

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA203/2025
[2025] NZCA 478**

BETWEEN	DEAN JOHN MIDDLEMASS Appellant
AND	THE KING Respondent

Hearing:	2 September 2025
Court:	Thomas, Brewer and Isac JJ
Counsel:	L S Collins for Appellant W J Harvey for Respondent
Judgment:	22 September 2025 at 9.00 am

JUDGMENT OF THE COURT

- A The appeal is allowed.**
- B The sentence of 27 months' imprisonment is set aside.**
- C A sentence of six months' home detention on the conditions identified in the pre-sentence report is substituted. This sentence is to commence on the date of this judgment.**
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REASONS OF THE COURT

(Given by Isac J)

Introduction

[1] Dean Middlemass was sentenced to 27 months' imprisonment in the District Court on charges of strangulation and male assaults female.¹ He now appeals, arguing the adopted starting point on the strangulation charge was too high and a separate uplift for the assault charge was excessive. If on appeal an end sentence of less than two years' imprisonment is to be imposed, the appellant argues he should be sentenced to home detention.

The offending

[2] Mr Middlemass had been in a relationship with the victim for close to two years. They both had children from former relationships, some of whom resided in a shared family home.²

[3] Tensions emerged in their relationship. On the day of the offending the victim was in bed under the covers. Mr Middlemass approached her, pulling her out of bed by the ankles causing her to strike her tailbone on the floor.³ He then pushed the victim against a wall causing her head to strike the wall as well.⁴ He kicked her bottom or thigh and slapped her face.⁵ This conduct gave rise to the charge of male assaults female to which the appellant pleaded guilty.

[4] The charge of strangulation arose from events that occurred next in the sequence and proceeded to trial. A jury was satisfied that Mr Middlemass was guilty of strangling the victim.⁶ When sentencing the appellant Judge Robinson, who was also the trial Judge, found that he placed his forehead against the victim's head and yelled "die cunt".⁷ Holding her against the wall, the appellant then put his hands

¹ *R v Middlemass* [2025] NZDC 6715 [sentencing decision] at [63].

² The evidence suggests that the home in which the offending occurred was owned by Mr Middlemass.

³ Sentencing decision, above n 1, at [3].

⁴ At [3].

⁵ At [3].

⁶ Mr Middlemass was acquitted of a further charge of common assault, in which it was alleged he had thrown a hot drink over the victim.

⁷ Sentencing decision, above n 1, at [4].

around her throat and lifted her so that her feet were just touching the ground.⁸ He then strangled her for 10 to 15 seconds.⁹

[5] The victim struggled to break the appellant's grip but was unable to do so.¹⁰ She was unable to speak due to the force applied to her neck,¹¹ and described her eyes feeling as though they were "about to pop out" of her head.¹² It was only when the victim started to go limp that the appellant let her go.¹³

[6] In sentencing Judge Robinson proceeded on the basis that Mr Middlemass had intentionally, rather than recklessly, impeded the victim's breathing.¹⁴

[7] It is clear from the victim impact statement that the assault had a significant and lasting effect on the victim. She has suffered from anxiety, depression and post-traumatic stress disorder. Her associated feelings of guilt and isolation are sadly all too common for victims of serious family violence.

The decision under appeal

[8] The Judge identified the charge of strangulation as the lead offence.¹⁵ Referring to this Court's guideline decision in *Shramka v R*,¹⁶ six aggravating features were identified. They were:¹⁷

- (a) the vulnerability of the victim;
- (b) the offending occurred in the home where "[the victim] was entitled to feel safe";
- (c) an aspect of aggravated violence, as the strangulation continued to the

⁸ At [4].

⁹ At [4].

¹⁰ At [4].

¹¹ At [4].

¹² At [4].

¹³ At [4].

¹⁴ At [5]–[6].

¹⁵ At [36].

¹⁶ *Shramka v R* [2022] NZCA 299, [2022] 3 NZLR 348.

¹⁷ Sentencing decision, above n 1, at [42].

point where the victim was losing consciousness;

- (d) a threat to kill;
- (e) enduring harm caused to the victim; and
- (f) likely harm to third parties, namely the children, who did not witness what occurred “but ... must have heard it”.

[9] The Judge considered the offending fell within the “moderate” category, concluding that “[s]ave for the fact of a protection order being in existence, parallels can be drawn between this case and the facts in *Shramka*”.¹⁸ These similarities compelled a starting point of three years’ imprisonment.¹⁹

[10] Turning to the charge of assault, Judge Robinson considered the charge in isolation would probably warrant a starting point of “around 14 months”, but allowing for the appellant’s relatively early guilty plea and totality, he applied a six-month uplift.²⁰ The Judge therefore adopted an overall starting point for both offences of 42 months’ imprisonment.²¹

[11] The Judge then provided total reductions of 35 per cent for mitigating factors, made up of 10 per cent for previous good character;²² 10 per cent for rehabilitation;²³ five per cent for traumatic childhood experiences;²⁴ and a further 10 per cent for the impact of imprisonment on the appellant’s daughter, of whom he had day-to-day care.²⁵

¹⁸ At [44].

¹⁹ At [47].

²⁰ At [48].

²¹ At [51].

²² At [53]–[55].

²³ At [56]–[57].

²⁴ At [58].

²⁵ At [59].

[12] This resulted in an end sentence of 27 months' imprisonment.²⁶ The Judge was not persuaded a sentence of home detention would have been appropriate even if available given the requirements of accountability, denunciation, and deterrence.²⁷

Was the adopted starting point too high?

[13] In *Shramka* this Court declined to adopt sentencing bands for strangulation, preferring an approach based on the presence of up to eight aggravating factors and an assessment of their intensity.²⁸ Three categories of offending were identified.²⁹ Serious or "[h]ighest level" offending might involve six or more aggravating factors and attract a starting point of five and a half years' imprisonment.³⁰ However, as the Court emphasised, there is a need for qualitative assessment of aggravating features rather than simple factor counting.³¹ Moderate offending might engage four or more aggravating factors (subject to their intensity) and compel a starting point of three years.³² The facts in *Shramka* itself were an illustration of this kind of case.³³ The Court did not provide a "worked example" of lower level offending, noting the category would need to be developed on a case-by-case basis in future decisions, and by reference to the higher levels it had identified.³⁴ However, where the strangulation is more transitory, and the harm less enduring, a lesser sentence would apply — "perhaps as low as two years".³⁵ *Shramka* went on to observe that for lower level offending "an eventual sentence of home detention may be available".³⁶

²⁶ At [61].

²⁷ At [62].

²⁸ *Shramka v R* above n 16, at [44]–[45]. At [42], the Court identified the relevant aggravating factors as: premeditation; history of strangulation or prior very serious domestic violence; vulnerability of the victim; home invasion/breach of protection order; aggravated violence; threats to kill; enduring harm to the victim; and harm to associated persons.

²⁹ At [46]–[54].

³⁰ At [46]–[47].

³¹ At [49], where this Court said "[a] very bad case, albeit with a more limited number of individual aggravating factors, might still command a more condign sentence" than a starting point of five and a half years' imprisonment.

³² At [50]–[52].

³³ At [50].

³⁴ At [54].

³⁵ At [54].

³⁶ At [54].

[14] Counsel for both parties referred us to a number of additional sentencing decisions in both the High Court and in this Court.³⁷ Having considered them, we have concluded the three-year starting point adopted by the Judge on the charge of strangulation was beyond the available range.

[15] Three aggravating features were present in this case:

- (a) Vulnerability of the victim — although we note that this factor will be present in almost all cases of strangulation. The focus must be on the degree of vulnerability.³⁸
- (b) Threats to kill — it is clear that the threat uttered by the appellant was a seriously aggravating feature.³⁹
- (c) Enduring harm to the victim — although all cases of serious family violence involving strangulation are likely to have significant and long-lasting psychological effects for victims.⁴⁰

[16] Missing on our view of the *Shramka* aggravating factors is pre-mediation; a history of strangulation or prior “very serious” domestic violence; home invasion or breach of a protection order; aggravated violence (in the form of “repeated or extended strangulation”); or evidence of harm to associated persons. We therefore differ with the Judge’s assessment that there were six aggravating factors present.

³⁷ *Jackson v Police* [2023] NZHC 1100; *Schell v Police* [2023] NZHC 636; *Mullan v Police* [2023] NZHC 962; *Miller v Police* [2022] NZHC 2636; *Ngataki v Police* [2022] NZHC 1952; *Williams v Police* [2022] NZHC 2583; *M v R* [2024] NZHC 3632; *Oldham v R* [2024] NZCA 690; *Solicitor-General v Hutchinson* [2018] NZCA 162, [2018] 3 NZLR 420; and *S v R* [2025] NZHC 997.

³⁸ *Shramka v R*, above n 16, at [42(c)]. In *Shramka*, this Court considered the victim almost passing out went to both vulnerability, as an illustration of the parties’ physical disparity, and aggravated violence: see *Shramka v R*, above n 16, at [50]. The Judge in the present case considered the fact the victim almost lost consciousness went to aggravated violence: see sentencing decision, above n 1, at [42]. We note that while loss of consciousness may go to more than one aggravating factor, as this Court emphasised in *Shramka*, the ultimate exercise is a careful assessment of the intensity of the various factors and overall circumstances of the offending: see *Shramka v R*, above n 16, at [44]. Care is required to avoid double counting.

³⁹ At [42(f)]

⁴⁰ At [42(g)].

[17] Nor do we accept the respondent’s submission that Mr Middlemass’ offending is similar to that in *Shramka* and “more intense” than that in *Oldham v R*.⁴¹

[18] In *Shramka* the offending involved the breach of a protection order and the period of strangulation was significantly longer.⁴² A charge of male assaults female arose from an incident where the appellant punched the victim in the face, resulting in a laceration requiring three stitches.⁴³ The charge of strangulation arose from a subsequent incident after the parties had separated.⁴⁴ The appellant first strangled the victim for about 30 seconds and then continued punching her in the head after she broke free of his grasp.⁴⁵ She suffered physical injury from the assault and there was a prior history of family violence.⁴⁶ Mr Shramka was convicted after trial of strangulation, injuring with intent to injure, male assaults female, and two charges of breaching a protection order.⁴⁷ This Court upheld an end sentence of two years and three months’ imprisonment.⁴⁸

[19] In *Oldham* an end sentence of two years and seven months’ imprisonment on charges of suffocation, male assaults female and possession of a firearm was upheld by this Court on appeal.⁴⁹ The appellant had three previous convictions for strangulation or suffocation.⁵⁰ In relation to the incident in question, the appellant had “flipped out” and accused his pregnant partner of planning to call the police.⁵¹ He took her phone to prevent her from doing so and struck her with a back-handed closed fist to the face.⁵² When the victim said she was leaving he reacted by picking her up, throwing her onto the bed, and jumping on top of her.⁵³ He smothered her by covering her mouth with his hands and pressing down with his weight.⁵⁴ He then put a pillow

⁴¹ *Oldham v R*, above n 37.

⁴² *Shramka v R*, above n 16, at [50].

⁴³ At [1].

⁴⁴ At [3]–[5].

⁴⁵ At [3].

⁴⁶ At [4] and [51].

⁴⁷ At [5].

⁴⁸ At [66].

⁴⁹ *Oldman v R*, above n 37, at [1]–[2] and [47].

⁵⁰ At [11].

⁵¹ At [3].

⁵² At [3]–[4].

⁵³ At [5].

⁵⁴ At [5].

over her mouth and face, preventing her from breathing.⁵⁵ Like the victim in the present case, this did not continue long enough to “go unconscious, so like just enough”.⁵⁶ The victim sustained injuries to her face and head.⁵⁷ Mr Oldham’s offending appeared to involve elements of controlling behaviour missing from the present case as well as a history of family violence.⁵⁸ Both cases relied on by the respondent involved aggravating factors making them more serious than the present.

[20] While no doubt this was a very frightening experience for the victim, it appears to have arisen from a spontaneous loss of self-control during a heated argument at the end of a relationship. The period of strangulation was relatively brief and we do not discern any accompanying coercive or controlling behaviours which are often the hallmark of more serious cases. On our assessment there were three aggravating factors. Of them it is the harm caused to the victim that is the most serious. Overall, the offending fell well short of the moderate band adopted in the District Court.

[21] We also consider the discrete six-month uplift applied on the charge of male assaults female was excessive. The assault was of low seriousness. On its own we do not consider it could warrant the 14 months’ imprisonment identified by the Judge. Even with the generous totality adjustment applied by the District Court, we consider six months’ imprisonment as a discrete uplift was also out of range.

[22] In our view, consistent with the sentences imposed in similar cases, a global starting point on both charges of two years and three months’ imprisonment was

⁵⁵ At [5].

⁵⁶ At [18].

⁵⁷ At [6].

⁵⁸ At [16]–[18].

appropriate.⁵⁹ It follows that we are also satisfied the end sentence of 27 months' imprisonment imposed by the Judge was manifestly excessive.

What is the appropriate sentence in this case?

[23] We are content to adopt the Judge's discounts for mitigating factors. Applying them to a starting point of 27 months results in an indicated end sentence of 17 months' imprisonment. As a sentence of short duration, it is necessary to consider whether a sentence of imprisonment should be commuted to home detention.

[24] Unlike the Judge we consider that a non-custodial sentence is the least restrictive outcome appropriate in the circumstances. The appellant is a 44 year old man who prior to his incarceration had the sole care of his 10 year old daughter. He has no previous convictions and runs a business. In addition, like the Judge we cannot overlook the appellant's demonstrated engagement in rehabilitation, including counselling and stopping violence programmes. This led the pre-sentence report writer to recommend a non-custodial sentence. A greater reduction for this mitigating factor was open.

⁵⁹ In *Jackson v Police*, above n 37, the appellant was sentenced to 28 months' imprisonment on charges of strangulation, injuring with reckless disregard and breach of a protection order for strangling the victim, throwing her to the ground and pulling her hair before again holding her by the throat. On appeal, the High Court found that a starting point of "no more than two years, three months' imprisonment was appropriate" for the strangulation offending. Three aggravating features were identified: vulnerability of the victim; breach of a protection order; and harm to associated persons, being two very young children who briefly witnessed the end of the assault. In *Mullan v Police*, above n 37, the appellant was sentenced to eight months' home detention on charges of strangulation and assault with intent to injure. The High Court upheld a starting point of 24 months' imprisonment for offending where the appellant applied pressure to the victim's neck so she struggled to breathe, and then pressed one thumb into the eye of the victim, causing a black eye. The District Court Judge identified aggravating factors of the victim's vulnerability as she was trapped on the floor, breach of trust, and physical and psychological harm to the victim. In *Schell v Police*, above n 37, the appellant was sentenced to 21 months' imprisonment on charges of assault with intent to injure, and strangulation. Following a verbal argument, the appellant applied pressure to the victim's throat, threw her to the ground and punched her six times in the head and face area while she lay on the floor, before pinning her to the ground with his forearm. The starting point of two years and four months' imprisonment was "stern" but was not disturbed on appeal. In *Apelu v Police* [2023] NZHC 3264 the appellant was sentenced to six months' community detention and six months' supervision on charges of strangulation and assault on a person in a family relationship. A starting point of 24 months' imprisonment was adopted for offending where the appellant assaulted the victim by pulling her hair, and then strangled her, applying force for about one minute until the victim began to lose consciousness. The appellant only stopped when a child entered the room.

[25] In fixing the period of home detention we also have regard to the seven weeks the appellant has spent in custody before trial and after sentencing (amounting to an effective sentence of four months' imprisonment).

[26] We therefore impose a sentence of six months' home detention.

Result

[27] The appeal is allowed.

[28] The sentence of 27 months' imprisonment is set aside.

[29] A sentence of six months' home detention on the conditions identified in the pre-sentence report is substituted. This sentence is to commence on the date of this judgment.

Solicitors:

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