

wounding with intent to cause grievous bodily harm³ and arson.⁴ He was sentenced to eight and a half years' imprisonment.⁵ He appeals against conviction and sentence.

[2] Three grounds of appeal are raised against the conviction:

- (a) The verdict was unreasonable because there was insufficient evidence of Mr Kreegher's guilt.
- (b) The prosecutor misdirected the jury by inviting them to consider that the evidence did not exclude Mr Kreegher's involvement and that Mr Kreegher did not have a counternarrative.
- (c) The Judge wrongly cautioned the jury about the reliability of the complainant's identification evidence when that evidence favoured the defence insofar as it did not identify Mr Kreegher.

[3] The sentence is appealed on the basis that the starting point was too high and insufficient credit was given for Mr Kreegher's personal circumstances.

Background

[4] In the early hours of the morning of 11 October 2016 the complainant, Mr Singh, drove to Life City Church in Wainuiomata to meet a Ms Reti-Kaukau. She resided at emergency housing at the Church at the time. Mr Singh picked her up and took her to an address in Petone. During the journey Ms Turner, an associate of Mr Kreegher, contacted Mr Singh via cellphone details obtained from Ms Reti-Kaukau. Ms Turner asked Mr Singh to return to the Church to give her some money. Mr Singh returned at around 3.30 am and Ms Turner got into his car. As Mr Singh began driving, a silver Mitsubishi vehicle pulled out in front of his vehicle, blocking its path. Mr Kreegher's mother owns the silver car, which was kept at the Church. The car was regularly used by Mr Kreegher. Mr Singh gave evidence that two men with partially disguised faces approached and entered his car. One of

³ Section 188(1). The maximum penalty is 14 years' imprisonment.

⁴ Section 267(2)(a). The maximum penalty is seven years' imprisonment.

⁵ *R v Kreegher* [2019] NZDC 25842 [Sentencing judgment].

them was described as having distinctive tattoos on his left arm and was larger than the other man. The Crown says this was Mr Kreegher. The other alleged offender was said to be a Mr White, another associate of Mr Kreegher.

[5] The two men attacked Mr Singh. They forced Mr Singh into the front passenger's seat of his car. One of the men then drove the car to a Kiwibank ATM with the other man and Ms Turner following in the silver vehicle. Once there, Mr Singh handed over his eftpos card and PIN details and Ms Turner used the eftpos card to withdraw \$140 in cash. They then drove to a BP station. Ms Turner was captured on CCTV refuelling the silver vehicle and paying for the fuel in cash. Mr Singh's car could be seen in the background in the forecourt. Both vehicles then travelled to a car park at a local beach, stopping twice on the way: first, to put Mr Singh in the boot; and secondly, to remove all of Mr Singh's clothing except for his underwear and place him back in the boot. Once at the car park, Mr Singh was taken from the boot. The Crown claims Mr Kreegher struck Mr Singh with a hammer, rendering him unconscious. It is alleged the defendants set fire to the car and left.

[6] As a result of the offending Mr Singh suffered a subarachnoid haemorrhage, a brain contusion, a left temporal fracture, a nasal and left orbital fracture and first-degree thermal burns to his hands and arms. He underwent surgery and was hospitalised for several days, followed by rehabilitation.

[7] Mr Kreegher was sentenced as the principal offender. He was sentenced along with Ms Turner on the basis that there was an unlawful and premeditated common intention between them to assault and rob Mr Singh, and the additional offences were a probable consequence of carrying out that intention. Mr White was acquitted of all charges.

Crown case

[8] The Crown case was a circumstantial one, comprising the following key strands:

- (a) The defendants knew each other and resided at the Church at the relevant time.

- (b) The defendants were in difficult financial circumstances at the time, and the Church was a facility for people who needed emergency housing, food and medical help (among other things).
- (c) The silver vehicle belonged to Mr Kreegher's mother and linked all three defendants together, with CCTV footage showing Ms Turner driving it at about the time of the alleged offending on 11 October 2016 and Mr Kreegher with it at other times.
- (d) The movements of the silver vehicle at the time of the alleged offending at the Church, and afterwards.
- (e) Mr Singh's description of his attackers, including descriptions as to tattoos, physical size and age.
- (f) Ms Turner's admission of her partial involvement insofar as it is consistent with Mr Singh's account.
- (g) Mr Singh's account is credible and reliable: for example, it was supported by texts which confirmed he did not know Ms Turner previously and CCTV footage that placed the silver vehicle and his car at the petrol station at the same time.

[9] The Crown also identified the following factor as supporting its circumstantial case:

The lack of any credibility, credible counternarrative to the defendants' involvement. On the evidence there is a strong and compelling ... inference available to you that the female offender and the two male attackers who got into Mr Singh's car in the early hours of the morning outside the church were occupants of that church and understood the swift progression of events to follow and the roles that were to be played in that progression of events ...

[10] Mr Britton, Crown counsel at trial, returned to this point when addressing the defence cases. He noted that:

Neither defendants White [nor] Kreegher gave statements to the police, as is their right. The factual product of this is that there is no counternarrative in respect of what Mr Singh alleges.

[11] Mr Britton addressed Mr Singh's evidence about the tattoos, noting that in cross-examination Mr Singh said tattoos appeared to be on his assailant's elbow, but in re-examination he said they were on his elbow and forearm. Mr Britton said that while it was for the jury to make what they wished of the defendants' tattoos, it was reasonable on the evidence to find that Mr Kreegher was the driver, in view of his larger size and style and location of the tattoo on his left arm.

Defence case

[12] The defence case focused on the absence of direct evidence of Mr Kreegher's involvement. Mr Paino, Mr Kreegher's trial counsel, emphasised that there was no DNA evidence, no blood, no clothing, no weapon, no clear evidence of motive, no telephone communications implicating Mr Kreegher, and no evidence of anyone from the Church as to Mr Kreegher's movements. He noted Mr Kreegher only moved into the Church seven nights before the alleged offending and there was no evidence that he stayed there. He also emphasised Mr Singh's evidence that the offender was Māori or Sāmoan, but Mr Kreegher's race was "officially that of a European". He also highlighted that the offenders communicated in Māori or Sāmoan but there is no evidence that any of the defendants can speak Māori or Sāmoan.

[13] Mr Paino also referred to Mr Singh's description of tattoos under cross-examination, which referred only to a tattoo at the elbow. He said this was not consistent with Mr Kreegher's tattoos which extended the length of his arm but not on his elbow. While Mr Singh's description under re-examination of the tattoos being on both the elbow and arm was noted, trial counsel said the "overwhelming inference or understanding on his evidence is that this was an elbow where the tattoo was and Mr Kreegher does not have a tattoo on his elbow". He reminded the jury that Mr Kreegher has the letters "ANGE" in bold dark letters on his fingers.

[14] Mr Paino told the jury the Crown's submission that the evidence did not exclude the defendants is not the law; it is not a question of being excluded, but rather it is the Crown's responsibility to prove its case beyond reasonable doubt. He also invited the jury to look at the quality of the circumstantial evidence, especially relating to the identification of Mr Kreegher and queried whether they could be sure he was in the silver vehicle.

Summing up

[15] It is necessary only to refer to those parts of the summing up directly in issue on appeal. Dealing first with the prosecutor's submission that there was no counternarrative, the Judge said:

Please be absolutely clear: the defendants are not required to provide a counternarrative. The law is plain. They are not required to provide a statement. It is their right. You cannot hold against them that they exercised a right guaranteed to them under our law.

[16] The Judge made a further, similar statement when giving specific evidential directions, emphasising that none of the defendants have to give evidence or were under an obligation to give a statement.

[17] Turning to the issue of reasonableness of the verdicts, the Judge provided the usual directions as to burden and standard of proof, noting also, if "the circumstances are suspicious ... or even gravely suspicious, that is simply not enough. Proof beyond reasonable doubt is what is required". The Judge also provided detailed directions as to the elements and corresponding factual questions that the jury must resolve beyond reasonable doubt. He gave the jury a detailed question trail that corresponded to the key elements and issues in dispute, together with detailed summaries of the cases for the Crown and the defendants. He carefully and thoroughly described the key aspects of the Crown and defence cases. He explained that the Crown case is circumstantial and identified the pieces of evidence the Crown relied upon.⁶ He similarly explained the defence case, noting, among other things:

⁶ See [8] above.

The defence say at best, the circumstances are suspicious but insufficient to carry the weight necessary to support verdicts of guilty. The defence point to the lack of any direct identification evidence from Mr Singh, the total lack of any linking DNA forensic evidence, the lack of any truly linking telecommunications evidence.

Specifically for Mr Kreegher, it is submitted that Mr Singh's description of the driver is so broad and generic to be meaningless. His description of height and build is unspecific. On the other hand, his description of the driver as Māori or Sāmoan is different from Mr Kreegher, who is European. There is no evidence Mr Kreegher could speak Māori or Sāmoan, as the driver did.

Mr Singh's tattoo description is concentrated on the left elbow area, whereas Mr Kreegher's tattoos are on his left forearm. Mr Singh gave no evidence of a highly identifying feature of Mr Kreegher's left fist, the letters "ANGE" tattooed on his upper fingers as shown in the Facebook photograph.

[18] As to the reliability of Mr Singh's evidence, the Judge told the jury that:

You will need to be very careful about Mr Singh's evidence as the foundation point for considering the circumstances against each of the defendants. The reason for that, of course, is that these events happened in the early hours of the morning. It was undoubtedly dark. Mr Singh was taken by surprise. Events would have been confusing and fast-moving. He suffered significant stress and trauma, both from the incident and from the later head injury. His opportunity to observe a particular person involved for any particular length of time could well be compromised. In his own mind, he may have come to conclusions about certain persons involved, certain descriptions, sequences of events which may not be entirely reliable.

[19] The Judge recorded submissions made on behalf of each defendant that Mr Singh could be easily confused, mistaken and wrong about, among other things, the sequence of events, the roles played by individuals, and description of individuals. The jury was then invited to consider the pieces of circumstantial evidence and whether they were reliable. The Judge said:

If you have some concerns or doubts about the reliability of Mr Singh's evidence because of the way events unfolded, then you will need to consider that before moving to consider this issue of circumstantial evidence.

[20] A standard direction about circumstantial evidence was given, together with a further summary of it. The Judge then noted:

On the other hand, the defence say there are a number of pieces of evidence that strongly point away from the involvement of the defendants. I remind you of what I said just before: that when you consider each of these pieces of evidence that the Crown relied upon and where the foundation of that evidence is from Mr Singh himself, bear in mind the cautions I have given you about his evidence.

[21] The Judge reminded the jury of the key elements of the defence case, namely the absence of identification, the absence of forensic evidence, the generic and meaningless nature of the Mr Singh's descriptions, the absence of evidence that Mr Kreegher speaks Māori or Sāmoan or that he stayed in the Church overnight, and that the evidence about tattoos did not match Mr Kreegher's actual tattoos. The Judge later told the jury that the lack of evidence is a matter that they could take into account.

[22] The Judge also emphasised how fundamental it is to grasp the interrelationship between the requirement that the Crown prove its case, that it prove it beyond reasonable doubt, and circumstantial evidence. He said:

In the end, the critical issues will only be correctly determined by you by asking these fundamental questions: One: on the evidence that we find to be reliable, has the Crown proved beyond reasonable doubt Kreegher and White were involved at all? Two: on the evidence that we find to be reliable, has the Crown proved beyond reasonable doubt Ms Turner was involved more than she has admitted? And three: on the evidence that we find to be reliable, and were we to conclude beyond reasonable doubt that White was involved and Ms Turner was more involved than she has admitted, has the Crown proved beyond reasonable doubt each was a party involved in the way that I have directed?

[23] The Judge concluded the summing up by repeating the cases for the Crown and each defendant.

Conviction Appeal

New evidence

[24] Mr Kreegher seeks leave to adduce new evidence being affidavits from him and his mother said to show that the car was in the possession of Jason Jones, who is Māori, a member of the Black Power gang, has a tattoo on his left arm and was Ms Turner's partner. Mr Jones was also resident at the Church at the time of the offending. The evident significance of this is that Mr Jones better matches Mr Singh's description of his assailant. Mr Kreegher deposes that he mentioned that Mr Jones borrowed the car to his counsel during the trial. It appears he did not do so earlier because, as a then-Black Power member, he did not want to "nark" at the time. Mr Kreegher's mother also deposes that Mr Jones had asked to borrow the car in October 2016 and that she had lent it to him, though she did not remember the exact

dates. She says she did not realise at the time of the trial that Mr Jones borrowing the car was significant.

[25] In order to be admissible on appeal new evidence must be sufficiently fresh and sufficiently credible.⁷ We agree with Ms Cooke and Ms Simpson, counsel for the Crown on appeal, that this evidence is neither fresh nor sufficiently credible. In the absence of waiver of privilege, and there being no claim of trial counsel misconduct, we can only assume that a decision was made not to call evidence about Mr Jones borrowing the car on the night of the offending. As noted by the Crown, the Court of Appeal is generally not sympathetic to appellants who have not put their best foot forward and seek a second opportunity to mount a more effective defence.⁸

[26] Moreover, the evidence said to implicate Mr Jones is weak: there is only a vague reference by Mr Kreegher's mother in her proposed evidence to the car being lent to Mr Jones and Ms Turner sometime in October 2016. Further, the evidence of Mr Kreegher's mother that she did not appreciate the significance of Mr Jones borrowing the car at the time of trial is not credible. Given the inherent weakness of the evidence, our concerns about credibility and the lack of freshness, we do not consider admission of the new evidence is justified.

[27] Accordingly, leave to adduce the new evidence is declined.

Were the verdicts unreasonable?

[28] Ms Hall, counsel for Mr Kreegher on appeal, submits the case for the Crown was a loose circumstantial one, largely resting on the identity of the car rather than the occupants. She contends the evidence of identification supported the defence case given Mr Singh's references to his assailant's ethnicity, language, tattoos and relative size. She also contends there was no evidence that Mr Kreegher was staying at the Church at the relevant time and no one had spoken to the car owner about the people she allowed to use it. Ms Hall is also critical of the police's failure to obtain other CCTV footage.

⁷ *Bain v R* [2004] 1 NZLR 638 (CA) at [22]; and *Bain v R* [2007] UKPC 33, (2007) 23 CRNZ 71 at [34].

⁸ *Bland v R* [2012] NZCA 165 at [27], citing *R v Belcher* CA367/05, 4 April 2006 at [18].

[29] We do not accept this submission. We are satisfied that there was sufficient cogent evidence upon which a jury could be reasonably satisfied of guilt beyond reasonable doubt.⁹ The factors identified by Mr Britton in closing to the jury, noted above at [8], provided a sufficient basis for a finding of guilt on each of the charges. In summary, there was evidence that: Mr Kreegher was living at the Church at about the time of the offending,¹⁰ the silver car was his mother's car (thus linking him to it), Ms Turner was seen driving the car at the time of the offending, and that one of the assailants broadly matched aspects of Mr Kreegher's physical description in terms of his size and the tattoo on his left arm.

[30] Some parts of Mr Singh's description of the assailant said to be Mr Kreegher, including his ethnicity (because he spoke Māori or Sāmoan), could not be reconciled with the available evidence of Mr Kreegher's ethnicity. There was no evidence that he was either Māori or Sāmoan or could speak those languages.¹¹ In addition, Mr Singh's description of the location of the tattoos on the assailant's arm was not entirely consistent, as noted — from his elbow only in evidence in cross-examination to his entire arm in re-examination. But these matters were clearly highlighted to the jury by defence counsel and the trial Judge, so there can be no doubt that the jury weighed these matters in their assessment. And, notwithstanding these factors, it remained available to the jury to find, beyond reasonable doubt, that Mr Kreegher was the assailant described by Mr Singh. In this regard, we think the prosecutor's closing on the likelihood of Mr Kreegher's involvement was well put:

One piece of evidence relied on by the Crown may not be enough perhaps. Two or more pieces in isolation may not be enough. But the Crown relies on you not looking at things in isolation. The Crown relies on you, in considering the totality of the evidence, which is the task that you are seized with. The Crown says it is implausible, utterly implausible, on the evidence we've heard, to suggest that two men and a woman in the early hours of the morning, completely unrelated to that church, would appear at the same time as Mr Singh without knowledge of his arrival and just happened to be driving Codey Kreegher's car.

[31] This appeal point is therefore dismissed.

⁹ In accordance with the test affirmed in *R v Owen* [2007] NZSC 102, [2008] 2 NZLR 37 at [17].

¹⁰ Evidence about this was given by Jason Clarke, a co-leader of a ministry at Life City Church, and by Deborah Wipani, a support volunteer at Life City Church.

¹¹ While not relevant to the assessment of the reasonableness verdict, Mr Kreegher described himself as Māori in the Pre-Sentence Report interview.

The prosecutor's closing

[32] Ms Hall submits the prosecutor was wrong to invite the jury to consider that the identification evidence did “not exclude” Mr Kreegher and that there was no counternarrative. This submission is said to undermine the requirement of the Crown to prove its case and in effect asked the jury to reverse the onus. As any remedial direction from the Judge was not immediate, the comments of the prosecutor were not saved.

[33] We can deal with this briefly. We agree the prosecutor's closing on this point was unclear as to its significance; although unlikely, the jury may have interpreted the prosecutor's statement to mean that Mr Kreegher had to prove a counternarrative. However, as summarised above, the Judge thoroughly addressed the issue of burden and standard of proof.¹² The Judge also made it absolutely clear to the jury that Mr Kreegher did not have to prove a counternarrative or say anything at all.¹³ Therefore, we see no risk of miscarriage arising from the prosecutor's comment that there was no counternarrative.

The direction about reliability

[34] Ms Hall submits the Judge's treatment of the caution surrounding the evidence of Mr Singh undermined the defence case in that his evidence of the assailant supported the offender not being Mr Kreegher. Ms Hall submits this was undermined by the Judge, and the question trail and supplementary papers did not set out the defence case sufficiently. More specifically, she submits that Mr Singh positively excluded Mr Kreegher as the assailant in material ways: he is not Māori, he does not speak Māori or Sāmoan, his tattoo is materially different than that seen and drawn by Mr Singh, and his other tattoos were not mentioned.

[35] The offending direction is noted above at [18], but we repeat it here for ease of reference:

You will need to be very careful about Mr Singh's evidence as the foundation point for considering the circumstances against each of the defendants.

¹² See [17] above.

¹³ See [15] above.

The reason for that, of course, is that these events happened in the early hours of the morning. It was undoubtedly dark. Mr Singh was taken by surprise. Events would have been confusing and fast-moving. He suffered significant stress and trauma, both from the incident and from the later head injury. His opportunity to observe a particular person involved for any particular length of time could well be compromised. In his own mind, he may have come to conclusions about certain persons involved, certain descriptions, sequences of events which may not be entirely reliable.

[36] The following passage is also highlighted by Ms Hall:

If you have some concerns or doubts about the reliability of Mr Singh's evidence because of the way events unfolded, then you will need to consider that before moving to consider this issue of circumstantial evidence.

[37] Ms Hall says the Judge's directions invited the jury to conclude, for instance, that perhaps Mr Singh had described the tattoo as only being on the elbow, but that the jury could conclude that the tattoo was actually on the forearm like Mr Kreegher has — fitting with the Crown case. She also contends that the Judge failed to encapsulate the force of the distinguishing identifying characteristics: the defence case in relation to the vehicle (that there was no evidence it was actually Mr Kreegher using the car that night), the lack of evidence that Mr Kreegher had been actually staying at the Church in the lead up to the incident, and the evidence that the language spoken by the driver was Māori or Sāmoan.

[38] We do not agree with Ms Hall's characterisation of the evidence of the Judge's directions. First, Mr Singh said in reply that the arm was tattooed from the elbow to the wrist and there was evidence that Mr Kreegher was a resident at the Church at about the time of the alleged offending. Secondly, it is a logical inference to draw that Mr Kreegher, being the son of the owner of the silver vehicle, was driving or had been driving it at the time of the offending given also Mr Singh's evidence as to his assailant's description, including his size and tattoos. Thirdly, the Judge's directions about the reliability of Mr Singh's evidence were entirely orthodox — inviting the jury to be cautious about the reliability of Mr Singh's evidence about what he had observed given the circumstances in which he made the observations. Fourthly, the Judge made it clear the jury needed to satisfy itself as to Mr Singh's reliability before adding his evidence regarding identity to the Crown's circumstantial case. In this regard we do not detect any suggestion that the Judge was directing the jury to disregard or downplay those aspects of the evidence unfavourable to the Crown. Rather, the Judge

appropriately directed the jury to be cautious about Mr Singh's evidence given the way events unfolded.

[39] We also disagree that the Judge's directions about the defence case were inadequate. We have summarised those directions in some detail and need only reiterate that the Judge reminded the jury of the key elements of the defence case, namely the absence of identification evidence, the absence of forensic evidence, the generic and meaningless nature of Mr Singh's descriptions, the absence of evidence that Mr Kreegher speaks Māori or Sāmoan or that he stayed in the Church overnight, and that the evidence about tattoos did not match Mr Kreegher's actual tattoos. The Judge also told the jury that the lack of evidence is a matter that they could take into account.

[40] Accordingly, we see no error or risk of miscarriage in relation to the Judge's treatment of Mr Singh's evidence or the defence case. This ground of appeal and the appeal against conviction are therefore dismissed.

Sentence Appeal

[41] Ms Hall submits the starting point of nine years' imprisonment adopted by the Judge was too high and that the discount of five per cent for all personal factors, as well as time spent on bail, was insufficient. In terms of the starting point, Ms Hall contends that the Judge inappropriately stacked the aggravating factors and two sets of offending. Ms Hall also contends that the sentence is manifestly excessive having regard to the starting point of six and a half years' imprisonment adopted by the High Court in *R v Samson*¹⁴ for two distinct episodes of similar violence, in which one set of offending precisely mirrored the present offending, and to the starting points adopted in other cases also involving aggravated robbery and kidnapping.¹⁵ Ms Hall

¹⁴ *R v Samson* [2018] NZHC 1500.

¹⁵ Citing *R v Mako* [2000] 2 NZLR 170 (CA); *Hewitt v R* [2018] NZCA 374, in which a starting point of five years' imprisonment was adopted; *R v Zhang* CA56/05, 24 May 2005, in which the High Court's starting point of six years' imprisonment was unchallenged on appeal; *Hoko v R* [2017] NZCA 484, in which a starting point of five years' imprisonment was adopted on the aggravated robbery charge, with a further uplift of one year's imprisonment for the kidnapping charge; and *R v Geros* HC Auckland CRI-2006-027-1485, 12 December 2006, in which a starting point of four years' imprisonment was adopted for two charges of kidnapping and two charges of aggravated robbery.

also submits the discount of five per cent was manifestly inadequate having regard to the time spent on bail (three years) and Mr Kreegher's personal circumstances, including a deprived upbringing. She contrasts the recognition given to Ms Turner's circumstances, including her turbulent upbringing and her separation from her children. Ms Turner was afforded a six month, or eight per cent, discount for her personal mitigating factors.

Assessment

[42] We do not agree that the starting point was excessive. As the Judge explained, there were several aggravating features to the offending, including:¹⁶

- (a) clear premeditation and planning — Mr Singh was lured to the Church for the purpose of robbing him;
- (b) significant violence — including repeated assaults;
- (c) an attack to the head with a weapon;
- (d) significant harm to Mr Singh who was placed in the boot, stripped virtually naked and then left unconscious next to a burning car;
- (e) given Mr Singh was unconscious and his proximity to the burning car, an obvious risk to his life; and
- (f) cash and property being taken.

[43] Assuming that the wounding with intent to cause grievous bodily harm is the lead offence,¹⁷ we agree with Crown counsel that the present offending falls within band three of *R v Taueki*,¹⁸ involving serious violence, use of a weapon, attack to the head, rendering the victim unconscious and resulting in serious injury.

¹⁶ Sentencing judgment, above n 5, at [26]–[32].

¹⁷ The sentencing Judge considered there were two lead offences: the wounding with intent to cause grievous bodily harm and aggravated robbery. See Sentencing judgment, above n 5, at [41].

¹⁸ *R v Taueki* [2005] 3 NZLR 372 (CA) at [40]–[41].

The presence of multiple attackers, the kidnapping and then the robbery all then clearly justify a starting point in the order of nine years. We therefore see no reason to revisit the Judge's assessment of starting point.

[44] We agree, however, with Ms Hall that the discount of five per cent for personal mitigating circumstances was manifestly inadequate. This is a case where a meaningful discount for Mr Kreegher's difficult upbringing and deprived social circumstances is available. As stated by this Court in *Zhang v R*, evidence of social, cultural or economic deprivation that has a demonstrative nexus with the offending may be presented in mitigation.¹⁹ In this regard, the pre-sentence report records that Mr Kreegher is of Māori and Pākehā descent, identifies strongly as Ngāpuhi, but his father, who was European, did not encourage taha Māori in the home. The report notes he had a turbulent upbringing, his father was a violent man and Mr Kreegher was mistreated by his stepmother. Mr Kreegher also advised that he was the victim of sexual offending as a very young child and is yet to fully address this. He has been an active member of the Black Power gang since a young age, though he says he has since left it. Mr Kreegher also self-reports that he abuses alcohol and started abusing methamphetamine and other drugs at 17 years of age. The report also explains that Mr Kreegher has a myriad of violent offending prior to 2016, but that this appears to have decreased since.

[45] In a letter to the sentencing Judge Mr Kreegher also said that he was abused mentally and physically as a child and he went to prison in 2010 while self-medicating with methamphetamine to mask the pain and depression. Ms Hall also advised that Mr Kreegher was kicked out of home at the age of 12 and bounced around relatives until he ran away around the age of 15, and that he was homeless for a number of years.

[46] The Judge acknowledged that Mr Kreegher had:²⁰

... obvious issues with gang affiliation, mental health and substance abuse. I have no doubt that these features are shaped by traumatic violent and abusive issues in your past.

¹⁹ *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [162].

²⁰ Sentencing judgment, above n 5, at [24].

[47] We are also satisfied that these same issues, and more generally a life marred by social deprivation, including at the time of the offending, likely influenced Mr Kreegher's poor life choices generally and on the night in question. Relevantly, a key strand of the Crown's case was that Mr Kreegher was in difficult financial circumstances at the time of the offending, noting also that the Church was a facility for those who needed emergency housing, food, medical and other help. All this bears on Mr Kreegher's relative culpability and we think a distinct discount in the order of 10 per cent, or 11 months, to reflect his difficult upbringing and ongoing social deprivation at the time of the offending is available.

[48] Ms Hall also sought to emphasise Mr Kreegher's capacity for rehabilitation, noting that he had, in short, turned a corner, having rejected gang life and is now focusing on his family. Three years on bail without incident is said to be indicative of his commitment to rehabilitation. However, Mr Kreegher's ongoing denial of his offending, and the serious nature of it, are strong countervailing factors, which in our view preclude a further discount on rehabilitative grounds.

[49] We consider, however, a discount for the very lengthy period spent on bail is also available. While the Sentencing Act 2002 only identifies time spent on electronically-monitored bail as a mandatory mitigating factor,²¹ it is common ground that discounts may be given for time spent on bail simpliciter. Whether there should be a discount and the scale of it will depend on the restrictiveness of the bail conditions and the level of compliance with them.²² Mr Kreegher's bail conditions were only moderately restrictive — involving a curfew from 7 pm to 7 am, but he was subject to them for a very lengthy period (three years) without breach. We therefore think in these circumstances a further six month discount, or about 5 per cent, is appropriate.

[50] Accordingly, when discounting factors are properly assessed, Mr Kreegher should have been afforded a discount in the order of 17 months, rather than the six months afforded by the Judge. This leads to an end sentence of seven years and seven months' imprisonment.

²¹ Section 9(2)(h).

²² *R v Nepe* [2008] NZCA 98 at [33]; *Keown v R* [2010] NZCA 492 at [12]; and *Tamou v R* [2008] NZCA 88 at [18]–[19]. See also Simon France (ed) *Adams on Criminal Law* (online looseleaf ed, Thomson Reuters) at [SA9.28B(b)–(c)].

Result

[51] The application for leave to adduce fresh evidence is declined.

[52] The appeal against conviction is dismissed.

[53] The appeal against sentence is allowed.

[54] The sentence of eight years and six months' imprisonment is quashed and replaced with a sentence of seven years and seven months' imprisonment.

Solicitors:
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