

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA577/2024  
[2026] NZCA 38**

BETWEEN SHONTAYN TOKOREMA TARATU  
Appellant  
AND THE KING  
Respondent

Hearing: 10 February 2026  
Court: Palmer, Downs and Harvey JJ  
Counsel: L A Elborough for Appellant  
H G Clark for Respondent  
Judgment: 25 February 2026 at 12 pm

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**JUDGMENT OF THE COURT**

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- A The conviction appeal is dismissed.**  
**B The sentence appeal is allowed.**  
**C The sentence of nine years and eight months' imprisonment is quashed.  
A sentence of nine years' imprisonment is substituted.**
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**REASONS OF THE COURT**

(Given by Downs J)

[1] Shontayn Taratu was found guilty by a jury of dealing cocaine and ketamine. Mr Taratu appeals his conviction and his sentence of nine years and eight months' imprisonment which also encompassed other drug dealing offences.<sup>1</sup> We must allow

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<sup>1</sup> *R v Taratu* [2024] NZDC 18541.

the conviction appeal if there has been a miscarriage of justice, meaning an error in or in connection with the trial giving rise to a real risk its outcome might have been affected.<sup>2</sup> We must allow the sentence appeal if there is an error in the sentence and a different sentence should be imposed.<sup>3</sup>

## **Background**

[2] Mr Taratu faced four charges, all under the Misuse of Drugs Act 1975. Charge 1 alleged he and his former partner, Luana Tasipale, supplied cannabis to their son. Charge 2 alleged Mr Taratu offered to sell the same drug to others. Charges 3 and 4 alleged Mr Taratu offered to supply cocaine and ketamine respectively. All charges were representative, meaning they alleged a pattern of conduct.

[3] Mr Taratu pleaded guilty to charges 1 and 2 at the beginning of his trial.

[4] To prove the remaining charges, the Crown relied on text messaging between Mr Taratu and others. The messaging used codes such as “coca” and “keta”. The Crown’s case was supported by the evidence of a drugs expert, Detective Sergeant Scott Foster.

[5] Mr Taratu testified. He accepted sending and receiving the messaging but said he was dealing in cannabis, not cocaine or ketamine. Mr Taratu said “coca” and “keta” referred to different strains of cannabis. Mr Taratu also said “K” meant \$100, not \$1,000, as the Crown alleged.

[6] As observed, Mr Taratu was found guilty of dealing cocaine and ketamine.

## **Trial counsel incompetence?**

[7] Mr Taratu was represented by Paul Barrowclough (in relation to these and other serious charges). Mr Taratu’s primary ground of appeal concerns that representation. Mr Taratu alleges Mr Barrowclough made a variety of errors in the conduct of his case, causing a miscarriage of justice.

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<sup>2</sup> Criminal Procedure Act 2011, s 232.

<sup>3</sup> Section 250(2).

[8] Mr Taratu swore an extensive affidavit in support of this contention. He also offered affidavits from several witnesses. We distil Mr Taratu's core complaints below. In so doing, we put aside the not inconsiderable body of inadmissible material in the affidavits offered by and on behalf Mr Taratu.<sup>4</sup>

[9] Mr Taratu says Mr Barrowclough failed to call evidence to support the proposition he was dealing strains of cannabis, rather than cocaine and ketamine:

- (a) Ms Tasipale should have been called to say the codes referred to cannabis based on what she knew of the offending.
- (b) Jiaying Wang, Mr Taratu's wife, should have been called to discuss familial finances, to demonstrate an absence of income or assets commensurate with commercial drug dealing.
- (c) A former police officer, Mark Gutry, should have been called to say strains of cannabis are cultivated in New Zealand, and dealers sometimes give these strains their own codes (as Mr Taratu said to the jury had happened). Mr Gutry could also have said he identified, from open-source web-based research, a "Ketama" strand of cannabis originating from Morocco.

[10] Mr Taratu's mother swore an affidavit, saying she had limited contact with Mr Barrowclough, and offered concern about the adequacy of his representation of her son.

[11] Mr Barrowclough filed an affidavit refuting the complaints. He and Mr Taratu were cross-examined closely before us, as were Ms Tasipale, Ms Wang, and Mr Gutry.

[12] We are satisfied there is nothing of substance in Mr Taratu's complaints of Mr Barrowclough for the following reasons.

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<sup>4</sup> We give one example. The affidavit of Mark Gutry included the content of his conversations with others about the messaging, and was offered, as proof, of the truth of that content. But those spoken to did not make affidavits. The evidence is unquestionably hearsay under the Evidence Act 2006.

[13] First, Mr Barrowclough said at their final pre-trial meeting on 12 March 2024 that Mr Taratu instructed him not to contact Ms Tasipale or Ms Wang as neither was to give evidence for him. Mr Taratu denied giving this instruction. We accept Mr Barrowclough's evidence on this topic — and, as will become apparent, more generally. Mr Barrowclough impressed as a fair, careful, and thoughtful witness, who made appropriate concessions under cross-examination.

[14] Second, none of the proposed testimony could materially advance Mr Taratu's case given the limitations in connection with it, disadvantages in relation to offering it, or both:

- (a) Ms Wang's affidavit is clear on its face that she "did not know about the cannabis codes", when what they meant comprised the key issue for the jury. In cross-examination, Ms Wang confirmed she knew nothing about the codes or Mr Taratu's drug dealings. That Ms Wang could speak to a modesty of income and assets was relatively unimportant given Mr Taratu's acknowledged drug dealings, albeit in cannabis only.
- (b) Ms Tasipale accepted in cross-examination she had "very little involvement" in Mr Taratu's offending, and "assumed" Mr Taratu was referring to cannabis rather than more serious drugs. Ms Tasipale also accepted in cross-examination she swore an affidavit in support of a successful discharge application on charge 1 — about which more shortly — in which she squarely blamed Mr Taratu for giving their son cannabis, describing her relationship with Mr Taratu as "toxic", and him as "controlling". We accept Ms Clark's related submission on behalf of the Crown that Ms Tasipale could have been cross-examined on this affidavit had she testified, and this would have been likely injurious to the conduct of Mr Taratu's case.
- (c) Mr Gutry accepted under cross-examination: (a) he had not, despite 28 years' experience as a police officer, heard of "coca" or "keta" as strains of cannabis before this case; (b) these terms could "on face value" be codes for cocaine and ketamine; (c) "K" typically referred to

\$1,000; and (d) reference to the Moroccan strain of cannabis, Ketama, could not have assisted Mr Taratu's case, as the alleged cannabis dealt by Mr Taratu was grown in New Zealand, not Morocco. Mr Gutry's potential testimony of codes being given to cannabis would have supported that fact, but that testimony would have come at the expense of points (a)–(d) above. Moreover, Mr Barrowclough elicited from DS Foster that strains of cannabis are grown in New Zealand, so this aspect was before the jury.

[15] Third, Mr Barrowclough said he advised Mr Taratu against calling a drug expert because he considered the disadvantages in doing so outweighed any advantages. We accept his evidence and Mr Barrowclough's related evidence that Mr Taratu accepted his advice. We note Mr Taratu accepted (during re-examination before us) that he knew it was open to him to reject Mr Barrowclough's advice and instruct him to do the contrary.

[16] Fourth, we find Mr Barrowclough was adequately prepared for trial. We acknowledge the possibility of electronically monitored bail was the focus of some of their 13 meetings, and the key meeting of 12 March 2024 did not occur until a month before trial. However, it is clear to us Mr Barrowclough understood the charges, Mr Taratu's defence to the charges, and attendant principle. We repeat our factual finding that Mr Taratu instructed Mr Barrowclough not to contact Ms Tasipale or Ms Wang, as neither was to give evidence for him. We make another point in this context: the case could not have been simpler. The sole issue was whether Mr Taratu was dealing cocaine and ketamine, or as he said, cannabis. And as to that, only Mr Taratu could *really* comment.

[17] On behalf of Mr Taratu, Mr Elborough offered other criticisms of Mr Barrowclough, including that he did not send Mr Taratu a letter of advice or record a signed instruction concerning Ms Tasipale or Ms Wang. We accept Mr Barrowclough should have done both. However, neither omission could have caused a miscarriage for the reasons already identified.

[18] This leaves one point in relation to representation. Ms Tasipale asked Mr Barrowclough to represent her also on charge 1. Mr Barrowclough told Ms Tasipale he was not permitted to do so because he already acted for Mr Taratu. Mr Barrowclough arranged for Ms Tasipale to be represented by a junior member of chambers, Jasmine Jackson. Ms Jackson successfully prosecuted Ms Tasipale's application for a discharge. That application was supported by the affidavit referred to at [14(b)]. Mr Barrowclough witnessed the swearing of that affidavit. He also supported Ms Jackson in court on the discharge application, and at an earlier case review hearing, as a senior practitioner from chambers. Mr Barrowclough did not offer any advocacy at either hearing.

[19] Against this background, which largely emerged at the hearing, Mr Elborough argued Mr Barrowclough had a conflict of interest because he acted for both Mr Taratu and Ms Tasipale. Mr Elborough said Ms Jackson was not sufficiently senior to represent clients on her own behalf, so it necessarily followed Mr Barrowclough was acting for both. Mr Elborough also contended Mr Barrowclough supervised Ms Jackson in relation to Ms Tasipale's case. Mr Barrowclough was categorical he did not so supervise Ms Jackson.

[20] We accept Mr Barrowclough's evidence. Relatedly, we conclude Ms Tasipale was represented by Ms Jackson, not Mr Barrowclough. Mr Barrowclough told Ms Tasipale he was not permitted to act for her. Mr Barrowclough played no role in taking instructions from Ms Tasipale, or in the formulation of her case. He gave Ms Tasipale no legal advice. The fact that Mr Barrowclough appeared at the discharge application and review hearings to support a junior practitioner does not alter that proposition. In any event, Mr Taratu instructed Mr Barrowclough not to speak to Ms Tasipale as a potential witness. No conflict of interest therefore arose. We accept Mr Barrowclough should not have witnessed Ms Tasipale's affidavit, but doing so did not occasion a miscarriage of justice in Mr Taratu's case. We did not understand Mr Elborough to argue otherwise.

[21] Mr Elborough did, however, argue Mr Barrowclough employed Ms Jackson given an entry in the law register to that effect, and that being so, he acted for both Mr Taratu and Ms Tasipale. The entry was not offered in evidence because it was

unavailable. We are prepared to accept the entry referred to Ms Jackson as Mr Barrowclough's employee. However, we have no reason to doubt Mr Barrowclough's evidence that Ms Jackson was not his employee. Indeed, Mr Barrowclough said he has never employed a junior barrister. Moreover, the mere fact of employment, had it arisen, would not have made Mr Barrowclough Ms Tasipale's lawyer.

[22] It follows the primary ground of the conviction appeal fails. The remaining grounds can be addressed more quickly.

### **Propensity evidence?**

[23] As observed, Mr Taratu pleaded guilty to charges 1 and 2 at the beginning of the trial, hence in front of the jury. When opening, the prosecutor invited the jury to focus on the remaining charges. In closing, the prosecutor said Mr Taratu accepted the drug dealing and the issue was what drugs he was dealing. Mr Elborough contends this matrix engaged propensity evidence and therefore required the trial Judge to give a propensity direction in accordance with that anticipated by *Mahomed v R*.<sup>5</sup>

[24] We disagree. The prosecution would have invoked propensity reasoning had it contended Mr Taratu's acknowledged offending meant it was likely he was *also* dealing cocaine and ketamine. But this argument was not advanced. No propensity was alleged. Put simply, propensity reasoning played no part in the case. Judge A M Fitzgibbon was therefore correct not to give a propensity direction.

### **Presumption of innocence**

[25] Mr Elborough also takes issue with the italicised aspects of the prosecutor's closing address:

*Just think about where that evidence is coming from. Who's telling that story? Who's giving that explanation? None of it's lining up. None of it makes sense. Crown says it's implausible. Doesn't have what prosecutors often call "the ring of truth," right? And there's no magic to that. There's no magic to doing a credibility assessment of someone. When people give evidence, and you as finders of fact are asked to assess how believable they are, how reliable they are, how credible they are, there's different things that you use, and her Honour*

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<sup>5</sup> *Mahomed v R* [2011] NZSC 52, [2011] 3 NZLR 145.

might direct you on it later, in terms of not reading too much into body language, looking at consistency, consistency over time, consistency within their own story. Use all those things, all right? But the ring of truth is ultimately what you're looking for, the Crown says. And there's no magic to that exercise. That's something I'd say we do every day. Whether it's subconsciously, or if you're the kind of person that does it intentionally, when someone's talking to you, you know if you believe them or not, right? *You might not be doing an assessment, but you do decide, based on whatever it is that we do as adults, if this person's telling you the truth or not. So do think about that.*

He argues the submission invited the jury to reject Mr Taratu's evidence because he had, as defendant, a motive to lie.

[26] Principle is clear. A generalised allegation that a defendant has a motive to lie simply to avoid conviction "is particularly serious because it subverts the presumption of innocence".<sup>6</sup> But as the cases also recognise:<sup>7</sup>

It is, however, one thing, and a perfectly proper approach, for prosecuting counsel to suggest an accused has a motive to lie and has lied because of previous convictions, the improbability of his evidence, its conflict with proved facts or other circumstances of the case. If that approach is taken, the Judge may choose to reflect those submissions in summarising the prosecution case. But it is quite another matter, and an incorrect approach, for prosecuting counsel or the Judge to suggest in submissions or in summing-up that an accused's motive to lie results from no more than the fact that he or she is the accused.

[27] Read as a whole, it is apparent the prosecutor was inviting reference to the evidence, not Mr Taratu's status as a defendant.

### **Summing up**

[28] Judge Fitzgibbon directed the jury that, if Mr Taratu's evidence created a reasonable doubt, the jury should find him not guilty. However, the Judge omitted to inform the jury the same outcome followed a jury conclusion that Mr Taratu was telling the truth. What would otherwise have been the standard tripartite direction therefore omitted one aspect. Mr Elborough argues the omission caused a miscarriage.

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<sup>6</sup> *R v Stewart (Eric)* [2009] NZSC 53, [2009] 3 NZLR 425 at [26].

<sup>7</sup> *R v Leef* CA14/06, 24 August 2006 at [29].

[29] We acknowledge the slip but consider it nothing more in the circumstances. As Ms Clark observes:<sup>8</sup>

However, in the circumstances the omission cannot have caused Mr Taratu any prejudice. The tripartite direction was preceded by the Judge re-emphasising the standard and burden of proof, as above. While the explicit possibility of the jury accepting the appellant's evidence was omitted, the two possibilities that (a) his evidence left them *unsure*, or (b) that what he said seemed like a *reasonable possibility*, were logically inclusive of the possibility that they actually accepted his evidence (clearly being a much higher bar for the defence).

[30] The Judge did not give an expert evidence direction. Mr Elborough contends this caused a miscarriage of justice given the Crown called DS Foster to testify about controlled drugs.

[31] The submission engages these principles:<sup>9</sup>

[77] ... the failure to instruct a jury as to the effect of experts giving evidence does not automatically lead to a miscarriage of justice. There is no absolute requirement to direct on the effect of expert evidence in every case (*R v Flaws* (1998) 16 CRNZ 216 at 219).

[78] In the time-honoured phrase, what direction is required depends on the circumstances of the particular case.

[32] DS Foster was not invited by the prosecutor to offer an opinion on the terms used by Mr Taratu.<sup>10</sup> Despite this, Mr Barrowclough put to the officer the codes could refer to drugs other than cocaine and ketamine. DS Foster acknowledged that was "possible".

[33] Contrary to Mr Elborough's submission, the Crown's case did not hinge on DS Foster's evidence. The hinge was the messaging itself — including the obvious similarity of the codes to the drugs alleged. The point can be made this way. The jury could have accepted DS Foster's testimony and still concluded Mr Taratu was dealing cannabis, not cocaine and ketamine. That being so, the omission of an expert evidence direction could not have caused a miscarriage.

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<sup>8</sup> Emphasis in original.

<sup>9</sup> *R v Guild* CA219/04, 11 October 2004.

<sup>10</sup> He did, in re-examination, offer an opinion about the dollar value of one transaction in the messaging.

## Framing of charges

[34] Finally, Mr Elborough contends charge 4 was a nullity, and use of representative charges impermissible.<sup>11</sup>

Charge 4 in the Crown Charge Notice, the purported charge of “offering to supply a Class C drug to a person over 18”, is not an offence known at law.

It is an offence to offer to sell a Class C drug to a person over 18, carrying a maximum penalty of eight years’ imprisonment, whereas it is a summary offence to offer to supply a Class C drug to a person over 18, carrying a maximum penalty of three months’ imprisonment.

...

The use of representative charges here contravenes s 20(2) of the Criminal Procedure Act 2011. That section provides the circumstances in which a charge may be a representative charge. In particular:

A charge may also be representative if—

- (a) multiple offences of the same type are alleged; and
- (b) the offences are alleged to have been committed in similar circumstances such that it is likely that the same plea would be entered by the defendant in relation to all the offences if they were charged separately; and
- (c) because of the number of offences alleged, if the offences were to be charged separately but tried together it would be unduly difficult for the court (including, in any jury trial, the jury) to manage the separate charges.

[35] We disagree for three reasons.

[36] First, charge 4 was laid under the correct legislative provisions. Pursuant to ss 6(1)(e) and (2)(c) of the Misuse of Drugs Act, it *is* an offence to sell, or offer to sell, any Class C controlled drug to a person of or over 18 years of age. Relatedly, the key case of *Fonotia v R* is distinguishable.<sup>12</sup> In it, the charges were a nullity because there is no offence of selling a controlled drug. But again, it is an offence to sell, or offer to sell, any Class C controlled drug to a person of or over 18 years of age, and ketamine is a Class C controlled drug.

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<sup>11</sup> Footnotes omitted.

<sup>12</sup> *Fonotia v R* [2007] NZCA 188, [2007] 3 NZLR 338.

[37] Second, everyone agreed, Mr Taratu included, that he had been trying to *sell* controlled drugs. The only issue concerned what drugs he had been trying to sell. Moreover, the Crown proved the (Class C controlled) drug was ketamine. So, the error was semantic, not more.

[38] Third, Mr Taratu suffered no prejudice from the charges being representative. His defence was identical for each alleged instance of offered sale: the substance was cannabis only. Mr Taratu does not say he would have pursued different defences had the charges been particularised.

[39] The conviction appeal fails.

### **Sentence appeal**

[40] This aspect requires a little more background. We begin with the Judge's statement of the facts:<sup>13</sup>

[3] ... You and Luana Tasipale are former partners. You have a 15-year-old son, ... Between 12 October 2022 and 9 November 2022, police intercepted private communications under surveillance device warrant of you. Police also obtained telecommunications data under production order for the communications of you between 1 August 2022 and 31 October 2022.

[4] Throughout the period of 11 September 2022 to [8 November 2022], you regularly supplied your son with ounces of cannabis plant with the expectation that he would sell that cannabis plant in smaller quantities to unknown persons. Police conservatively estimate that the total amount supplied by you to him was 12 ounces or 336 grams which usually sold for around \$20 a gram which would yield \$6,720. You would typically resupply your son with at least two ounces of cannabis plant every fortnight and if you were not able to personally deliver the cannabis plant resupplies then you would arrange for an unknown associate to do that.

[5] There are some examples in the summary of facts of conversations between you which are relevant. The text message communications show that you and Luana benefitted from [your son] supplying cannabis plant. The communications also show that you exploited your son by having the expectation that he prioritise his cannabis plant sales and on November 2022 police executed a search warrant at your address. [He] and Luana were both present at the time and zip lock bags were found, 37 of them, together with a gram of cannabis in [his] bedroom, \$500 cash, electronic scales, and numerous empty zip lock bags.

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<sup>13</sup> *R v Taratu*, above n 1.

[6] Between 11 and 30 September, you offered to supply an unknown person with ounces of cannabis plant for \$350 an ounce and you then communicated with the unknown person claiming: “Anyone after a Z, 10 left, elbows ready, end of week, taro equals green 350.” The person acknowledged their interest and that formed the basis of that second charge.

[7] Offering to supply ketamine between 8 September 2022 to 11 October. You offered to supply an unknown person with kilograms and ounces of ketamine, \$5,000 an ounce, \$165,000 per kilogram, and then offering to supply cocaine between 8 September 2022 to 11 October 2022, you offered to supply an unknown person with kilograms of cocaine referred to as CC and Coco for \$270,000 per kilogram and on 9 September you communicated with an unknown person claiming: “Got C and K as well, Coco keta. I got another pre-pay order to sort but it’s coming out.” The person acknowledged their interest and confirmed, same one as before we did, cocaine is a Class A control drug.

[8] Following the jury trial, you are found guilty of the two representative charges of supplying a Class A control drug and a Class C control drug in my notes for the sentencing. Police relied on the text messages between you and a Mr Samuella Latu between the dates of 8 September 2022 and 11 October 2022. The text messages refer to the text exchange included texts including from you: “Sup Tox, got Cs and K as well.” The response from Mr Latu: “What’s the numbers brother? How much for half, whole and half?” and further said: “Bigs one brother” and then a question: “What’s C and K?” your response: “Coco and keta”. There were further texts including: “164 on Big Tuku full house”, “165 is that for the C?”, “Nah, that’s 270”. You gave evidence that the references to C and K and Coco and keta were two strains of cannabis and were not references to Class A and C drugs, cocaine and ketamine. When giving evidence you agreed that you dealt in cannabis, but you did not deal in ketamine or cocaine and as you are aware the jury found you guilty of those two representative charges.

[41] The Judge sentenced this way:

[18] The starting point is 10 years for the lead offending plus an uplift of two years for the other offending which gets to 12 years, taking into account totality, a deduction is appropriate which means it gets back down to 10 years. A section 27 report, your personal circumstances and the remorse and I have read your letter in which you talk about what you meant for your son. I agree that nine years and eight months is the appropriate end sentence for the lead offence of supplying cocaine and all the other charges. I will go through and put an amount in relation to those, but it is one sentence of nine years and eight months.

[42] Mr Elborough contends the starting point was erroneous because *Cavallo v R* holds starting points for dealing in cocaine should generally be five per cent below a comparable methamphetamine starting point,<sup>14</sup> and cases involving much greater

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<sup>14</sup> *Cavallo v R* [2022] NZCA 276, (2022) 30 CRNZ 726 at [63].

quantities of cocaine have attracted a starting point in the order of 10 years' imprisonment.<sup>15</sup>

[43] We acknowledge these points, but note the Judge deducted two years for totality with the result a 10-year starting point applied to *all* the offending. This level is unimpeachable given the various aspects of Mr Taratu's offending, which included repeated provision of cannabis to his son, dealing in drugs of different classes, and substantial amounts of both cocaine and ketamine for anticipated commercial profit.

[44] We do, however, accept Mr Elborough's submission the Judge's deduction of four months for Mr Taratu's background and personal circumstances was inadequate. We consider a one-year (10 per cent) discount would have been appropriate given Mr Taratu's exposure to alcohol, drugs and gangs likely influenced his path to commercial drug dealing. Given the seriousness of the offence, we do not accept Mr Elborough's submission that a discount of 15 percent discount was warranted. It follows we consider the appropriate sentence should have been nine years' imprisonment, rather than nine years and eight months' imprisonment.

## **Result**

[45] The conviction appeal is dismissed.

[46] The sentence appeal is allowed.

[47] The sentence of nine years and eight months' imprisonment is quashed. A sentence of nine years' imprisonment is substituted.

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

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<sup>15</sup> See, for example, *R v Higgins* [2025] NZHC 4012; *R v Geary-Hore* [2025] NZHC 2669; *Alves v R* [2025] NZCA 508; *R v Zubillaga* [2024] NZDC 121; *R v Hokai* [2023] NZHC 2113; *R v Li* [2023] NZHC 891; *R v Namoa* [2022] NZHC 3025; *Singh v R* [2020] NZCA 211; and *De Macedo v R* [2020] NZCA 132.