IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA358/2025
[2026] NZCA 39

BETWEEN	JOHN MASON Appellant
AND	THE KING Respondent

Hearing: 17 February 2026

Court: Whata, Peters and Dunningham JJ

Counsel: G H Vear and C L Forsyth for Appellant
T R Simpson for Respondent

Judgment: 27 February 2026 at 11.00 am

JUDGMENT OF THE COURT

A The application for an extension of time to appeal is granted.

B The appeal is allowed.

C The sentence of three years and one month's imprisonment is set aside and a sentence of two years and three months' imprisonment is substituted.

REASONS OF THE COURT

(Given by Whata J)

[1] Mr Mason was convicted of aggravated burglary and subsequently pleaded guilty to charges of receiving, dangerous driving and failure to stop. He was sentenced to three years and one month's imprisonment.[1] He appeals against this sentence.

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[1] *R v Newall* [2025] NZDC 8973 [judgment under appeal].

The sentence

[2] The Judge set out the facts of Mr Mason and his co-offender Mr Newall's offending for the purpose of sentencing as follows:

> [3] On 4 April 2023 at about 3.30 pm, you both arrived at the home address of the two victims who were present at the address with a child. You were not invited. A confrontation occurred between you and the victims. You both then obtained weapons from the back of the utility vehicle you had arrived in consisting of a metal pipe and a piece of wood and then you rushed towards one of the victims. He retreated inside and you followed him. When inside you searched the address and stole several items belonging to the victims, including a laptop, a phone, tobacco and cash. You both then left the address and were arrested shortly after with the stolen items located in that utility vehicle.
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> [4] Mr Mason, on 10 August 2024, a motor vehicle was stolen from an address in Long Bay in Auckland. On 6 September 2024 the police located the vehicle driving on Whangaripo Valley Road with a different registration on the vehicle that was stolen but recognised it as being driven by you and you were wanted by the police for a breach of bail.
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> [5] The police followed you for several kilometres at road speed and did not try and stop the vehicle. You turned into Bosher Road, Wellsford where other police units were waiting. When you saw the police, you took off at speed, but you were not pursued. A short time later the police located you driving the vehicle on Wellsford Valley Road and activated lights and sirens, but you failed to stop. The police followed your vehicle at road speed but lost it due to your excessive speed. The vehicle was located 30 kilometres away abandoned on Run Road at Tapora. You were apprehended about an hour later by a police dog unit. You were hiding approximately 100 metres away in the bush. The vehicle you were driving was found to be the stolen vehicle from Long Bay.

[3] The Judge noted:

> [11] I need to take into account the effect of the offending on the victims who were extremely frightened by what happened and do not feel safe in their own home. There are aggravating factors I need to take into account. First of all, this amounted to a home invasion of the victim's home. You were not welcome there, but you forced your way in. There was also a child present at the time and there was also the presence of weapons and the threat of violence. The presence of those weapons were used to intimidate the victims. You were two offenders acting together, each carrying a weapon.

[4] The Judge also noted that all the property taken has been recovered, but that there was a medium level of premeditation, the offenders deliberately went to the

address for that purpose and they had weapons available to them.[2] Their prior convictions were identified as aggravating factors, while some efforts at rehabilitation were identified as a mitigating factor.[3]

[5] The Judge said that an unusual feature of the case was that the victims were known to Mr Mason, and that he wrongfully took it upon himself to assist the owner of the property, who had issued eviction notices to the victims (tenants), to remove the victims from it.[4] The Judge noted that while that assistance may have been well intended, the criminal method was reprehensible.[5] Given these unusual circumstances the Judge did not apply the leading authority on point, *R v Mako*, and instead identified his own assessment for a starting point of three and a half years.[6] He uplifted this by six months for the receiving charge, then reduced this to four months to take into account Mr Mason's guilty plea.[7] He then applied a further uplift of two months for both the dangerous driving and failing to stop charges.[8]

[6] This resulted in a cumulative starting point of four years' imprisonment. From that he discounted the sentence by eight months, comprised of discounts of six per cent for remorse and a further 10 per cent for rehabilitation. He then reduced the sentence by a further three months for Mr Mason's time spent on restricted bail. This resulted in an end sentence of three years and one month.[9] Concurrent sentences of four months for the receiving and one month on the dangerous driving were also imposed.[10]

[7] For Mr Newall, the Judge considered his culpability was slightly less than Mr Mason's; and adopted a starting point on the aggravated burglary of two and a half years' imprisonment.[11] He discounted this by 10 per cent to reflect his rehabilitation efforts and a further five months for time on restrictive bail. This resulted in a term of

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2 At [12]. We consider that the Judge has misdescribed the purpose of the visit. The evident object of the visit was to evict the victims, who were previously tenants at the property.
3 At [13].
4 At [17]–[18].
5 At [18].
6 At [19]–[20], referring to *R v Mako* [2000] 2 NZLR 170 (CA).
7 Judgment under appeal, above n 1, at [21].
8 At [22].
9 At [23]–[25].
10 At [26]–[27].
11 At [29].

imprisonment of 22 months, but the Judge was satisfied that a sentence of home detention for 11 months was appropriate.[12]

Application for an extension of time to appeal

[8] Mr Mason filed his notice of appeal out of time. Mr Mason filed an affidavit explaining the delay in filing his appeal, in which he described difficulties applying for legal aid and obtaining appellate counsel. Given the delay is minor, being only 15 working days, we consider it appropriate to grant Mr Mason an extension of time.

Threshold for appeal

[9] We may allow an appeal against sentence if there is an error and a different sentence should be imposed.[13] A different sentence will be mandated if the original sentence is manifestly excessive.[14]

Grounds of appeal

[10] Mr Mason submits that his sentence was manifestly excessive due to a combination of factors:

(a) reference to unproven facts, namely that $80 and tobacco were taken;

(b) an excessive start point, inconsistent with parity principles;

(c) excessive uplift for dangerous driving and failure to stop; and

(d) insufficient discount for rehabilitative efforts.

[11] It transpires we consider that the Judge erred when fixing disparate starting points for Messrs Mason and Newall. For this reason we deal with that appeal point first and mention the other appeal points only briefly when considering whether a different sentence should be imposed.

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12 At [30]–[33].
13 Criminal Procedure Act 2011, s 250(2).
14 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [35]–[36].

Disparity

[12] Mrs Vear, for the appellant, submits that the Judge was wrong to adopt a 30 per cent greater starting point for Mr Mason over that adopted for his co-offender Mr Newall, noting that the Judge described Mr Newall's culpability as a "little less" than Mr Mason's.[15] This is said to be an unjustified difference and not even-handed. She emphasises that they were convicted on the same conduct and both were acquitted on alleged violence offending. She contends that in some respects Mr Newall undertook a more active role, being the individual who took the laptop and cellphone. In addition she says the evidence suggests it was spontaneous rather than premeditated offending, and there was no evidence that the items they took into the property were brought into the address for the purpose of being used as weapons. She also notes that the Crown does not argue that Mr Newall is less culpable.

[13] In terms of the appropriate starting point, it is submitted that the two and a half years adopted in respect of Mr Newall better reflected the seriousness of both their offending, referring to cases attracting a similar starting point and where similar aggravating features were present.[16] Other cases, said to be more serious that attracted lesser or similar starting points to that imposed on Mr Mason, are also cited.[17]

[14] Ms Simpson, for the Crown, submits that the lack of parity does not constitute an error, referring to the following comment made by this Court in *Kulu v R*:[18]

> [33] When an appellate court is dealing with an offender whose sentence appears to it to be proper, the fact a co-offender has received a sentence which the appellate court considers too lenient is not of itself a ground for interfering with the appellant's longer sentence. …

Analysis

[15] We accept that the starting point imposed on Mr Mason was within the range available for offending of this kind. As the Crown submits, the facts in *Marsh v R* are

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15 Judgment under appeal, above n 1, at [29]. We note that the starting point adopted for Mr Mason was in fact closer to 40 per cent higher than that adopted for Mr Newall.

16 Citing *Daniels v R* [2015] NZCA 295; and *McNeice v R* [2012] NZCA 566.

17 Citing *McCormack-Cameron v R* HC Invercargill CRI-2007-425-42, 5 February 2008 and *Shirley v R* [2009] NZCA 216.

18 *Kulu v R* [2022] NZCA 284 (footnote omitted).

sufficiently illustrative.[19] In that case the offenders were invited into the victim's home for the purpose of a drug deal. When asked to leave, they stood over the victim and took half a gram of methamphetamine, $50 in cash, a sports bag and a cellphone.[20] Unlike the present case there were no weapons. The trial Judge described the offending as "a premeditated robbery with an element of home invasion".[21] The same Judge adopted a starting point of four years and nine months. This Court concluded that a starting point of three and half years' imprisonment more accurately reflected the seriousness of the offending.[22]

[16] The key issue here however is whether, having handed down a substantially lesser starting point for Mr Newall, an issue of unfair disparity arises. As this Court said in *R v Lawson* (a case usefully highlighted by Mrs Vear):[23]

> The Courts must bear in mind that public confidence in the administration of justice is best preserved if justice appears to be administered evenhandedly.

[17] It is true, as Ms Simpson submits, the fact of a lesser sentence is not sufficient by itself for interfering with the sentence. But we consider care is nevertheless needed to ensure that offenders that offend in a similar way attract a similar starting point. It does not matter that the starting point adopted for Mr Mason is within range against the generality of cases. Mr Newall's starting point was also within the same range, exemplified by the cases highlighted by Mrs Vear.

[18] As foreshadowed above, we consider the Judge erred when fixing disparate starting points. This disparity was not adequately explained by the Judge in his sentencing notes. While we accept it was available for the Judge to adopt a higher starting point for Mr Mason based on his finding that the offending was principally led by him, we think that given the overall joint nature of the offending, any uplift of the starting point would need to be small, say no more than three months.

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19 *Marsh v R* [2019] NZCA 220.
20 At [2]–[4].
21 At [6], quoting *R v Armstrong* [2018] NZDC 24016 at [14].
22 *Marsh v R*, above n 19, at [17].
23 *R v Lawson* [1982] 2 NZLR 219 (CA) at 223.

[19] Given this error, we now turn to consider whether a different sentence should be imposed. For that purpose, we consider that a starting point of two years and nine months to be in range and we use the balance of the appeal points to frame the rest of our assessment.

Unproven facts

[20] Mrs Vear argues that the Judge wrongly referred to the stealing of tobacco and cash, which were contested facts.[24] She submits that this may have led the Judge to misunderstand the purpose of their actions, that is to evict the victims from the property to assist the property owner. But we agree with the Crown that this was of no moment. The Judge also found that all property had been recovered and in any event it was (and is) the "home invasion" element of the offending that was the key, and we think determinative, factor in fixing a starting point.

Uplifts

[21] Turning to other factors, firstly the uplifts. Mrs Vear submits that starting points or uplifts of one month are commonly adopted where the dangerous driving demonstrably endangered the lives of people.[25] In Mr Mason's case, an uplift of no more than two weeks would have been warranted had it been stand-alone offending. But she says this offending should have been considered alongside the receiving offending as they were causally connected. The principle of totality therefore applied, yet no totality adjustment was made. Had this been done, then a global uplift of no more than four months was warranted. She also submits that the Crown cites no authority to support correctness of the uplifts and highlights various cases where smaller uplifts were applied.[26] Ms Simpson responds that the relatively modest uplifts are inherently unobjectionable.

[22] Unsurprisingly there is limited appellate authority dealing with a combination of receiving, dangerous driving or failing to stop charges. We acknowledge that based

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24 See judgment under appeal, above n 1, at [3].

25 Citing *Gray v Police* [2018] NZHC 103, *Norris v Police* [2024] NZHC 1992, *Cole v R* [2018] NZHC 1405, *Christiansen v Police* HC Wellington CRI-2008-454-25, 20 May 2008, *R v Burton* HC Hamilton CRI-2007-019-9869, 26 February 2008, and *Police v Ratahi* [2013] NZHC 1657.

26 See above at n 25.

on the High Court authorities cited by Mrs Vear, an uplift of one month for dangerous driving is common. But that is a limited frame within which to find the uplift of two months was excessive. In any event, for the purposes of our evaluation, we think a one month uplift is appropriate for the driving offending and a total uplift of five months is justified.

Discount

[23] Miss Forsyth submits that Mr Mason threw himself into his rehabilitation, referring to among other things the various programmes he has attended, including the Clean n Soberside residential programme, the Men's Living Without Violence programme, the Man Up 2.0 programme, Narcotics Anonymous meetings and Abuse Prevention Services counselling. She therefore submits that a discount of 15 per cent was warranted.[27] She further submits that the restricted bail discount was unduly parsimonious, noting that he had spent a total of 18 months on bail from the time of the aggravated robbery charge.

[24] In our view, the 10 per cent afforded by the Judge for rehabilitation was not out of range. But we accept a discount of 15 per cent could have been applied without criticism given the significant efforts Mr Mason has made at rehabilitation. We are also content to use that level of discount in our assessment. However, the reduction of a further three months for time spent on restrictive bail was appropriate given Mr Mason offended while on it. No further adjustment for bail is needed on that basis.

Outcome

[25] Assuming then a starting point of two years nine months or 33 months, an uplift of five months to other offending, a discount of 15 per cent for rehabilitation efforts together with the six per cent discount for remorse and a further three months for time on bail, the end point sentence would devolve to 27 months. Given this, the sentence handed down by the Judge of three years one month or 37 months was manifestly excessive. We also think that an end sentence of 27 months better gives vent to the purposes and principles under the Sentencing Act 2002.

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[27] Citing *R v Keyte* [2022] NZHC 1063 at [29]–[32] and *R v Rata* [2024] NZHC 2292 at [19]–[21].

Result

[26] The application for an extension of time to appeal is granted.

[27] The appeal is allowed.

[28] The sentence of three years and one month's imprisonment is set aside and a sentence of two years and three months' imprisonment is substituted.

Solicitors:
Public Defence Service | Ratonga Wawao ā-Ture Tūmatanui, Tauranga for Appellant
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent