ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF VICTIM PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [86].

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE

CRI-2025-419-000085
[2025] NZHC 3730

BETWEEN	ARIANA THOMPSON-BELL Appellant
AND	THE KING Respondent

Hearing: 3 November 2025

Appearances: R Greenhalgh for Appellant
C Hardy for Crown

Judgment: 3 December 2025

JUDGMENT OF BECROFT J
[Appeal against sentence]

This judgment was delivered by me on 3 December 2025 at 10am.

Registrar/Deputy Registrar

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Solicitors:
Public Defence Service, Hamilton
Hamilton Legal, Hamilton

This appeal

[1] Over a two-year period, Ms Ariana Thompson-Bell stole half a million dollars from a charitable trust for which she was the highly trusted finance administrator. Most of the money was used to support her own lifestyle. She is a 33-year-old first offender, has five children and is currently pregnant. Approximately $60,000 was repaid.

[2] She faced a charge known as theft by a person in a special relationship.[1]

[3] Ms Thompson-Bell pleaded guilty and was sentenced by Judge T V Clark in the Hamilton District Court on 21 July 2025 to two years and three months' imprisonment.[2] A reparation order for $100,000 was also made.

[4] Ms Thompson-Bell now appeals against that prison sentence on the basis that it was manifestly excessive. More particularly, Ms Hardy, who argued the appeal comprehensively and clearly, submitted that:

(a) the starting point of five years' imprisonment was too high; and/or

(b) insufficient credit (only five per cent) was given for Ms Thompson-Bell's previous good character; and/or

(c) insufficient credit (only five per cent) was given for her remorse and involvement in a restorative justice process.

[5] The thrust of Ms Hardy's argument was that the sentence should have been two years' imprisonment or less, and that in Ms Thompson-Bell's particular circumstances, home detention should then have been imposed. Ms Greenhalgh, for the police,

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1 Crimes Act 1961, ss 220 and 223(a). The maximum sentence is imprisonment for seven years. The particulars of the charge allege that "having control of property, namely money in circumstances that she knows required her to deal with the property in accordance with the requirements of any other person, namely [redacted, the Trust] and intentionally dealt with the property otherwise than in accordance with those requirements and thereby committed theft". Although not expressed to be a representative charge, the offending encompassed numerous transactions.

2 *Police v Thompson-Bell* [2025] NZDC 16214.

strongly opposed the appeal. She argues the sentence is without material error and simply cannot be regarded as manifestly excessive.

[6] Under the Criminal Procedure Act 2011 (CPA), the appeal must be allowed if for any reason, there is an error in the sentence imposed upon conviction; and a different sentence should be imposed.[3]

[7] In *Tutakangahau v R*,[4] the Court of Appeal confirmed that s 250(2) was not intended to change the approach to appeals against sentence. It must be shown that the sentence is manifestly excessive or wrong in principle, or there must be exceptional circumstances.

[8] I also record that Ms Thompson-Bell sought leave to file an affidavit, said to contain fresh material, as to her allegedly inadequate treatment at the Auckland Women's Correctional Facility relating to her pregnancy. I allow admission of that affidavit. It qualifies as "fresh". It is in the interests of justice to admit it. But it is of little assistance. This is because, since making that affidavit, her circumstances have further changed for the better. She has now been transferred to the specialist Mother and Baby Unit within the prison.

The facts

[9] Ms Thompson-Bell was employed as the finance administrator for the [redacted, the Trust]. The Trust [redacted]. She had begun her employment with the Trust in 2014, [redacted]. She then achieved an appropriate qualification in business/accounting,[5] which led to her role at the time.

[10] One of her responsibilities was to set up payments for the Trust to pay invoices to third parties. These payments, once set up, were authorised by two trustees of the Trust.

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

4 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [32]–[35].

5 In her affidavit, Ms Thompson-Bell confirms that in 2019 she graduated from the University of Waikato with a Bachelor of Business, majoring in accounting, and then worked at KPMG for a year before her mother offered her a job "…doing finance work because of her qualification and because I wanted something more flexible with young kids."

[11] By method of setting up legitimate invoice payments in the banking system, but changing the payee's bank account number to one of her own four bank account numbers, she paid herself Trust money that was meant for the Trust's creditors. One of the accounts was in the name of her 12-year-old daughter. One fraudulent payment of $3,500 was made directly to a Kōhanga Reo account which Ms Thompson-Bell had control over. The offending occurred over a period of approximately two years, between 2021 and 2023. The total amount taken was $499,972.55. It appears there were approximately 85 separate transactions involved.

[12] Ms Greenhalgh, who argued the case responsibly for the police, correctly described the offending as a continued course of premeditated dishonesty offending almost totally for personal gain. The majority of the stolen money was used to fund a lifestyle that Ms Thompson-Bell would otherwise not have been able to afford.

[13] The missing funds were eventually noticed when the Trust began receiving notification of unpaid invoices. Enquiries were undertaken, including by the Chief Executive Officer of the Trust, who is Ms Thompson-Bell's mother, and who originally employed her.

[14] Ms Thompson-Bell's offending was discovered to the devastation of the Trust, and, I infer, of her mother also.

[15] By the time of sentencing, Ms Thompson-Bell had repaid $66,335.93 to the Trust. In fact, this had largely been paid, as I understand it, by her mother as an advance on her daughter's inheritance. However, Ms Thompson-Bell did not have any other assets that could be utilised to make further payments.

[16] The Trust was able to meet its commitments for all the still outstanding invoices (over $400,000) from surplus funds earmarked for future restoration projects. I infer those new initiatives could not then proceed.

The District Court sentencing decision

[17] Judge Clark's decision was careful and comprehensive. I largely adopt the summary of that decision as helpfully set out in Ms Hardy's submissions, which are accepted as accurate, as follows:

> The District Court Judge canvassed the facts in more detail, regarding the amount of money taken, the period of time over which it was taken and the impact on the victim/s.
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> In discussing aggravating features, the Judge acknowledged that breach of trust is inherent in the charge. Ms Thompson-Bell had trust placed in her to set up payments, but the Judge acknowledged that the degree of trust was not as high as an accountant or someone with an enduring power of attorney for a vulnerable person.[6]
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> The Judge made particular reference to *Watson v R*[7] in setting the starting point. Specifically, she referred to the observation in *R v Borlace*,[8] discussed in Watson, that fraud cases in the range of $500,000 to $750,000 will typically attract a starting point of five to seven years imprisonment.
>
> The Judge set the starting point at five years' imprisonment.[9]
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> Turning to matters in mitigation, the Judge considered the information that was before the court in the form of affidavits from Ms Thompson-Bell and her husband Mr Tana Bell. These affidavits set out the family circumstances, focusing on their children (five of them in the household) and the impact of a sentence on them. Referring to *Phillip v R*, the Judge allowed a 15 per cent discount for this factor.[10]
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> In relation to guilty plea discount, although police had submitted that 20% was appropriate, the Judge accepted that the brief delay initially was only for the purpose of confirming the amounts involved, and therefore that the guilty plea was at the earliest opportunity. The Judge allowed a 25 per cent discount for guilty plea.[11]
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> The Judge then considered the submissions for a previous good character discount. The Judge acknowledged Ms Thompson-Bell's positive contributions to the community, however stated that she could not reach the discount advocated for by defence.[12] The Judge allowed five per cent for this. She went on to observe: "That is not to be confused with no previous convictions, which is a neutral factor at sentencing. I would adjust upward if there were aggravating features such as convictions, but that is not the position."[13]

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6 *Police v Thompson-Bell,* above n 2, at [34]–[25].
7 *Watson v R* [2024] NZHC 1326.
8 *R v Borlase* [2017] NZHC 236.
9 *Police v Thomspon-Bell,* above n 2, at [51].
10 At [57]–[58].
11 At [59].
12 A discount of 10 per cent was sought.
13 At [63].

> Turning to consider the issue of remorse, the Judge acknowledged that a hui had been held between Ms Thompson-Bell and the Trust, where Ms Thompson-Bell had shown her remorse face to face and apologised. However, the Judge considered the fact that Ms Thompson-Bell had been caught, rather than turning herself in, limited the credit available for remorse. A discount of five per cent was afforded.[14]
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> Finally, the Judge turned to the issue of reparation. The Judge had earlier acknowledged that Ms Thompson-Bell had repaid some $66,000.00, approximately 13 per cent of the loss. In consideration of Ms Thompson-Bell's ability to repay, the Judge ordered reparation in the amount of $100,000. She allowed a further five per cent discount to acknowledge what had been paid before sentence.[15]

[18] In conclusion, while her Honour recognised Ms Thompson-Bell's personal circumstances, she considered she could not apply any further reductions beyond the 55 per cent she had identified. Accordingly, there was no other sentence available aside from imprisonment. Despite the prolonged and serious nature of the offending, her Honour did not impose a minimum period of imprisonment, (which she considered), to ensure Ms Thompson-Bell was eligible for parole consideration as soon as possible, at the expiration of one-third of her sentence.

[19] The end sentence was two years and three months' imprisonment. Ms Thompson-Bell will be eligible for parole after nine months.

Other material available at sentencing

[20] The pre-sentence report from the Department of Corrections assessed Ms Thompson-Bell as someone with a medium risk of re-offending, given the extended period of offending and the high level of premeditation. She was also assessed as at high risk of harm to others. The report was clear in its primary recommendation of imprisonment.

[21] Ms Thompson-Bell, herself, provided three affidavits. They provided the District Court with details of her personal circumstances including her children, her means to pay future reparation through her employment, her relationship to the Trust, how she used the stolen money, and details of her community work and previous good

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14 At [65]–[67].
15 At [38]–[43].

character as well as the restorative justice process engaged in with the Trust. Her final affidavit advised the Court that she was now pregnant and this was supported by a midwife's letter.

[22] Her husband confirmed he shared responsibility for caring for the children with Ms Thompson-Bell and set out the arrangements the family would make for the children, as well as his concerns about the effect of imprisonment on the family.

[23] I now turn to the particular grounds relied on by Ms Thompson-Bell and her appeal.

Starting point too high?

[24] There is no tariff or guideline case for theft by a person in a special relationship. Therefore, the proper approach is to carefully analyse comparable cases to establish the true level and nature of the offending and Ms Thompson-Bell's culpability.

[25] Ms Hardy's submission is that the Judge was in error to rely on a generic observation about sentencing levels for fraud based solely on the amount involved. In that respect, it is true that the Judge noted the comments of Fitzgerald J in *R v Borlase*[16] to the general effect that "[w]here the benefits obtained were around $500,000 to $750,000, starting points of around five to seven years have been adopted." Although that was a case of bribery and corruption, which bears no factual resemblance to this case, the range suggested relative to the amounts involved are a useful beginning and cross check.

[26] With respect to Ms Hardy's submission, I read the District Court Judge as carefully taking into account the factors set out in what she referred to as the well-known case of *R v Varjan.*[17] Those factors, the Judge correctly said, go the issue of culpability which "of course assists the Court to determine starting points".

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16 *R v Borlase*, above n 8, at [73].
17 *R v Varjan* CA 97/03, 26 June 2003.

[27] The Judge particularly turned her mind, in terms of that culpability assessment, to the circumstances of the offending; the nature of the offending; its magnitude and its sophistication; the number of victims; the motivation for the offending; the amounts involved; the losses and the period during which the offending occurred; the seriousness of breaches of trust involved; and the impact on the victims. So, it cannot be said that her starting point was based on a simple overall assessment of the amount involved.

[28] Here, there were numerous transactions. They represented a chronic pattern of long-term offending. While it was not entirely sophisticated, it was attuned to the circumstances of the Trust and Ms Thompson-Bell's obvious knowledge that it would be difficult (as was the case) for the Trust to detect. And the fact that it continued for more than two years shows that it was sophisticated enough in the circumstances of the Trust, to avoid detection. In that sense, there was a high level of premeditation.

[29] The Judge sought further information, and clearly and inevitably concluded that there was no underlying or even explicable motivation to the offending such as supporting an addiction, a gambling habit, or medical expenses for a sick child. These sorts of motivations are not unknown and will sometimes justify a more merciful approach, and perhaps a lower starting point. But here, the Judge plainly concluded, as is inevitable, that Ms Thompson-Bell's offending was motivated by what she bluntly called "greed". It is hard to see how it could be described in any other terms. Almost all the stolen money was diverted to Ms Thompson-Bell's own lifestyle which included at least one payment to Air New Zealand and also to restaurants, cafes and supermarkets. Ms Hardy responsibly did not shrink from the reality that there was no readily explicable motivation for the offending other than personal greed.

[30] There is also in this case a high trust position. The Trust that employed her is small and tightly held. It clearly reposed significant responsibility and trust in Ms Thompson-Bell, as tertiary qualified in business with an accounting major. She knew she was in a position to divert funds owed to creditors to her own accounts.

[31] I also infer that the money would presumably have come from grants from either government or local bodies and/or public and private donations. However, the Trust advises that "no philanthropic grant moneys were affected". Nevertheless, in the context of a relatively small philanthropic trust, this was, in my view, a relatively massive loss.

[32] So, all those factors were clearly in the Judge's mind apart from the very significant extent of money involved.

[33] Ms Hardy was critical that the sentencing Judge did not adopt a starting point of four years and eight months' imprisonment which was adopted in the apparently comparable case of *Watson v Police.*[18] Ms Watson's offending spanned two and a half years and resulted in losses to her employer of $517,000. She worked as a Customer Services and Inventory Controller. Her offending was described as sophisticated—perhaps more so than that of Ms Thompson-Bell. She stole courier bags and then sold them on Trade Me for less than face value. These were used in large volumes by the company and not noticed. Ms Watson's profit was just over $215,000. Ms Watson also stole oils and lubricants valued at over $86,000 and also sold them on Trade Me for over $20,000. She also used a company credit card to buy gift cards ($2,400) and to pay off personal debt.

[34] In *Watson*, Boldt J observed on appeal that "even a slightly higher starting point would probably have been sustainable". In my view, the real (and more serious) difference from *Watson* is that, there, Ms Watson only profited by way of slightly less than half what she stole from the company. Here, Ms Thompson-Bell received every cent of the money she stole. Also, the small charitable Trust reposed significant trust in Ms Thompson-Bell. I would regard her offending as properly justifying a slightly higher starting point than in *Watson*.

[35] Boldt J, as did Judge Clark in this case, also referred to *McGregor v R*[19] and *R v Mears*.[20]

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18 *Watson v R*, above n 7.
19 *McGregor v R* [2015] NZCA 565.
20 *R v Mears* [2014] NZCA 30.

[36] In *McGregor*, the appellant pleaded guilty to 10 charges of theft by a person in a special relationship. She stole just over $470,000 and, like Ms Thompson-Bell, her offending involved a grave breach of trust. She was employed by a trust company and had responsibility for the management of estates of clients—who were either elderly or mentally incapable of managing their own affairs. The offending seems to have continued for perhaps five years. A starting point of five years was upheld by the Court of Appeal.

[37] In *Mears*, the appellant stole $380,000 from a small-scale business where she was employed as a credit controller, for over six years. A starting point of four years six months' imprisonment was upheld.

[38] All these cases surely indicate that the five-year starting point adopted for Ms Thompson-Bell was within the range although close to, or at, the top of it.

[39] I also emphasise that in establishing what the Courts have come to call a "starting point", a Judge is not engaged in a precise mathematical exercise or an exact science. The facts of every case differ. A Judge must bring his or her own assessment of the aggravating factors. Comparable cases are crucial; but no two cases are the same. Provided Judges operate within an appropriate range identified by comparable cases, there can be no complaint and certainly no error. I conclude that is exactly the case here. The sentencing Judge was aware of the relevant comparable cases; she identified relevant factual aggravating factors; and then set a starting point that, in my view, was withing the range and cannot be criticised.

Insufficient credit given for good character?

[40] Under s 9(2)(g) of the Sentencing Act 2002, a Judge must take into account an offender's previous good character. It will be recalled that the Judge allowed Ms Thompson-Bell five per cent for this mitigating factor, rather than the 10 per cent advocated by Ms Hardy.

[41] The sentencing Judge acknowledged that Ms Thompson-Bell had contributed constructively to the community and to different groups. Ms Hardy explained that this included service to her Marae and several Kōhanga Reo; membership of two school boards; and involvement in two community initiatives providing free food and clothing for people in need in the Morrinsville area.

[42] However, given the length and repetitive nature of Ms Thompson-Bell's pre-meditated offending, the Judge clearly did not treat it is a one-off, isolated lapse or fall from grace. The Judge clearly had in mind the magnitude of the offending due to the 81 fraudulent transactions made by Ms Thompson-Bell over the 26-month period. Each, in reality, represented a separate instance of theft. Clearly, this prolonged offending limits any claim of good character.

[43] The Judge said that she simply could not get to 10 per cent. These are matters of judicial assessment. So far as it goes, it could not be said to be in error.

[44] However, the Judge went on to say that good character:

> is not to be confused with no previous convictions, which is a neutral factor in sentencing. I would adjust it upward if there were aggravating factor such as previous convictions, but that is not the position.

[45] Ms Hardy submitted this approach was in error. I agree.

[46] With great respect, it is wrong in principle to sentence a person on the basis that appearing as a first-time offender does not bear on good character and cannot justify any allowance.

[47] The law is clear. For instance, in *Rana v R*,[21] the Court of Appeal observed that, in light of the authorities discussed, such as *Manawaiti v R*; and *R v Hockley*,[22]the sentencing Judge:

> … fell into error in treating the lack of previous convictions as an absence of an aggravating factor rather than regarding it as a mitigating factor. At the age of 38, Mr Rana had no previous convictions. The Judge should have taken that factor into account as evidence of previous good character.

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21 *Rana v R* [2014] NZCA 468.
22 *Manawaiti v R* [2013] NZCA 88; *R v Hockley* [2009] NZCA 74.

[48] In *Rana*, the Court noted that there was no particular further evidence of positive contribution to society. It determined, in light of a nine year starting point, that a "modest" discount of 7.5 per cent was available just in relation to the lack of previous convictions.[23]

[49] This aspect of the case has given me pause for thought. Any error must be material. That is, it must have caused the sentencing process to miscarry and resulted in a plainly wrong result and/or was manifestly excessive. There are two important things to say in that respect

[50] First, there *was* consideration given to Ms Thompson-Bell's good character. It was not ignored. However, she may be left with a justified source of concern that the Judge excluded consideration of a factor which clearly should have been considered. I now must consider it. There is a real argument that at age 33, any additional allowance over the five per cent would be very small, if any. It is clear the Judge was sceptical of the good character submission. At age 33, Ms Thompson-Bell was still relatively young. She has had some, but nevertheless limited time to demonstrate an offence free lifestyle.

[51] That a person is a first offender must be considered. It cannot be ignored. But it does not mean a deduction is always required. It will depend on the circumstances. Here, the five per cent allowed for good character could not be said to be clearly inadequate—even if Ms Thompson-Bell's status as a first offender was factored into the allowance.

[52] The second thing to say is that the overall allowances of 55 per cent for all mitigating factors could not be said to be manifestly inadequate. This was the approach taken in *Quinlan v* R,[24] where the Court observed that more credit could, and perhaps, should have been given for past good character. However, the overall conclusion was that a total discount of nine months for mitigating factors was not manifestly inadequate.

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23 At [17].

24 *Quinlan v R* [2013] NZCA 634 at [40].

[53] The reality in this case was that Ms Thompson-Bell received a very significant set of allowances, totalling 55 per cent of the starting point. So, while there may have been an error in principle, in the approach to calculating one component of that overall allowance (good character), any further percentage increase in that component would, in my view, strike at the heart of the integrity of the sentence. It cannot be that various component parts are simply added on top of each other without limit. The sentencing Judge must, at some stage, stand back and reach what is a justified overall assessment for mitigating factors. Here, 55 per cent is at the top of that range.

[54] Had Judge Clark considered Ms Thompson-Bell's lack of previous convictions to be a mitigating factor, it is reasonably clear that she would not have provided a further reduction, although I do not rely on that prediction of her approach. In this appeal, I regard it as wrong, in principle, to increase the allowances so that they would reach 60 per cent, and that is to say nothing of the additional allowances argued for, which I consider next.

[55] Therefore, I conclude that the submission as to a greater good character allowance should be rejected. The role of an appeal court is circumscribed. And if there is an error in principle, it must have materially contributed to a manifestly excessive sentence. Here, that is simply not the case.

[56] On any analysis, in these circumstances, two years and three months' imprisonment could not be regarded as other than appropriate.

A greater allowance for remorse and restorative justice?

[57] Again, it will be recalled that the Judge allowed a five per cent reduction for Ms Thompson-Bell's remorse and a further five per cent to acknowledge the reparation that was paid before sentence. There was no explicit reduction for her participation in a restorative justice process.

[58] Ms Hardy submits there should have been a "ten per cent discount in relation to remorse and restorative justice"

[59] Prior to Ms Thompson-Bell being charged with the offending, she had engaged in a hui with the Trust where she apologised. She was able to discuss her offending with representatives of the Trust and make arrangements for reparation payments. The Trust noted that as of 15 December 2024, Ms Thompson-Bell had made consistent payments totalling $12,182.01. The Trust was of the view that she should be allowed to repay more money which would not be possible in prison. Significantly more was repaid before sentencing.

[60] In this case, I agree with Ms Greenhalgh for the police, that Judge Clark fully considered the extent of the remorse demonstrated by Ms Thompson-Bell when setting the allowance at five per cent. She recognised the remorse shown at the hui, and her apology, as being important. But she weighed that against the fact that at no stage during the offending had Ms Thompson-Bell, as it were, come to her senses. She said that "I can only speculate as to how much longer her offending would have continued on, had she been left to her own devices and no one figured out what she was doing."

[61] In these circumstances, that assessment by the Judge does not constitute an aggravating feature. But it is properly regarded as tempering the allowance for remorse.

[62] I do not detect any error in the Judge's overall approach.

[63] As to restorative justice, in a sense this is contained in the further five per cent allowance for reparation already paid, before sentencing. As I say, this was apparently as a down-payment of Ms Thompson-Bell's expected inheritance from her mother, together with the approximately $12,000 paid off as recorded by the Trust.

[64] I do not see how the overall 10 per cent allowance, combining remorse and separately the initial payment of reparation, could be said to be inappropriate. Neither was it an error to exclude a specific allowance for involvement in the restorative justice process, of which the Judge was clearly and explicitly aware in her sentencing.

[65] A representative of the Trust addressed the sentencing Court. The Judge would have been aware (as am I) of the thoughtful and considered view of the Trust. Both in writing, and in Court before me, the Trust emphasised that little would be achieved by sending Ms Thompson-Bell to prison, given her family commitments. The Trust also emphasised that her retention in the community would enable her to work and more effectively pay the ordered reparation. The views of the victim expressed at a restorative justice conference are of course relevant. But it will be understood that they cannot be determinative.

[66] Restorative justice processes can be powerful. They allow for reconciliation and promote rehabilitation. The Sentencing Act requires that, in certain circumstances, if an offender pleads guilty to an offence in the District Court, the Court must adjourn proceedings for enquiries to be made as to the appropriateness of a restorative justice process.[25] Restorative justice processes should not be minimised. But here, there is nothing to suggest the Judge overlooked the process. And, as I say, the five per cent allowance for payments made reflects, at least indirectly, the restorative justice process and the offer of amends made at that conference.

[67] In respect of this submission also, it is important to say that any further reductions, as I have previously observed, would undermine the integrity of the overall sentence. The 55 per cent allowance for the mitigating factors was already very generous. It could not be said to be manifestly inappropriate—far from it.

Conclusion

[68] All the grounds raised on behalf of Ms Thompson-Bell, although well and competently argued by Ms Hardy, must fail. I do not see any *material* error in the sentencing Judge's approach. The essential question that I am required to resolve is whether the end sentence was manifestly excessive. For the reasons I have outlined, it was clearly not.

[69] Before I leave this appeal, I address two important matters which in reality were central in this appeal.

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[25] Sentencing Act 2002, s 24A.

[70] First, this appeal highlights difficulties with the words and terms used in sentencing which can cause misunderstanding about the sentencing process itself. The words "starting point" and "discounts" played a particularly important part in this sentencing. Here, the "starting point" was challenged. And the "discounts" were said to be inadequate. However, these words are not the words of the Sentencing Act.

[71] The Sentencing Act sets out a non-exhaustive list of aggravating features and mitigating factors. That is, what makes the offence worse, on the one hand, and what makes an offender less culpable or less blameworthy, on the other. In sentencing, a Court needs to take both into account and to balance them against each other.

[72] The concept of a "starting point" is used to reflect that part of the process which considers aggravating features of the offence (and mitigating factors of the offence for that matter) in the context of any guideline or tariff judgment, or failing that, any comparable cases. That is only half of the process. The other half is to consider the aggravating and mitigating factors personal to the offender. In considering the mitigating factors, that is, factors which make the offending less blameworthy, the term "discounts" is often used.

[73] Establishing the appropriate starting point requires careful judgement, as was the case here. And even that starting point, itself, may be further uplifted if there are particularly aggravating factors relating to an offender. The starting point is not to be considered as the sentence which an offender should receive. It is no more than the halfway point in the sentencing exercise.

[74] The word "discounts", at its worst, has connotations of a criminal justice supermarket where offenders can get "good deals". Nothing, of course, could be further from the truth. "Discount" is the arguably unfortunate word chosen to describe the careful consideration that *must* be given to the non-exhaustive list of mitigating factors set out in s 9 of the Sentencing Act. A better word might be "statutory allowances".

[75] The sentencing process is complex, must be carefully undertaken, and consists primarily of identifying and balancing both aggravating and mitigating factors. This has always been the basis of sentencing in New Zealand since at least the 1980s. The current methodology and terminology established by the Court of Appeal simply seeks to make the process more transparent with the aim of promoting sentencing consistency. It is a "judge invented" process. Sentencing judges are bound by the process and must follow it.

[76] The use of the words "starting point" and "discounts" can cause misunderstanding. They do not always reflect (as in this case) the complex balancing and assessment process involved in all sentencing, particularly for serious offences.

[77] Also, using percentage figures for the mitigating factors (commonly called discounts) could suggest a mathematical precision or scientific basis for determining a sentence that does not exist. Ascribing a percentage figure to factors such as remorse or good character (which was one focus of this appeal) in one sense cheapens or at least oversimplifies the assessment process. These factors, as highlighted in this appeal, are very difficult to reduce to mathematical values.

[78] The point of these remarks is to emphasise that in this case the proper balancing process at the heart of all sentencing was undertaken by the Judge. The "starting point" was appropriately set by considering all the relevant aggravating factors in light of comparable cases. Also, the Judge was alert to the artificiality and inappropriateness of simply adding up fixed percentages for every possible "discount", that is to say mitigating factors. That is why she said that 55 per cent was all that was legitimately available. I agree with her. Any more would reduce this sentence to an unsupportable level. That would be wrong in principle and would deprive the sentence of integrity.

[79] The second, and final, observation is to emphasise that the sentencing of a pregnant mother, with five children for whom she has caregiving responsibilities, but who is charged with very serious offending, is a difficult and perplexing issue. Judge Clark was alert to that issue, and the particular needs of one of her children, who has serious neuro-developmental disabilities and is challenging to parent.

[80] In this case, the Judge took into account the Supreme Court case of *Philip v R.*[26] That case emphasises New Zealand's proper compliance with the Convention on the Rights of the Child, the most ratified international human rights treaty ever. Article 3 of the Convention makes clear that in all actions concerning children (including those undertaken by courts of law) the child's best interests shall be a primary consideration. This is an important guiding principle.

[81] The Convention also highlights the importance of a child's connection with both of their parents.[27] There is growing research and concern in New Zealand about the consequences for children of an imprisoned parent.[28]

[82] In this respect, I cannot fault the approach that the Judge took. She said, "I have given a lot of thought to the impact of sentencing on those children". Later, she said:[29]

> … it has weighed heavily on me that the impact of this sentence will be hardship to everyone involved:- to those members of the family who first brought this offending to light; to Mr Tana Bell who will now be responsible together with other whānau members for looking after these children until such time as Ms Thompson-Bell can be paroled; and to the children at school, at home, struggling to understand where their mother is. All of those things I have thought long and hard about. I have had to be very clinical and base my decision on the caselaw that is available to me that I am guided by, and to look very carefully at what can legitimately be afforded by way of discount. From my perspective, I have done as much as I can.

[83] A 15 per cent allowance was made for factors relating to Ms Thompson-Bell's children and family and the effect on them of her imprisonment. That was appropriate. It is telling that no direct challenge was mounted to this aspect of the Judge's decision.

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

27 Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), arts 7 and 18.

28 For instance, a charitable trust active in this field in New Zealand is Pillars Ka Pou Whakahou. Pillars, estimates there are 17,000 children in New Zealand with a parent in prison. Research by Pillars suggests that children who have had a parent in prison are 9.5 times more likely to be imprisoned themselves. It is said that "[c]hildren of people in prison are in a situation they did not choose, yet they face a sentence of their own. They are frequently invisible victims of crime and may become socially and economically isolated. It is not their crime, but it is still their sentence." There is also work recently carried out by the former Chief High Court Judge, Thomas J, that details the impact of parental incarceration on children, see Susan Thomas, Fiona Kidd and Stacy Shortall Impact of Parental Incarceration on Children (NZLS CLE, October 2023). See further *Smith v Ministry of Social Development* [2024] NZHC 696 at [69]–[71].

29 At [77].

However, this issue was clearly the backdrop for this appeal. It loomed large behind all the specific appeal grounds.

[84] A sentence of imprisonment will clearly be a significant burden on Ms Thompson-Bell's husband who is taking prime responsibility for the caregiving of her children while she is serving her prison sentence. Courts are not immune to the effects on children of a parent being in prison. Far from it. This factor weighs heavily on sentencing Judges. But at the same time, sentencing principles such as accountability, deterrence and denunciation in respect of this theft of half a million dollars are also important.

[85] Ms Thompson-Bell is now expecting the birth of her sixth child. Thankfully, she has been placed in the care of the Mother and Baby Unit of the Auckland Women's Correctional Facility. Her concerns about her previous treatment in the standard prison wing are no longer relevant. She is now in a better place. It is a sophisticated and specialised unit particularly focusing on the needs of both the incarcerated mother and also her baby. It is regularly inspected by the Corrections Inspectorate, the Ombudsman and the Commissioner for Children. The needs of both mother and baby are at the forefront of those inspections and they have generally been positive.[30]

Result

[86] Consistent with what I understand to have been the approach in the District Court I suppress publication of the name of the Trust that is the victim in this case, and details which may lead to its identification. I am satisfied that pursuant to s 202 of the CPA publication would cause undue hardship to the Trust as it relies significantly on public donations.

[87] I conclude by emphasising that a sentencing appeal is not "a second shot at sentencing".[31] It is not a reconsideration as to what another Judge would have done. Its purpose is to detect and correct error, and to interfere only when the relevant statutory tests are met, and when there has been a sentence imposed that is manifestly

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30 The reports from the Children's Commissioner can be located at Mana Mokopuna | Children's Commissioner "Reports" www.manamokopuna.org.nz/publications/reports/.

31 *Polyanszky v R* [2011] NZCA 4 at [17].

excessive, or involved a material error of law, or is plainly inappropriate or is wrong in principle. That is not the situation here.

[88] Acutely conscious as I am of the burden this sentence will place on Ms Thompson-Bell, her husband, family and particularly her children, this appeal must be and is dismissed.

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Becroft J