years' imprisonment as the starting point for the robbery (and this was not challenged by Mr Walsh). As the Judge explained, the robbery had several aggravating features.[18] We particularly note the vulnerability of the victims, the impact of the offending on them (both physical and psychological), and the extent of Mr Body's violence and threats.

[29] The unlawful possession of a pump-action shotgun would, on a standalone basis, have called for a starting point of two to three years' imprisonment.[19] By itself, it justified a 12-month uplift. Presentation of a firearm is a more serious offence than unlawful possession. Further, Mr Body presented the firearm because he wanted to steal the car. Overall, an uplift of two years' imprisonment was easily justified for the two firearms offences.

[30] The Judge applied an uplift of only six months for the three dangerous driving offences, the aggravated assault and the breach of parole conditions. This can only be described as restrained.

[31] Finally, there was the conspiracy to pervert the course of justice. This Court has said that such offending warrants a strong response and that "any attempt to disturb the process of administration of justice is to be deplored" and will usually be met with a moderately lengthy term of imprisonment.[20] Here, Mr Body conspired with two individuals that they intervene on his behalf in relation to a complainant in his trial. This was very serious offending of its type and could have attracted a higher standalone starting point than the two to two and a half years indicated by the Judge. An uplift of 18 months was justified.

[32] Standing back, we are satisfied that an overall starting point of eight years' imprisonment appropriately represented the overall criminality of Mr Body's offending. Mr Walsh submitted that this was an excessive starting point for a series of offences that essentially consisted of a single but drawn-out attempt by Mr Body to escape from police.[21] We do not accept that characterisation. This was not merely a

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18 Judgment under appeal, above n 1, at [56].
19 See *Campbell v R* [2022] NZCA 579 at [18].
20 *M (CA469/2013) v R* [2013] NZCA 385 at [9].
21 Mr Walsh acknowledged that three of the offences were separate from any attempt to evade police:

failure to stop followed by dangerous driving in the course of fleeing police. Mr Body also assaulted police constables when they attempted to stop him, drove a car on its rims into oncoming traffic, presented a pump-action shotgun at a couple with a view to stealing their car, robbed another couple of their car and drove dangerously while threatening their lives. This combination of serious offending itself justified a lengthy starting point. The starting point also had to take into account Mr Body conspiring with two others to pervert the course of justice.

Uplift for personal aggravating factors

[33] Mr Body has an extensive criminal history. Many of his approximately 100 previous convictions are for offences similar to those for which he was sentenced: serious driving offences, escapes from custody, refusals to stop and violent offending. The offending for which Mr Body was sentenced occurred while he was on parole (or in the case of the conspiracy to pervert the course of justice offending, while in custody awaiting trial).

[34] Relevant prior convictions and offending on parole are aggravating factors under s 9(1)(c) and (j) of the Sentencing Act. We do not accept Mr Walsh's submission that the Judge's uplift of 12 months (12.5 per cent of the overall starting point) for these factors was excessive. While a 12-month uplift was at the upper end of the permissible range, this Court has upheld uplifts of over 20 per cent for this combination of aggravating factors, including in cases involving previous convictions far less extensive than those with which Mr Body presents.[22]

Adjustment for personal mitigating factors

[35] Mr Walsh submitted a discount of 15 per cent ought to have been given for the matters raised in the s 27 report. The report described Mr Body having a deprived childhood. Mr Body said that his parents abused alcohol and drugs, that he regularly witnessed his father beating his mother, and that his parents separated when he was six. He said he then went to live with his father, who taught him to grow cannabis

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the breach of parole conditions, the first dangerous driving offence, and the conspiracy to pervert the course of justice.

22 See *Vernon v R* [2010] NZCA 308; and *Waterworth v R* [2012] NZCA 58.

(which was his father's source of income). Mr Body starting using drugs when he was nine years old. His father had a stroke when Mr Body was 11 years old, after which Mr Body turned to crime to survive. He has been involved in the criminal justice system for much of his life since adolescence.

[36] We agree, as did the Judge, that these background factors help explain Mr Body's offending. Some adjustment to the starting point was therefore warranted. But we consider the Judge was right to limit the adjustment to five per cent. First, the factors can only be regarded as having made a causative contribution to the offending (rather than being a proximate or operative cause). Secondly, Mr Body's offending was very serious, engaging sentencing principles such as denunciation, deterrence and community protection. In such cases, as the Supreme Court said in *Berkland v R*, the adjustment for personal background factors will be limited.[23]

Result

[37] The appeal against sentence is dismissed.

Solicitors:
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[23] *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [94] and [111].