IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA96/2025
[2026] NZCA 164

BETWEEN	JAMES ANTHONY FINN Appellant
AND	THE KING Respondent

Hearing: 24 March 2026

Court: Collins, Mander and Becroft JJ

Counsel: M W Ryan for Appellant
D R Green for Respondent

Judgment: 6 May 2026 at 12 pm

JUDGMENT OF THE COURT

A The appeal against sentence is allowed.

B The sentence of eight years' imprisonment is set aside. A sentence of seven years and 10 months' imprisonment is substituted.

REASONS OF THE COURT

(Given by Becroft J)

The appeal

[1] Mr James Anthony Finn appeals his sentence of eight years' imprisonment in respect of 19 charges, principally methamphetamine dealing, possession of other

controlled drugs, unlawful possession of firearms and ammunition, and dishonesty offending.[1]

[2] Mr Finn's single ground of appeal is that the Judge failed to make any meaningful adjustment from the starting point of 11-and-a-half years' imprisonment to reflect the totality of his offending. Mr Finn says this resulted in a manifestly excessive end sentence.

[3] The Crown opposes and submits that this was an orthodox sentencing process, without error, that resulted in an entirely appropriate end sentence.

[4] The Court must allow Mr Finn's appeal if it is satisfied that there was an error in the sentence imposed following conviction; and a different sentence should be imposed.[2]

[5] It is only appropriate for an appeal court to intervene and substitute its own views if the sentence being appealed is "manifestly excessive" and not justified by the relevant sentencing principles, or where the sentence is in range but an error has occurred that requires correction in those particular circumstances.[3] Where an arithmetical error has occurred, the appeal court will impose a corrected sentence to give effect to the sentencing judge's intentions.[4]

[6] In this case, we have concluded that the sentencing process adopted by Judge Kellar was appropriate. The starting point he adopted to reflect the totality of the offending was within range, and the end sentence was not manifestly excessive.

[7] We therefore conclude the appeal is unsuccessful on the grounds advanced by Mr Finn. We do make a small mathematical correction which slightly reduces his sentence and allow the appeal on that basis. What follows are our reasons.

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1 *R v Finn* [2025] NZDC 2751 [sentencing notes]. The sentence was imposed by Judge Kellar on 12 February 2025 in the District Court at Christchurch.
2 Criminal Procedure Act 2011, s 250(2).
3 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [32]–[36].
4 *Tutakangahau v R,* above n 3, at [36]; and *Ferris-Bromley v R* [2017] NZCA 115 at [15(a)].

The offending

[8] Between 8 and 22 August 2023, Mr Finn offered to supply methamphetamine to an associate on five separate occasions (totalling 75.5 g) and supplied it to the associate on 11 occasions (totalling 60.5 g). This dealing activity formed the basis of the representative charges of offering to supply and supplying a Class A controlled drug.[5]

[9] On 21 September 2023, Mr Finn was arrested at a car park in Nelson. A search warrant was executed on his vehicle. Police found:

(a) 150.87 g of methamphetamine packaged for sale with further indicators of commerciality, including scales, "tick lists" detailing drug-dealing transactions and money owed, deal bags and $8,357.10 cash. This laid the basis for the possession of a Class A controlled drug for supply charge.[6]

(b) 35.09 g of MDMA for supply (this formed the basis for the possession of a Class B controlled drug for supply charges),[7] 105.72 g of cannabis for supply (resulting in the possession of a Class C controlled drug for supply charge),[8] 1.5 tabs of LSD (resulting in the possession of a Class A controlled drug charge),[9] and drug paraphernalia, being four methamphetamine pipes and a cannabis "grinder" (resulting in the representative possession of pipes charge and the possession of a utensil charge).[10]

(c) Three firearms concealed in a guitar case (a loaded .22 semi-automatic rifle and two 12-guage pump-action shotguns, one of which was loaded), together with 27 rounds of .22 calibre ammunition and

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5 Misuse of Drugs Act 1975, s 6(1)(c) and (2)(a). The maximum penalty is life imprisonment.
6 Section 6(1)(f) and (2)(a). The maximum penalty is life imprisonment.
7 Section 6(1)(f) and (2)(b). The maximum penalty is 14 years' imprisonment.
8 Section 6(1)(f) and (2)(c). The maximum penalty is eight years' imprisonment.
9 Section 7(1)(a) and (2)(a). The maximum penalty is six months' imprisonment or a fine not exceeding $1,000, or both.
10 Section 13(1)(a) and (3). The maximum penalty is one year's imprisonment or a fine not exceeding $500, or both.

54 rounds of 12-gauge shotgun ammunition, a magazine coupler and a second magazine. This resulted in three charges of unlawful possession of a firearm,[11] two charges of possession of a firearm part without a licence,[12] and two charges of unlawful possession of ammunition.[13]

(d) A stolen Milwaukee-branded grinder and battery, resulting in the receiving charge (for the value of $500–$1,000).[14]

(e) A knuckleduster in Mr Finn's pocket. This resulted in the possession of an offensive weapon charge.[15]

[10] On 22 September 2023, a search under a warrant of a storage unit revealed a stolen, hotwired 2021 Suzuki motorcycle that had been taken from the University of Canterbury car park approximately one year earlier, leading to the unlawful use of a motorcycle charge.[16]

[11] Both counsel accepted that Mr Finn also pleaded guilty to a separate charge of driving with two or more qualifying drugs in his blood.[17] This charge appears to have resulted from a blood specimen taken following a single-vehicle crash on 3 August 2023 that revealed methamphetamine, MDMA and THC at eight times the qualifying drug limit.

Sentencing in the District Court

[12] Mr Finn pleaded guilty at callover to all 19 charges.

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11 Arms Act 1983, s 45(1). The maximum penalty is four years' imprisonment or a fine not exceeding $5,000, or both.
12 Section 22A. The maximum penalty is a fine not exceeding $10,000.
13 Section 45(1).
14 Crimes Act 1961, ss 246 and 247(b). The maximum penalty is one year's imprisonment.
15 Section 202A(4)(a). The maximum penalty is three years' imprisonment.
16 Section 226(1). The maximum penalty is seven years' imprisonment.
17 Land Transport Act 1998, ss 57B and 57D. The maximum penalty is six months' imprisonment or a fine not exceeding $4,500. The court must order the person to be disqualified for nine months or more from holding or obtaining a driver licence.

[13] Pre-sentence and alcohol and drug reports were prepared. The Judge found a causative connection between Mr Finn's drug addiction and his offending and recognised his background and rehabilitative prospects as mitigating factors.[18]

[14] Judge Kellar structured the adjusted starting point for the sentence as follows:[19]

(a) a starting point of seven-and-a-half years' imprisonment for the methamphetamine offending;

(b) an uplift of two years' imprisonment for the other drug offending;

(c) an uplift of one-and-half years' imprisonment for the firearms and ammunition offending;

(d) an uplift of six months' imprisonment for the dishonesty offending; resulting in

(e) an aggregate starting point of 11-and-a-half years' imprisonment.

[15] The Judge then stated:

> [11] I need to step back and ensure that the starting point is not wholly disproportionate to the overall seriousness of the offending and, given the quantity of methamphetamine, your role in it and the other offending, I consider that an 11½ year starting point reflects, adequately reflects, the appropriate starting point.

[16] The Judge then applied the following personal adjustments:[20]

(a) a five per cent uplift for relevant criminal history; and

(b) discounts of:

(i) 15 per cent for guilty pleas;

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18 Sentencing notes, above n 1, at [15] and [17].
19 At [8] and [10].
20 At [16]–[17].

(ii) 10 per cent for the causative connection between Mr Finn's drug addiction and offending; and

(iii) seven per cent for personal circumstances and rehabilitative prospects.

[17] As he put it, this produced a downward adjustment of 27 per cent, being approximately three years, resulting in an overall sentence of eight years and six months' imprisonment.[21]

[18] The Judge then indicated a further six-month uplift was appropriate for offending while on parole. However, there should then be a 12-month reduction to reflect that Mr Finn had already spent 16 months in prison as a result of his parole recall.[22] The Judge reached a final sentence of eight years' imprisonment.[23] The Judge also disqualified Mr Finn for nine months on the separate driving charge.[24]

Was totality adequately addressed?

[19] No issue is taken with the Judge's starting point of seven-and-a-half years' imprisonment for the methamphetamine offending, including both the offers to supply and actual supply, together with possession for supply of 150.87 g of methamphetamine. Neither could there be. The starting point was fair and appropriate. Given Mr Finn's role as a middleman (purchasing methamphetamine from a bulk supplier and on-selling it in quantities that a street dealer would then break down and sell), which was characterised as "significant" (using the *Zhang v R* classification),[25] the starting point could even have been a little higher.[26]

[20] Mr Ryan's essential contention for Mr Finn was that the sentencing went wrong from that point. In his view, the Judge then set (and illegitimately cumulated) discrete stand-alone sentences for the remainder of the other offending, as we have set out.

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21 At [17].
22 At [18].
23 At [19].
24 At [21].
25 At [6]–[7], referring to *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [115].
26 See also the refinements to the *Zhang* significant role profile in *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [71] per Winkelmann CJ, William Young, Glazebrook and Williams JJ.

Mr Ryan's argument is predicated on his view that each of the three further uplifts (totalling four years) would have been appropriate for each set of offending in their own right. However, they should then have been subject to a totality adjustment downwards from the resulting 11-and-a-half years' imprisonment. He suggested the result of that exercise would be an adjusted starting point of about nine-and-a-half years' imprisonment. In other words, had totality been applied, the uplift for all the other offences would have been no more than two years.

[21] We do not accept that submission nor the criticism of the District Court Judge's approach.

[22] In our view, the Judge's uplifts for each of the related, but different, sets of offences were made very much with the appreciation that the total period of imprisonment should be in proportion to the gravity of the offending overall. We conclude that this analysis was implicit in the Judge's approach.

[23] We say this because, for instance, of the way the Judge treated the firearms offending. It will be remembered that this related to three firearms, two of which were loaded, the possession of firearm parts without a licence and substantial amounts of ammunition, all found in Mr Finn's car. All those offences were subject to only an 18-month uplift.[27] If those charges had stood alone on the basis that they were in the possession of a commercial-level drug dealer, stand-alone sentences would inevitably have attracted a higher starting point than 18 months. The Courts have repeatedly made clear that the combination of drug dealing and firearms must be regarded very seriously.[28] We consider that a starting point for the firearms and ammunition offending, in their own right, could easily have been three years' imprisonment. The 18-month figure adopted by the Judge has been endorsed by this Court as an appropriate uplift for firearms offending as part of sentencing for drug dealing offending.[29] So, in our view, the uplift for the firearms offending demonstrated that totality was very much in the Judge's mind. Similarly, the remaining dishonesty and

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27 Sentencing notes, above n 1, at [10].

28 See *Perez v R* [2015] NZCA 267 at [51], citing *R v Henwood* [2008] NZCA 248 at [23] and *Faifua v R* CA287/05, 27 March 2006 at [26]; and *Haggie v R* [2011] NZCA 221 at [23], citing *Torea v R* [2011] NZCA 96.

29 See discussion on this point in *Mills v R* [2016] NZCA 245 at [18], citing *R v Fonotia* [2007] NZCA 188, [2007] 3 NZLR 338 at [41] and *Haggie v R*, above n 28, at [23].

drug offending was significant and would have attracted higher starting points if sentenced on a stand-alone basis.

[24] The fact that the Judge made no mention of the serious drug-related driving charge carrying with it a maximum penalty of six months' imprisonment (other than to impose nine months' disqualification), again, rather emphasises that totality was foremost in the Judge's mind at the uplift stage.[30] In our view, the Judge must be taken to have concluded (for totality reasons) that there was no need to impose a discrete cumulative sentence for that offence.

[25] Mr Ryan emphasised that we could not be sure that the Judge had this totality approach in mind. As we say, we conclude that such an approach was implicit in the Judge's sentencing. And even if Mr Ryan is correct, when we consider afresh the uplifts imposed, we are satisfied they are consistent with a totality approach.

[26] In any case, when the Judge finalised the 11-and-a-half year starting point as representing all the offending, he then, in what we would regard as something of a cross-check, explicitly considered whether that length of imprisonment properly reflected, in a proportionate way, the overall gravity of the offending. In other words, he explicitly addressed totality considerations. He concluded that it did.[31] So do we.

[27] In short, we see no error in the way the Judge constructed the adjusted starting point. Nor do we consider the overall starting point to be, in itself, excessive in any way or wrong in principle.

[28] In all of this, we accept that s 85(2) of the Sentencing Act 2002 provides that a cumulative sentence of imprisonment must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending. That provision, as Mr Ryan emphasised, imposes an obligation on the sentencing judge and is not merely a discretionary consideration. We also accept that the totality principle is the primary principle guiding the judicial approach to sentencing for multiple offences.[32]

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30 Sentencing notes, above n 1, at [21].
31 At [11].
32 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [49].

[29] Mr Ryan relied on *Haywood v R*.[33] He stressed that *Haywood v R* (a slightly different situation to here) makes clear that the totality assessment should not be approached sequentially as an adjustment of the appropriate end sentence for secondary offending to fit the totality principle. Rather, the analysis should be guided from the outset with the appreciation that the total period of imprisonment should be in proportion to the gravity of the overall offending.[34]

[30] In our view, none of those important principles are infringed in this case.

[31] During argument, Mr Ryan responsibly accepted that the processes adopted by the Judge, in order to reflect totality, could not be criticised. Mr Ryan's fundamental complaint was that the cumulative starting point of 11-and-a-half years was just too high and lacked a meaningful totality assessment. As we have emphasised, we understand that enthusiastically made submission, but we do not accept it.

The remainder of the sentencing process

[32] We emphasise that no issue is taken with the remainder of the sentencing process and, again, neither could it be. The reductions, particularly given the significant commerciality of this repeat methamphetamine offending, if anything, were generous.

The mathematics of the sentencing calculations

[33] The only other matter that we would add, not specifically addressed by either counsel, was that the Judge's calculations leading to the end sentence were a little confusing and have led to a mathematical error, that has slightly prejudiced Mr Finn.

[34] It is now well known that *Moses v R* provides that a two-step methodology should be used in sentencing:[35]

> (a) the first step … calculates the adjusted starting point, incorporating aggravating and mitigating features of the offence;

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33 *Haywood v R* [2015] NZCA 551.
34 At [11].
35 *Moses v R,* above n 32, at [46] (footnote omitted).

(b) the second step incorporates all aggravating and mitigating factors personal to the offender, together with any guilty plea discount, which should be calculated as a percentage of the adjusted starting point.

[35] That methodology does not, as this Court noted, "preclude credit for some mitigating factors being assessed by reference to what would otherwise be the end sentence (that is, the product of step 2)".[36]

[36] As previously discussed, the Judge's "adjusted starting point" under the first step was 11-and-a-half years' imprisonment.

[37] In respect of the second step, the Judge applied, in effect, two uplifts for personal aggravating factors. First, an uplift of five per cent representing Mr Finn's considerable previous convictions.[37] And, secondly, an uplift of six months (applied, somewhat confusingly later in the sentencing calculations) to reflect that this was offending while on parole in respect of an existing four-year prison sentence imposed for methamphetamine supply and other related offences.[38] We have already adverted to this previous offending. The result is that the Judge split the application of the uplifts so that the second was applied to the end point of step two, not as part of step two itself.

[38] The Judge should have applied the two uplifts to the 11-and-a-half year adjusted starting point. That is, the five per cent for prior convictions, and the six months for offending while on parole which equates to 4.3 per cent of the adjusted starting point. So, the total uplifts were 9.3 per cent of the adjusted starting point,

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36 At [48]. For example, time spent on electronically monitored bail or time spent in custody is factored in at that stage.

37 Sentencing notes, above n 1, at [16].

38 At [18]. See *Turner v R* [2025] NZCA 687 at [28]–[31] where this Court considered whether offending while on bail is a factor that aggravates the seriousness of the relevant offending or an aggravating personal factor. This Court noted that there appeared to be conflicting authorities on this issue, not only in the District Court and the High Court, but also in this Court. The fact of these different approaches was said to be "plainly unsatisfactory": see at [30]. This Court observed that the preponderance of its decisions are to the effect that offending while on bail is a personal aggravating factor rather than one that goes to the gravity of the offending and, while not finally deciding the issue, this Court indicated that view was its preferred approach. We take the same view in respect of offending while on parole — that is, it should be treated as an aggravating personal factor, and the subject of an uplift from the adjusted starting point.

being 12.8 months. Applying the uplifts to the adjusted starting point results in 150.8 months.

[39] The Judge then set the total allowances for mitigating features at 32 per cent applied to the 11-and-a-half-year starting point. That is 44.16 months.

[40] Subtracting the allowances (of 44.16 months) from 150.8 months results in 106.6 months.

[41] At that stage, it was appropriate to subtract the 12-month reduction to reflect the time spent in custody while on parole recall, resulting in 94.6 months. That results, with rounding in Mr Finn's favour (to 94 months), in an end sentence of seven years and ten months' imprisonment.

[42] In *Ferris-Bromley v R*, this Court discussed the correct approach to correcting arithmetical errors. Kós P observed that:[39]

> A mathematical error resulting in a sentence more severe than the Judge patently intended must be corrected, even if the sentence imposed was still within the available range. In such a case of plain error, it would be unjust for that error to be left uncorrected.

[43] That being the case, in our view, the sentence should be reduced, if only to conform with the correct approach using the mathematical figures applied by the Judge.

[44] In all of this we have considerable sympathy for the Judge. The *Moses* methodology can sometimes be complicated and result in quite complex mathematical calculations. Here, for instance, the Judge chose to take into account the five per cent uplift for previous convictions (but not the six months for offending while on parole), by reducing the 32 per cent amount for personal mitigating factors by that five per cent so that the reductions were 27 per cent. This is confusing for a defendant as to the precise allowances he is being accorded. And here, the Judge rounded the 27 per cent (three years and 1.2 months) to three years — which reduces the credit already said to

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39 *Ferris-Bromley v R*, above n 4, at [15(a)] (footnotes omitted).

have been given to him.[40] Applying the second uplift of six months at a later stage (rather than as a percentage of the 11-and-a-half year adjusted starting point), is also confusing. We accept there are only small amounts of months involved, but for a defendant that matters.

Conclusion

[45] The appeal cannot succeed on the basis of any of the grounds raised by Mr Ryan. However, the mathematical error in the end sentence must be corrected so that it is recorded as seven years and 10 months' imprisonment, rather than the eight years that we conclude was mistakenly imposed by the sentencing Judge due to mathematical error. To that small, and somewhat technical, extent the appeal is allowed.

Result

[46] The appeal against sentence is allowed.

[47] The sentence of eight years' imprisonment is set aside. A sentence of seven years and 10 months' imprisonment is substituted.

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[40] Sentencing notes, above n 1, at [17].