NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA102/2022
[2023] NZCA 533

BETWEEN	A (CA102/2022) Appellant
AND	THE KING Respondent

Hearing:	2 October 2023
Court:	Mallon, Churchman and Osborne JJ
Counsel:	P K Hamlin and S R Hames for Appellant B J Thompson for Respondent
Judgment:	30 October 2023 at 10 am

JUDGMENT OF THE COURT

A The appeal against conviction is dismissed.

B The appeal against sentence is dismissed.

C The need to correct the error pursuant to r 7.1(6) of the Criminal Procedure Rules 2012 is drawn to the attention of the District Court.

REASONS OF THE COURT

(Given by Churchman J)

Introduction

[1] A was convicted of sexual violation by rape against two women following a jury trial in the Manukau District Court.[1] He was sentenced by Judge Patel to eight years and 10 months' imprisonment.[2] He now appeals against his convictions and sentence.

[2] The appellant raises four grounds of appeal. The first and second are in support of the submission that a miscarriage of justice has occurred and the convictions should be quashed. The third and fourth allege that the sentence imposed was manifestly excessive. The grounds are that:

(a) The Judge erred by not giving a direction on reliability in relation to one of the complainants, given the evidence of her extreme level of intoxication on the night of the alleged sexual violation.

(b) The Judge asked questions during the appellant's evidence that were unfair, repetitive and leading.

(c) The Judge was wrong to find that the offending in relation to one of the complainants involved a breach of trust, leading to an excessively high starting point.

(d) The combined discount allowed for mental health issues and relative youth of 20 per cent was insufficient.

The Crown case

B

[3] The first complainant, B, is the appellant's first cousin. She was aged 22 at the time of the alleged offending. The appellant was aged 28.

---

1 Crimes Act 1961, ss 128(1)(a) and 128B — maximum penalty 20 years' imprisonment.
2 *R v [A]* [2022] NZDC 2164 [sentencing decision].

[4] On 13 July 2019, the appellant's parents hosted a party at their home in the Bay of Plenty. B had intended to stay the night there before returning to her home in Auckland the next day, as the appellant had previously agreed to drive her back.

[5] That evening, B became very intoxicated at the party. She was put to bed, where she vomited on the floor.

[6] At around midnight, the appellant decided to drive home to Auckland, rather than stay the night. B was assisted into the back seat of his car and given a container to vomit into during the journey. She vomited during the first part of the journey and was in and out of sleep as they drove.

[7] At some point near Waihi, the appellant stopped the car and emptied the vomit container. He got into the backseat and made sexual advances towards B. He pulled down his pants, exposing his penis, and said he wanted to make her feel good. She screamed and he got back into the driver's seat and continued driving.

[8] The appellant next stopped in Paeroa. He again got into the backseat of the car. This time he pulled B's legs apart, moved her underwear to the side and inserted his penis into her vagina until he ejaculated.

[9] Afterwards, the appellant drove B back to her home in Auckland. The next day, B told her parents that the appellant had raped her. She was medically examined and the appellant's semen was located on swabs taken from her vagina and underpants. B gave a DVD evidential interview on 16 July 2019. The appellant was charged with rape in relation to B on 22 November 2019.

C

[10] The second complainant is C, a close family friend of the appellant's family. The alleged offending against her occurred in around September 2014. At the time, C was 16 years old. The appellant was 22.

[11] C attended a party with the appellant's younger brother. It was arranged that she would stay at the appellant's parents' house that night.

[12] C became very intoxicated at the party. She also smoked cannabis. At one point in the night, she wandered off and became lost in an area of bush. She telephoned her mother in a distressed state. Her mother called the appellant's mother, who located C and took her back to the appellant's family home.

[13] The appellant's father carried C inside the house and she threw up on him. The appellant's mother helped to shower C. She was then put to bed on a mattress in a rumpus room downstairs wearing a dressing gown and underwear.

[14] The appellant was also staying at the house that night, having recently moved back home after a relationship break-up. C woke up to him having sex with her. He told her to be quiet and shut up or he would put his penis in her mouth to keep her quiet. C felt like she "deserved it" because she had let herself get so drunk so she kept quiet and tried to go back to sleep so she could pretend it never happened.

[15] C was picked up the next day by her mother. She told her mother that the appellant had touched her but did not explain the extent of it. About a week later, the appellant sent C a Facebook message asking if she wanted to have sex with him. There was some disagreement about the content and nature of the message. C's evidence was that the appellant asked if she wanted to have sex with him *again*. The appellant denies that, and said it was a generic text message sent to many different women as he was looking for a "rebound".

[16] C went to the police in November 2019 after finding out that the appellant was facing the charge in relation to B. She gave a DVD evidential interview on 10 December 2019. The appellant was charged with rape in relation to C on 10 March 2020.

Defence at trial

[17] The trial took place over six days in July 2021. The appellant gave evidence in his defence and called seven witnesses.

[18] His defence in relation to B was that sexual intercourse occurred but was consensual. He said B had kissed him as he was scraping vomit from her dress and

that he believed she was a willing participant. He contended that B, who was in a relationship at the time, felt ashamed about having sex with her cousin.

[19] His defence in relation to C was that the encounter described by C never happened. He said she had a false recollection, as a result of her intoxication, or was lying.

[20] Of the seven witnesses the appellant called at trial, four were not at either the 13 July 2019 or the September 2014 party. They essentially gave "good character" evidence. Two said that although they had been in situations where they had been drunk in the appellant's presence, he had not taken advantage of them. One said that the appellant had propositioned her when she had been intoxicated but that when she had refused the invitation, he did not pursue the matter further. The fourth, a family member of the appellant, said that there had been occasions when friends of hers, affected by alcohol, had stayed at the appellant's parents' house, none had raised any issue about the appellant doing anything inappropriate to them. One of the remaining witnesses had been at the 13 July 2019 party. He said that he did not really see how much the complainant had to drink that night.

[21] Two of the witnesses had been at the party in September 2014. They described the complainant as being drunk and having smoked cannabis.

[22] The appellant did not call any expert evidence as to the effect of the consumption of alcohol or cannabis on memory.

Appeal against conviction

First ground — refusal to give a reliability direction

[23] The appellant requested that the Judge give the jury a reliability warning under s 122 of the Evidence Act 2006 in relation to C's evidence. The Judge then heard submissions from counsel on the matter. At the commencement of his summing up on 5 July 2021, the Judge indicated that he would not be giving such a direction. He subsequently provides his reasons in a ruling dated 13 July 2021.[3]

---

3 *R v [A]* [2021] NZDC 14227 [section 122 ruling].

[24] The Judge first considered this Court's decision in *Bruce v R*.[4] That was a successful appeal against conviction based on a failure by the trial Judge to give an adequate reliability warning in circumstances where the complainant of sexual violation was highly intoxicated with alcohol and cannabis at the time of the alleged offending. The Judge noted that in *Bruce* there were several external and internal inconsistencies in the complainant's evidence, and that there were said to be "some profound issues as to her memory in relation to the crucial issues leading up to the sexual activity".[5]

[25] In contrast, the Judge observed that there was no evidence in the present case as to the extent of any impairment in C's memory at the time of the alleged incident.[6] Rather, C's recollection of events prior to being put to bed was largely consistent with other witnesses, such as her mother and the appellant's parents.[7] The Judge noted that while C said in a preliminary interview that she could not remember exactly what happened, "she gave a clear account of the defendant having sex with her when she awoke and what the defendant said to her".[8] The Judge also noted the appellant's evidence that there was sufficient light in the room to see that C's body was uncovered, and that the defence did not seek an identification warning.[9] Finally, the Judge recorded that if C's evidence of the Facebook message was accepted, there would be evidence supporting her complaint in the form of an admission by the appellant.[10]

[26] The Judge concluded that a warning as to the reliability of C's evidence was not required.[11] He stated, however, he would give a direction to the jury that they "ought to take into consideration that [C] had [consumed] alcohol and cannabis and what impact that might have on her reliability".[12]

---

4 *Bruce v R* [2015] NZCA 332, (2015) 28 CRNZ 150.
5 Section 122 ruling, above n 3, at [13].
6 At [14].
7 At [14].
8 At [14].
9 At [14].
10 At [15].
11 At [16].
12 At [16].

[27] In the summing up, the Judge gave the following warning:

> Now it's common knowledge, members of the jury, that the consumption of alcohol, cannabis and other drugs can have a negative effect on memory both in terms of the ability to form memories and the ability to recall memories. You may have the experience of not recalling events that occurred when you've been drinking alcohol or you might've said to someone who'd been drinking alcohol whether they recalled an event only to be told "no". Now, members of the jury, just like any part of the evidence it's for you to determine what impact the consumption of alcohol, cannabis or other drugs has on the credibility and the reliability of the complainants and [A]. It's for you to decide whether witnesses were telling the truth or if, because of alcohol, cannabis or drug consumption, they were honest but mistaken. That is, that they did not form memories or could not remember parts of the night or that their memories are not accurate because of the impact of alcohol, cannabis or other drugs.

Submissions

[28] Mr Hamlin, for A, submitted that C's level of intoxication and what he submitted to be factual similarities with *Bruce* (namely the consumption of alcohol and cannabis to the point of throwing up) meant that a reliability warning was required. He submitted that, while it could be said that the effects of alcohol would be well-known amongst members of the jury, this was not necessarily the case as to the effects of alcohol combined with cannabis. He further submitted that the necessity for a reliability warning was reinforced by the fact that the allegation was a dated one and approaching the 10-year time frame when a reliability warning would be required.

[29] For the Crown, Mr Thompson submitted the Judge was right to distinguish *Bruce* on the basis that C's evidence on the critical details was clear, cogent and largely consistent with that of other witnesses. Mr Thompson submitted that the present case is more closely analogous to *Daradkeh v R*, where this Court held no warning under s 122 was required.[13] In any event, it was said that the Judge ensured the jury was well aware of the parties' respective arguments, including the defence submissions regarding C's reliability and consumption of alcohol and cannabis, and, overall, no warning under s 122 was needed.

---

13 *Daradkeh v R* [2016] NZCA 172.

Analysis

[30] Section 122 of the Evidence Act provides (as relevant):

> **122 Judicial directions about evidence which may be unreliable**
>
> (1) If, in a criminal proceeding tried with a jury, the Judge is of the opinion that any evidence given in that proceeding that is admissible may nevertheless be unreliable, the Judge may warn the jury of the need for caution in deciding—
>
> (a) whether to accept the evidence:
>
> (b) the weight to be given to the evidence.
>
> …
>
> (3) In a criminal proceeding tried with a jury, a party may request the Judge to give a warning under subsection (1) but the Judge need not comply with that request—
>
> (a) if the Judge is of the opinion that to do so might unnecessarily emphasise evidence; or
>
> (b) if the Judge is of the opinion that there is any other good reason not to comply with the request.
>
> (4) It is not necessary for a Judge to use a particular form of words in giving the warning.
>
> …

[31] For the reasons we now set out, we consider that the Judge did not err in refusing to give a warning under s 122.

[32] In *Bruce*, it was not in dispute that the sexual contact occurred.[14] The issue was whether there had been consent or a reasonable belief in consent. The complainant's evidence in that case was that she had been extremely drunk and that her memory was "patchy" after smoking cannabis.[15] She said she could remember "about 60 per cent" from entering the bedroom to falling asleep.[16] Given her level of intoxication, and the evidence of a third party who saw them holding hands and hugging each other, there was always a real chance that a jury would infer reasonable

---

14 *Bruce v R*, above n 4.
15 At [13].
16 At [13].

doubt as to consent.[17] In those circumstances, there was an obvious concern about the potential impact of cannabis and alcohol on the complainant's memory and perception in relation to the sexual contact.

[33] In that case, this Court found that a more comprehensive warning was required that:[18]

(a) addressed the potential adverse effects of marijuana on perception or memory input;

(b) drew attention to the key inconsistencies in the complainant's evidence concerning certainty as to undressing and penetration;

(c) counselled caution in adopting the prosecutor's assertion that the complainant's "clear patches" of memory were lucid and reliable in the circumstances (this was inconsistent with the agreed impact of cannabis on perception, and the complainant's evidence under cross-examination); and

(d) noted that the context impaired not only the complainant's reliability but also the defendant's, as well as his ability to mount an effective defence.

[34] In contrast, the issue in this case was simply whether the alleged sexual contact happened or not. In effect, the defence submission is that a reliability warning was required because there was a risk that C, by virtue of her intoxication, essentially imagined the entire episode. However, there is nothing in the evidence to suggest that C was so affected by alcohol and cannabis that she imagined the alleged offending. On the contrary, C's evidence was largely consistent with that of other witnesses. In particular, her account of what occurred after she was brought back to the house was consistent with that of the appellant's parents. This suggests that her recollection was

---

17 At [14].

18 At [26]. The Court also identified other matters of concern, including the Judge's decision to decline to accept expert evidence about the impact of alcohol and drugs on memory, the failure to consult counsel on the content of the reliability warning, and the provision to the jury in summing up of inconsistent written and oral directions on reliability.

reliable in the period of time leading up to the alleged offending. The fact that C could not recall events before being picked up but was able to give an account of what happened back at the house is also consistent with the effects of the substances gradually wearing off or, in other words, with her "sobering up".

[35] The Judge gave a direction about the effect of alcohol and cannabis on the ability to form and recall memories, and the need to take this into account when assessing credibility and reliability. The direction squarely raised that issue in relation to the question the jury was required to determine, namely whether the alleged sexual contact with C occurred or not.

[36] We agree that *Daradkeh* is more analogous to the present case.[19] In that case, an intoxicated passenger fell asleep in a taxi and awoke to find the driver indecently assaulting her. This Court rejected an argument that a s 122 warning should have been given due to the complainant's lack of recall about the events of that night, saying:

> [40] We do not consider that the fact that the complainant was under the influence of alcohol and medication, and unconscious for much of the time when she was in the taxi, meant that a reliability warning was required. She was very clear about what she found happening when she came to, namely that Mr Daradkeh's hands were down her pants. She was very clear that she had not consented to this. There was nothing to indicate that the fact that she had been unconscious for much of the preceding period affected her ability to remember what happened when she became conscious.

[37] Likewise, as noted above, there is nothing to suggest that in this case C's earlier intoxication and gaps in memory affected her ability to remember what happened when she woke up. Her account of what she saw and experienced when she did was clear, detailed and consistent with the evidence of other witnesses. She recalled waking up and hearing the appellant breathing heavily, the words that he used in telling her to be quiet, and what she was wearing at the time.

[38] *Bruce* is not authority for the proposition that a s 122 warning is required in every case involving a complainant who is intoxicated and has consumed cannabis. That would be contrary to the language of the section, which confers a discretion on the presiding judge.

---

19 *Daradkeh v R*, above n 13.

[39] We also consider that the age of C's allegations did not give rise to particular reliability concerns additional to the complainant's intoxication. C's allegation was not about an event that was close to the 10-year period where a reliability warning would be required. She first made her allegation approximately five years after the event and in the circumstances she explained. The trial took place relatively promptly, less than two years later.

[40] The Supreme Court has recently considered the circumstances where a s 122 warning will be required, albeit, not in a case involving possible memory impairment as a result of consumption of alcohol or cannabis, but a case involving events which had occurred some 16 to 17 years previously.[20] The Supreme Court indicated that if counsel requests a reliability warning the trial judge must have "good reason" to decline it.[21] The majority considered that s 122(3)(b) is not prescriptive and any "good reason" in the context of the trial will suffice.[22]

[41] The majority identified "good reasons" as including where: the defendant has had a proper chance to respond to allegations of events occurring many years previously;[23] a warning would fundamentally cut across the defence case;[24] and, as expressly provided for in s 122(3)(a), a warning might inappropriately emphasise other allegations against the defendant.[25] The majority emphasised that what is a "good reason" in a particular case will depend on an assessment of its factual context.[26]

[42] In the present case, the appellant had the opportunity to fully respond to the allegations; there is no dispute that both the complainants were intoxicated and the jury was not required to grapple with expert evidence about the effect of intoxication on memory or recall. As is clear from the Judge's warning quoted above at [27], the Judge did expressly draw the jury's attention to the potential impact of alcohol and cannabis consumption on the ability to form and recall memories.

---

20 *R (SC78/2018) v R* [2023] NZSC 132.
21 At [4] per Winkelmann CJ, O'Regan and Williams JJ and at [172] per Glazebrook and Ellen France JJ.
22 At [4] and [51]–[53] per Winkelmann CJ, O'Regan and Williams JJ.
23 At [52] per Winkelmann CJ, O'Regan and Williams JJ.
24 At [52] per Winkelmann CJ, O'Regan and Williams JJ.
25 At [4] per Winkelmann CJ, O'Regan and Williams JJ.
26 At [53] per Winkelmann CJ, O'Regan and Williams JJ.

[43] In relation to the 2019 incident involving B, an over-emphasis on the intoxication of the complainant could have adversely impacted the defence case, which was one of consent. As well, if such a warning had been given in respect of one complainant and not the other, the jury may well have become confused.

[44] These circumstances set out above, in our view, amounted to "good reason" and the Judge made no error in not giving a formal reliability warning under s 122. The directions given were adequate in the circumstances of this case.

Second ground — questions from the bench during the appellant's evidence

[45] The second ground of review is that the Judge is said to have repetitively questioned the appellant during his evidence on a point that was unhelpful for the defence case, and in a manner that was unfair, repetitive and leading. Mr Hamlin relied on the following exchange:

> Q. I wasn't quite clear on the number of times that you said that she had vomited on the trip back, this is just on the trip back?
>
> A. Just the once.
>
> Q. So was that in the bucket?
>
> A. Yes, it was in the ice-cream container, yes.
>
> Q. And you emptied that?
>
> A. Yes I did.
>
> Q. And was that on the first stop?
>
> A. Yes it was.
>
> Q. Then you said that there was some vomit on her dress as well?
>
> A. Yes.

[46] The relevant principles governing judicial intervention in criminal trials, which largely reflect the authorities cited by Mr Hamlin in support of this ground,[27] are well established, and are set out in this Court's decision in *Milosevic v R*.[28]

---

[27] See *R v H* (2002) 19 CRNZ 518 (CA) at [33]; and *E H Cochrane Ltd v Ministry of Transport* [1987] 1 NZLR 146 (CA) citing *R v Matthews* (1983) 78 Cr App Rep 23.

[28] *Milosevic v R* [2022] NZCA 479 at [46]–[48] (footnotes omitted).

[47] A judge may ask a witness any question that in the judge's opinion "justice requires".[29] In deciding if justice requires questioning a witness in a criminal trial, the judge should take into account the defendant's right to a fair trial, the separate roles of the judge and jury, the need to let counsel pursue their examination and cross-examination of witnesses, and the possibility that such judicial questioning could cut across a defence which a defendant wishes to rely on.[30] A judge may not intervene in a criminal trial so as to cause a reasonable observer to think the court partial as between the parties.[31] When a judge is considering questioning in the course of cross-examination of a defendant who has elected to give evidence in a criminal trial, "considerable caution is required".[32] A judge must avoid any appearance of bias or advocacy.

[48] It seems that a confusion in the evidence about the number of times the appellant had stopped the vehicle as a result of B vomiting prompted the Judge's initial question but there does not seem to have been any obvious need for him to have followed up with the other questions. It would have been better if he had not asked them. However, it goes too far to categorise the questioning as being repetitive or showing partiality. The questions do not obviously cut across a defence that the appellant was advancing. Indeed, the questions could be seen as supportive of the defence that B was very intoxicated and her memory was unreliable. We do not consider that there is anything in the questions that might have given an appearance that the Judge was becoming an advocate for the prosecution. We do not consider the questions from the Judge give rise to any unfairness or risk of any miscarriage of justice.

[49] Accordingly, the appeal against conviction is dismissed.

---

29 Evidence Act 2006, s 100(1). See also *Milosevic v R*, above n 28, at [148].
30 *Milosevic v R*, above n 28, at [48].
31 At [46] citing *Tahere v R* [2013] NZCA 86 at [31].
32 At [47] citing *M v R* [2015] NZCA 183 at [38].

Sentence appeal

Third ground — finding of breach of trust

[50] In sentencing, the Judge listed breach of trust as an aggravating feature of the offending against B. He said:[33]

> (g) Breach of trust. [B] is your first cousin. You had been entrusted to return her to her family safely, and you abused that trust by offending against her. …

[51] Mr Hamlin submitted that the Judge erred in finding breach of trust to be an aggravating feature of the offending, and he submitted that this led to a manifestly excessive starting point. He pointed out that B and the appellant were 22 and 28 at the time of the offending, an age gap of only six years. He said the appellant was not in a position of trust or authority and there was no power imbalance between them. Further, sexual intercourse between cousins, while potentially embarrassing, is not prohibited.

[52] We are unable to accept this submission. As Mr Thompson pointed out, the defendant in *Daradkeh*, who indecently assaulted an intoxicated passenger in his taxi, was found to have acted in breach of trust. The appellant's offending in this case was a more serious breach of trust because the relationship between the appellant and B was much closer. B was in a very vulnerable state due to her intoxication. The appellant was B's older cousin and he had been entrusted to return her safely to her parents. The reason he was entrusted with that task was because he was sober. The appellant even called B's father during the trip to reassure him that everything was okay. When B's boyfriend called asking to speak to her, he refused to put her on the phone, saying she was too drunk. The Judge was correct to find that the breach of trust in this case was an aggravating factor in these circumstances. This finding did not result in a starting point that was excessive.

---

[33] Sentencing decision, above n 2, at [18(g)].

Fourth ground — insufficient discount for mental health issues and youth

[53] In sentencing the appellant, the Judge allowed a discount of five per cent to the appellant for previous good character, reflecting that he had no previous convictions before his offending against C. The Judge accepted that the appellant's attention deficit hyperactivity disorder (ADHD) "played a contributing role to the commission of the offences",[34] and this was "causative of the offending to a degree".[35] The Judge considered a reduction in the appellant's sentence was necessary to reflect this. The Judge also provided a discount for the appellant's relative youth. The Judge adopted a discount for the appellant's ADHD and relative youth of 15 per cent together with a discount of five per cent for good character, resulting in a "global discount" of 20 per cent.[36]

[54] The appellant challenged this discount. He suggested that discounts totalling 30 per cent would have been more appropriate.

[55] We disagree. The overall discount of 20 per cent was appropriate recognition of the appellant's personal circumstances. That level of discount was consistent with this Court's decision in *Wira v R*, in which the Court considered a 20 per cent discount was required for Mr Wira's ADHD, serious childhood post-traumatic stress disorder (PTSD) and other circumstances, including an extremely violent and dysfunctional upbringing in a gang environment.[37] The Judge in this case considered *Wira* and made no error in determining that a lesser discount was required. He applied the discount was applied to both sets of offending notwithstanding that the appellant would not have qualified for a discount for youth, or indeed previous good character, in relation to the 2019 offending. The discount could not be said to have resulted in a sentence that was manifestly excessive.

[56] The appeal against sentence is dismissed.

---

34 At [28].
35 At [30].
36 At [32]–[33].
37 *Wira v R* [2021] NZCA 98.

Final matter

[57] An additional matter raised by Mr Hamlin is that the first strike warning document and the warrant of committal in relation to the charge against C describes the offence as "male rapes female aged 12 – 16", whereas C was at least 16 when the offending occurred. The actual charge was sexual violation by rape and it did not refer to the age of the victim. Mr Hamlin submitted that the appellant faces barriers to rehabilitation and reintegration if the nature of his offending is said to relate to sexual violation of a minor, compared to a sexual act with a person aged 16 years or older. He sought that the description be changed to correctly refer to the charge of which he was convicted.

[58] We are satisfied the description of the offending is incorrect. We do not accept the Crown's submission that this description is intended to include a person who is 16 years of age. The Crimes Act 1961 consistently draws a distinction between sexual acts against people under 16, the legal age of consent, and those 16 and older. There is no reason, in our view, why the description should not be corrected. We do not consider that it is necessary to show detriment in order to rectify this error. In any case, we accept a description of the charge which suggests the appellant is guilty of a sexual act with a minor carries a greater stigma and may be a greater barrier to the appellant's rehabilitation.

[59] Rule 7.1(6) of the Criminal Procedure Rules 2012 provides:

> A judicial officer or Registrar may at any time correct an entry made by that person in the permanent court record, or direct that it be corrected, if satisfied that it is erroneous in any respect.

[60] As the error was not made by this Court or a Registrar of this Court, the correction will have to come from the District Court. We draw the matter to the attention of that Court and anticipate that the Court record will be amended accordingly.

Result

[61] The appeal against conviction is dismissed.

[62] The appeal against sentence is dismissed.

[63] The need to correct the error pursuant to r 7.1(6) of the Criminal Procedure Rules 2012 is drawn to the attention of the District Court.

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