

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA642/2022
[2023] NZCA 491**

BETWEEN	COREY NORMAN MILNE Appellant
AND	THE KING Respondent

Hearing: 31 August 2023
Court: Miller, Ellis and van Bohemen JJ
Counsel: S G Vidal for Appellant
R W Donnelly for Respondent
Judgment: 9 October 2023 at 10.30 am

JUDGMENT OF THE COURT

- A The application to adduce further evidence is granted in part.**
 - B The appeal against sentence is allowed.**
 - C The sentence of four years and one month’s imprisonment is quashed.**
 - D In substitution, a sentence of three years and nine months’ imprisonment is imposed.**
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REASONS OF THE COURT

(Given by van Bohemen J)

[1] Mr Corey Milne appeals the sentence of four years and one month’s imprisonment imposed by Judge Harvey in the District Court at Invercargill after

Mr Milne had been found guilty of wounding with intent to cause grievous bodily harm.¹

[2] Mr Milne's notice of appeal challenged his conviction and asserted generally that the sentence was excessive. At the hearing, however, Mr Milne's counsel, Ms Vidal, advised that Mr Milne was not pursuing his appeal against conviction. Accordingly, the hearing proceeded on the basis that the appeal against conviction had been withdrawn.

[3] In addition, Ms Vidal did not challenge the starting point of five and a half years' imprisonment adopted by the Judge or the discount of over 25 per cent given for Mr Milne's personal circumstances. She submitted, however, that Mr Milne was entitled to a further discount of 15 per cent for cultural and social factors which were causatively related to his offending but were not before the Court when he was sentenced.

[4] Mr Milne filed his appeal within time. However, he requires leave to adduce further evidence, including a report under s 27 of the Sentencing Act 2002.

Appeal against sentence

[5] Under s 250(2) of the Criminal Procedure Act, this Court must allow an appeal against sentence if satisfied that, for any reason, there was an error in the sentence imposed on conviction or that a different sentence should be imposed. Otherwise, it must dismiss the appeal.²

The offending

[6] We adopt the Judge's account of the offending when sentencing Mr Milne:

[3] The facts that I sentence you on are that on 4 September, you hosted a group of people at your home address. Your wife, who was at that stage pregnant, stayed in the house and she went to bed quite early. You and your friends were in the garage. At the party were a number of people, including ... Mr Soper

¹ *R v Milne* [2022] NZDC 20149 [Sentencing notes].

² Criminal Procedure Act 2011, s 250(2) and (3).

[4] From the evidence, I am satisfied that Mr Soper was not making friends at this party. He became very intoxicated and seemingly quite aggressive.

[5] In the early hours of the morning, his partner decided that she wanted to go home but he told her in fairly graphic terms that he was not going anywhere. She then left and her evidence was that she walked down to the shops and then she was picked up by her partner's mother.

[6] Mr Soper, for one reason or another, had not realised that she had gone. He went searching. He went to your house and he banged on the door. [Mr Milne's flatmate], who had gone to bed some two hours earlier, woke up when he heard the banging and he went to the toilet, where he was ill. He then went to the front door. Mr Soper told him that he was looking for his partner. He was told to wait and [his flatmate] went to have a look.

[7] [Mr Milne's flatmate's] evidence was that he went down to the spare bedroom. He looked there but then discovered that Mr Soper had not done as he was told and he had followed him. He was taken back to the front door and again told to stand there. He then went to your bedroom. He opened the door but unfortunately Mr Soper had followed yet again and perhaps out of irritation, he kicked the open door, which slammed open and woke your wife.

[8] He left the house and went back to the garage but it seems that you were also becoming concerned about where this lady had gone and you went for a walk to see if you could find her. You walked down the road towards the shops and as you were returning, you were met by [your flatmate].

[9] At about that time, you received a call from your wife. She told you that she had been woken up by Mr Soper, who had barged into the bedroom and slammed open her door. You were very angry. You were already tired of this man and it would seem that this was probably the last straw. You stormed into the garage, you swore at him and whether or not he hit you first is uncertain but what is very clear is that you then hit him very hard on at least two occasions and you knocked him out. By this stage, you had lost all control. Although he was lying on the floor, you then rained a number of punches on him and I am satisfied that you stomped him at least twice in the head or possibly the body area.

[10] As a result, he was in a very bad way. During the course of the evidence it transpired that when the ambulance first arrived, he was assessed [as] being at Status 1. Status 0 is the equivalent of being dead. He was very very badly hurt.

[11] I have no doubt that as this assault continued, you were so angry you did intend to hurt him.

Sentencing notes

[7] After describing the offending, the Judge observed:

[12] In preparing for this sentencing, I have had the advantage of reading a considerable amount of material. I have read the submissions filed by the Crown and your counsel. I have read the pre-sentence report. I have seen the

victim impact statements. I have received, and I have read, all of the references that have been filed by your counsel and obviously I have listened to what they have had to say to me this morning.

[8] The Judge acknowledged that he found the sentencing particularly difficult. On the one hand, it was a very violent attack on a drunk person who was quickly rendered unconscious, and the attack continued after the victim was defenceless.³ But, as the Judge then noted:

[26] ... I am also aware that under normal circumstances you do not behave in this way. The references that I have seen indicate that you are very well regarded by a very large number of people. Despite personal tragedies yourself, it seems you are always ready to help others. You engender huge loyalty from those people you come into contact with, and it sounds as if you maintain essentially an open home to anybody who wants to come and talk to you. The reference from your former wife indicates that you behaved in this way for many years. In fact, she makes the comment that she has had to share you with an awful lot of people.

[27] Given that background, it is difficult to understand why you suddenly erupted on this night. I accept that this man had become irritating during the evening. It would seem that his behaviour got worse as he became more and more intoxicated. I suspect that what finally made you snap was when you heard he had gone into your home and barged into the bedroom occupied by your pregnant partner. Clearly you overreacted. From the evidence, it would seem unlikely that it was he who attacked you first, and I say that simply because nobody, apart from you, saw that occur.

...

[30] ... I am very conscious of the fact that you yourself have had tragedy and upset in your life and that there are a very large number of people who support you. Over the years, as I have said, you have done a great deal of good. I also accept that you do not usually behave in this way and this night can truly be described as an aberration.

[9] The Judge was satisfied that the offending fell within band two in *R v Taueki*⁴ because there were three aggravating features: the attack to the victim's head, extreme violence, and the victim's vulnerability.⁵ The Judge said the appropriate starting point was five-and-a-half years' imprisonment. The Judge accepted that Mr Milne was remorseful, despite denying some aspects of the offending.⁶

³ Sentencing notes, above n 1, at [25].

⁴ *R v Taueki* [2005] 3 NZLR 372 (CA) at [34].

⁵ Sentencing notes, above n 1, at [16] and [29].

⁶ At [30].

[10] The Judge said that, despite the fact Mr Milne had two previous convictions for violence,⁷ he considered he was entitled to take into account “what can only be described as an impressive background”.⁸ The Judge said he was prepared to give Mr Milne “a very substantial discount” to recognise all of the good that Mr Milne had done. He also noted that Mr Milne had been on electronically monitored bail for a long time and there had been no breaches.⁹

[11] The Judge sentenced Mr Milne to four years and one month’s imprisonment.¹⁰

The appeal

Appellant submissions

[12] Mr Milne’s notice of appeal asserted that the sentence was manifestly excessive. However, Ms Vidal, did not base her submissions on these grounds. Instead, Ms Vidal submitted that at the time of trial and sentence Mr Milne had been completely disconnected from Māoritanga and he and his then counsel did not appreciate the value of a cultural report. Since his imprisonment, Mr Milne has identified his heritage and engaged actively with Māoritanga.

[13] Ms Vidal sought leave to put in evidence certificates attesting to Mr Milne’s participation in rehabilitation programmes since he was sentenced and through which he had gained a better understanding of his heritage. Mr Milne also sought leave to produce a report prepared in accordance with s 27 which, Ms Vidal submitted, establishes a causative connection between Mr Milne’s background and his offending. Ms Vidal said the report helped to identify the triggers for Mr Milne’s out of character behaviour and established a direct link between Mr Milne’s background and his over-reaction to the threat he perceived to his vulnerable pregnant wife. She submitted that a further discount should be made to recognise these matters. Ms Vidal said the report was not available at sentence and that it was the interests of justice that it be received.

⁷ Two convictions in 2008 for assault for which Mr Milne was required to pay sums in reparation and to undertake community work.

⁸ Sentencing Notes, above n 1, at [32].

⁹ At [34].

¹⁰ At [36].

Crown submissions

[14] Mr Donnelly, counsel for the Crown, submitted that the appeal should be dismissed. He said the sentence imposed in the District Court was well within range and, indeed, could be said to be at the lower end of the range.

[15] Mr Donnelly said that it was not in the interests of justice to grant leave to admit the s 27 report or the other material. The report was not fresh; it could have been adduced when Mr Milne was sentenced. The other material related to events post-sentence and were not suggestive of error by the sentencing Judge.

[16] Mr Donnelly accepted that the information in the report was more detailed than that before the Judge at sentence. However, he said it confirmed matters known to the Judge; namely that Mr Milne was well thought of by others and had suffered difficulties, as the Judge set out at [26] and [30] of his Sentencing notes.

[17] Mr Donnelly said the discount of over 25 per cent was substantial in the context of a case where there could be no credit for a guilty plea or lack of prior convictions. The discount was significantly higher than the discounts of 15 per cent for personal mitigating factors given in *Waikato-Tuhega v R* and *Kohu v R*.¹¹ Mr Donnelly pointed out that in *Kohu*, this Court observed that the 15 per cent discount given in that case for cultural factors reflected an orthodox application of the relevant principles this and other courts have consistently applied.¹²

Application to adduce further evidence

The s 27 report

[18] The s 27 report has been prepared by Ms Tara Oakley. Ms Oakley is a professional s 27 report writer and does not have personal knowledge of Mr Milne, his family circumstances or his community. The report is based on a two-hour interview with Mr Milne while he was in Invercargill Prison, and telephone interviews with Mr Milne's mother; his current partner; and his son.

¹¹ *Waikato-Tuhega v R* [2021] NZCA 503; and *Kohu v R* [2023] NZCA 343.

¹² *Kohu v R*, above n 11, at [36]

[19] According to the report, Mr Milne identifies as Māori through both his paternal and maternal lineages. However, he says he was deprived of his Māoritanga, his ancestry, and the richness and mana that could provide because of Western concepts of blood quotients and the “relatively racially oppressive” society in which he and his family lived. The report writer says that the family’s mixed heritage made them “not Māori enough” to be comfortable in owning their rightful place as tangata whenua.

[20] Mr Milne was the oldest of four children. Mr Milne’s father was an alcoholic who was emotionally absent at best, physically aggressive and, more typically, verbally abusive. Mr Milne’s mother says Mr Milne took on the role of the protector of the younger children in the home and felt huge pressure to keep everyone safe.

[21] Mr Milne struggled at school with reading and writing and considered he suffered from dyslexia. By age 14 he was hanging out with the wrong people, smoking, not going to school and was asked to leave school. As a result, he was “kicked out of home” and went to live with a paternal aunt in Invercargill. This coincided with his parents’ separation. Mr Milne has had little contact with his father since.

[22] By age 17, Mr Milne started getting into trouble and was sent back to live with his mother. By that stage, substance abuse issues had emerged; he was smoking cannabis most mornings and drinking alcohol. The report says Mr Milne and his brother, who was next in age, both found solace in the escapism that substances such as synthetic cannabis allowed them and that his brother’s use of this led to his severe mental health issues and decline.

[23] Mr Milne formed a relationship with his first partner, who was five months’ pregnant when she and Mr Milne met. Mr Milne was a father to her son and they later had a son together. He also has another son from a short-term relationship at a time when they were separated.

[24] The report makes it clear that Mr Milne has been a devoted father to all his sons. For a period of about five years, when he was 26 to 31, Mr Milne stopped

drinking alcohol. However, that was about the time that he and his brother were using synthetic cannabis, to which Mr Milne became addicted.

[25] Mr Milne and his first partner resumed their relationship after a period of separation and later married. However, the relationship was fraught for various reasons. They separated about four years ago, just before his brother passed away. After his brother's death, Mr Milne was unable to work due to depression and anxiety. He began drinking heavily again and using recreational drugs (MDMA/ecstasy) on weekends. He felt he had failed his brother. Both Mr Milne's mother and son commented on his mental health and said he "never really came right" after his brother died. However, he also started to tinker with cars, an activity that gave him some joy, and was an expert at fitting exhausts. He became a mentor for young people who came to his house for assistance with their cars and for advice.

[26] At about this time, Mr Milne's current partner, came into his life. She later became pregnant. They were very happy about the pregnancy, but this development caused stress with his first partner. His current partner was also uncomfortable at the numbers of people who assumed a right of entry into her home with Mr Milne.

[27] The report writer asserts that the following factors were operative or proximate factors that causatively contributed to Mr Milne's offending behaviours:

- (a) An exaggerated sense of responsibility for others:

Mr Milne felt that his home, his partner and his unborn child were at risk and that his violent and uncertain childhood may have invoked such a response.

- (b) Severe grief and stress and resultant compromised mental health:

Based on studies that suggest that offenders often have a background of grief trauma, Mr Milne's deep grief and compromised mental health were likely to be causal factors.

- (c) A vulnerability to maladaptive coping strategies including violent responses:

Through his life, Mr Milne has dealt with difficulties with maladaptive coping strategies such as alcohol and drugs. While not intoxicated on substances at the time of offending, violence is also a maladaptive coping strategy that links his background to his offending.

- (d) Cultural deprivation:

Mr Milne has been deprived of culture and connection to te ao Māori and disallowed access to wider whānau, hapū, iwi, marae and whenua. Had he been given access to this traditional support system, his life would likely have looked very different.

- (e) Unsuccessful education linked with criminal outcomes:

There is evidence indicating that educational underachievement and failure to attend school increase participation in criminal behaviour.

Discussion

[28] As Mr Donnelly says, the s 27 report is not fresh; it could have been provided at sentence. While Ms Vidal and the report writer place some emphasis on Mr Milne's awakening to Māoritanga and his wider cultural background after he was imprisoned, the focus of the report is Mr Milne's personal background and experiences — much of which was known at the time of sentence. However, consistently with the approach of the Supreme Court in *Berkland v R*, we have decided to admit the s 27 report.¹³ As the Supreme Court said in *Berkland*, background information is important in sentencing and s 27 is a key tool for eliciting it and it is important that courts have access to in-depth background information in sentencing.¹⁴ Accordingly, we grant leave for the s 27 report to be admitted in evidence.

¹³ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

¹⁴ At [174].

Certificates concerning rehabilitative activities

[29] We do not grant leave, however, to admit the other material attached to Ms Vidal's submissions. The certificates are evidence that Mr Milne has, since sentence, engaged productively with opportunities available to him in prison. They confirm that the sentencing Judge correctly recognised potential for rehabilitation, but they cannot be used to reduce the sentence from a position of hindsight.

Analysis

[30] The essential question for determination is whether, having regard to the s 27 report which was not available to the Judge, we are satisfied that a different sentence should be imposed. That in turn depends on whether we are satisfied that there is information in the s 27 report that was not available to the Judge and which would justify a different sentence.

The information available to the Judge

[31] As noted at [6] above, the Judge recorded that he had read all of the references that had been filed by Mr Milne's counsel. There were 37 references. They included letters and emails from Mr Milne's mother; his former partner; his current partner; his younger sister; his stepson; his niece; and his nephew. The rest were from friends who had known and, in some cases, had been supported by, Mr Milne over the years. One was from a man who was at primary school with him. Another was from a friend of 25 years. One was from someone who had known Mr Milne and his former partner for 15 years. The rest were from people who had known Mr Milne for periods of between one and eight years. There was also a reference from his former partner's parents.

[32] Common themes of the references were: Mr Milne's generosity; his open house/open door/open arms policy; his willingness to take people in; his readiness to support others in times of distress, including when they were suffering from mental health issues; that he was a friend to the many young people who came around his house to talk and fix cars or for his company; and that he was known to many as "Pa"

and was regarded by many as a father or father-figure. Many said his offending was completely out of character and that Mr Milne was a gentle man who had never been violent in their presence.

[33] His current partner, her parents and others regretted that Mr Milne's imprisonment would separate him from his new-born son and other sons.

[34] Unsurprisingly, most of the references from friends highlighted the positive aspects of Mr Milne's character and what he had done for them. They did not try to offer explanations for what had happened or comment on his background. However, the references from family members and some friends of longer standing did address those matters.

[35] The reference from Mr Milne's mother stated that he had no communication with his father, that the last few years had been very hard for him because his brother had passed away, that the death of his brother had had a major effect on him and had caused him very bad anxiety, and that his siblings had always looked up to him as a brother and friend.

[36] In her reference, Mr Milne's former partner said she had seen Mr Milne go through a lot of heartache after losing a cousin, his brother, to whom he was very close when growing up, and a close friend. She said she knew this had broken him in so many ways. She also said she knew for a fact that Mr Milne was a very understanding and patient man and that he would have had to have been provoked for hours on end for him to lose his patience in the way he had.

[37] Mr Milne's former partner also spoke of the close bond between Mr Milne and his sons and her disappointment that their daughter, with whom she was pregnant when she and Mr Milne separated, does not have a bond with her father. She said her daughter (who was nearly 14 months' old when she wrote the reference in October 2022 and must now be just over two years' old) needs her father.

[38] Mr Milne's current partner said that Mr Milne had helped her deal with her childhood trauma, severe anxiety and depression by guiding her down the right path

and that she had never talked about her childhood trauma until she met Mr Milne. She said he has helped others by not only lifting them up but also lifted himself by sharing and giving advice on things he had experienced.

[39] She said her pregnancy had been very hard, that she had been in and out of hospital and that she had a traumatic birth experience. Mr Milne had been with her every step of the way and had always been there to support her. She said their son was a bit of a handful and it made her upset to think Mr Milne would not see his son grow “for the most cherishable and important part” of their child’s life.

[40] Mr Milne’s niece said that over the past few years, Mr Milne had had a challenging time dealing with the loss of several loved ones and that he had experienced a significant amount of guilt and blame. She thought a large contribution to those feelings was that he could not help those people during their distress as he had done previously and that this had exacerbated his low self-esteem and mental health. She said it had been heart-breaking to see because he was so caring and empathetic.

[41] A friend of Mr Milne’s said she had reached out to Mr Milne when his marriage to his first partner broke down because, knowing them both and how it had happened, she knew how difficult the situation had been for him and how hurt he would have been.

[42] She stated:

Over the years, [Mr Milne] has worked so hard on keeping himself in check to be a better person for himself and his boys and he even keeps his sons’ friends in check too by providing his home as a safe place for anyone to go and talk with him about anything from being responsible for their own lives to talking about [their mental health] and helping to guide them out of hard situations in their lives!

I have seen and heard these interactions and even helped when I could myself.

...

[Mr Milne] always said that there was a seat at his table with no judgement for anyone whenever they needed one but his only rule was simple Respect! People had to have respect for his home, his family and anyone else that happened to be at this place at the same time or they would be asked to leave. He tried to make his place a safe place and to always have a positive relaxed vibe.

[43] It is apparent that the Judge had a wide pool of information about Mr Milne when he sentenced him. From this information, the Judge must have been aware that Mr Milne:

- (a) had been estranged from his father;
- (b) had lost his brother and others to untimely deaths, which had caused him considerable distress, and that family members considered that it had affected his self-esteem and mental health; and
- (c) was generous towards, accepted responsibility for, and was protective of others.

[44] The Judge would also have been aware that his current partner's pregnancy had been difficult and that at least one friend of long-standing had hinted at what might have provoked Mr Milne's violence that night — that Mr Soper had not shown respect for Mr Milne's home and family.

Comparison of the available information with the information in the s 27 report

[45] Apart from the details concerning the alcoholism and violence of Mr Milne's father, we consider that the Judge had available to him, and from a wider range of sources, most of the information relevant to the two primary causative factors postulated in the s 27 report: the exaggerated sense of responsibility for others and the grief, stress and resultant compromised mental health caused by the loss of his brother and others close to him.

[46] We accept that the synthesis and analysis provided by Ms Oakley presented the information in a more organised and directed fashion. However, we are not persuaded that there was information in the s 27 report relating to these two factors that was significantly additive to the information before the Judge that would have warranted a separate discount from the significant discount made by the Judge. Nor do we consider that there was information that would have warranted a greater discount than that made by the Judge.

Other factors not addressed in the information available to the Judge

[47] The information available to the Judge did not address the three remaining factors that Ms Oakley identified as causative of the offending: a vulnerability to develop maladaptive coping strategies including violent responses; cultural deprivation; and unsuccessful education. However, even on Ms Oakley's analysis, the second and third factors were not advanced on the basis of evidence of any direct connection to Mr Milne or his background.

[48] The violence factor was extrapolated from the fact that Mr Milne previously engaged in substance abuse — of which there is no evidence or suggestion that this was an issue on the night of the offending. Apart from the two convictions for assault some 14 years prior to the offending, there is no evidence of Mr Milne resorting to violence. The references from friends indicate that, in recent years at least, Mr Milne was not a violent man. We see nothing causative in this factor that would have warranted a discount.

[49] While Mr Milne displayed poor coping skills on the early morning of his offending, we do not consider that this can be explained by his educational underachievement given Mr Milne's past, as indicated by his references. Those references portray Mr Milne as a calm and patient person. Those closest to him considered he made a momentary lapse in judgement on the morning of the offending. The references do not suggest that Mr Milne lacks the ability to cope with difficult situations — as is sadly typical of those with educational underachievement.

[50] As for cultural deprivation, as the Supreme Court said in *Berkland*, historical dispossession and social disruption are relevant and can be taken into account at sentence where those narratives help explain, and causatively contribute to, the offending.¹⁵ It may be that Mr Milne's life would have looked very different if he had been given access to wider whānau, hapū, iwi, marae and whenua, but that is not in itself a sufficient causal connection.

¹⁵ *Berkland v R*, above n 13, at [110] and [124]–[125].

[51] In this case, background circumstances undoubtedly contributed to Mr Milne’s overprotective behaviour. The Judge made a substantial allowance for that. We are not persuaded that the cultural explanation for those circumstances warrants an additional discount.

[52] There is also nothing to suggest that Mr Milne’s offending had any connection with educational underachievement.

Conclusion regarding information in s 27 report

[53] For these reasons, we are not satisfied that there is anything in the s 27 report that supports a separate discount in addition to the discount of over 25 per cent made by the Judge or that supports a greater discount than that made by the Judge.

Other sentencing principles warranting a discount

[54] Mr Milne was sentenced on 13 October 2022, some two months before the Supreme Court’s decision in *Philip v R*.¹⁶ In *Philip*, the Supreme Court upheld a discount of about 10 per cent made by the High Court when sentencing Mr Philip for the impact his sentence would have on his young child, who had developed a secure attachment with his father.¹⁷ That discount was in addition to a 30 per cent discount for Mr Philip’s difficult background, drug addiction, mental health issues, remorse and clear motivation for rehabilitation, a 20 per cent discount for Mr Philip’s guilty plea and a discount for time spent on electronically monitored bail.

[55] The Supreme Court held that a discrete discount was available in that case, given that Mr Philip was an important presence in his young child’s life.¹⁸ It noted that the provision for discounts for the wellbeing of an offender’s children reflects s 8(h) and (i) of the Sentencing Act and is supported by the United Nations Convention on the Rights of the Child.¹⁹ The Supreme Court observed that it did not find it helpful to characterise such discounts as “rare”.²⁰

¹⁶ *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571.

¹⁷ *R v Philip* [2021] NZHC 2393.

¹⁸ *Philip v R*, above n 16, at [53].

¹⁹ At [52].

²⁰ At [56].

[56] Unlike the situation in *Philip*, there is no prospect of Mr Milne being released from prison if an additional discount is made to take account of the impact of his imprisonment on his two young children (his son with his current partner and his daughter with his former partner). While circumstances have prevented Mr Milne from developing an attachment with his young children, we consider the loss of the opportunity for them to form such attachments is itself a significant factor. This is particularly so where there is ample evidence to establish not only that Mr Milne has been a good father to his other sons but that he is a significant father figure to many others. There is also evidence from both mothers that they very much want Mr Milne to be involved in the early lives of their young children.

[57] In these circumstances, we are satisfied that it would be strongly in the interests of Mr Milne's young children that they should be able to have their father present in their lives as soon as possible. For these reasons, we consider that a further discount of four months or approximately six per cent should be made to Mr Milne's sentence.

Result

[58] The application to adduce further evidence is granted in part.

[59] The appeal against sentence is allowed.

[60] We quash the sentence of four years and one month's imprisonment imposed by the High Court.

[61] In substitution, we impose a sentence of three years and nine months' imprisonment.

Solicitors:
Southern Law, Invercargill for Appellant
Crown Solicitor, Invercargill for Respondent