IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA199/2025
[2026] NZCA 97

BETWEEN	SHAUN LEE SATHERLEY Appellant
AND	THE KING Respondent

Hearing: 18 February 2026

Court: Courtney, van Bohemen and Andrew JJ

Counsel: A J McKenzie for Appellant
R N Thompson and Z R Hamill for Respondent

Judgment: 31 March 2026 at 11.30 am

JUDGMENT OF THE COURT

The appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by van Bohemen J)

[1] Shaun Satherley appeals his sentence of two years and five months' imprisonment imposed by Judge Zohrab in the District Court at Christchurch on 2 April 2025.[1]

[1] *R v Lambert* [2025] NZDC 7588 [judgment under appeal] at [47].

[2] Mr Satherley had been found guilty at trial of burglary,[2] possession of instruments for the commission of burglary,[3] and possession of methamphetamine for supply.[4]

[3] The sole ground of appeal is that the two-month reduction applied to Mr Satherley's sentence for the unlawful search and seizure of his co-defendant's vehicle, in breach of s 21 of the New Zealand Bill of Rights Act 1990 (NZBORA), was insufficient.

Relevant background

Offending

[4] In the early hours of 27 March 2023, police received notification of an alleged burglary occurring at a commercial premises in Kaiapoi. CCTV footage showed Mr Satherley and his co-defendant, Ms Lambert, with torches looking around the enclosed yard which was surrounded by a six-foot high mesh wire fence. Police attended the scene and, with the assistance of a dog, located Mr Satherley and Ms Lambert hiding in long grass nearby.

[5] A pair of gloves and a head torch were found near where Mr Satherley was hiding. He also had two pen torches on him.

[6] A search of Mr Satherley located a small, sealable bag containing white crystal powder, which the police suspected was methamphetamine even though Mr Satherley said it was another substance.

[7] A vehicle, registered to Ms Lambert, was parked along train tracks nearby. A warrantless search of the vehicle was carried out under s 20 of the Search and Surveillance Act 2012. The search located a backpack containing 17.5 grams of methamphetamine, $1488.30 in cash, a set of scales, and a leather case of lockpicks.

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2 Crimes Act 1961, ss 231(1)(a) and 66. Maximum penalty: 10 years' imprisonment.
3 Section 233(1)(a). Maximum penalty: three years' imprisonment.
4 Misuse of Drugs Act 1975, s 6(1)(f) and (2); and Crimes Act, s 66. Maximum penalty: life imprisonment.

Procedural history

[8] After Mr Satherley was charged, he challenged the admissibility of the evidence of methamphetamine located in Ms Lambert's vehicle on the basis the vehicle search breached his right to be free from unlawful search and seizure.

[9] Following a pre-trial hearing, Judge Kellar held that the search was unlawful.[5] Because the search was commenced at 4.30 am, the Judge was satisfied there were reasonable grounds to believe that it had not been practicable to obtain a warrant.[6] However, despite the circumstances in which Ms Lambert and Mr Satherley were found, despite the police suspecting the substance in the bag found on Mr Satherley to be methamphetamine and despite Mr Satherley acknowledging, albeit indirectly, having been in the vehicle, the Judge was not satisfied the police had reasonable grounds to believe there would be a controlled drug within the vehicle, or to suspect commission of a drug offence in the vehicle.[7]

[10] As a consequence, the evidence was improperly obtained.[8] However, in accordance with s 30 of the Evidence Act 2006, the Judge ruled that the evidence was admissible because he considered its exclusion would be disproportionate to the impropriety of the search.[9]

[11] In assessing the impropriety of the search, the Judge held that the breach was "hardly egregious", and that Mr Satherley and Ms Lambert had been found in suspicious circumstances.[10]

[12] More generally, the Judge observed:[11]

> The evidence found in Ms Lambert's and Mr Satherley's bags respectively is reliable. The alleged offending is reasonabl[y] serious. The breach of the right to be free from unlawful search and seizure was a matter of fine judgement rather than an egregious one.

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5 *R v Lambert* [2023] NZDC 25704 at [44].
6 At [34]–[35].
7 At [43]–[44].
8 At [44].
9 At [54].
10 At [48].
11 At [54].

Sentence imposed in the District Court

[13] Judge Zohrab adopted a starting point of two years and six months' imprisonment for the lead charge of possession of methamphetamine for supply. The Judge considered the offending fell towards the bottom of band two of the guideline judgment *Zhang v R* and noted that Mr Satherley was a street dealer heading towards having a moderately commercial aspect to the operation.[12] The Judge applied an uplift of nine months for the charges of burglary and possession of instruments for the commission of burglary.[13] This resulted in a global starting point of 39 months' imprisonment.

[14] The Judge awarded reductions of four months for the time Mr Satherley had spent on bail and four months for addiction and related issues.[14]

[15] The Judge noted that Mr Satherley's counsel had submitted there was scope for a significant allowance for the breach of Mr Satherley's rights but observed that he had not been referred to any authority or cases where similar allowances had been made.[15] Even so, and despite submissions from Crown counsel that no such allowance was appropriate, the Judge made an allowance of two months for this factor:[16]

> … to take into account the fact that this was a situation where you had a right to be free from unlawful search and seizure and that there was a breach of that right but, as the Judge noted, this was hardly egregious and this was not done in bad faith and he was not satisfied by a fine margin that there were sufficient grounds to provide reasonable grounds so I would have thought that two months' allowance or credit is appropriate.

Relevant legal principles

Approach on appeal

[16] Under s 250(2) of the Criminal Procedure Act 2011, the court must allow an appeal against sentence if satisfied that, for any reason, there was an error in the

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12 Judgment under appeal, above n 1, at [25]–[26], referencing *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.
13 At [42].
14 At [43] and [46].
15 At [44].
16 At [45].

sentence and that a different sentence should be imposed. In any other case, it must dismiss the appeal.[17]

[17] It is well-established that an appeal against sentence will be successful only if the appellant can point to an error, either intrinsic to the Judge's reasoning, or as a result of materials submitted on the appeal, that vitiates the lower Court's sentencing discretion.[18] Unless there is a material error in the end sentence, the Court will not intervene.[19] The focus is on whether the end sentence is within the available range, rather than the process by which the end sentence is reached.[20] Mere tinkering is not permitted.[21]

Submissions

[18] Mr McKenzie, for Mr Satherley, submits that a reduction of two months (or five per cent) for the breach of Mr Satherley's right under the NZBORA was not an effective remedy and says a sentence reduction of 25 to 33 per cent would have been appropriate.

[19] Mr McKenzie submits there is a strong nexus between the unlawful search and Mr Satherley's conviction, given the methamphetamine was the basis for the conviction. He says further that a sentence reduction is the only available remedy, given the evidence of the methamphetamine has been admitted and the Crown has not offered an apology or compensation.

[20] Mr McKenzie notes there is no express sentencing regime that displaces the appropriateness of a sentence reduction. In this respect, he contrasts Mr Satherley's situation with that of the defendant in *Winders v R,* where this Court held that, despite serious breaches of the defendant's rights, it was precluded from making a reduction to the minimum mandatory period of imprisonment for murder by the obligation to give effect to the legislative policy behind s 104 of the Sentencing Act 2002.[22]

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17 Criminal Procedure Act 2011, s 250(3).

18 *R v Shipton* [2007] 2 NZLR 218 (CA) at [138]–[139]; *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [30]; and *Tamihana v R* [2015] NZCA 169 at [14].

19 *Tamihana v R*, above 18, at [14], citing *Te Aho v R* [2013] NZCA 47 at [30].

20 *Tamihana v R*, above n 18, at [14], citing *Tutakangahau v R*, above n 18, at [36].

21 See for example *Cao v Police* [2022] NZHC 2034 at [19]; and *Maihi v R* [2013] NZCA 69 at [21].

22 *Winders v R* [2018] NZCA 277, [2019] 2 NZLR 305 at [72]–[73].

[21] In addition, Mr McKenzie submits the fact the breach was "not egregious" is not relevant in determining the size of the sentence reduction because the seriousness of the breach had previously been considered by the Court in allowing the admission of the evidence. He also submits that the reduction for the breach of NZBORA rights should be made at the end of the sentencing process.

Submissions for the Crown

[22] Ms Thompson for the Crown helpfully reviews senior court decisions that bear on whether sentence reductions should be made for breaches of rights under the NZBORA. She notes that, while it has been accepted that a sentence reduction can be made for a breach of NZBORA rights, with one exception, the Sentencing Act does not specifically contemplate the sanctioning of State conduct within the purposes and principles of sentencing.[23] Accordingly, Ms Thompson submits that, absent any hardship or direct personal effect, to use sentence reduction as a mechanism to vindicate breaches of NZBORA rights may not be consistent with the scheme of that Act.

[23] Ms Thompson also submits that a sentence reduction is unlikely to be appropriate where a court had already determined that improperly obtained evidence should be admitted and, in so doing has already weighed the impropriety and taken into account the need for an effective and credible system of justice as required by s 30(2)(b) of the Evidence Act.

[24] In any event, Ms Thompson submits that the infringement of Mr Satherley's rights was minor. He did not own the car that was searched, the search was carried out after Mr Satherley and Ms Lambert had been found in suspicious circumstances, and the Judge had held that the search was "hardly egregious". Accordingly, and given Judge Kellar's confirmation that Mr Satherley's rights had been breached, Ms Thompson submits that the five per cent reduction allowed by Judge Zohrab was generous.

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[23] The exception is in s 9(2)(fb) of the Sentencing Act 2002 which provides that the effects on an offender of delay caused by prosecutorial failure to comply with a procedural requirement may be a mitigating factor in sentencing.

Analysis

[25] In the Supreme Court's decisions in *R v Williams* and *Beckham v R*, it has been established that a reduction in sentence can be a remedy for a breach of the NZBORA where the breach relates to the circumstances of the offence or the offender.[24] While *Williams* concerned undue delay to trial, *Beckham* concerned a breach of a defendant's right under s 21 of NZBORA not to be subject to unlawful search and seizure — the same right breached in relation to Mr Satherley.

[26] Accordingly, we approach the appeal on the basis that a sentence reduction may be available where a defendant's right not to be subject to unlawful search and seizure has been breached, notwithstanding the absence of specific statutory direction.

[27] We do not consider that particular hardship has to be shown before a reduction is made, provided the breach relates to the circumstances of the offence or the offender. Whether any reduction is made, and the extent of the reduction, will depend on the nature of the breach and the effect on the offender.

[28] We agree that, unlike the situation in *Beckham*, in this case there was a clear nexus between the breach and Mr Satherley's conviction and sentence. Absent the breach, there would have been no discovery of the backpack containing 17.5 grams of methamphetamine and so no conviction and sentence for possession of methamphetamine for supply — the lead charge on which Mr Satherley was sentenced.

[29] We do not accept the reduction for the breach of Mr Satherley's NZBORA rights should be substantial just because the breach contributed materially to his conviction and sentence on the methamphetamine charge. While the search was held to be unlawful, the fundamental reason Mr Satherley was convicted and sentenced was that he committed an offence; not that the offending was discovered.

[30] While Judge Kellar's decision included a judicial determination that Mr Satherley's rights had been breached, we do not agree that the decision, of itself,

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[24] *R v Williams* [2009] NZSC 41, [2009] 2 NZLR 750; and *Beckham v R* [2015] NZSC 98, [2016] 1 NZLR 505 at [154]–[156] and [164]. See also *Larkins v R* [2024] NZCA 659 at [29].

can also be seen as providing an effective remedy for the breach. The effect of the decision was to declare the evidence obtained by the breach admissible, not to remedy the breach. That said, we accept that, in other circumstances, a declaration that a person's rights have been breached may be a sufficient remedy, as indeed may be other remedies.

[31] Judge Kellar assessed the breach as "hardly egregious". Indeed, it was not. Another judge might well have held there to have been no breach at all. So, in terms of gravity, the breach was low.

[32] In these circumstances, we consider the five per cent reduction granted by Judge Zohrab was appropriate. Any higher reduction would have been disproportionate and could have resulted in an end sentence that did not adequately reflect the purposes and principles of sentencing.

[33] For completeness, we note that, in accordance with this Court's decision in *Moses v R*,[25] any reduction for a breach of NZBORA rights is to be calculated and applied together with other discounts personal to the offender and not separately after those other discounts have been applied.

Result

[34] The appeal against sentence is dismissed.

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

[25] *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46].