IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA426/2025
[2025] NZCA 558

BETWEEN	MI (CA426/2025) Appellant
AND	THE KING Respondent

Hearing:	29 September 2025
Court:	Mallon, Whata and Venning JJ
Counsel:	H J Croucher and A C L Jordan for Appellant J E Bragg and N C Vaughan for Respondent
Judgment:	21 October 2025 at 3 pm

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Mallon J)

Introduction

[1] The appellant participated in an illegal "boy racer" event.[1] He hit a young woman (N), who was pregnant and who was a spectator at the event. She was injured and her baby died shortly after the event following an emergency caesarean section. The appellant pleaded guilty and was convicted of manslaughter, dangerous driving causing injury and driving while disqualified.[2] He was sentenced to two years and four months' imprisonment.[3]

[2] The appellant appeals his sentence. He says it was manifestly excessive because the starting point of four years and three months' imprisonment was too high, a 25 per cent discount should have been allowed for his guilty plea (rather than the 20 per cent given), and a 25 to 30 per cent discount should have been allowed for his youth, background and intellectual deficiencies (rather than the 15 per cent given).[4]

[3] For the reasons that follow, we consider the end sentence of two years and four months' imprisonment was within range and the sentence appeal must therefore be dismissed.

Circumstances of offending

[4] The illegal boy racer event took place late in the evening of 19 May 2023 in East Tāmaki, Auckland. It is not known who organised the event. It had been publicised on social media. Around 50 to 100 people came to view the event. Amongst them were N, her partner and his sister. They stood on the road to watch the event.

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1 The appellant's name has been anonymised pending the determination of category 3 proceedings. See n 6.

2 Crimes Act 1961, s 177; and Land Transport Act 1998, ss 32(1)(a) and (3) and 36(1)(b).

3 *R v [MI]* [2025] NZHC 1830 [sentencing notes].

4 The appellant does not pursue as a ground of appeal that uplifts for driving while disqualified and offending on bail were inappropriate. See below at [40].

[5] The appellant attended the event in his blue Holden Commodore. It was unregistered, its warrant of fitness had expired, and the car was not up to warrant of fitness standard. He was a disqualified driver, having pleaded guilty on 17 April 2023 (that is, approximately one month prior to the illegal boy racer event) to driving a motor vehicle recklessly and failing to stop when required.[5]

[6] During the event the appellant began doing "burnouts" in tandem with a red Holden Commodore. A burnout involves intentionally causing the rear wheels of a vehicle to spin through a sustained loss of traction, creating large clouds of smoke and causing the vehicle to spin and drift. The appellant had passengers in his car, including someone in the front passenger seat who was leaning out of the window and filming the burnouts.

[7] The appellant's car started drifting wider and closer to where the spectators were gathered. N tried to move backwards but was pushed forwards by the crowd behind her. The appellant's car made glancing contact with N's partner on his leg, then his sister on the hip, neither sustaining any injury. It then struck N in the front of her torso, causing her to become airborne before landing heavily on her back on the road. The appellant continued his burnouts for a brief period before leaving the area. He stopped at a nearby service station to assess the damage to his car. This included panel damage.

[8] N's partner and others rushed to N's aid and she was driven to hospital in her partner's car. At hospital, due to concerns about the welfare of N's baby, an emergency caesarean was performed. N's baby (T) was born alive at about 3.14 am on 20 May 2023. She required resuscitation at birth and did not respond favourably to intubation. Neuroimaging revealed that T had suffered a catastrophic brain injury that was not survivable. T passed away at about 12.43 am on 21 May 2023. The pathologist's conclusion from an autopsy was that T had died as a result of a brain injury sustained in utero when N was hit by the appellant's car.

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5 Land Transport Act 1998, ss 35(1)(a) and 52A(1)(a)(i) and (3).

[9] In the morning of 20 May 2023, unaware of events taking place at the hospital, the appellant posted a video of the collision on Instagram with text saying:

> Not posting this for drama but when use are out to watch skids an drags stand the fuck back my clipping points are not humans It's the curb so stand back an don't fucken stand on the road hate swinging my car an some idiots on the road people need to learn it's a dangerous activity so stand the fuck back or get whacked

[10] N's sister asked the appellant to delete the post. The appellant replied:

> Who's this? Everyone knows the baddest skidder at drags is right here. Everyone knows stand back or get whacked. You can see everyone standing on the road in this video which needs to get out there to people that don't know number one rule at drags is stand back sorry if it was your friend or whatever can you get them to message me.

[11] N's sister told the appellant who she was. He replied:

> I'll give her a little cash so she knows not to stand there it wasn't either of our faults but I'll give back what's good cause I'm not trying to run I'm just trying to put it out there cause it's just fact.

[12] The appellant sent a further message later that day asking if N was "all good". Sometime later, N's sister posted on Instagram that T had passed away. The appellant saw this post. N's sister again asked the appellant to delete his post showing N being hit. The appellant did so but on a different account he made the following post:

> To the people that got hit on the weekend keep these indoors and sort it cause if the pigs come to mine for that I'll come to yours and smoke you end of.

Progress of charges

[13] The appellant was initially charged on 31 May 2023 with driving while disqualified and driving dangerously causing injury to N. He was remanded on bail without plea on 13 June 2023. On 29 August 2023 additional charges were brought, namely failing to stop to ascertain injury and failing without reasonable excuse to assist the police to access his cell phone. On 28 November 2023 he was charged with manslaughter. All charges were transferred to the High Court for a first appearance on 13 December 2023.

[14] The appellant's counsel considered it was not possible to resolve matters at an early stage. This was understood to be the first occasion in New Zealand where the Crown had brought a charge of manslaughter for the death of a baby for injuries received in utero. This raised complex legal issues. It was also necessary to pursue outstanding disclosure in relation to the medical records of T. Counsel also considered there were difficulties in obtaining clear and coherent instructions from the appellant.

[15] Counsel instructed Dr Jon Nuth, a psychologist, to provide an assessment of the appellant for the purposes of an application for interim name suppression.[6] In a report dated 5 June 2024, Dr Nuth said:

> From a clinical perspective [the appellant] continues to meet diagnostic criteria for attention deficit hyperactivity disorder and I consider that he has intellectual and cognitive difficulties that result from a confluence of factors. These include (1) in utero polysubstance exposure risk (maternal alcohol and other drugs), (2) significant educational deprivation and (3) poor ongoing parental care. In my view [the appellant's] difficulties are not of the magnitude to meet the clinical criteria (which mirrors the legal criteria) for an intellectual disability however his abilities are in and around the borderline intellectual ability ranges. It was not possible to determine whether he meets criteria for Foetal Alcohol Spectrum Disorder, but he continues to at least satisfy criteria for ADHD and in my opinion has widespread cognitive weaknesses.

[16] As a result of Dr Nuth's report, counsel applied to the High Court for the appellant to be assessed by a communication assistant and that a communication assistant be present in all lawyer-client meetings. At a trial callover on 14 August 2024, Downs J ordered that the appellant have communication assistance at any hearing. The Judge, however, declined an order in relation to meetings outside of court on the basis it was not clear that this kind of assistance was within s 80 of the Evidence Act 2006.[7]

[17] Counsel considered she was unable to properly advise the appellant and receive his instructions until a comprehensive communication assessment and report was completed. In the meantime, counsel sought to find a suitably qualified expert to give

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6 That application was granted: *R v [MI]* [2024] NZHC 1755. It lapsed on 29 April 2025, when Fitzgerald J declined interim name suppression until sentencing after the appellant pleaded guilty: *R v [MI]* [2025] NZHC 950. The appellant has unrelated category three charges pending and s 199A of the Criminal Procedure Act 2011 currently applies.

7 *R v [MI]* HC Auckland CRI-2023-092-10421, 14 August 2024 (Minute No 3 of Downs J).

an option on whether N's baby was "born alive". In December 2024, the briefed expert advised that the deceased was born alive.

[18] On 26 September 2024 counsel received the comprehensive communication assistance report recommending that a communication assistant be made available at all lawyer-client meetings. Based on that report, Downs J granted the request on 12 December 2024.[8] Counsel then had two extended meetings with the appellant and the communications assistant who confirmed that the appellant understood the implications of the expert report. With that confirmation, counsel commenced discussions with the Crown, which culminated in guilty pleas to charges of disqualified driving, dangerous driving causing injury and manslaughter on arraignment on 17 January 2025.[9]

Personal circumstances

[19] The appellant was 22 years old at the time of the offending.

[20] He has a reasonably extensive Youth Court history relating to matters in 2016 and 2017. In the adult jurisdiction, his conviction history was more limited. He was convicted of receiving property in September 2018. He was then convicted in April 2023 of failing to stop when required and operating a vehicle recklessly relating to an incident in August 2021, for which he was ordered to do community work and disqualified from driving for six months.[10] In November 2024 he was convicted of common assault for an incident in November 2023 for which he was ordered to pay reparation and sentenced to supervision.

[21] A Department of Corrections | Ara Poutama Aotearoa Provision of Advice to Courts (PAC) report was prepared for the sentencing. The appellant reported being unaware that he had hit the victim until later in the night when an associate told him. He acknowledged fleeing the scene was not the best course of action but he was scared. He said he had offered money in his reply to N's sister because he thought it was the

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8 *R v [MI]* HC Auckland CRI-2023-092-10421, 12 December 2024 (Minute No 4 of Downs J).

9 Charges of failing to stop to ascertain injury and failing to allow a police officer access to his cell phone were withdrawn.

10 See above at [5].

right thing to do. He acknowledged being negatively influenced by his peer group, and his longing for acceptance was said to stem from the instability, abuse and neglect of his younger years. He has a long-standing addiction to cannabis and was also currently using methamphetamine. He felt a sense of responsibility for not protecting a relative from sexual abuse that relative suffered from someone they both knew. He was deeply sad that he might be sent to prison as he had seen his father and uncles in and out of prison, and he did not want that life for himself.

[22] An affidavit by Russell Burt, the principal of the primary school the appellant had attended, was also prepared for sentencing. Mr Burt advised that the appellant's home life was "truly dysfunctional" and "completely to [his] disadvantage." The appellant's lack of regulation made structured learning difficult. His young mother prioritised her own interests and the home environment included domestic violence, substance abuse, and exposure to inappropriate sexual behaviour. The appellant's "basics" were not well provided for and the school and other charitable organisations often had to fill the gaps, assisting with clothing, food and hygiene. He had no routine and his mother did not support him with his dysregulated and impulsive behaviour. The school referred him for an assessment and got permission to administer his medication. His father later came onto the scene and attempted to take some steps to provide a more stable home for the appellant, but this did not work out as the appellant's father was later imprisoned.

[23] An affidavit from the appellant's sister was also prepared for sentencing. The appellant was bailed to live with her. She described him as supportive and a huge help around the house, and someone who followed the bail rules. She supported the appellant's attendance at the Right Track | Te Ara Tutuki Pai programme (driving him to and from every session) and found him to be "really engaged" with it. The appellant completed this programme (which involved 48 hours in total over a six-week period). The programme facilitator described the appellant as demonstrating clear growth in self-awareness, emotional maturity, and practical decision making, having expressed sincere remorse and a strong commitment to change.

High Court sentencing

[24] Sentencing took place in the High Court before Wilkinson-Smith J on 2 July 2025.

[25] N provided a victim impact statement for sentencing. She said she knew she should not have been there when she was pregnant. She had now healed and "found peace with it all" and hoped the appellant would find peace too. She did not blame him, was truly sorry and wished she could do more to help him with his case, and wished him the best of luck with everything.

[26] The Judge adopted a starting point of four years and three months' imprisonment for the offending.[11] In doing so, the Judge referred to this Court's decision in *Gacitua v R* which sets out a list of aggravating and mitigating circumstances in cases involving motor manslaughter.[12] The Judge considered the aggravating factors to be: "showing off" (doing tandem burnouts while surrounded with people, with a person hanging out the window, which was reckless driving that was glorified on social media); driving habitually below the acceptable level (having been disqualified from driving one month prior, having previous driving convictions and driving a car that was not up to standard); failing to stop (the Judge not accepting that the appellant did not know he had hit someone); and the appellant's posts on social media.[13] While the fact that someone died is part of the offence, the sentence also had to acknowledge that a second person (N) suffered injuries.[14]

[27] The appellant sought a discount for his guilty plea of 25 per cent. The Crown initially submitted that the reduction should be 10 per cent but revised that to a discount of 20 to 25 per cent. The Judge described this change as a responsible concession in view of the enquiries that were necessary due to the unusual features of the injuries being suffered in utero and that the baby was born alive.[15] The Judge

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11 Sentencing notes, above n 3, at [23].

12 *Gacitua v R* [2013] NZCA 234. The Judge also discussed the cases the Crown and defence counsel relied upon, namely: *R v Bishop* [2012] NZHC 2761; *R v Prince* HC Whanganui CRI-2011-083-1775, 5 December 2011; *O'Sullivan v R* [2014] NZHC 739; *R v Stephens* [2023] NZHC 3555; and *Zhu v R* [2021] NZCA 254.

13 Sentencing notes, above n 3, at [13].

14 At [14]–[15].

15 At [28].

decided on a discount of 20 per cent because the manslaughter charge was not brought for six months after the initial charges and the appellant had not immediately accepted responsibility for dangerous driving causing injury to N.[16]

[28] The Judge allowed a further discount of 15 per cent for youth, cognitive difficulties and the appellant's background.[17] The Judge noted that at 22 years the appellant was "not very young" but it was appropriate to consider this in conjunction with the appellant's cognitive difficulties (caused by in utero polysubstance exposure).[18] The Judge accepted that there was a causative nexus between the appellant's attention deficit hyperactivity disorder (ADHD), and his impulsive and thrill-seeking behaviour.[19] The Judge also accepted that the appellant had a difficult personal background and that this made it more difficult for the appellant to do the right thing, and that the appellant had potential despite this.[20]

[29] The Judge allowed a further discount of 10 per cent to recognise remorse and the appellant's steps towards rehabilitation thought the Right Track programme.[21] In doing so, the Judge noted that these steps were taken against the background of a difficult upbringing. The Judge considered the steps taken needed to be balanced against the appellant's actions immediately after the event, but was of the view that, with the progress the appellant had made, he would be unlikely to post messages of the kind that he had.

[30] Lastly, the Judge applied a one-month uplift for the fact that the appellant was a disqualified driver and had previous convictions, and a further one-month uplift for the fact that the appellant was on bail at the time of the offending.[22]

[31] The Judge understood from using a "sentence calculator" that a starting point of four years and three months' imprisonment, with discounts totalling 45 per cent and the two-month uplift, gave rise to an end sentence of two years and

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16 At [28]–[29].
17 At [36].
18 At [30]–[31].
19 At [32].
20 At [35].
21 At [37]–[40].
22 At [43]–[44].

four months' imprisonment. Standing back she considered this was the appropriate sentence. The Judge's typed sentencing notes record in a footnote that, correctly calculated, the end sentence was two years and six months' imprisonment.[23] The Judge confirmed that an end sentence of two years and four months' imprisonment was the intended sentence.[24]

Assessment

[32] The first challenge to the sentence is to the starting point. The aggravating factors referred to in *Gacitua* come from the English Court of Appeal decision in *R v Cooksley*.[25] This Court considered the *Cooksley* factors to be helpful in assessing the seriousness of the offending.[26]

[33] In *Gacitua* three of those factors (high speed competitive driving, a deliberate course of very bad driving and aggressive driving) were present albeit that they overlapped. This Court considered that a starting point of a starting point of four to five years would have been available following changes to the Land Transport Act 1998 in 2011 in light of these factors.

[34] In this case, of the *Cooksley* aggravating factors set out in *Gacitua*, three were present (showing off, a poor driving history and unwarranted vehicle, and failing to stop). Additionally, as the Judge noted, there was the posting of the video after the event and the injury to a second victim. The Judge's starting point of four years and three months is within range with reference to *Gacitua*.

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23 At [47], n 22.

24 The sentence of two years and four months' imprisonment was imposed on the manslaughter charge. Concurrent sentences of 12 months' imprisonment and one month's imprisonment were imposed on the dangerous driving causing injury and driving while disqualified charges respectively. The appellant was also disqualified from driving for 12 months from the date of his release from prison.

25 *R v Cooksley* [2003] EWCA Crim 996, [2003] 3 All ER 40 at [15].

26 *Gacitua v R*, above n 12, at [29].

[35] The appellant refers to three High Court sentences in support of his submission that the appropriate starting point was three and a half to four years' imprisonment:

(a) *R v De Reeper*:[27] this involved a defendant who was riding a motorcycle alongside two friends on a public road who were each passing each other on several occasions at excessive speed. One of the friends was killed when he approached a corner at 240 km/h and crashed, having been encouraged by the defendant passing him at a "grossly excessive speed".[28] The High Court Judge accepted that the friend had "contributed significantly to his [own] death through the grossly excessive speed at which he was riding" and the "mistake he made in the way he braked before the corner, initially just using his rear brake".[29] The Judge adopted a starting point of two years and three months' imprisonment for charges of manslaughter and dangerous driving.[30]

(b) *R v Elliot*:[31] this involved two young friends who decided to see whose car could accelerate faster by racing each other on a public road with an 80 km/h limit, in a quiet and sparsely populated area. It was arranged that one of their friends would stand past the end point of the race to wave his arms to alert the two drivers if there was any traffic coming from the other direction, as well as to take a photo at the end of the race to see who was the winner. As one of the racers approached the end at a speed of about 106 km/h, he saw the young man unexpectedly crossing the road in front of him and was unable to avoid striking and killing him. Both of the racers were charged with manslaughter. The Judge adopted a starting point of three years' imprisonment.[32]

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27 *R v De Reeper* [2021] NZHC 1336.
28 At [28].
29 At [22].
30 At [39].
31 *R v Elliot* [2014] NZHC 214.
32 At [28].

(c) *R v Luke*:[33] this involved a group of young people who had gathered on a public road with a speed limit of 50 km/h. When the defendant began to race, he was driving on the wrong side of the road at a speed somewhere between 100 and 150 km/h. The victim, who was one of the race starters, was standing with his back to the defendant. The defendant did not see him, and at a speed of between 70 to 100 km/h struck and killed him. The Judge adopted a starting point of three years and six months' imprisonment.[34]

[36] We are not persuaded that *De Reeper* is similar given the significant contribution of the victim to his own death in that case. Nor are we persuaded that *Elliot* is similar given the lesser danger in the way the race had been set up and the unexpected event of the young man crossing the road in front of the driver. We consider *Luke* to be more similar, but less serious than the present case. This is because of the increased danger in the present case arising from the number of spectators, the showing off aspect and danger involved with the passenger hanging out the window to video the event for posting on social media, failing to stop after hitting N and instead leaving the scene, the fact there were two victims, and posting the video of the incident and blaming N.

[37] On the basis of these cases, we consider a starting point of four years' imprisonment was available to the Judge before consideration of the fact that the appellant was a disqualified driver in a vehicle that was not roadworthy and had previous driving offences. The Judge added three months for those matters,[35] but when considering personal aggravating factors the Judge also uplifted the sentence by one month because the appellant was a disqualified driver with previous convictions, as well as a further one month uplift because the appellant was on bail at the time of the offending.[36]

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33 *R v Luke* HC Rotorua CRI-2007-070-3532, 19 October 2007.
34 At [10].
35 Sentencing notes, above n 3, at [23].
36 At [41]–[45].

[38] The Judge turned her mind to whether this involved double counting and satisfied herself that she had not.[37] We infer that the Judge must have tempered the uplift she would otherwise have given for personal aggravating factors because she had already added three months to her starting point to arrive at a total starting point of four years and three months' imprisonment.

[39] The prospect of double counting arises because "driving habitually below [the] acceptable standard" is one of the aggravating factors set out in *Cooksley*.[38] However, as this Court said in *Gacitua*,[39] the *Cooksley* factors need to be adapted to take account of the statutory framework under our Sentencing Act 2002 and the sentencing methodology established by this Court in *R v Taueki*.[40] In this case, the fact the car was unroadworthy would be relevant to the starting point, but the fact the appellant was a disqualified driver at the time and that he had previous relevant convictions is better seen as a personal aggravating factor rather than an aggravating factor of the offending.

[40] That said, the Judge's methodology did not in fact result in double counting, both because she had tempered the uplift cognisant of avoiding double counting and because, correctly calculated, the end sentence from the Judge's starting point, uplifts and reductions was two years and six months' imprisonment. The Judge proceeded to impose a sentence of two years and four months' imprisonment because that was the end sentence she had intended. In light of this, the appellant does not rely on the double counting of personal aggravating factors on his appeal.

[41] As to the guilty plea, the Supreme Court in *Hessell v R* said:[41]

> [62] … The only way in which the many variable circumstances of individual cases which are relevant to a guilty plea can properly be identified is by requiring their evaluation by the sentencing judge, and allowing that judge scope in light of the conclusion he or she reaches to give the most appropriate recognition of the guilty plea in fixing the sentence.

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37 At [43].

38 *R v Cooksley*, above n 25, at [15].

39 *Gacitua v R*, above n 12, at [28].

40 *R v Taueki* [2005] 3 NZLR 372 (CA).

41 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607. See also at [74]–[77], emphasising the variable circumstances are to be evaluated by the sentencing judge "who, in the end, must stand back and decide whether the outcome of the process followed is the right sentence".

[42] In this case, there were unusual circumstances that properly explained the delay in entering a guilty plea to the manslaughter charge as the Judge accepted. The Judge did not allow the maximum 25 per cent reduction because the appellant did not accept responsibility for the charge of dangerous driving causing injury to N. That charge did not require expert evidence and was brought six months before the manslaughter charge.

[43] The appellant submits the Judge failed to take into account his communication difficulties which meant counsel could not take informed instructions until a communications assistant was instructed. We accept that counsel may have felt it unwise to finalise her instructions on all charges until a communications assistant was in place. In those circumstances, some Judges may have allowed a full 25 per cent discount and it would have been open to the Judge to have done so. That, however, is not the test on appeal. Rather, the question is whether it was open to the Judge to allow a 20 per cent discount instead and in turn whether not allowing 25 per cent led to an end sentence that was manifestly excessive.

[44] We consider it was open to the Judge to allow a 20 per cent discount rather than 25 per cent. The charge of dangerous driving causing injury to N was a relatively straightforward one. There is no suggestion that the appellant wanted to take responsibility for this at an early stage or that the prosecution (and in turn N) understood that this charge was likely to be resolved once any decision had been made about whether to charge the appellant in relation to T's death. We consider it is not appropriate to interfere with the Judge's evaluation of the circumstances when her approach did not lead to an end sentence that was manifestly excessive..

[45] The appellant submits the Judge should have allowed 25 to 30 per cent for his youth, intellectual difficulties and background factors. Dr Nuth assessed the appellant as scoring low on executive functioning, having difficulties with impulsivity, and having the "air of a young man significantly younger than his chronological age". On this basis the appellant submits a 10 per cent reduction to the starting point for youth alone should have been given. He says a further reduction of 10 to 15 per cent for his ADHD and intellectual deficiencies should also have been given and a further five per cent for his difficult background.

[46] We consider the Judge was correct to consider these factors together. The Judge was correct that, at 22 years old, the appellant was "not very young".[42] However, there was a causative connection between his low executive functioning, intellectual deficiencies and impulsivity with the poor start he received because of his mother's polysubstance abuse and the unregulated and unsafe environment in which he was raised (despite the efforts his school and others made). There was in turn a causative connection between these matters and the offending. We consider these background factors to be quite weighty in the appellant's case, and we would have been inclined to allow a greater discount than the Judge gave for these factors.

[47] However, we consider the discount of 10 per cent for rehabilitation efforts was arguably generous. We can understand why the Judge decided to recognise the appellant's successful completion of the Right Track programme. It represented a change in the appellant's thinking about his behaviour and its impacts on others, in contrast to his attitude in the immediate aftermath of the incident and its consequences. That was an encouraging step, particularly in light of his disadvantaged background and intellectual difficulties. In other words, there was a degree of overlap between this factor and the factors for which the Judge had already allowed a 15 per cent reduction.

[48] Overall, whatever weight is given to one factor over another, a total discount of 45 per cent for all the overlapping personal factors and the guilty plea was about right and certainly within range. Ultimately a sentencing Judge must stand back and decide whether the end sentence is the right sentence taking into account all relevant circumstances.[43] The Judge did precisely this when she realised the calculation error and confirmed that an end sentence of two years and four months' imprisonment was the intended sentence. We consider this end sentence was within range.

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42 Sentencing notes, above n 3, at [30].

43 *Hessell v R*, above n 41, at [77]; *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [75]; *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [49]; and *R* (CA217/2018) [2018] NZCA 582 at [26]–[29].

Result

[49] The appeal is dismissed.

Solicitors:
Public Defence Service | Ratonga Wawao ā-Ture Tūmatanui, Manukau for Appellant
Crown Solicitor, Manukau for Respondent