

[2] The victim was his former partner. She described the relationship as controlling on his part. She obtained a protection order in 2019.

[3] On 27 April 2021 there was a hearing in the Family Court to do with the care of the couple's children. The victim travelled to Auckland for the hearing and stayed overnight with the appellant at his parents' address. The appellant drove the victim to and from the Family Court in the victim's car. After the hearing the two of them returned to Mr Hopa's parents' home, where they sat outside in the car and consumed alcohol. After a time the appellant took the keys from the ignition and they went inside.

[4] Once there, he pushed her into a bedroom and assaulted her, punching her in the face and head multiple times. At some point during the assault she was strangled. She described feeling light-headed and then unable to breathe. The offending stopped after she managed to call out for their son, who came into the room. It appears Mr Hopa's parents called the police. Police did not speak to the victim at that time because she had hidden under the house, where she remained for some hours before walking to another address for help.

[5] Mr Hopa went to trial, where he was acquitted or discharged on two charges of male assaults female. He pleaded guilty to one charge of male assaults female and the charge of breaching a protection order by physically abusing the victim. He was found guilty by the jury on a charge of strangulation.

[6] Judge Bergseng adopted a starting point of two years and six months' imprisonment for the strangulation charge.² He uplifted that by eight months for the charges of male assaults female and breach of the protection order.³ There was a further uplift of four months because the appellant was on bail at the time.⁴ Discounts were given for cultural deprivation (20 per cent), efforts at rehabilitation (five per cent), and time spent on electronically monitored bail (three months).⁵ The end sentence of two years and four months' imprisonment was imposed on the

² At [27].

³ At [28].

⁴ At [29].

⁵ At [30]–[32].

strangulation charge, with sentences of eight months for breach of the protection order and male assaults female to run concurrently.⁶

[7] Mr Hopa says that the starting point for strangulation was too high. The Judge identified five aggravating factors: the victim's vulnerability, breach of the protection order, aggravated violence, enduring harm to the victim and the presence of their son for part of the offending.⁷ It is said that the Judge was wrong to rely on two of them, aggravated violence and enduring harm. In terms of the level of violence, the Judge was wrong to find that the victim was close to losing consciousness. All she said in evidence was that she was feeling dizzy or lightheaded. That does not indicate that she was strangled for a long time or that she was close to losing consciousness. Nor did her victim impact statement describe enduring harm. She spoke of harm caused by what she described as the violent relationship, but she did not attribute that to the strangulation itself. Had he been sentenced on the basis that only three aggravating features were present, a starting point of no higher than two years and three months' imprisonment should have been taken.

[8] With respect to the uplift of eight months for male assaults female and breach of a protection order, Mr Hopa accepts that if they stood alone these charges would warrant a starting point of eight to nine months' imprisonment, but it said that when totality is taken into account the uplift was too large. The Judge took into account offending for which Mr Hopa was acquitted at trial. No uplift was warranted for the breach of protection order because that charge was based on the same physical violence captured by the strangulation and male assaults female charges.

[9] We think this was serious offending. As the Judge noted, photographs show that she sustained significant injuries, including pronounced bruising to her face, neck and head. She was diagnosed with a concussion and experienced headaches, nausea, fatigue and difficulty concentrating during subsequent days. A medical report describes bruising to her anterior neck.

⁶ At [34].

⁷ At [27].

[10] We accept that the violence was not aggravated to a high degree, but it was open to the Judge to find it was aggravated and to infer from the victim's evidence she was dazed, lightheaded, unable to breathe and may have been close to unconsciousness that the strangulation lasted for some time.

[11] We are also not persuaded that the Judge was wrong to identify enduring harm to the victim as a factor. It is true that it cannot be separated from harm attributable to the abusive relationship and the assaults other than strangulation, but that does not mean the Judge must discount it. Its impact on the victim is a question of judgement. In *Shramka v R* this Court noted that victims of strangulation experience terror which may have an enduring effect.⁸ In her victim impact statement, the victim spoke of being mentally shattered and of his physical and mental abuse still lingering. We accept the Crown's submission that the strangulation was a continuation of his attempts to control her.

[12] We find that the starting point of two years and six months was available.

[13] We also accept the Crown's submission that the uplift of eight months for breach of a protection order and male assaults female was available. The Judge recognised the risk of double counting.⁹ The male assaults female charge included very hard punches to the victim's head. He was acquitted in respect of some of those punches (because the charges split them into two incidents), but it remained a serious offence of its type. Mr Hopa was right to accept that the uplifts would have been acceptable starting points had this offending been sentenced alone. The question then becomes one of totality. We accept that all of this offending involved a single incident. However, we are not persuaded that the uplift makes the sentence manifestly excessive.

[14] The appeal is dismissed.

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⁸ *Shramka v R* [2022] NZCA 299, [2022] 3 NZLR 348 at [42(g)].

⁹ Sentencing notes, above n 1, at [28].