

**NOTE: HIGH COURT SUPPRESSION ORDERS EXIST IN RELATION TO ASPECTS OF [2021] NZHC 136 PURSUANT TO S 205 OF THE CRIMINAL PROCEDURE ACT 2011: SEE PARAGRAPH [61].**

**<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360354.html>**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 75/2022  
[2024] NZSC 59**

BETWEEN JUSTIN RICHARD BURKE  
Appellant

AND THE KING  
Respondent

Hearing: 20–21 March 2023

Judgment (No 1): 22 April 2024

Further  
Submissions: 1 May 2024

Court: Winkelmann CJ, Glazebrook, Williams, Kós and O’Regan JJ

Counsel: J R Rapley KC for Appellant  
B Hawes for Respondent

Judgment: 16 May 2024

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**JUDGMENT (NO 2) OF THE COURT**

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- A The appellant’s conviction for manslaughter is quashed.**
- B An order is made under ss 234(2) and 241(2) of the Criminal Procedure Act 2011 substituting a conviction for injuring with intent to injure under s 189(2) of the Crimes Act 1961.**
- C An order is made under ss 234(5) and 241(2) of the Criminal Procedure Act 2011 substituting a sentence of three years’ imprisonment.**
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**REASONS**  
**(Given by Kós J)**

[1] Mr Burke's appeal against conviction for manslaughter was allowed by this Court.<sup>1</sup> We directed submissions be filed as to next steps and disposition of the appeal.<sup>2</sup> Given the likelihood Mr Burke had completed his sentence of five years and two months' imprisonment, we observed there may be little point in a retrial. We noted Mr Rapley's submission on appeal that an appropriate course would be substitution of a conviction for injuring with intent to injure under s 189(2) of the Crimes Act 1961.

[2] A joint memorandum of counsel was filed on 1 May 2024. It advised that Mr Burke had completed his sentence in full, and had been released from prison on 14 February 2024 subject to six months' standard and special conditions.

[3] We record that Mr Burke was jointly charged with four others:

- (a) Mr Webber pleaded guilty to the murder of Mr Heapey and was sentenced to life imprisonment with a minimum period of 15 years.<sup>3</sup>
- (b) Mr Waho, Mr Sim and Ms Cook each pleaded guilty to a charge of causing grievous bodily harm with intent to injure. Mr Waho was sentenced to two years and 11 months' imprisonment (reduced on appeal from three years and three months' imprisonment),<sup>4</sup> and the other co-defendants to two years and three months' imprisonment.<sup>5</sup>

[4] Given Mr Burke has completed his sentence, the Crown does not suggest a retrial is appropriate. Rather, it accepts a conviction under s 189(2) can and should be substituted, with a sentence in the vicinity of three years' imprisonment.

[5] The defence supports that approach. We agree that is the appropriate outcome in this appeal, and direct accordingly.

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<sup>1</sup> *Burke v R* [2024] NZSC 37.

<sup>2</sup> At [175].

<sup>3</sup> *R v Webber* [2020] NZHC 2328.

<sup>4</sup> *Waho v R* [2020] NZCA 526.

<sup>5</sup> *R v Sim* [2019] NZHC 2361; and *R v Cook* [2019] NZHC 2890.

## **Result**

[6] The appellant's conviction for manslaughter is quashed.

[7] An order is made under ss 234(2) and 241(2) of the Criminal Procedure Act 2011 substituting a conviction for injuring with intent to injure under s 189(2) of the Crimes Act.

[8] An order is made under ss 234(5) and 241(2) of the Criminal Procedure Act substituting a sentence of three years' imprisonment.

Solicitors:  
Raymond Donnelly & Co, Christchurch for Respondent