IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA276/2023
[2025] NZCA 604

	BETWEEN	CORNELIS CHRISTIAAN TIMMERMAN Appellant
	AND	THE KING Respondent

Hearing:	24 July 2025
Court:	Collins, Jagose and Gault JJ
Counsel:	J E L Carruthers for Appellant B J Thompson and B So for Respondent T Epati KC and J L Butcher as counsel to assist the Court
Judgment:	18 November 2025 at 9.30 am

JUDGMENT OF THE COURT

A Leave to appeal out of time is granted.

B The appeal is dismissed.

REASONS OF THE COURT

(Given by Gault J)

Introduction

[1] Mr Timmerman seeks to appeal his convictions out of time, having pleaded guilty in December 2021 to the following charges in the High Court after a sentence indication:

(a) two charges of unlawful possession of a prohibited firearm;[1]

(b) four charges of unlawful possession of a prohibited magazine;[2]

(c) two charges of unlawful possession of explosives;[3] and

(d) one charge of trespass.[4]

[2] Mr Timmerman says that, following demanding stints in custody and on electronically monitored (EM) bail, the indefinite adjournment of his trial,[5] and the dismissal of numerous of the charges he faced,[6] he accepted a sentence indication on what remained,[7] not because he accepted his guilt but to put an end to the proceedings, which had taken a serious toll on his physical and mental health.

[3] Further, he says that the Crown's inability to prove its case against his co-defendant, Mr Simonsen, suggests there is substance to his defence.

[4] In part, Mr Timmerman alleged trial counsel error. We heard oral evidence from Mr Timmerman and his trial counsel, Mr Gurnick.[8]

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1 Arms Act 1983, s 50A and Crimes Act 1961, s 66(1). Maximum penalty five years' imprisonment.
2 Arms Act, s 50B and Crimes Act, s 66(1). Maximum penalty two years' imprisonment.
3 Arms Act, s 45(1) and Crimes Act, s 66(1). Maximum penalty four years' imprisonment.
4 Trespass Act 1980, ss 3(1) and 11(2)(a). Maximum penalty three months' imprisonment or a fine not exceeding $1,000.
5 *R v Timmerman* HC Auckland CRI-2020-063-917, 4 November 2021 (Minute of Lang J).
6 *Timmerman v R* HC Auckland CRI-2020-063-917, 11 November 2021 (Minute of Lang J); and *Timmerman v R* [2021] NZHC 3063.
7 *R v Timmerman* [2021] NZHC 3287 [sentence indication].
8 We also received an affidavit from Mr Timmerman's co-defendant, Mr Simonsen.

Background

[5] The offending Mr Timmerman pleaded guilty to in December 2021 was conveniently set out in Lang J's sentencing notes:[9]

> [4] … on 10 March 2020 [Mr Timmerman] went to Rotorua Police Station and asked to speak to a police officer who was either not there or was unavailable. When [Mr Timmerman was] told [he was] not able to speak to the police officer, [he] became angry and began to act in a disorderly manner. The police asked [him] to leave the police station on several occasions. When [he] refused to do so [he was] arrested and charged with trespass. [He] began resisting arrest and [he was] charged with that as well. [He was] then held in custody at the police station until [his] first appearance in Court the following day.
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> [5] Overnight the police obtained a search warrant in relation to a campervan [he] had left parked outside the police station. When they searched the campervan, they found a prohibited AR15 semi-automatic rifle, a prohibited 30 round magazine and four live .223 calibre rounds of ammunition. Two days later, the police obtained a further search warrant to search an address where [he] had been living in a caravan. In a shipping container at the address they found another AR15 semi-automatic rifle. They also found three prohibited firearm magazines and a substantial quantity of .223 and .22 calibre ammunition.
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> [6] It is now common ground that both automatic rifles belonged to an associate of [Mr Timmerman's], a Mr Simonsen. The exact circumstances in which [he] came into possession of the firearms is unclear, but the Crown accepts they did not belong to [him] at the time they were found in [his] campervan and in the shipping container.
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> [7] The firearm that was found in [his] campervan had originally been given to [his] partner by [Mr B] the owner of the address where [he was] parking [his] caravan. That person is a firearms dealer. He gave [Mr Timmerman's] partner the firearm in September 2017 and in exchange for repair work [Mr Timmerman] had carried out on one of [Mr B's] motor vehicles. He also subsequently gave [Mr Timmerman] and [his] partner lessons, or instructions, as to how to use the firearm. [Mr Timmerman's] partner no longer wanted to keep the firearm once the Government announced its intention to pass legislation making semi-automatic firearms illegal following the Christchurch terror attacks in March 2019. On 26 March 2019 she gave the firearm to Mr Simonsen. The circumstances in which it came to be in [Mr Timmerman's] campervan on 11 March 2020 are unclear.

Extension of time

[6] The notice of appeal was filed on 23 May 2023, 14 months out of time.[10]

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9 *R v Timmerman* [2022] NZHC 226 [sentencing notes].

10 Mr Timmerman was sentenced on 18 February 2022 to nine months' supervision: see at [27].

[7] The Crown opposes an extension of time, submitting that trial counsel's evidence does not appear consistent with Mr Timmerman's claim that he was unable to exercise his appeal rights in a timely way due to health issues. Instead, the Crown submits, it appears the real reason for the appeal being filed when it was, is the information that came to light during the trial of Mr Simonsen which commenced on 1 May 2023 and was adjourned part-heard on 5 May 2023. The charges against Mr Simonsen, except that relating to the AR-15 semi-automatic rifle found in Mr Timmerman's campervan, were dismissed on 21 August 2023 under s 147 of the Criminal Procedure Act 2011, and Mr Simonsen was found not guilty on that remaining charge on 13 March 2024.[11]

[8] While the Crown acknowledges it has suffered no particular prejudice due to the late filing of the appeal, it opposes an extension on the ground that it does not consider the grounds of appeal are meritorious.

[9] Although we have reservations about Mr Timmerman's reliance on his health issues to explain his delay, given the relevance of those health issues and the evidence emerging at Mr Simonsen's trial to the merits of the appeal, the application for an extension of time is granted.

Approach on appeal

Appeals following guilty pleas

[10] The applicable principles are not in dispute. The test in an appeal following a guilty plea was set out by the Supreme Court in *Re Solicitor-General's Reference (No 1 of 2023)*:[12]

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11 *R v Simonsen* [2024] NZDC 5766 at [70]. His matter had been transferred back to the District Court.

12 *Re Solicitor-General's Reference (No 1 of 2023)* [2023] NZSC 151, [2023] 1 NZLR 457 (footnotes in original).

The test is whether there has been a miscarriage of justice

[39] It is important to reiterate at the outset that the overriding test in an appeal following a guilty plea is whether a miscarriage of justice will result if the conviction is not overturned.[13] A miscarriage of justice is defined as:[14]

> (4) … any error, irregularity, or occurrence in or in relation to or affecting the trial that—
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> (a) has created a real risk that the outcome of the trial was affected; or
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> (b) has resulted in an unfair trial or a trial that was a nullity.

[40] A "trial" is defined as including "a proceeding in which the appellant pleaded guilty".[15] The Act accordingly contemplates the possibility of a miscarriage despite a guilty plea.[16] In considering the application of the miscarriage test, the Court of Appeal in *Le Page* said there were "at least" three broad situations in which a miscarriage of justice would be indicated. Those were where:[17]

> (a) the appellant did not appreciate the nature of, or did not intend to plead guilty to, a particular charge;
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> (b) on the admitted facts, the appellant could not in law have been convicted of the offence charged; or
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> (c) the guilty plea was induced by a ruling which contained a wrong decision on a question of law.

[41] Subsequently, in *Merrilees v R* a further category was added, namely:[18]

> … where trial counsel errs in his or her advice to an accused as to the non-availability of certain defences, or outcomes, or if counsel acts so as to wrongly, and perhaps negligently, induce a decision on the part of a client to plead guilty under the mistaken belief or assumption that no tenable defence existed or could be advanced.

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13 Criminal Procedure Act 2011, ss 229 and 232. Whether a miscarriage of justice has resulted is also the ultimate issue on appeal after a guilty plea in Australia. See, for example, *Layt v R* [2020] NSWCCA 231 at [24]–[28] for a summary of the principles; and *R v Kardogeros* [1991] 1 VR 269 (VSCA).

14 Section 232.

15 Section 232(5).

16 Matthew Downs (ed) *Adams on Criminal Law — Procedure* (online looseleaf ed, Thomson Reuters) [*Adams on Criminal Law*] at [CPA232.14].

17 *R v Le Page* [2005] 2 NZLR 845 (CA) at [17]–[19]. See, by way of an example of a similar approach, that of the Court of Criminal Appeal of Western Australia in *Borsa v R* [2003] WASCA 254 at [20].

18 *Merrilees v R* [2009] NZCA 59 at [34].

[42] Finally, in *Wilson v R*, this Court accepted that the summary in *Le Page* is "incomplete".[19] The Court continued, stating that this was because:[20]

> … it does not recognise the possibility that a conviction following a guilty plea may be quashed on appeal (and no retrial ordered) where there is an abuse of process of a type that would justify the granting of a stay in order to preserve the integrity of the justice system. In principle, where an abuse of process by the police or prosecuting authorities is sufficiently significant to justify the granting of a stay, the fact that a defendant has entered a guilty plea should not prevent him or her from appealing against conviction in reliance on the abuse of process. The entry of the stay in this type of case indicates that the prosecution should not have gone to trial for reasons based on the public interest. The fact that a conviction results from a guilty plea rather than a trial should not change the position, at least in principle.

[43] As is apparent from *Le Page* itself, the references to categories in which a miscarriage may be identified are intended to provide some guidance. The categories identified are simply illustrative of situations where an appeal has succeeded notwithstanding the entry of a guilty plea. In particular, the categories should not operate to confine or restrict the inquiry, which is whether justice has miscarried. The High Court of Australia put it in this way in *R v Darby*: "In our opinion [the] determination will focus upon the justice of the case rather than upon the technical obscurities that now confound the subject."[21]

[44] As is also clear from *Le Page*, the categories are not closed.[22] This too, as we have said, is common ground. Delivering the judgment of the Court of Appeal in *Le Page*, Panckhurst J said that it was "only in exceptional circumstances that an appeal against conviction will be entertained" following a guilty plea, as the appellant was required to show a miscarriage would result if the conviction was not overturned.[23] There is no dispute between counsel that the circumstances must be exceptional.

[45] We agree with the submission of counsel assisting the Court that using that term, "exceptional", is a convenient shorthand way of capturing the policy considerations underpinning guilty pleas which are relevant

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19 *Wilson v R* [2015] NZSC 189, [2016] 1 NZLR 705 at [104] per William Young, Glazebrook, Arnold and Blanchard JJ.

20 At [104] per William Young, Glazebrook, Arnold and Blanchard JJ.

21 *R v Darby* (1982) 148 CLR 668 at 678 per Gibbs CJ, Aickin, Wilson and Brennan JJ. That case was not dealing with an appeal following a guilty plea but with an argument that a conspirator's guilty verdict at trial was unsustainable in light of his co-conspirator's subsequent acquittal.

22 *Adams on Criminal Law*, above n 16, at [CPA232.14] sets out a number of illustrations of circumstances that may provide grounds for a successful appeal against conviction after a guilty plea. See also the discussion in Mark Lucraft (ed) *Archbold: Criminal Pleading, Evidence and Practice* (2023 ed, Sweet & Maxwell, London, 2022) at [7-46] discussing the similar categories adopted in England and Wales and where it is specifically said that "this is not necessarily a closed list"; and *Halsbury's Laws of Australia* (online ed) vol 130 Criminal Law at [130-13975].

23 *R v Le Page*, above n 17, at [16].

> here. Those policy considerations include finality and individual autonomy.[24] No doubt reflecting the underlying policy imperatives, the Court in *Le Page* went on to say that "[w]here the appellant fully appreciated the merits of his position, and made an informed decision to plead guilty, the conviction cannot be impugned".[25] However, that statement needs to be read in light of the full passage, which reiterates the miscarriage test, and the judgment as a whole. When read in that context, it is clear that the Court nonetheless envisaged that the policy considerations may give way in those cases where otherwise a miscarriage will result. That must be so.
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> [46] To summarise, the categories identified in the authorities to date are illustrations of when a miscarriage of justice may have occurred. But the overriding test is whether there will be a miscarriage in the particular case unless the guilty plea is able to be impugned and the conviction set aside.[26]

[11] Very soon after that Supreme Court decision (and apparently without being referred to it), this Court summarised the position to similar effect in *Poole v R*:[27]

> [35] It is well established that it is only in exceptional circumstances that an appeal against conviction will be entertained following entry of a plea of guilty.[28] The appellant must show that a miscarriage of justice will result if their conviction is not overturned.[29] Where an appellant has fully appreciated the merits of their position and made an informed decision to plead guilty, the conviction will usually be upheld.[30]
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> [36] A series of decisions in this Court has recognised four broad categories where there may be a miscarriage of justice resulting from a guilty plea if the conviction is not quashed and the matter allowed to go to trial:[31]
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> (a) the defendant did not appreciate the nature of or did not intend to plead guilty to a particular charge;
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> (b) on the admitted facts the offender could not in law have been convicted of the offence charged;

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24 See *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [45]–[46] as to the benefits a guilty plea delivers to the administration of justice and to those who otherwise are required to participate in the trial process. The Court also made the point that the justification for taking a plea into account in sentencing assumes those who respond to incentives to plead guilty are actually guilty. If that assumption is not right, the incentives are contrary to the public interest and, importantly, risk breach of human rights.

25 *R v Le Page*, above n 17, at [16].

26 If the reason for allowing the appeal in such cases is that a stay would have been available, there would be no order for a retrial, whereas in other circumstances, the court may order a trial take place.

27 *Poole v R* [2023] NZCA 643 (footnotes in original).

28 *R v Le Page*, above n 17, at [16].

29 Criminal Procedure Act, s 232(2)(c).

30 *R v Le Page*, above n 17, at [16].

31 *R v Le Page*, above n 17, at [17]–[19]; *R v Stretch* [1982] 1 NZLR 225 (CA) at 229, citing *R v Forde* [1923] 2 KB 400, [1923] All ER 477 at 403; *R v Merrilees*, above n 18, at [33]–[34]; *Richmond v R* [2016] NZCA 41 at [17]–[18]; and *Nixon v R* [2016] NZCA 589 at [8].

(c) the plea was induced by a ruling based on a wrong legal authority; and

(d) the defendant received incorrect advice from trial counsel as to the non-availability of certain defences or outcomes.

[37] We acknowledge that the categories of miscarriage for this purpose are not closed and that a plea of guilty obtained by duress and coercion for example would obviously be capable of causing a miscarriage of justice.[32]

[12] We also note that in the current edition of *Adams on Criminal Law*, one of the additional categories under which an appeal may succeed is now expressed in terms of where an appellant's ability to determine whether or not to plead guilty was affected by a permanent impairment or lack of capacity "or by ill-health".[33]

Trial counsel error more generally

[13] The law governing the obligations of defence counsel to their clients in criminal trials is quite simple. Counsel must give appropriate advice at appropriate times to enable a defendant to give informed instructions. Having received instructions, and subject to their duty to the Court, counsel must act on those instructions so long as they are within the law.[34]

[14] Of course, the relationship between counsel and defendant depends in large part on the personalities, and experience, of both. Some defendants will rely entirely on the advice they are given. Others will be much more independent. Defendants will differ in their ability to understand how the law regulates the evidence that can be heard in their trial. All defendants are stressed by the criminal trial process. The professional and personal demands on defence counsel do not make it an easy job.

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32 *Adams on Criminal Law*, above n 16, at [CPA232.14] identifies an additional three categories under which an appeal may succeed: where the appellant was impacted by a permanent impairment or lack of capacity, where there was some impropriety in the proceedings or of the prosecution, and where the court has failed to provide the defendant with an opportunity to vacate their guilty plea when imposing a sentence different to that which was indicated prior to the plea being entered.

33 *Adams on Criminal Law*, above n 16, at [CPA232.14], referring to *Gardiner v Levin District Court* HC Palmerston North CIV-2006-454-630, 24 November 2006, *Leeder v Christchurch District Court* [2005] NZAR 18 (HC) and *Reynolds v Police* [2020] NZHC 2419.

34 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 13.3 and 13.13.1.

[15] The law does not require counsel to be perfect in the discharge of their professional obligations to their defendant client. An appellate court will intervene only if an error gives rise to a miscarriage of justice.[35] Having said that, an error or errors leading to a defendant making a fundamental decision on an uninformed, or ill-informed, basis will almost always be regarded as causing a miscarriage of justice. One of the fundamental decisions is that relating to plea.[36]

Analysis

[16] We focus on Mr Timmerman's grounds of appeal pursued by his counsel on appeal, Mr Carruthers. Mr Carruthers emphasised two points: that Mr Timmerman consistently maintained his innocence; and that he pleaded guilty on account of grave concerns over his physical and mental health. He also submitted there is substance to Mr Timmerman's defence.

[17] Mr Timmerman said he was physically and mentally abused by the police between his arrest and sentencing to the point that he required heart surgery, which was performed in February 2023. He said he was not able to facilitate a defence until after that for health reasons. He disputed the reference in Dr Kumar's psychiatric report, dated 10 July 2020, that he had previously been diagnosed with Marfan syndrome, which features abnormal heart valves, or that he already had heart issues.

[18] We accept that Mr Timmerman was suffering from irregular heartbeats requiring cardioversion, but nothing in the medical information provided on appeal indicates that Mr Timmerman's heart issues were caused by his treatment during or following his arrest.

[19] Mr Timmerman also said he made a genuine attempt to fight as long as he could to maintain his innocence but at some stage he just could not take any more. We acknowledge Mr Timmerman's stresses before and after March 2020. This was his first encounter with the criminal justice system. He was remanded in custody—

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35 *R v Sungsuwan* [2005] NZSC 57, [2006] 1 NZLR 730 at [70]. Also see *Hall v R* [2015] NZCA 403, [2018] 2 NZLR 26 at [77].

36 *Hall v R*, above n 35, at [65]. See also *Tihema v R* [2024] NZSC 112, [2024] 1 NZLR 473 at [38(d)], citing *Hall v R*, above n 35, at [65]; and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, r 13.13.1.

initially under close supervision—and underwent mental health assessment, presenting with mild autistic traits and experiences of trauma. He was found fit to stand trial. In June 2020, he was admitted to EM bail. In September 2020, he took an overdose of sleeping pills and there is reference to another suicide attempt in 2020. According to the pre-sentence report prepared by Dr Dean, Mr Timmerman attributed this to the stress of his court case. He was seen by crisis services and started on antidepressant medications. He was discharged from follow-up services to instead receive care from his general practitioner. He has not required mental health services since that time but saw a clinical psychologist between November 2020 and May 2021. He was diagnosed as suffering from post-traumatic stress disorder (PTSD), which had led to anxiety and low mood. He was given treatment to develop the foundations for exposure-based trauma work and it was recommended he could benefit from medium to long-term therapy for PTSD / trauma.

[20] In 2021, Mr Timmerman's EM bail conditions were made less restrictive so he could continue work as a specialist car mechanic at an Auckland workshop, see his daughter every second week and various other permitted absences from his Hamilton bail address, but we accept it was a stressful time given his mild autistic traits, experience of trauma and cardioversions while he was also living alone at a bail address some distance from where he had lived previously.

[21] In May 2021, the proceeding was transferred to the High Court. On 4 November 2021, the November trial date had to be adjourned due to COVID-19 restrictions. As Mr Thompson, for the Crown, acknowledged, Mr Timmerman was dealing with a number of personal issues in the lead up to his guilty plea.

[22] Mr Gurnick was aware of those personal issues. Mr Timmerman and Mr Gurnick had good communication. Mr Gurnick acknowledged that the biggest concern for Mr Timmerman was the fact that the matter had been going on for so long and he had been on EM bail for a significant period of time. This was impacting on Mr Timmerman's mental health and his ability to see his daughter. Mr Gurnick sought to bring the proceedings to an end for Mr Timmerman's benefit.

[23] As Mr Carruthers submitted, Mr Timmerman maintained his innocence. Mr Gurnick accepted that generally Mr Timmerman maintained that the firearms and ammunition were not his. We accept that, after the plea, Mr Timmerman said to Dr Dean, for the preparation of his pre-sentence report, that he entered a plea for convenience.

[24] We reiterate that the categories for vacating guilty pleas are not closed.[37] Trial counsel error is not a prerequisite. However, we do not accept that a miscarriage arises in Mr Timmerman's case on the basis of trial counsel error or otherwise. We make the following points.

[25] Addressing trial counsel error first, Mr Gurnick made genuine attempts to invite the Crown to withdraw the charges, but they did not agree to this. He succeeded in having the more serious charges dismissed on 11 November 2021, before the sentence indication. A trial adjournment was necessary (through no fault of Mr Gurnick), and Mr Gurnick appropriately advised Mr Timmerman of the risk of further delay. Lang J had indicated that he had "little confidence" that it would be possible to allocate the proceeding a firm fixture in Hamilton in 2022.[38] He also anticipated transferring the proceeding back to the District Court for trial—given the s 147 submissions painted a different picture to that which appeared when he determined the proceeding should be tried in the High Court—but he proposed to accede to the request for a sentence indication.[39]

[26] Mr Gurnick was instructed to seek a sentence indication. The sentence indication was that a non-custodial sentence "may well be available".[40] Mr Gurnick appropriately advised Mr Timmerman of the likelihood that any punitive aspect of any sentence that might be imposed had already been served. Mr Timmerman was not rushed into accepting the sentence indication. Five days after the sentence indication, and following a conversation, he emailed Mr Gurnick saying he wanted to accept the sentence indication.

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37 *Wilson v R* [2015] NZSC 189, [2016] 1 NZLR 705 at [104]; and *Re Solicitor-General's Reference (No 1 of 2023)*, above n 12, at [44]–[46].

38 *R v Timmerman*, above n 5, at [3].

39 *R v Timmerman* HC Hamilton CRI-2020-063-917, 16 November 2021 (Minute of Lang J) at [1]–[2].

40 Sentence indication, above n 7, at [18].

[27] Mr Gurnick also appropriately advised Mr Timmerman of the risk of being found guilty. Mr Gurnick considered that because of where the firearms and ammunition were found, there was a risk Mr Timmerman would have been found guilty at trial in that he could not overcome the reverse onus required by s 66 of the Arms Act 1983. We do not accept that Mr Gurnick misled or pressured Mr Timmerman into pleading guilty. We consider there was no trial counsel error.

[28] Turning to whether there were other exceptional circumstances, we accept that Mr Timmerman's guilty plea occurred against the background of his experience in custody and on EM bail, his mental health issues and heart-related problems (which did not abate after he pleaded guilty). He was also busy with his work. However, we do not accept that Mr Timmerman pleaded guilty only to preserve his health. It may have been a pragmatic decision, but we consider Mr Timmerman made a rational and informed decision to plead guilty having regard to the trial delay, risk of conviction and likely sentence.

[29] We comment further on the Crown and defence cases. The Crown case was that one AR-15 rifle and some of the ammunition was found in Mr Timmerman's campervan that he left parked outside the Rotorua police station. This firearm, registered to Mr Timmerman's then partner, had been given back to Mr Simonsen in March 2019 after the Christchurch mosque shootings, but the Crown said that messages indicated Mr Simonsen was merely storing it for Mr Timmerman. The other AR-15 rifle and more ammunition were found in a shipping container on a property owned by Mr B, where Mr Timmerman was living in a caravan. In addition, in Mr Timmerman's Audi also located on Mr B's property, police found a fake diplomatic officer concealed carry licence card and a large case with cut outs to fit particular weapons and items into which the firearm and many of the prohibited magazines found in the container fitted precisely.

[30] Mr Timmerman's defence was conveniently stated in a resolution letter that Mr Gurnick wrote to the Crown on 17 October 2021. In relation to the campervan, Mr Timmerman said in the main it stayed at Mr B's property unless it was rented out to a third party for holiday purposes. Mr Timmerman used it on occasions. Mr Timmerman was not residing at Mr B's property. On the night of

9-10 March 2020, after his return from Hong Kong, Mr Timmerman slept in the campervan but did not bother to check it "from top to bottom" like he usually would after it was rented out. He did not enter the rear storage compartment or any of the campervan's many other storage compartments. On 10 March 2020, Mr Timmerman put his mountain bike in the back storage compartment of the campervan (intending to go for a bike ride in the Redwoods after visiting his daughter). He did not notice anything out of place and again did not check the whole campervan as he trusted Mr B and assumed he did not need to worry about anything having gone missing or being broken. He drove into Rotorua.

[31] In relation to the container located on Mr B's property in which the other AR-15 rifle and ammunition was found, Mr Timmerman's position was that the container was locked using a four digit numeric code. Multiple people had access to the container, including Mr and Mrs B, Mr Simonsen and others. It was located next to the firing range, which was approximately 30 metres away. Mr B used to store various firearms in the container, either overnight or sometimes for longer periods. It was easier for Mr B to store items in the container next to the firing range. Mr Timmerman did not have any knowledge of anything prohibited in the container, and did not see any firearms, ammunition, magazines, or anything else that was seized by police. The last time he entered the container before departing for Hong Kong was on 24 February 2020. After he left, the container was accessible by Mr B and others. Mr Timmerman did not know if Mr B used the firing range or had stored anything in the container. Mr Timmerman returned to Rotorua on 9 March 2020 after visiting Hong Kong but did not enter the container. Between 24 February 2020 and 13 March 2020, he did not enter the container. In relation to the Audi, Mr Timmerman said the concealed carry card was a joke, and he had never seen the large case before.

[32] Following Mr B's evidence in Mr Simonsen's trial, Mr Timmerman says that Mr B was responsible for placing all of the relevant items in the campervan and container without Mr Timmerman's knowledge.

[33] Whether or not Mr Timmerman had an arguable defence, in all the circumstances we do not consider that Mr Timmerman's guilty plea in December 2021 was overborne by unbearable strain or a unique combination of factors. As this Court

said in *Hancock v R*, the fact that "an accused may be stressed and feel under pressure when making a decision to plead guilty is not ordinarily sufficient to amount to a miscarriage of justice".[41] Many defendants face pressures and stresses as they consider a guilty plea. Acknowledging Mr Timmerman's earlier difficulties, it is evident from the sequence of events in late 2021 that he made a rational and informed choice to plead guilty. His plea was voluntarily and willingly given. That is consistent with Dr Dean's view, in his pre-sentence report in February 2022, that Mr Timmerman was competent to enter a guilty plea.

[34] Finally, we do not consider that the subsequent outcome of Mr Simonsen's trial indicates any miscarriage of justice. We accept that the relevant (amended) charges alleged joint possession by Mr Timmerman and Mr Simonsen, and that it transpired in Mr Simonsen's trial that Mr B's records indicated he had not sold the firearm found in the container to Mr Simonsen but to someone else who was not linked to Mr Timmerman. This affected Mr B's credibility and may have added credibility to Mr Timmerman's defence, but Mr Simonsen's acquittal does not absolve Mr Timmerman. Mr Timmerman was charged on the basis of having actual physical possession of the items in question. They were found either in his campervan or his container. The case against him did not depend on him having joint possession with Mr Simonsen. As Mr Thompson submitted, the case against Mr Timmerman never relied to any material extent on the gun register evidence which was the focus of much of Mr Simonsen's trial. Also, despite the unreliability of Mr B's gun register, Judg Saunders, in acquitting Mr Simonsen, noted that she did not think Mr B was a witness deliberately manipulating business records to suit. The Judge said Mr B struck her as someone who did his best to answer sustained criticism in cross-examination that, in the end, was not in fact relevant to the verdict.[42]

[35] Mr Timmerman still faced difficulties in relation to the container charges that Mr Simonsen did not face. First, Mr Timmerman accepted the container was his so the s 66 reverse onus applied to him.[43] He would have had to prove on the balance of probabilities that the firearm and other items were not his property and that they were

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41 *Hancock v R* [2012] NZCA 292 at [32], citing *Keegan v R* [2010] NZCA 247 at [60].

42 *R v Simonsen*, above n 11, at [71].

43 Contrast *R v Coultas* [2009] NZCA 71 at [18], where this Court said the Crown must first prove occupation beyond reasonable doubt before it can invoke the reverse onus under s 66.

in the possession of some other person.[44] At Mr Simonsen's trial, Mr B denied ever having access to Mr Timmerman's container. Secondly, Mr Timmerman's only explanation for the large gun case found in his Audi—with cut outs to fit particular weapons and items into which the firearm and many of the prohibited magazines found in the container fitted precisely—was that Mr B also had access to his Audi.

[36] As Mr Thompson submitted, the case against Mr Timmerman remains a strong one. In any event, a not guilty verdict in relation to a co-defendant does not undermine the finality of an earlier guilty plea absent exceptional circumstances.

[37] None of the grounds of appeal show that there has been a miscarriage of justice in this case. While Mr Timmerman evidently regrets his decision to plead guilty given his co-defendant's success, there are no exceptional circumstances that could justify overturning his convictions.

Result

[38] Leave to appeal out of time is granted.

[39] The appeal is dismissed.

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

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[44] *R v Wickliffe* [2009] NZCA 504 at [25] and [29], citing *R v McKeown* (1988) 3 CRNZ 438 (CA) at 443; and *Heemi v R* [2018] NZCA 359 at [12] and [16], citing *Hooper v Police* HC Christchurch AP253/93, 22 July 1993 at 4.