ORDER PROHIBITING PUBLICATION OF THIS JUDGMENT, THE MEDIA RELEASE, AND ANY INFORMATION THEREIN, UNTIL THE JUDGMENT IS MADE PUBLICLY AVAILABLE AT 2.00PM ON THURSDAY 30 APRIL 2026.

ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES OR IDENTIFYING PARTICULARS OF DEPARTMENT OF CORRECTIONS OFFICIALS PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [300]. PUBLICATION OF THEIR OCCUPATION IS PERMITTED. SEE: https://www.legislation.govt.nz/act/public/2011/81/en/latest/#DLM3360349

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY PERSON UNDER THE AGE OF 18 YEARS WHO IS A VICTIM OR WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE: https://www.legislation.govt.nz/act/public/2011/81/en/latest/#DLM3360352

NOTE: ORDERS IN [2024] NZCA 597 AND BY MINUTE OF THIS COURT DATED 17 DECEMBER 2025 PROHIBITING PUBLICATION OF NAMES, ADDRESSES OR IDENTIFYING PARTICULARS OF MR TARRANT'S COUNSEL UNDER S 202 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. PUBLICATION OF THEIR OCCUPATION IS PERMITTED. SEE: https://www.legislation.govt.nz/act/public/2011/81/en/latest/#DLM3360349

NOTE: ORDER BY MINUTE OF THIS COURT DATED 28 JANUARY 2026 PROHIBITING PUBLICATION OF THE NAME, ADDRESS OR IDENTIFYING PARTICULARS OF STANDBY COUNSEL UNDER S 202 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. PUBLICATION OF THEIR OCCUPATION IS PERMITTED. SEE: https://www.legislation.govt.nz/act/public/2011/81/en/latest/#DLM3360349

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA598/2022
[2026] NZCA 148

BETWEEN	BRENTON HARRISON TARRANT Applicant
AND	THE KING Respondent

Hearing: 9–13 February 2026

Court:	French P, Thomas and Collins JJ
Counsel:	Counsel A, Counsel B, Counsel D and Counsel E for Applicant M F Laracy, B Hawes, A J Ewing and N J Wynne for Respondent Counsel C as Standby Counsel
Judgment:	30 April 2026 at 2 pm

JUDGMENT OF THE COURT

A The post-hearing application to abandon the application for an extension of time in which to appeal against conviction is declined.

B The post-hearing application to abandon the application for an extension of time in which to appeal against sentence is granted.

C The application for leave to appeal against conviction out of time is declined.

D Order prohibiting publication of name, address or identifying particulars of Department of Corrections officials pursuant to s 202 of the Criminal Procedure Act 2011. Publication of their occupation is permitted.

E We make an order prohibiting publication of this judgment, the media release, and any information therein, until the judgment is made publicly available at 2.00 pm on Thursday 30 April 2026.

REASONS OF THE COURT

(Given by Collins J)

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INTRODUCTION

[1] On 26 March 2020 Mr Tarrant pleaded guilty to 51 charges of murder,[1] 40 charges of attempted murder,[2] and one charge of having committed a terrorist act.[3] He was convicted of those 92 offences immediately upon pleading guilty.[4]

[2] When he pleaded guilty, Mr Tarrant accepted a summary of facts prepared by the Crown. He does not challenge those facts which we discuss at [64]–[98]. As we shall explain, the offending occurred on 15 March 2019 in Christchurch. Most of Mr Tarrant's offending occurred first at the Al Noor Mosque in Riccarton, and soon thereafter, at the Linwood Islamic Centre. Mr Tarrant took loaded guns to the mosques intending to kill as many people as he could, knowing the victims would be attending Jumu'ah (Friday prayers).

[3] Mr Tarrant was arrested after his vehicle was stopped by police soon after the offending as he was driving to Ashburton in order to attack a third mosque. Mr Tarrant was interviewed by police and admitted his offending. In addition to his admissions, Mr Tarrant's offending was recorded on a "GoPro" camera attached to a helmet he was wearing, and on CCTV cameras at the Al Noor Mosque. He published a manifesto before the offending which set out his motives for killing members of the Islamic faith. Messages sent to his mother and sister immediately prior to the offending added to the overwhelming case against him.

[4] On 27 August 2020, Mr Tarrant was sentenced by Mander J to life imprisonment without parole.[5]

[5] On 3 November 2022, Mr Tarrant filed a notice of appeal against his convictions and sentence. Under ss 231(2) and 248 of the Criminal Procedure Act 2011, a notice of appeal against conviction or sentence "must be filed within

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1 Crimes Act 1961, s 172.
2 Section 173.
3 Terrorism Suppression Act 2002, s 6A.
4 Mr Tarrant had pleaded not guilty to the charges on 14 June 2019. The changes of plea to guilty occurred pursuant to s 42 of the Criminal Procedure Act 2011.
5 *R v Tarrant* [2020] NZHC 2192, [2020] 3 NZLR 15 [sentencing notes] at [187]–[189].

20 working days after the date [the] sentence [is imposed]". Mr Tarrant's notice of appeal was filed 505 working days out of time. His notice of appeal contains an application to extend time to file his appeals.[6] We will explain at [33]–[56] the principles governing Mr Tarrant's application for an extension of time and his appeal against conviction.

[6] This judgment deals only with the substance of Mr Tarrant's appeal against his convictions and his application to extend time to appeal those convictions. As we shall explain later in this judgment, his application to appeal his sentence out of time has been abandoned and is now at an end.

[7] Mr Tarrant's grounds of appeal against conviction evolved prior to, and during the course of, the hearing. We explain the changing nature of the grounds of appeal at [22]–[32]. At this juncture, we simply note that in the final iteration of his grounds of appeal put to us during closing submissions, Mr Tarrant claimed his guilty pleas were not voluntary and were "entered as a direct result of the oppressive conditions in which he was held" on remand at Auckland Prison.

Representation

[8] Throughout the hearing of the appeal, Mr Tarrant was represented by four lawyers including two who are very experienced barristers. We previously granted applications by Mr Tarrant's lawyers to have their identities suppressed because of well-founded concerns about the safety of those lawyers and members of their families if their identities were made public.[7] Accordingly, Mr Tarrant's lawyers throughout the appeal were referred to as Counsel A, B, D and E. We continue to use those references to Mr Tarrant's counsel in this judgment.

[9] Counsel C was appointed by the Court as standby counsel in the event that Mr Tarrant terminated the services of his lawyers. Counsel C has also been granted

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6 Criminal Procedure Act, s 231(3); and Court of Appeal (Criminal) Rules 2001, r 11.

7 *Tarrant v R* [2024] NZCA 579; and *Tarrant v R* CA598/2022, 17 December 2025 (Minute of the Court) [December 2025 minute] at [4].

name suppression.[8] As it transpired, Counsel C's services were not required during the hearing, but the Court is grateful for the presence of Counsel C throughout.

[10] Following the hearing, Mr Tarrant dismissed his lawyers who then applied for leave to withdraw as his counsel. We have granted that application. In doing so the Court records its gratitude to all the lawyers who have acted for Mr Tarrant. They have done so with the highest degree of professionalism in particularly challenging circumstances.

Application to abandon the proposed appeals

[11] On 20 February 2026 the Registrar received a "[n]otice of abandonment of appeal" from Counsel C. It was signed by Mr Tarrant using a self-styled moniker, but the notice was not dated, nor was it witnessed, as required by r 35 of the Court of Appeal (Criminal) Rules 2001 (the Rules). Because the notice did not comply with the Rules it was rejected by the Registrar. On 24 February, Counsel C filed a second notice of abandonment signed by Mr Tarrant, again using a pseudonym. On this occasion the notice was dated and witnessed.

[12] Counsel C filed with the Court on 27 February a memorandum in which counsel confirmed that Mr Tarrant now no longer wishes to have a lawyer and had advised Counsel C that it would not be in the public interest to allow his appeal to continue in its current state as, according to Mr Tarrant, it would likely lead to a miscarriage of justice.

[13] Seven reasons were advanced by Mr Tarrant for wishing to abandon his proposed appeals. They were set out in the following way by Counsel C:

> 20. Mr Tarrant considers:
>
> a. The evidence before the Court was not properly or adequately investigated or tested. Indeed, in oral submissions the Crown conceded that it chose not to counter much of Mr Tarrant's evidence. That was also evident in the Crown's cross-examination of him. The Crown did not cross-examine him on his prison conditions and his resulting and regretted change in ideology which led him to plead guilty. The Crown did not

[8] *Tarrant v R* CA598/2022, 28 January 2026 (Minute of the Court) at [1].

cross-examine him on the alleviation of his prison conditions and his return to his ideology. Further, Mr Tarrant is concerned that there was no cross-examination on the psychiatric and psychologist reports and reviews, particularly as the report writers were not called and relied on incorrect and misleading reports from prison officers and others. Consequently, Mr Tarrant is concerned that the evidence is misleading and untrue and the evidential foundation for the submissions is misplaced.

b. The evidence presented should have been tested for veracity before being submitted into evidence or at the least Mr Tarrant considers he should have had the opportunity to respond to it.

c. The merits of the appeal have not been effectively tested. He does not believe the Court entertained his claims from the outset and he does not consider there is any point in continuing the application as it appeared to have dismissed his application out of hand.

d. That his evidence was not properly weighed and considered and rather the unsworn and misleading reports of others were taken as fact without an effective challenge. In turn that led to the appeal being heard on hearsay and misinformation, not first-hand accounts such as his.

e. He did not agree with the arguments or evidence relied on by his counsel during the appeal hearing. He did not agree with how the case was run by his counsel or the Court.

f. His previous counsel Mr Tait and Mr Hudson advised the Court of defences which were not the defences he planned to run at trial and they contradicted each other, which was not highlighted in cross-examination.

g. That due to his inexperience in legal proceedings and wish to maintain his privacy, he kept much of the evidence to himself, excessively limiting the material evidence before the Court to avoid it being misused.

[14] The ability for an appellant to abandon their appeal is governed by s 337 of the Criminal Procedure Act which provides:

> **337 Abandonment of appeal by appellant**
>
> (1) An appellant may, at any time, abandon an appeal by filing in the appeal court a notice advising that he or she—
>
> (a) does not intend further to prosecute the appeal; and
>
> (b) abandons all further proceedings concerning that appeal.
>
> (2) The notice must be authenticated by—
>
> (a) the appellant personally; or

(b) the appellant's lawyer.

[15] In *Waymouth v Ministry of Transport*, this Court considered the meaning of the phrase "at any time" in a former version of s 337 of the Criminal Procedure Act, contained in s 129 of the Summary Proceedings Act 1957.[9] The issue before the Court was whether the words "at any time" conferred on the appellant an absolute right to abandon their appeal at any point in the proceeding.

[16] The majority concluded that the appellant loses their absolute right to abandon the appeal once the hearing of the appeal has commenced.[10] This was because a criminal appeal may engage matters of public interest, and once an inquiry into the merits of the case begins, wider public interest considerations become relevant.[11] Furthermore, the majority considered that an appellant should not be able to abandon their appeal merely because they form the view over the course of the hearing that their appeal is "proceeding somewhat badly in open Court".[12] It would be even more absurd if they were able to do so where the decision of the court has been reserved.[13] In the majority's view, these factors must limit the appellant's right to abandon their appeal, with the result that leave of the court is required once the hearing has commenced.[14]

[17] Mr Tarrant's central claim appears to be that he is unhappy with how his hearing unfolded. He takes issue with the Crown's cross-examination of him, the evidence (or lack thereof) that was presented at the hearing, and how his counsel ran his case. These concerns all point to the fact that over the course of the hearing, Mr Tarrant began to form the opinion that the hearing was not proceeding in his favour, and as a result decided to file a notice of abandonment after the hearing concluded. These circumstances are exactly what the majority in *Waymouth* were addressing when they determined that an appellant's right of abandonment must be limited once the hearing of their appeal begins.

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9 *Waymouth v Ministry of Transport* [1982] 1 NZLR 358 (CA).
10 At 366–367 per McMullin and Chilwell JJ.
11 At 366.
12 At 366.
13 At 367.
14 At 366.

[18] Furthermore, Mr Tarrant's application and conviction appeal are undoubtedly of significant public interest. His offending is unprecedented in New Zealand and had, and continues to have, a profound impact on the victims and their families. There is a strong public interest in having Mr Tarrant's application and conviction appeal finally determined.

[19] We note that the majority in *Waymouth* confined their decision to appeals as of right, and opted to express no view on applications for leave to appeal.[15] However, the majority stated that the "right of abandonment ceases once a hearing *on the merits* commences".[16] At the hearing, Mr Tarrant's application for an extension of time was considered alongside his conviction appeal, meaning that the merits of Mr Tarrant's conviction appeal were considered in depth over a period of five days. Furthermore, as we shall explain, an application for an extension of time to appeal requires a consideration of the merits of the proposed appeal.[17] Given the extent to which the merits of Mr Tarrant's conviction appeal were explored at the hearing, we consider that the reasoning of the majority in *Waymouth* applies to both Mr Tarrant's application for an extension of time and his conviction appeal.

[20] We therefore decline to grant Mr Tarrant leave to abandon his application for an extension of time and his conviction appeal.

[21] Different considerations apply however to Mr Tarrant's sentence appeal. We expressly confined the hearing to Mr Tarrant's application to extend time in relation to his conviction appeal and the conviction appeal itself. There was no consideration of the merits of Mr Tarrant's sentence appeal. Therefore, the policy issues raised by this Court in *Waymouth* do not apply to Mr Tarrant's sentence appeal (and the extension of time application that would accompany it). Mr Tarrant retains the right to abandon his sentence appeal. We therefore accept Mr Tarrant's notice of abandonment to the extent it relates to his sentence appeal.

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15 At 367.

16 At 366 (emphasis added).

17 *R v Knight* [1998] 1 NZLR 583 (CA) at 589. See also *Mikus v R* [2011] NZCA 298 at [26], citing *Slavich v R* [2008] NZCA 116 at [14].

The evolving grounds of appeal

[22] In his affidavit Mr Tarrant said that at the time he pleaded guilty he had been suffering from a "nervous breakdown" or "mental breakdown", and that he had been driven to a state of "near-insanity" by his prison conditions.[18] Mr Tarrant also said that he was in an "irrational" state of mind when he pleaded guilty and that he pleaded guilty because he felt unable to run the defence he said he wanted to run because it was a defence not recognised in law and a trial court would not have permitted it to have been run.

[23] There was a suggestion from a psychologist called to give evidence for Mr Tarrant that he may have pleaded guilty because he believed that his prison conditions would improve if he did so.

[24] During his oral evidence Mr Tarrant said he "was probably not fit to plead" when he entered his guilty pleas. However he also agreed with counsel for the Crown that he satisfied the criteria for being fit to plead set out in the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act). Mr Tarrant's counsel also accepted that he satisfied the fitness criteria. We discuss fitness to plead at [44]–[47].

[25] In their written submissions filed in advance of the appeal, counsel for Mr Tarrant framed the ultimate question for the Court as being whether Mr Tarrant's guilty pleas were "fully informed and freely volunteered". This question was underpinned by Mr Tarrant's claim that his guilty pleas were "coerced" and "not freely given because of the oppressive conditions he was kept in".

[26] Counsel also said in their written submissions that Mr Tarrant was unable to "make rational choices" when he pleaded guilty. The written submissions then focused in depth on whether Mr Tarrant was fit to enter guilty pleas. While counsel did not explicitly say Mr Tarrant lacked the capacity to plead guilty, they did suggest that had the health assessors known "the full extent of the condition in which Mr Tarrant was held their respective views of the impact of the conditions would have been correspondingly greater". It is important to note however that no application was

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[18] See also [111].

made by Mr Tarrant to cross-examine the health assessors whose evidence we explain at [176]–[215].

[27] In counsel's oral submissions it was said the appeal was based mainly on Mr Tarrant's evidence that his guilty pleas were not entered voluntarily. They said:

> That they were entered as a direct result of the oppressive conditions in which he was held. … [T]hese oppressive conditions impacted upon his mental health to such a severe extent that prevented him from being able to participate in court process[es] properly.

Counsel submitted that:

> It is Mr Tarrant's evidence that due to his isolation and the associated conditions, he suffered a complete destruction of his identity. He describes this as nervous exhaustion or a nervous breakdown.

[28] Mr Tarrant's counsel confirmed however that it was not part of his case that the conditions of his imprisonment were imposed for the purpose of extracting the guilty pleas.

[29] In response to a question from the Court, Mr Tarrant's counsel said that rationality forms part of the assessment of whether the pleas were voluntary and freely given and that if a defendant subjectively believes that they are not acting rationally, then that undermines the voluntariness of their plea.

[30] The Court also questioned counsel for Mr Tarrant about how his evidence about his state of mind could be reconciled with the acknowledgment that he satisfied the requirements of being fit to plead in the CPMIP Act. According to counsel, Mr Tarrant's evidence that he was incapable of rational decision making sits outside of the "conventional" or "traditional" fitness to plead test and is instead relevant to the question of whether the guilty pleas were truly "voluntary".

[31] Counsel for Mr Tarrant also explained that his proposed appeal did not involve a challenge to his "at-risk" status in prison during the relevant period. We discuss "at-risk" status at [123]. Nor, we were told, did his grounds of appeal require us to make findings under the New Zealand Bill of Rights Act 1990 (NZBORA) about his prison conditions. Counsel acknowledged those matters were more appropriate in a

judicial review and that the appeal focused on the impact of the prison conditions that Mr Tarrant experienced rather than the legality of those conditions.

[32] As we explained at [7], Mr Tarrant's case was ultimately based on the proposition that his guilty pleas were not voluntary and were entered as a direct result of the prison conditions that he was subject to prior to pleading guilty.

Governing principles

Principles governing an extension of time to appeal

[33] The key question that governs an application to extend time to appeal is whether it is in the interests of justice to grant the application.[19]

[34] Factors identified by this Court that may be relevant to the assessment of an application to extend time include:[20]

(a) the strength of the proposed appeal;

(b) the wider interests of society and the finality of criminal cases;

(c) the length of the delay and the reasons for it;

(d) the practical utility of any remedy sought;

(e) the extent of the impact on those who are affected if the application is granted;

(f) the administration of justice; and

(g) the extent of any prejudice to the Crown if the application is granted.

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19 *R v Knight*, above n 17, at 587; and *R v Lee* [2006] 3 NZLR 42 (CA) at [96]–[97] and [106]. See also *Kriel v R* [2024] NZCA 45 at [80] and [85].

20 *R v Knight*, above n 17, at 587 and 589.

Principles governing an appeal following a guilty plea

[35] A guilty plea is an admission by a defendant of the essential elements of the offence. Importantly, it is a public acceptance of culpability by the defendant. The consequences which flow from a guilty plea include the defendant's relinquishment of their right to trial and the presumption of innocence. The Crown is no longer required to prove the case. Significantly, victims and witnesses are relieved of the stress of giving evidence and society does not have to shoulder the costs of an expensive trial.[21]

[36] A trial judge does not have to accept a guilty plea. Where, for example, a question is raised as to a defendant's mental fitness to enter a plea, then the court is required to follow the procedures set out in the CPMIP Act to determine whether or not the defendant has the requisite mental capacity to plead and, if they wish to plead not guilty, whether they have the requisite mental fitness to stand trial.[22]

[37] It is a hallmark of our justice system that guilty pleas are voluntary. A guilty plea that is induced through torture, improper coercion or an abuse of process is not voluntary and offends the most basic requirements for a fair trial.[23]

[38] Absent any finding that a defendant lacks the mental capacity to plead guilty or that their plea is a consequence of torture, improper coercion or an abuse of process, then the plea is presumed to be voluntary and therefore valid, particularly where the defendant has had the benefit of competent legal advice before electing to plead guilty.

[39] The presumption that a guilty plea is valid is however rebuttable. The onus is on the appellant to establish that a miscarriage of justice will occur if their convictions are not set aside, despite the entry of guilty pleas.[24]

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21 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [45]. See also *Re Solicitor-General's Reference (No 1 of 2023)* [2023] NZSC 151, [2023] 1 NZLR 457 at [45].

22 See Criminal Procedure (Mentally Impaired Persons) Act 2003, ss 7–19; and *McKay v R* [2009] NZCA 378, [2010] 1 NZLR 441 at [33]–[34] and [39].

23 See *Wilson v R* [2015] NZSC 189, [2016] 1 NZLR 705 at [104] as an example of an abuse of process case.

24 See *R v Le Page* [2005] 2 NZLR 845 (CA) at [16].

[40] Examples of circumstances in which courts in New Zealand may allow a conviction appeal where the appellant pleaded guilty include where:

(a) The appellant did not appreciate the nature of the charge, or did not intend to plead guilty.[25]

(b) On the admitted facts, the appellant could not, as a matter of law, have been convicted of the offence.[26]

(c) The plea was induced by a ruling which was wrong in law.[27]

(d) The guilty plea occurred as a consequence of wrong legal advice or significant counsel error.[28]

[41] These categories are not exhaustive. The overriding test is whether there will be a miscarriage of justice if the conviction is allowed to stand.[29]

[42] A conviction appeal based on the contention that the appellant lacked the requisite mental ability to plead guilty may fall within the first category of the cases we summarised at [40(a)]. Counsel for Mr Tarrant submitted his application fell under no specific category but engaged the general "miscarriage of justice" test.

[43] Although Mr Tarrant tentatively suggested at one point in his evidence that he was "probably not fit to plead", his final position both in his evidence and in his counsel's submissions was that he was fit to plead guilty in terms of the CPMIP Act. In order to understand what that acknowledgement means it is necessary to first explain the legal requirements of fitness to plead and stand trial in New Zealand. We will also discuss Mr Tarrant's view that he was in a state of irrationality when he pleaded guilty before we examine the law governing the importance of guilty pleas being voluntary.

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25 At [17].
26 At [18].
27 At [19].
28 *Merrilees v R* [2009] NZCA 59 at [34]; and *Nixon v R* [2016] NZCA 589, (2016) 28 CRNZ 698 at [9].
29 *Re Solicitor-General's Reference (No 1 of 2023)*, above n 21, at [46].

Fitness to plead guilty

[44] A defendant is fit to stand trial if they have the capacity to effectively participate in his or her trial.[30] As we explained in *Nonu v R*, the CPMIP Act introduced a new regime for determining if a defendant is fit to stand trial, which includes having the requisite fitness to plead.[31]

[45] Section 4 of the CPMIP Act defines "unfit to stand trial" in the following way:

> **unfit to stand trial**, in relation to a defendant,—
>
> (a) means a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and
>
> (b) includes a defendant who, due to mental impairment, is unable—
>
> (i) to plead:
>
> (ii) to adequately understand the nature or purpose or possible consequences of the proceedings:
>
> (iii) to communicate adequately with counsel for the purposes of conducting a defence

[46] The definition of "unfit to stand trial" in s 4 of the CPMIP Act was the product of changes contained in a Supplementary Order Paper introduced during the passage of the legislation.[32] In *Hanara v R* we observed:[33]

> (a) By changing the pre-condition for finding a defendant unfit to stand trial from a diagnosis of mental disorder to one of mental impairment, Parliament deliberately broadened the range of persons who might be adjudged as unfit to stand trial.
>
> (b) Parliament chose not to define mental impairment. Instead, it has been left to the courts to determine if a defendant is mentally impaired after receiving "the evidence of 2 health assessors as to whether the defendant is mentally impaired".[34]
>
> …

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30 *Nonu v R* [2017] NZCA 170 at [29]; and *Hanara v R* [2022] NZCA 608, (2022) 34 FRNZ 437 at [112]–[114]. The approach adopted in these cases has since been affirmed by the Supreme Court: see *Tihema v R* [2024] NZSC 112, [2024] 1 NZLR 473 at [46].

31 *Nonu v R*, above n 30, at [25] and [27], citing *R v Presser* [1958] VR 45 (VSC) at 48.

32 Supplementary Order Paper 2003 (161) Criminal Justice Amendment Bill (No 7) 2003 (328–2) at 3.

33 *Hanara v R*, above n 30, at [103].

34 Criminal Procedure (Mentally Impaired Persons) Act, s 8A(1).

[47] We again emphasise that the term "mental impairment" in s 4 of the CPMIP Act is broader than the concept of "mental disorder", which is used in s 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.[35] In addition, we make clear that the test for determining unfitness to stand trial under the CPMIP Act is grounded in the requirement that a defendant's fitness to stand trial must be assessed in the context of the nature of the trial and what decisions the defendant is able to make in his or her trial (their decisional capacity).[36] This recognises that a defendant may be fit to enter a plea but lack the capacity to give evidence or participate in a complex trial. This point was reiterated by this Court in *Wheble v R*:[37]

> … the entering of guilty pleas does not require an ability to give adequate instructions to counsel during a trial, nor is there any need to process information and arrange one's thoughts as would be necessary in the more stressful context of a trial.

Irrationality

[48] It was argued by Mr Tarrant that his mental state was affected by the conditions he experienced in prison and that, as a consequence, he was not in a rational state of mind when he pleaded guilty. Mr Tarrant's counsel acknowledged that the evidence of Mr Tarrant's behaviour and logical reasoning did not support the claim he was irrational at the time of his guilty pleas in the way the word "rational" is commonly understood. Jurisprudence on rationality is to the effect that, in order to be truly irrational, a defendant's behaviour or views must be disconnected from reality.[38] Mr Tarrant's counsel instead submitted that Mr Tarrant's use of the term "irrational" was his way of describing his subjective "mindset" when he pleaded guilty and that

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35 Mental Health (Compulsory Assessment and Treatment) Act 1992, s 2 definition of "mental disorder".

36 *Nonu v R*, above n 30, at [31]; and *Hanara v R*, above n 30, at [146].

37 *Wheble v R* [2024] NZCA 541 at [54], quoting *Britz v R* [2012] NZCA 606 at [113]. See also *R v Komene* [2013] NZHC 1347 at [18]; and *R v Marcantonio* [2016] EWCA Crim 14, [2016] 2 Cr App R 9 at [8].

38 *R v Cumming* [2006] 2 NZLR 597 (CA) at [38], citing W J Brookbanks "Judicial Determination of Fitness to Plead — The Fitness Hearing" (1992) 7 OLR 520 at 521. See also *Nonu v R*, above n 30, at [30], n 15; *R v Henneberry* 2017 NSCA 71, 351 CCC (3d) 365 at [24]–[25]; and *R v Bharwani* 2025 SCC 26, 450 CCC (3d) 143 at [6].

he suffered "a complete destruction of his identity" when he pleaded guilty. He argued that he was:

(a) acting rationally when he committed the offences on 15 March 2019; but

(b) that he was in an "irrational" state of mind when he pleaded guilty and expressed remorse for his offending.

[49] Mr Tarrant's counsel submitted this was evidence supporting his claim that the guilty pleas were not entered voluntarily.

Voluntary pleas

[50] In *Re Solicitor-General's Reference (No 1 of 2023)*, the Supreme Court acknowledged that "[i]t is not disputed that the fact a plea is not voluntarily and willingly given may give rise to a miscarriage".[39] A similar idea had previously been expressed in *Merrilees v R*, where this Court said that "[i]f a plea of guilty is made *freely*, after careful and proper advice from experienced counsel … later retraction will only be permitted in very rare circumstances".[40] Therefore, a miscarriage of justice may occur if guilty pleas are not voluntarily entered.

[51] What then is meant by a plea being "voluntarily" entered? This Court has recently reiterated that the fact "an accused may be stressed and feel under pressure when making a decision to plead guilty is not ordinarily sufficient to amount to a miscarriage of justice".[41] It is not unusual for a defendant facing serious charges to experience pressure and stress when considering whether or not to enter a guilty plea.[42] Something more is required for a miscarriage of justice to be established.[43]

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39 *Re Solicitor-General's Reference (No 1 of 2023)*, above n 21, at [37].
40 *Merrilees v R*, above n 28, at [35] (emphasis added).
41 *Timmerman v R* [2025] NZCA 604 at [33], quoting *Hancock v R* [2012] NZCA 292 at [32].
42 *Timmerman v R*, above n 41, at [33]; and *Keegan v R* [2010] NZCA 247 at [60].
43 *Keegan v R*, above n 42, at [60].

[52] Similar sentiments have been expressed by the Court of Appeal of England and Wales. In *R v Nightingale (Danny)*, the Court stated:[44]

> [10] … It is axiomatic in our criminal justice system that a defendant charged with an offence is personally responsible for entering his plea, and that in exercising his personal responsibility he must be free to choose whether to plead guilty or not guilty. …
>
> [11] What the principle does not mean and cannot mean is that the defendant, making his decision, must be free from the pressure of the circumstances in which he is forced to make his choice.

[53] In *Meissner v The Queen*, the High Court of Australia sought to draw a distinction between proper and improper pressure in the context of entering guilty pleas, stating:[45]

> … It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence. But the accused may show that a miscarriage of justice occurred in other ways and so be allowed to withdraw his plea of guilty and have his conviction set aside. For example, he may show that his plea was induced by intimidation of one kind or another, or by an improper inducement or by fraud.

[54] In Canada, it is well-established that a valid guilty plea must be voluntary, unequivocal and informed.[46] There is a considerable volume of jurisprudence in Canada concerning the requirement that a guilty plea be voluntary. This concept has been described by Canadian courts as including:

(a) the "conscious volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate";[47]

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44 *R v Nightingale (Danny)* [2013] EWCA Crim 405, [2013] 2 Cr App R 7 at [10].

45 *Meissner v The Queen* (1995) 184 CLR 132 at 157 per Dawson J (footnotes omitted). See also *R v WBA (No 2)* [2018] QCA 360 at [13].

46 *R v Wong* 2018 SCC 25, [2018] 1 SCR 696 at [43].

47 *Regina v RT* (1992) 10 OR (3d) 514 (ONCA) at 520, citing *R v Rosen* [1980] 1 SCR 961 at 974.

(b) where "the accused has not been coerced into pleading guilty" and the guilty plea "is the free choice of an accused, untainted by improper threats, bullying or any improper inducement to plead guilty";[48] and

(c) where it is "the product of the offender's exercise of free will".[49]

[55] Canadian authorities have also provided guidance on when a defendant's mental state might be said to impact on the voluntariness of their guilty pleas. Overall, it has been determined that the capacity to make a "conscious volitional decision" to plead guilty is not a high one. In *Regina v MAW*, Laskin JA held that a "limited cognitive capacity" standard should be applied to assess whether a defendant's mental state impairs their ability to make a decision of this kind.[50] This is the same standard used to assess the defendant's fitness to stand trial. That standard requires the court to be satisfied that the accused understands the process involved, can communicate with counsel and can make conscious choices. There is no requirement that those choices be wise, rational or in the defendant's best interests.[51]

[56] Drawing these threads together, in order for Mr Tarrant's guilty pleas to have been involuntary, he would need to establish that his pleas were the product of coercion, improper inducement, or improper pressure, which affected his mind to such an extent that his will was overborne.

Our approach

[57] The position taken by Mr Tarrant requires us to undertake two enquires:

(a) What was his state of mind when he pleaded guilty?

(b) Were his guilty pleas voluntary?

[58] If Mr Tarrant's guilty pleas were involuntary then his conviction appeal would have to be allowed regardless of the reasons for his pleas having been entered.

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48 *R v Henneberry*, above n 38, at [20].
49 *R v Hunt* 2021 ABCA 49, 401 CCC (3d) 240 at [42].
50 *Regina v MAW* 2008 ONCA 555, 237 CCC (3d) 560 at [32]–[33].
51 At [24]–[25] and [32]–[33]. See also *R v Henneberry*, above n 38, at [25].

[59] We shall first address Mr Tarrant's conviction appeal and then his application to extend time to appeal. We follow this course of action because, as we have explained, the alleged merits of Mr Tarrant's proposed appeal, which are integral to the application to extend time, are encompassed within his conviction appeal. Thus, logic dictates that we deal first with the merits of the conviction appeal.[52]

The guilty pleas

[60] Before he pleaded guilty, Mr Tarrant's then counsel, Mr Tait and Mr Hudson, provided him with a summary of facts. Mr Tarrant initialled each page of that summary which was incorporated into a letter of advice written by his lawyers.

[61] Two letters of advice were provided to Mr Tarrant by his lawyers. The first, dated 2 August 2019, was written when Mr Tarrant told his lawyers in late July that he wished to plead guilty. He changed his mind shortly after that occasion, but in March 2020 he decided that it was time to plead guilty, having previously told his lawyers that he always intended to plead guilty and that it was just a matter of when he would do so. Both Mr Tait and Mr Tarrant told us he chose to plead guilty on 26 March because New Zealand had been placed into a COVID-19 lockdown on 25 March. Mr Tarrant apparently thought the timing of his guilty pleas would catch the media off guard. Before he changed his pleas, Mr Tarrant's lawyers provided him with a second comprehensive letter of advice, dated 24 March 2020.

[62] Amongst other matters, the second letter of advice said:[53]

> **Likely sentence**
>
> In our letter dated 2 August 2019 we provided a detailed analysis of the sentence you are likely to receive if you plead guilty to the charges that you currently face. A copy of that letter is **attached** to this letter for your reference.
>
> I repeat the advice that I gave in my letter dated 2 August.
>
> Ultimately I advise you that upon conviction I expect you would receive a sentence of life imprisonment without the possibility of parole. This would mean that you would remain in prison for the rest of your life.

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52 *R v Knight*, above n 17, at 589.
53 Emphasis in original.

> Although no-one in New Zealand has ever received this sentence I consider your offending meets the requirements for such a sentence to be imposed.
>
> …
>
> **Change of mind**
>
> We repeat our previous advice that the entry of guilty pleas is final.
>
> It is unlikely that a Judge would grant you permission to vacate your guilty pleas, especially given the strength of the evidence in your case.

[63] On 24 March Mr Tarrant signed written instructions to his counsel to plead guilty to the 92 charges he faced.

SUMMARY OF FACTS

[64] In this judgment we have drawn upon the Crown's summary of facts and the sentencing notes of Mander J. There has been no challenge to the Judge's summation of the facts.

[65] Mr Tarrant arrived in Dunedin in 2017. At the time, he was a 26-year-old Australian citizen. In September 2017 he was granted a New Zealand firearms licence and between December 2017 and March 2019 he began the process of acquiring a large arsenal of high-powered firearms and military equipment. Many of the firearms were semi-automatic weapons. He stockpiled in excess of 7,000 rounds of ammunition of various calibres. Mr Tarrant also purchased military-style ballistic armour and tactical vests. While stockpiling the arsenal and practicing the use of the weapons, Mr Tarrant began to form a plan to carry out a firearm attack on mosques designed to inflict as many fatalities as possible.

[66] On 8 January 2019, Mr Tarrant travelled from Dunedin to Christchurch to undertake a reconnaissance of the Al Noor Mosque. The main entrance to the Mosque is situated on Deans Avenue, Christchurch. He went to a position opposite the Mosque and from there flew a drone directly over the Mosque. The drone filmed and recorded an aerial view of the Mosque's grounds and buildings. Mr Tarrant then flew the drone back over the Mosque focussing upon entry and exit points.

[67] Utilising the information that he gained from his reconnaissance of the Al Noor Mosque, Mr Tarrant wrote detailed notes regarding the exact time it would take to move between various positions within the Mosque and how long it would take to carry out each stage of the attack.

[68] On the morning of Friday 15 March 2019, Mr Tarrant left his address in Dunedin and drove his Subaru Outback car towards Christchurch. In the vehicle Mr Tarrant had six firearms comprising two military-style semi-automatic rifles, two shotguns, a lever action rifle, a bolt action rifle and numerous rounds of ammunition contained in a variety of magazines. On the weapons Mr Tarrant wrote references to the Crusades, recent terror attacks and drew symbols including those associated with the Nazi "SS". He had four incendiary devices with him which were intended to be used to burn down the mosques. Mr Tarrant also took with him ballistic armour and a military-style tactical vest.

[69] At 12.55 pm Mr Tarrant reached the outskirts of Christchurch and started the final preparations for the attack. This involved him arranging four of the firearms in the driver and front passenger footwell of his vehicle and laying two firearms in the rear luggage compartment of the vehicle alongside the four incendiary devices. Mr Tarrant was dressed in military-style camouflage clothing and placed over this a full tactical vest with pockets in the front of it containing at least seven fully loaded magazines and a bayonet.

[70] Mr Tarrant then mounted the GoPro camera to the front of a helmet pointing forward with the intention of recording his actions. The GoPro camera was equipped with the ability to produce a "live feed" directly to the internet.

[71] Mr Tarrant attached an audio speaker to the front of the vest that he was wearing, through which he planned to play music at high volume once he entered the Al Noor Mosque.

[72] Mr Tarrant parked in a carpark near the Al Noor Mosque on Deans Avenue. At 1.28 pm he uploaded a manifesto which he had prepared to a website accessed by

people with extreme right-wing viewpoints. The manifesto left no doubt about Mr Tarrant's intense hatred of members of the Islamic faith.

[73] At 1.31 pm Mr Tarrant sent messages to his mother and sister explaining how they should deal with media and police enquiries following his attack.

[74] At 1.32 pm Mr Tarrant turned on the GoPro and began recording and sending a live feed to the internet from this device. At the beginning of this recording, Mr Tarrant pointed the camera at his face so that he could be readily identified as the perpetrator of the attack.

[75] Mr Tarrant then sent emails setting out his intentions to attack Christchurch mosques. Those emails were sent to the government as well as numerous media agencies in both New Zealand and overseas. He attached to those emails the manifesto he had previously uploaded onto the internet.

[76] At the time Mr Tarrant was completing his final preparations, there were approximately 190 people inside the Al Noor Mosque. Mr Tarrant drove his vehicle to a driveway adjacent to the mosque and got out. He slung a semi-automatic rifle over his shoulders enabling him to keep both hands free. He then took a shotgun from the rear of the car, leaving the other firearms and incendiary devices in the vehicle, and walked onto the footpath of Deans Avenue and into the carpark of the Al Noor Mosque.

[77] As Mr Tarrant approached the front door of the Mosque, he saw his first four victims walking in front of him. Without warning Mr Tarrant raised the semi-automatic shotgun and fired nine shots into the backs of the people walking into the entrance of the Mosque. Mounir Soliman, Syed Ali and Amjad Hamid died instantly. The fourth victim, Hussein Moustafa was initially wounded but was murdered when Mr Tarrant shot him at point-blank range in his back and head.

[78] As he made his way down the hallway of the Mosque to the main prayer area, Mr Tarrant shot Ata Mohammad Ata Elayyan and Ali Elmadani, killing Mr Elayyan and causing Mr Elmadani to collapse to the ground. He then entered the main prayer

area at the rear of the building where most of the worshippers were present. They had heard the gunfire and, upon realising that something was wrong, they had moved to the two exits, located on each side of the prayer area.

[79] When he entered the main prayer area, Mr Tarrant initially fired at worshippers who were lying on the ground. He shot Ziyaad Shah and again shot Mr Elmadani, killing him. He then turned to the large groups gathered on each side of the prayer area. Mr Tarrant fired his semi-automatic firearm into the mass of people on one side of the room. He repeatedly moved his weapon across that side of the room before turning to the other group of people trapped on the opposite side of the prayer area, who were trying to escape through a single exit door.

[80] As he turned his semi-automatic weapon on these worshippers, Naeem Rashid ran at Mr Tarrant. Despite having been shot, Mr Rashid crashed into Mr Tarrant, forcing him down on one knee and dislodging a magazine from his vest. As Mr Rashid lay on his back, Mr Tarrant fired further shots at Mr Rashid who died at the scene. His actions however allowed a number of his fellow worshippers to escape.

[81] By this stage Mr Tarrant had emptied a 60-round magazine. He replaced that magazine with another. Standing in the middle of the main prayer area he fired rapid bursts towards each side of the room where people were trying to hide or attempting to escape. After reloading his gun yet again, he continued to shoot at persons lying prone or trying to escape. He discharged rapid bursts across both sides of the room before approaching individual victims and shooting them. As Ashraf Ragheb sought to escape from a side room down the hallway to the main entrance, Mr Tarrant shot and killed him.

[82] Mr Tarrant then moved closer to each of the groups of people lying dead, wounded or feigning death on each side of the main prayer area. Worshippers, who were either crying out for help or appeared to be alive, were systematically shot in the head. One of those was a three-year old child, Mucaad Ibrahim. He was clinging to his father's leg when he was murdered by two shots aimed by Mr Tarrant.

[83] At this point, Mr Tarrant made his way out of the Mosque, checking prone victims as he went so as to ensure they were dead. Outside he shot at people attempting to flee including Mohammad Faruk, who was fatally shot in the back. Wasseim Daragmih and his four-year-old daughter received life-threatening wounds. He fired in the opposite direction, hitting Sazada Akhter in her spine. Although she survived, Ms Akhter will be forever confined to a wheelchair.

[84] Having run out of ammunition, Mr Tarrant discarded his weapon and returned to his vehicle where he armed himself with another military-style semi-automatic firearm fitted with two 40-round magazines. He fired this weapon down a side driveway towards the back of the Mosque, murdering Muse Awale and Hamza Alhaj Mustafa, a 16-year-old boy who had escaped from the main prayer area and was sheltering behind vehicles. Another man, Mohammad Shamim Siddiqui, was critically wounded.

[85] Mr Tarrant then returned to the main prayer area. As he entered he saw Md Hoq, who was wounded, sitting up against a window. Mr Tarrant aimed one shot at Mr Hoq, killing him instantly before firing further shots at a group of people lying in one corner. Mr Tarrant fired fatal shots at those who were still alive.

[86] Mr Tarrant then reloaded his weapon and walked over to the group of people lying on the opposite side of the main prayer area and fired into them. He noticed Haji Nabi attempting to shelter behind a small wall. He aimed two shots at Mr Nabi, thereby killing him, before walking to within a metre of the huddled group of people and fired further shots into those who were either deceased or mortally wounded. Any persons who showed signs of life were shot.

[87] After exiting the Mosque for the second time, Mr Tarrant saw two women attempting to escape. He shot Ansi Karippakulam Alibava and Husna Ahmed. Ms Ahmed was killed. Ms Karippakulam Alibava was wounded. While she lay on the street, pleading for help, Mr Tarrant murdered her by firing two shots into her from point-blank range. He then returned to his vehicle and inflicted the indignity of driving over Ms Karippakulam Alibava's body as she lay in front of the driveway.

[88] As he drove away from the Al Noor Mosque, Mr Tarrant continued to shoot at anyone who he considered should be a target of his hatred. He discharged a shotgun at two men who appeared to be of African descent. A short distance further on he saw Muhammad Nasir and his son walking towards the Al Noor Mosque dressed in traditional clothing. Mr Tarrant again discharged the shotgun, seriously wounding Mr Nasir before pointing the weapon at the boy who was trying to hide behind a wall. Mr Tarrant pulled the trigger but the gun failed to fire.

[89] He then sped away, driving directly to the Linwood Islamic Centre. On the way, he came alongside another vehicle being driven by a Fijian man. He pointed his shotgun at him. Despite repeated attempts to fire that shotgun, it failed to discharge.

[90] During this part of his journey, Mr Tarrant was talking and laughing about various aspects of what had occurred and what was occurring. His words and actions were seen by the audience watching the live feed from the GoPro camera on his helmet.

[91] When Mr Tarrant arrived at the Linwood Islamic Centre, he parked his car across the end of the driveway to the mosque preventing any vehicle from entering or leaving the mosque. Mr Tarrant got out of his vehicle taking with him a lever action rifle. Down the driveway towards the rear of the mosque, Mr Tarrant saw three people standing near a vehicle. He raised his rifle and shot Ghulam Hussain in the head, killing him, before firing at and wounding Muhammad Raza, who had gotten out of the other side of the vehicle. Mr Tarrant also shot and wounded Karam Bibi, who was on the left side of the vehicle. After shooting her, Mr Tarrant saw Mr Raza hiding behind a fence. He raised his rifle and shot him several times in the chest and head, killing him. He then turned to where Ms Bibi was trying to hide in front of the vehicle. He walked to within two metres of her as she lay prone with her head buried in her hands, stood over her and murdered her by shooting her once in the upper torso and once in the head.

[92] Mr Tarrant then walked across the front of the mosque and turned down the eastern side of the building. As he passed a window he saw the silhouette of Mohammed Khan. Mr Tarrant fatally shot him through the window. Mr Tarrant then

again fired the rifle through the window. With his weapon now empty, Mr Tarrant ran down the driveway back to his vehicle. As he reached his car, Abdul Aziz Wahabazadah walked down the driveway towards Mr Tarrant yelling at him. At his vehicle, Mr Tarrant retrieved another semi-automatic rifle and fired at Mr Wahabazadah, who dived between some parked cars before Mr Tarrant walked back up the driveway to the main entrance of the mosque.

[93] As he walked to the main entrance situated on the western wall of the mosque, Mr Tarrant saw several people standing in the entranceway. He fired several rounds at those people, killing Musa Patel.

[94] Mr Tarrant then walked into the entrance of the mosque, turned to his left and fired further shots, killing Linda Armstrong. People were huddled in corners of the room and trying to escape. He then opened up his rifle into the main prayer area, killing Mohamad Mohamedhosen. He fired his rifle until he ran out of ammunition after which he dropped the gun and ran back to his vehicle.

[95] As he ran back to his vehicle, Mr Wahabazadah chased him, carrying the discarded lever action rifle. Mr Tarrant drew a bayonet from his vest but retreated as Mr Wahabazadah approached him. Mr Tarrant got into his car and started to drive away, passing close enough for Mr Wahabazadah to throw the discarded weapon at Mr Tarrant's vehicle, breaking a rear window.

[96] Mr Tarrant then drove his vehicle east along Linwood Avenue before making his way onto Brougham Street where his car was rammed by police. He was immediately arrested.

[97] When interviewed by police on 15 March 2019 Mr Tarrant admitted the facts that we have summarised above. He also said that the incendiary devices which he took to the mosques were intended to burn the mosques to the ground and that he wished he had done so.

[98] The summary of facts records that Mr Tarrant:

> … stated that he wanted to have shot more people than he did and was on the way to another mosque in Ashburton to carry out another attack when he was stopped.

MR TARRANT'S STATE OF MIND WHEN HE PLEADED GUILTY

[99] Following his arrest, Mr Tarrant was transported to a maximum-security unit at Auckland Prison. Initially he was housed in Unit 11. Mr Tarrant was the sole prisoner in Unit 11 until approximately 16 September 2020 when another prisoner was placed in Unit 11. On 7 January 2021, Mr Tarrant was moved into the Prisoners of Extreme Risk Unit (PERU). This required Mr Tarrant to move from Unit 11 to Unit 10 where other prisoners were housed. This occurred approximately 10 months after Mr Tarrant pleaded guilty.

Mr Tarrant's evidence

[100] In his affidavit sworn in support of his applications, Mr Tarrant says that when he arrived in prison in March 2019 his "mental health was well enough" and that he knew he "was in for a tough couple of years in what was likely to be a dangerous environment where many would wish to harm [him]".

[101] Mr Tarrant sets out in his affidavit his perceptions of the conditions to which he was subjected whilst on remand. Those conditions included him being separated from other prisoners and being placed under 24-hour surveillance via cameras in his cell. Prison officers checked on him every 15 minutes night and day because he was assessed as being at risk of harming himself, or at risk of harming others. We will explain the evidence relating to that assessment at [176]–[215].

[102] Mr Tarrant says that he was constantly harassed and taunted by prison officers and that he was subjected to cruel and unnecessary isolation and sensory and sleep deprivation through, amongst other measures, having:

(a) limited access to reading material;

(b) constant noise from prison guards by them deliberately coughing, sniffing and rattling keys which caused him sleep deprivation;

(c) prison staff making derogatory comments about him, particularly when he was being observed via CCTV;

(d) to endure strip searches and rub down searches;

(e) to withstand excessive disciplinary measures;

(f) constant exposure to light (including torch light every 15 minutes at night time) which contributed to his sleep deprivation; and

(g) cold conditions in his cell, which also contributed to his sleep deprivation.

[103] Mr Tarrant says that prison authorities blocked or delayed his mail, deprived him of television, music, exercise equipment, written materials and access to media for approximately 14 months.

[104] Mr Tarrant acknowledges in his affidavit that before entering prison he expected that he would be subject to at-risk conditions for between three months to two years. He says he knew that because:

> … they'd kept Anders Breivik[54] … on at-risk in Norway for 2 years without need. I expected I'd receive the same treatment. What I never expected was that they'd keep me on at-risk status for 4 years nor that there would be cameras in my cell, particularly cameras looking into the shower and toilet area. I didn't know I'd be in an at-risk gown for 3 years. I never expected that they'd do such a thing as its inherently degrading and therefore I expected it would be illegal for them to do so.

---

[54] We interpolate that Mr Breivik is a Norwegian neo-Nazi terrorist who in 2011 killed eight people by detonating a bomb in a van in Oslo and two hours later murdered 69 young people at a summer camp. He went to trial in 2012 and was found guilty of mass murder and terrorism. He was sentenced to a maximum of 21 years' imprisonment (the maximum finite term of imprisonment under Norwegian law), with potential for five-year extensions.

[105] The at-risk gown referred to by Mr Tarrant is a rip-proof garment that is issued to prisoners who are assessed as being at risk of committing suicide or engaging in self-harm.

[106] Mr Tarrant says that after nine months in prison he began "mumbling and became nearly inaudible or in-comprehensible". He said that his inability to form adequate sentences rendered it practically impossible for him to represent himself in court.

[107] He said he was concerned his inability to represent himself in a coherent manner would not only damage his case but also "the political movement" he is part of, thereby risking "the survival prospects of the West".

[108] Mr Tarrant says that the damage done to his mental health was so severe that he began questioning if he had ever been sane at all. He said that he suffered a nervous breakdown which lasted 18 months and that he became psychotic. In his oral evidence before us however, Mr Tarrant said that he was never suffering from psychosis and that he had misused that term in his affidavit.

[109] To assist us to understand the conditions he says he was enduring, Mr Tarrant exhibited to his affidavit an example of his daily life in prison. The day he chose to describe was in the last week of January 2020, just before he decided to plead guilty. Mr Tarrant says that this account demonstrates that his decision to plead guilty was the product of "duress through mental torture". We reproduce part of Mr Tarrant's account here:

> 9:30am-1:15pm: I sit on the edge of my bed doing absolutely nothing. There is nothing to do. My thoughts obsess over my situation and quickly turn bitter. The staff's voices are loud. Occasionally in the far distance I can hear a prisoners muffled, incomprehensible yell. Every minute feels like seven minutes in length. One hour feels like seven. I lay on the bed looking at the ceiling. I overhear the staff talking about something to do with me that was on the news. I can only make out every third word, something about a shooting and white supremacy. My anxiety levels increase and increase and increase. I feel short of breath, and it feels as if there is a steel band around my chest that grows gradually tighter and tighter, I grit my teeth. My left cheek just below my eye begins to twitch, not even trying to control it stops it. My face turns into a grimace

for ten seconds and I rub my hand across it again and again until it stops, I tell myself to keep it together. My hand goes back to resting by my side, my thoughts run back to my situation, and I am growing increasingly rage filled. It's only 10:15 am. The staff do the usual 15 min check, rattling the shutter against the glass, keys jangling, feet stomping. My head begins to twitch, and eyes keep rolling upwards towards the ceiling -I don't know why. I think about everything the staff have done to me so far in prison. I feel as if I have not been treated like a human being, this upsets me beyond belief. My teeth clench. I tell myself to stop, it's only the psychosis doing this; control yourself, don't let them get to you. It doesn't work, I feel despondent in my situation and I am filled with rage for the situation and treatment I am receiving. One of the staff begins to fake cough every minute, on the minute. My face twitch is back, and my hand is constantly rubbing my face. This continues for another hour and a half.

They bring the lunch; I have my sandwiches and a cup of lukewarm tea. Each time I bring my cup of tea to my lips one of the staff clears their throat loudly, I test this by putting the cup to my lips without drinking, then placing it back down once more and bringing it immediately up to my lips once more and yep, sure enough, they loudly clear their throat every time I do it. I tip the rest of the tea down the sink, as it's obvious that I'll get no enjoyment from drinking it. I return to bed and lay there, staring at the ceiling. Staff have their lunch break for the next hour and are especially loud, it's like listening to a house party going on until 1:15pm. I fall asleep for an hour and 15 minutes until 2:30pm, when I'm awoken by a loud cough, and I know the worst harasser has arrived on shift. The next 12 hours I know will be dominated by that sound -him clearing his throat every 2 minutes. He does it as per usual and 30 mins in says to the person beside him "my throats getting sore", the person beside him chuckles and says "pace yourself, you got to go all night... I'll take over" then begins imitating him by clearing his throat loudly- they both laugh. I'm lying there, absolutely furious and yell out "shut the fuck up you freaks!" This brings a pause from them then the first guard clears his throat 3 times, extra loudly, and then all the guards laugh. I'm absolutely raging by this stage, but there is nothing I can do. I lay then for another hour and a half listening to them. By 4:00pm I'm literally shaking my head from side to side endlessly in distress and rage and rubbing my face continuously seemingly not under my own volition.

At 4:10 I use the bathroom; the entire guard station goes silent except for whispering. I am distinctly aware of the cameras watching my every action. I look up and there is a camera pointed directly at me. I finish and wash hands, there is silence from the guard station for another couple of minutes and then someone says something, and they all laugh, then they go back to talking normally, as per usual. At 4:30pm they bring down my towel and a change of clothing, it's time for

me to have a shower, quite obviously. The staff place my shower gear through my hatch, into my cell. They walk back to the guard station and suddenly there is complete silence, an awkward, strained silence. I undress in the shower and move my new set of clothes just on the outside of the shower wall. I shower, fully aware of the camera in my shower watching me at all times. I angle my body to try to lessen the amount of flesh being shown to the camera and as I wash and soap myself, I make sure not to wash anywhere that might bring ridicule or commentary from the staff. Once I'm finished the shower is switched off and I face myself towards the wall and crouch down, reaching my hand around the shower wall to grab my towel and clothes, trying to minimize exposure to the multiple cameras looking into the shower. I dry myself, put on the fresh clothes and wait. A couple of minutes of near silence passes, the only sounds being some giggling and whispering by two female members of staff. After a couple of minutes all the staff start talking and cracking jokes once more, the staff come down to get my old clothes and towel. One of them taking my clothes says "Don't worry mate, no-one is watching you shower..." I say nothing and simply put my clothes out the hatch. In the background one of the staff members is doing the usual throat clearing routine. As the staff turn to leave I ask, "are there any books for me?" they reply "no, there is nothing for you" and leave. I return to lying in bed. At 5pm the security gate slams shut, then opens again immediately to allow one of the … staff to come down to do a 15 min check. He checks on me through the hatch; slaps it closed and then turns off his body camera before walking into the laundry-room. He starts loudly fake coughing in the laundry again and again and again for 2 minutes, then turns on his bodycam, exits the laundry room and walks back to the guard station. The heavy security door slams shut behind him. I lay there and stare at the ceiling.

…

9:30pm: By this stage the beeping, coughing, grunting shutter rattling, talking, laughing and desk-hitting cacophony had well and … truly put me into a state of nervous breakdown; I endlessly pick my scalp, rock back and forth; rub my hand across my face, clench my jaw and grimace; shake my head; twitch my neck and roll my head in little circles, while staring at the ceiling. It's only 9:40pm and I know there are many hours till morning and a new day, I just have to stay sane until then: someone will come tomorrow and put a stop to this, the police... the human rights people... the inspectors... someone will surely come, surely (or so I'd tell myself this every night, it was my only hope and in hindsight I think it was the only thing that kept me alive).

10pm: My heart is beating arrhythmically and at this stage I am concerned. I could actually die. My anxiety is at its peak and the shortness of breath occasionally leaves me suddenly gasping in large lungful's of air. I attempt to try to

> disassociate myself from what is happening to try to reduce my anxiety and thereby lessen my stress. It doesn't work at all, the staff are too loud, and my mind is too irrational, every time they hit the desk or cough I jump in response as my body is startled. This continues the entire night, hour after hour without end. The night seems to last forever-every minute an hour and every hour a day of struggle itself. Despite lying in bed, not moving at all except for my head shaking or moving in small circles my heart rate sits at roughly 100 bpm,40 bpm above average.
>
> …

[110] Mr Tarrant says that his behaviour in prison was "prone to wild swings" and that his mood and emotional state were "utterly destabilised by the treatment" he received in prison. He says his "labile and mentally unwell state was apparent to all".

[111] In his affidavit Mr Tarrant said:

> 191. By the time it came around to when I decided to plead guilty around February 4 2020 – there was little else I could do. My mental state was severely unwell, my lawyers were not willing to run the defence I was looking to run and I was afraid that, due to my damaged mental state, if I did try to represent myself in Court I might make a fool of myself by twitching, shaking or being unable to speak. In hindsight requesting court proceedings to halt until my mental health improved and my inhumane prison conditions ceased, was the better option but I did not want to:
>
> 191.1 Appear weak, as I believed, it would harm the movement;
>
> 191.2. Deter others from acting [in support of the movement];
>
> 191.3. Give our enemies the satisfaction of hearing I had been maltreated.
>
> 192. As such I ultimately felt I had no choice.
>
> 193. I decided that I would wait as long as possible to plead guilty to damage the state, but COVID 19 kicked off and I realised if I timed it correctly I could catch them off-guard by doing the unexpected and not let the press build up the event into any form of victory for themselves, so I pleaded guilty after lockdown kicked in.

[112] Mr Tarrant also said in his affidavit that he adopted a passive stance to the sentencing process believing that once sentencing was completed he would return to prison and "the abuse and maltreatment would stop" and that he would "regain [his] mental health".

[113] In summary, Mr Tarrant said the following about his mental state during the period leading up to him pleading guilty:

(a) he was in a "state of nervous breakdown";

(b) he had a "mental breakdown" and was "incapable of rational decision making and … did not make an [adequately] informed decision about [his] pleas"; and

(c) he had been "driven into … near-insanity by the actions of the staff and management [of the prison] and was struggling to stay alive".

[114] Mr Tarrant relied on reports into the PERU prepared by the Office of the Inspectorate | Te Tari Tirohia in July 2023 (the Inspectorate Report)[55] and the Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata in December 2024 (the Ombudsman Report).[56] The reports do not refer specifically to Mr Tarrant and related to the conditions experienced by all prisoners in the PERU. Nevertheless, Mr Tarrant relied on those reports to say that the conditions he endured during the period building up to his decision to plead guilty were far worse than the conditions referred to in the Inspectorate Report and the Ombudsman Report. In counsel's submission, the reports supported Mr Tarrant's credibility about the conditions he experienced in prison and the impact upon him of those conditions.

[115] The concerns set out in the reports are significant. The Ombudsman Report for example says:

(a) There was "compelling evidence of prolonged solitary confinement and other human rights abuses … the cumulative impact of the treatment and conditions in the PERU [is] cruel, inhuman, and degrading. [There

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55 Office of the Inspectorate | Te Tari Tirohia *Prisoners of Extreme Risk Unit (PERU): Announced Inspection* (Ara Poutama Aotearoa | Department of Corrections, 27 August 2024).

56 Peter Boshier *OPCAT Report: Report on an examination of the Prisoners of Extreme Risk Unit under the Crimes of Torture Act 1989* (Tari o Te Kaitiaki Mana Tangata | Office of the Ombudsman, 17 December 2024).

are] real and serious concerns that people held in the PERU have experienced ill-treatment".[57]

(b) The cells are "oppressive and not appropriate for long-term management of people in custody. Cells lacked adequate floor space, lighting, temperature and ventilation/fresh air".[58]

(c) Observations of at-risk prisoners are disruptive and "the prolonged length of time that people assessed as at risk of harm in the PERU were exposed to these conditions, and the limited regard paid to the impact this treatment may have had on their wellbeing, is deeply concerning".[59]

[116] We will return to these concerns when analysing the evidence relating to Mr Tarrant's state of mind when he pleaded guilty.

[117] Mr Tarrant challenged the evidence of Mr Tait and Mr Hudson when they said that from the outset he always intended to plead guilty and that it was just a matter of when he would do so. Counsel for Mr Tarrant recognised this was a crucial issue. We will return to consider this topic when analysing Mr Tarrant's case.

[118] Mr Tarrant accepted that Mr Tait and Mr Hudson told him that his proposed defences would not be countenanced by the High Court. He said in his oral evidence:

> … I had my own defence, and they said, "Well, they're going to throw that out if you go to court." And I said: "Well, I'm going to run it anyway. I don't care".

[119] Mr Tarrant acknowledged that prior to sentencing he told the author of the pre-sentence report as well as the two court-appointed health assessors that he was sorry for his actions. He told us that his expressions of remorse were a reflection of his irrational state of mind at that time.

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57 At 10.
58 At 19.
59 At 42.

Observations of Department of Corrections staff

Witness C

[120] Witness C is a psychologist who is employed by the Ara Poutama Aotearoa | Department of Corrections (Corrections).[60] He is in a senior leadership position with responsibilities for assisting in the management of prisoners of extreme risk.

[121] Witness C explained that in 2019, Corrections was in the process of establishing a Persons of Extreme Risk Directorate (PERD) to assist Corrections to manage prisoners who posed a particularly serious risk of causing harm either to themselves or other persons or who were themselves at risk of being harmed by other prisoners.

[122] Sections 58–60 of the Corrections Act 2004 provide the statutory basis for Corrections to segregate prisoners. There are three types of segregation order provided for in these sections:

(a) A direction that a prisoner be segregated for the purposes of security, good order or safety under s 58 of the Corrections Act. This type of segregation order expires after 14 days unless the Chief Executive of Corrections orders that it continues in force. If a direction is continued by the Chief Executive then it must expire after three months unless a Visiting Justice directs that it continue in force.[61]

(b) A direction under s 59 that a prisoner be segregated for the purposes of protecting the safety of the prisoner (a protective custody order). These types of orders also expire after 14 days unless the Chief Executive directs that it continues in force. Where a protective custody order continues after 14 days, it must be reviewed by the Chief Executive at intervals of not more than three months.[62]

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60 Witness C's name has been anonymised as a result of safety concerns arising out of his position as a Corrections official: see December 2025 minute, above n 7, at [5].

61 Corrections Act 2004, s 58(3)(c)–(d). See also s 3(1) definition of "chief executive".

62 Section 59(4)(c)–(d).

(c) A direction under s 60 that a prisoner be segregated to assess or ensure their mental or physical health. This type of order does not apply to prisoners who are at risk of self-harm. A direction under s 60 "continues in force while the prisoner continues to be detained in the prison unless the prison manager or the chief executive revokes it".[63] The prison manager may not revoke a direction unless the prison's health centre manager advises that there is no longer any justification for segregation.[64]

[123] Prisoners assessed as being at risk of self-harm must be managed pursuant to ss 61A–61H of the Corrections Act. Those provisions cover the assessment of a prisoner thought to be at risk of self-harm, including the requirement for observations of the prisoner at intervals specified by the prison manager;[65] limitations upon such prisoners having access to other prisoners;[66] the development of at-risk management plans;[67] and the designation of a prisoner's cell as an "at-risk cell".[68] A prisoner's at-risk status remains in place until it is revoked by the prison manager. Revocation must occur if the prison manager is satisfied, after obtaining the advice of the prison's health centre manager "that the prisoner is no longer at risk of self-harm".[69]

[124] It will be noted that the first two segregation orders we have referred to at [122] have specific time limit provisions. There are however, no specific time limit provisions that apply to orders designed to assist in managing a prisoner's health or those at risk of self-harm.

[125] We will explain at [176]–[215] the medical evidence concerning Mr Tarrant's risk of self-harm. It is important to reemphasise however that counsel for Mr Tarrant made clear in response to a question from the bench that Mr Tarrant's at-risk status was not challenged in the appeal before us as it was "perhaps more suited to judicial review". Thus, there was no dispute that Mr Tarrant was properly assessed as being

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63 Section 60(3).
64 Section 60(4).
65 Section 61B(b).
66 Section 61CA.
67 Section 61D.
68 Section 61H.
69 Section 61F(1).

at-risk from the time he arrived in Unit 11 on 16 March 2019. As we have noted at [31], we were also not asked to make findings that Mr Tarrant's prison conditions breached the rights affirmed in the NZBORA. Mr Tarrant's case relied on the impact of those conditions on his state of mind.

[126] Witness C explained that Mr Tarrant was assessed as being "at-risk" of self-harm from 16 March 2019. That status has been reviewed weekly but has remained in place for the duration of Mr Tarrant's time in Auckland Prison.

The methods of observing Mr Tarrant

[127] Consistent with s 61B(b)–(c) of the Corrections Act, Mr Tarrant has been closely monitored through:

(a) Video cameras which are monitored 24 hours a day by unit staff who make written notes of Mr Tarrant's behaviour.

(b) Visual checks by unit staff every 15 minutes. Witness C said "[t]his not only allows for social interaction but assists staff to identify subtle changes in [Mr Tarrant's] mood or behaviour that might not be apparent from camera observations alone".

(c) Daily welfare checks, where "[e]very day a health staff member, often a nurse, visits Mr Tarrant to check on his welfare". These checks were initially twice a day but were, at Mr Tarrant's request, reduced to once a day from 2 August 2021.

Mr Tarrant's description of his behaviour in January 2020

[128] We have set out at [109] part of Mr Tarrant's description of a day in his life in late January 2020. Witness C has reviewed Corrections records and advised us there is no evidence to support Mr Tarrant's claim that at that time he was behaving in the extremely distressed manner which he describes. Had Mr Tarrant been observed to have behaved in such a way then Witness C would have expected to have been

informed of these changes to Mr Tarrant's behaviour. This evidence was supported by Mr Tarrant's referral to a psychiatrist in August 2021 due to, in summary:

> Mr Tarrant's recent threats of suicide and comments that he was struggling with his mental health; his appearing withdrawn, less communitive with staff, flat or irritable; periods when he appears agitated and distracted, for example staring into space or pacing his cell; lack of interesting things he previously enjoyed, for example not using his yard for several months and purchasing canteen items; and expressing hopelessness.

[129] We observe that the description of Mr Tarrant's behaviour in August 2021 bears some similarity to Mr Tarrant's description of his state of mind in 2020 but notably that behaviour was not observed until 17 months after he pleaded guilty.

[130] For completeness we record that although Mr Tarrant was referred for a psychiatric assessment in August 2021, he refused to speak with a psychiatrist. As a consequence no formal assessment was made about his mental wellbeing at that time.

Sleep deprivation

[131] Witness C says Mr Tarrant's patterns of sleep were monitored by staff. He says "[w]hile there would certainly have been nights where Mr Tarrant's sleep was unsettled, [the Corrections records] do not suggest this was the case every night". Witness C explained how efforts were made to improve Mr Tarrant's comfort. These measures included providing him with additional bedding and clothing during colder months and the placing of a curtain over the external window to his cell to reduce light entering his cell at night time.

Contact with other persons

[132] Witness C explained that while Mr Tarrant was deemed too high a risk to have access to other prisoners until September 2020, Corrections endeavoured to ensure he had some:

> 17. … contact with staff, with his family and with counsel. To alleviate his isolation while Mr Tarrant was not provided opportunity to associate with other prisoners, Corrections arranged for Mr Tarrant to have opportunities to socialise – for example with a Corrections staff member who shared Mr Tarrant's background in physical training (in 2019). Mr Tarrant initially engaged with this member of staff, but after a couple of sessions he stated that he wanted no further contact with this member

> of staff, threatening to assault him. Mr Tarrant was also provided daily opportunities to interact with health and custodial staff, but typically chose to engage in minimal interaction.

Witness D

[133] Witness D became involved with PERD in October 2019 and has been the Operations Director of the PERU since its inception.[70] In his evidence Witness D explained the three types of records that prison officers are required to maintain in relation to Mr Tarrant:

(a) "[A]t-risk observation sheets" which are written up every five minutes and record what Mr Tarrant is doing. The observation sheets are read by the Principal Corrections Officer every day and comprise very thorough records of Mr Tarrant's life in prison.

(b) "Offender notes" which are electronic records of significant events that occur during a prisoner's time in prison. Witness D explained that "Mr Tarrant's offender notes are more detailed than for other prisoners, and … record, for example, what he is doing while awake. i.e. reading or watching TV; visits by lawyers or family; requests to staff; unusual behaviour; cell searches, etc".

(c) "Daily update" records which cover Mr Tarrant's behaviour during a 24-hour period.

[134] Examples of at-risk observation sheets, offender notes and daily update records for Mr Tarrant were exhibited to Witness D's affidavit. They provide a very detailed contemporaneous account of the events that were occurring in Mr Tarrant's life. For example, part of his offender notes for 2 January 2020 read:

> He received his dinner at 1520.
>
> He asked for 2 green tea bags, 3 x tomato sachets and cordial from his canteen.

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[70] Like Witness C, Witness D's name has been anonymised for safety purposes: see December 2025 minute, above n 7, at [5].

> At dinner time [he] put away the book with the number ?52?[71] prominently displayed in his cell for staff to see.
>
> He returned the orange and muffin (from his dinner) along with his rubbish at 1745.
>
> He asked for some new books and received Tricks of Life by David Attenborough and Book of Drawings He returned two books Life on Earth and Complete book of Drawings.
>
> Seen by health at 1836 nurse … Nil issues identified.
>
> He spent the early evening alternating between exercising using the mattress, bedding and books as weights and reading at the desk.
>
> After exercising he asked for and was given a change of bed linen.
>
> This afternoon and early evening he has been compliant and patient while waiting to have his requests [met].

[135] Witness D reviewed the offender notes for Mr Tarrant for all of January 2020 and told us they do not record Mr Tarrant showing any signs of distress at that time. Witness D told us that:

> 21. … Rather, he appeared to be interacting with staff fairly normally, and spent his time reading books or legal documents, making use of his yard to exercise, and watching television. It does not appear he raised issues with the nurse during his daily welfare checks. While on some nights Mr Tarrant is recorded as having had unsettled sleep, there is no indication he was lying awake at night for hours at a time nor that he was regularly crying out.

[136] Witness D responded to Mr Tarrant's claims that the PERU staff shone torches in his face every 15 minutes overnight depriving him of sleep:

> 40. … Overnight, custodial staff performing 15-minute safety checks on Mr Tarrant will shine [a] torch into the cell through the glass observation window. The torch is aimed towards the ceiling, which lights the room sufficiently to do the physical check. Torchlight is necessary to see into the cell, because the interior of the cell is dark whereas the area outside is lit, so reflections on the glass observation window would otherwise obstruct visibility.

[137] Witness D also addressed Mr Tarrant's complaint that he was denied access to lawyers. That particular complaint, and Witness D's response will be addressed by us when considering Mr Tarrant's application to extend time to file his appeal.

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[71] We understand this to be a reference to Mr Tarrant wishing to add a further victim to the list of those whom he killed on 15 March 2019.

The observations of Mr Tarrant's lawyers

[138] Mr Tarrant's description of his mental state at the time that he pleaded guilty contrasts markedly to the observations of Mr Tait and Mr Hudson.

[139] Mr Tarrant spoke with Mr Hudson on 26 March 2019 and the lawyers first met with him at Auckland Prison on 28 March 2019. At that meeting, Mr Tarrant signed a document confirming instructions to act, in which Mr Tait was named as Mr Tarrant's counsel. In early April, Mr Tarrant's application for legal aid was approved and Mr Tait and Mr Hudson were assigned as his legal aid counsel. Their assignment lasted through to 13 July 2020 when they were granted leave to withdraw following Mr Tarrant terminating his instructions to Mr Tait and Mr Hudson.

[140] Mr Tait has been a lawyer for over 30 years. Throughout that time he has practiced solely in criminal defence work. He has been lead defence counsel in multiple criminal trials including in over 30 murder cases.

[141] Mr Hudson was admitted to the bar in 2008. Like Mr Tait, he has practiced as a criminal defence barrister and is approved to deal with all criminal legal aid cases, including murder.

[142] During the period that they acted for Mr Tarrant, Mr Tait and/or Mr Hudson spoke with Mr Tarrant on over 70 occasions, either face-to-face or via telephone. The face-to-face communications lasted up to over two hours. Communication with Mr Tarrant by way of telephone calls and letters necessarily increased after COVID-19 restrictions commenced.

[143] Whenever Mr Tarrant raised any issues with Mr Tait or Mr Hudson over his prison conditions his lawyers wrote to Corrections. The lawyers said that Corrections responded appropriately to any issues they raised on behalf of Mr Tarrant. For example:

(a) On 31 March 2019 Mr Tait wrote to a Corrections officer to clarify visiting hours and to request, among other things, that Mr Tarrant's hands not be cuffed behind him during his meetings with counsel and

that he be provided with writing materials to record his instructions. The letter also asked Corrections to confirm that Mr Hudson and Mr Tait's legal visits were not being recorded and that material provided to Mr Tarrant by his counsel was not being read or retained by Corrections officers. The Prison Director at Auckland Prison responded on 3 April 2019, addressing each issue raised and confirming Mr Tarrant's hands would be cuffed in front of him for further meetings and that he would be provided with writing materials.

(b) On 11 April 2019, Mr Tait wrote to the Prison Director. In that letter he raised concerns about a release to the media of a complaint Mr Tarrant made about his prison conditions. Mr Tait also asked that written materials given to Mr Tarrant at meetings with his counsel be provided to him promptly, that further writing materials be provided to him and that he be provided with additional blankets. Further clarification was also sought about the decisions to segregate Mr Tarrant for medical oversight, to not provide him with media articles about his offending and to keep him in clothing designed to reduce the risk of suicide. The Prison Director responded on 3 May 2019, again addressing each of the concerns raised.

[144] Initially, Mr Tarrant was facing 50 charges of murder and 39 charges of attempted murder. No charges under the Terrorism Suppression Act 2002 had been laid at that time.

[145] On 3 May 2019, Mr Hudson told Mr Tarrant that the number of murder charges he was to face would increase to 51 following the death of one of the victims. Mr Tarrant's response to Mr Hudson was unusual. He was not in the least bit perturbed that another person had died.

[146] On 21 May 2019, the defence lawyers learnt the Crown would be laying a charge under the Terrorism Suppression Act against Mr Tarrant for engaging in a

terrorist act. Mr Hudson conveyed this news, as well as the fact that the Crown would be laying two additional charges of attempted murder, to Mr Tarrant later that day:

> Mr Tarrant was jubilant upon receiving this news. I recall Mr Tarrant laughing and calling out to Prison Officers who were nearby to tell [them] that he was now a terrorist. Mr Tarrant was obviously pleased with this news.

[147] Mr Tait and Mr Hudson both said in their evidence that when Mr Tarrant entered his not guilty pleas on 14 June 2019, they did not have any reason for concern about Mr Tarrant's fitness to plead or to provide instructions. Their assessment of Mr Tarrant's mental capacity at that time was confirmed by reports from two health assessors, Dr Skipworth and Mr van Rensburg, which had been prepared at the request of the High Court pursuant to s 38 of the CPMIP Act. Both Dr Skipworth, who is a leading psychiatrist, and Mr van Rensburg, another prominent psychologist, agreed Mr Tarrant was fit to stand trial. We will return to these reports when discussing the medical evidence concerning Mr Tarrant's mental health at the relevant times.

[148] Mr Tait explained to us that Mr Tarrant did not take issue with the s 38 reports and that he did not wish to engage his own psychiatrist because he did not want "to be perceived as 'being crazy'".

[149] Mr Tait and Mr Hudson discussed trial strategies and potential defences with Mr Tarrant. Those discussions included a pre-trial application to change the venue of the trial from Christchurch to either Auckland or Wellington, an application for disclosure orders against the Crown and a non-party disclosure application.

[150] The change of venue application was supported by an affidavit from Professor Christopher Triggs from the University of Auckland concerning statistics relating to schools in the Christchurch area impacted by the lockdown procedures that took place on 15 March 2019. That statistical information was gathered to demonstrate to the Court the number of schools in the area which had been affected by lockdown with the view to arguing that potential jurors were likely to have had their own children subjected to lockdown because of Mr Tarrant's actions and would hold additional prejudicial views about him.

[151] Mr Tait explained:

> Mr Tarrant was able to understand this evidence and positively contribute to the change of venue application.

[152] Mr Tarrant ultimately instructed his lawyers to abandon the change of venue application on the morning of the hearing of the application. Mr Tarrant's decision was contrary to the advice which Mr Tait had given him. Mr Tait told us:

> Mr Tarrant instructed us to abandon the change of venue application as he did not want to create the public perception that he was fleeing or running away from the community in which his offending was committed.

[153] In February 2020, Mr Tarrant instructed his lawyers to again pursue a change of venue application, which was eventually declined by Mander J.[72]

[154] Mr Tait and Mr Hudson explained the application of the relevant sections of the Crimes Act 1961 and the Terrorism Suppression Act. Mr Tait was satisfied Mr Tarrant appreciated that the offence of engaging in a terrorist act involved an especially complicated legal provision. Mr Tait reached the view that it might have been possible to persuade the Crown to withdraw the terrorism charge in exchange for guilty pleas to the other charges. Mr Tarrant was however adamant that he did not wish the terrorism charge to be negotiated away.

[155] Mr Tait explained that Mr Tarrant's proposed defences were rooted in his extreme ideological convictions. He wanted to argue that his actions were designed to save Western civilisation. His lawyers however made it very clear that the High Court would not entertain any attempt to run a defence along those lines. Mr Tait told us:

> Mr Tarrant was ultimately accepting of [this] advice and did not advance this theory again.

[156] When discussing other potential defences, Mr Tarrant also accepted the advice from his lawyers that the potential defences of self-defence, provocation or compulsion were simply not available in his case.

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[72] *R v Tarrant* [2020] NZHC 337 at [4].

[157] Significantly, Mr Tait said:

> From an early stage Mr Tarrant informed both myself and Mr Hudson that he intended to plead guilty to the charges before trial.

Mr Tarrant was however, not forthcoming about when he would plead guilty.

[158] To similar effect, Mr Hudson said:

> Throughout my representation of Mr Tarrant he was accepting of the overwhelming case against him and frequently told myself and Mr Tait that he planned to plead guilty before trial. In the absence of his confirmed instructions, Mr Tait and I were forced to prepare for trial in the event that Mr Tarrant did not ultimately choose to plead guilty before his trial date was reached.

[159] As we have previously noted, Mr Tarrant denied telling Mr Tait and Mr Hudson that he always intended to plead guilty.

[160] Mr Tarrant did not however dispute that during a meeting on 30 July 2019 with his lawyers he told them that he wanted to plead guilty as quickly as possible. This in turn led to Mr Tait and Mr Hudson preparing a 22-page letter dated 2 August 2019, which we have previously referred to at [61]. That letter recorded, amongst other matters, Mr Tarrant's instructions that he wished to plead guilty. Mr Hudson read out that letter and the charges to Mr Tarrant before he signed his instructions. Mr Hudson said:

> I had no cause for concern that Mr Tarrant did not understand what he was signing or the consequences of entering guilty pleas to each of the charges.

[161] Mr Tarrant however changed his mind on 6 August 2019 and instructed his lawyers that he wished to continue with his not guilty pleas.

[162] Mr Tait explained in his affidavit that throughout the time he acted for Mr Tarrant he "had no concern about his mental health or his ability to instruct" counsel:

> Mr Tarrant was actively involved in all aspects of his case. Mr Tarrant closely followed developments of the case and was keenly interested in how his matter was being reported by the media in New Zealand and internationally.

[163] Mr Tait said that in his view Mr Tarrant's fitness did not change throughout the time that he acted for him. He thought that Mr Tarrant was always able to instruct his lawyers and to understand the proceedings at all times.

[164] Mr Tait told us he did not witness the "wild mood swings" or "destabilised emotional state" that Mr Tarrant claimed to have been suffering from.

[165] Mr Tait was adamant that Mr Tarrant did not appear to be mentally unwell and that if he had any concerns about Mr Tarrant's mental welfare he would have immediately raised them with Corrections and with the Court.

[166] On 4 March 2020, just before Mr Tarrant entered his guilty pleas, Mr Hudson met with Mr Tarrant to review a list of questions posed by the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 | Te Kōmihana Uiui a Te Whakaeke Kaiwhakatuma i Ngā Whare Kōrana o Ōtautahi i Te 15 O Poutū-Te-Rangi 2019 (the Commission). Mr Hudson stated that throughout the course of this meeting, Mr Tarrant was fully engaged, and Mr Hudson had no concerns about his fitness. On 10 March 2020, Mr Hudson received a telephone call from Mr Tarrant for the purpose of discussing the questions posed by the Commission. In this call, Mr Hudson advised Mr Tarrant that providing a statement to the Commission may prejudice his trial, and told us that while Mr Tarrant understood this advice, he maintained his desire to make a statement.

[167] Mr Tarrant advised Mr Hudson during a telephone call on 24 March 2020 that he wished to change his pleas to guilty in respect of all 92 charges that he was facing. Because of the impending restrictions on access to prisoners with the introduction of the Level 4 COVID-19 lockdown on 25 March, Mr Tait and Mr Hudson urgently arranged to visit Mr Tarrant. At that meeting Mr Tait and Mr Hudson provided Mr Tarrant with detailed written advice about the consequences of entering guilty pleas to the charges:

> 93. This advice included discussing the anticipated sentence, [we] were both clear that life imprisonment without parole was realistically the only sentence to be expected; the process for entry of pleas; our ability to negotiate the charges and our belief that the Crown would withdraw the

> [e]ngaging in a terrorist act charge if Mr Tarrant were [to] plead to all of the remaining Murder and Attempted Murder charges.
>
> 94. Mr Tarrant confirmed that he did not want to have the charge of engaging in a terrorist act charge withdrawn.

[168] The written advice included the recommendation that the possibility of the Crown withdrawing the terrorism charge should be pursued. Mr Tait said that he understood it was however "fundamentally important" to Mr Tarrant that he should be convicted on the terrorism charge in light of his ideology.

[169] Mr Tait and Mr Hudson noted that Mr Tarrant had lost weight between March 2019 and March 2020. However, apart from frustration with his prison environment, neither lawyer had any concerns about Mr Tarrant's mental wellbeing. Mr Hudson said that at no stage in his more than 30 visits to Mr Tarrant did he observe him twitching, shaking or unable to speak and, had he observed this, he would have informed authorities. Mr Hudson accepted that Mr Tarrant was frustrated by his conditions but Mr Hudson was not aware of Mr Tarrant experiencing a mental breakdown and is confident he would have recognised obvious signs of mental illness, given his experience in dealing with defendants with mental health issues. His changes of mind over the change of venue application and entering guilty pleas in August 2019 were attributed by Mr Hudson to "Mr Tarrant's desire to control the proceedings [rather] than being the result of deteriorating mental health".

[170] On 2 April 2020, Mr Hudson requested a telephone call from Mr Tarrant, who contacted him later that day. This was their first contact since guilty pleas were entered. Mr Hudson said Mr Tarrant was interested in how the media had reported his change of plea and that he was amused that the Prime Minister's COVID-19 briefing had been disrupted when news of his guilty pleas became public.

[171] Following Mr Tarrant's guilty pleas, the Commission approached Mr Hudson and Mr Tait to confirm whether Mr Tarrant was willing to be interviewed by the Commission. Mr Tarrant confirmed with Mr Hudson that he would like to be interviewed. The interview occurred on 24 June 2020, and lasted approximately five hours. Mr Tait and Mr Hudson attended as Mr Tarrant's legal representatives. No

issues arose about Mr Tarrant's ability to engage with the questions put to him by the Commission.

Medical evidence

[172] Mr Tarrant's description of the degree and extent of his deteriorating mental health during the period leading up to his decision to plead guilty in March 2020 is also impossible to reconcile with almost all of the evidence from mental health professionals who assessed him. We have already summarised the legal principles governing assessments of fitness to stand trial under the CPMIP Act. We will therefore start this part of our judgment by summarising the reports prepared under s 38(1)(a) of the CPMIP Act. We shall then discuss further reports prepared by Dr Skipworth and Mr van Rensburg in August 2020 prior to Mr Tarrant being sentenced. We shall then explain nine reports prepared by psychiatrists at the Mason Clinic, which is the Auckland Regional Forensic Psychiatric Service. The Mason Clinic was engaged by Auckland Prison to assess and review Mr Tarrant's mental health during the period with which we are concerned. Finally, we shall consider the evidence of Witness B,[73] a clinical psychologist who was instructed by Mr Tarrant's counsel and the evidence of Professor Ogloff, a clinical and forensic psychologist retained by the Crown who was highly critical of Witness B's evidence.

[173] Dr Skipworth, Mr van Rensburg and the authors of the Mason Clinic reports were not called as witnesses. Their reports were presented as evidence and not challenged before us. Witness B and Professor Ogloff were the only medical witnesses whose evidence was challenged by cross-examination during the hearing before us.

Section 38 reports

[174] Section 38 of the CPMIP Act enables a court to require a health assessor to prepare an assessment report on a person who is in custody, at any stage of a proceeding against that person. The purposes of a s 38 report include assisting the court to determine whether the defendant is unfit to stand trial, whether the defendant

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[73] This Court directed in a minute that like Witness C and Witness D, Witness B's name should be anonymised during the course of the hearing: see December 2025 minute, above n 7, at [5]. Witness B was therefore referred to as "Witness B" throughout the hearing.

is insane and the type and length of sentence that might be imposed following conviction.

[175] In Mr Tarrant's case, the Court sought s 38 reports before he entered his not guilty pleas in order to assess he had the requisite fitness to stand trial. As we have noted, the term "unfit to stand trial" includes being unfit to enter a plea. We understand there was no indication that Mr Tarrant might be unfit.[74] The reports were sought out of an abundance of caution because of the extraordinary nature of Mr Tarrant's offending.

Dr Skipworth's report

[176] Dr Skipworth has been the Clinical Director of the Mason Clinic since 2010. He assessed Mr Tarrant in Auckland Prison on 15 April and 9 May 2019 over a combined period of four and a half hours. He also spoke with Mr Tarrant's mother on 31 May 2019 and reviewed statements that his mother and sister made to the police on 17 March 2019. Dr Skipworth had access to a range of material concerning Mr Tarrant's background and offending as well as a psychological report prepared by two psychologists at the Mason Clinic in May 2019.

[177] Dr Skipworth described Mr Tarrant's upbringing in Australia and the difficulties he experienced when his parents separated and his mother commenced a new relationship with a man of Aboriginal descent. Mr Tarrant had a fractious relationship with his mother's new partner whom his mother said Mr Tarrant regarded as being a "stereotypical Aboriginal bludger". Mr Tarrant's father was diagnosed with mesothelioma in 2007 arising from work-related exposure to asbestos. He died in 2009.

[178] Mr Tarrant travelled extensively in the years preceding his move to New Zealand in 2017. His sister said in her statement that when Mr Tarrant returned from travel in July 2016, he was a "changed person" and regularly spoke of politics, religion, culture and history. Mr Tarrant's mother explained to Dr Skipworth that her

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[74] See *R v Tarrant* HC Christchurch CRI-2019-009-2468, 5 April 2019 (Minute of Mander J) at [13], where Mander J observed that the ordering of reports under the CPMIP Act was "an entirely routine and prudent step to be taking at this stage".

son struggled with the multicultural countries he visited and during this time he further intensified his opposition to migration and assimilation of cultures. Following an incident in Ethiopia, Mr Tarrant developed a hatred of African people. According to his sister he referred to them as "Untermensch", a term used by the Nazis to describe non-Aryan people. Mr Tarrant's sister also spoke about how Mr Tarrant's blatantly racist views became apparent around 2017. She described his idolisation of Hitler, his hatred of Muslim people and his concern that they would "'out breed' white peoples in Europe".

[179] Mr Tarrant's behaviour in prison was initially non-compliant and he refused to engage with non-Caucasian staff. This behaviour did not continue however and by the time Dr Skipworth prepared his first report, Mr Tarrant's behaviour and overall compliance with prison rules did not give rise to concerns.

[180] During Dr Skipworth's assessment of Mr Tarrant he observed that:

> 78. Mr Tarrant was fully orientated to time, place and person and did not present with overt cognitive deficits, though his cognitive functioning was not formally tested. He appeared to enjoy discussing his ideology and the background to his alleged offending as contained in his manifesto.

[181] Dr Skipworth also recorded:

> 83. Although Mr Tarrant's thoughts, actions and behaviour were centrally focused on the meticulous planning and execution of his actions on 15 March for many months, his thoughts did not have the quality of obsessional thoughts in that they were not ego-dystonic (i.e. they were not in conflict with his self-image), nor were they recurring or unwanted thoughts. Further, his violent actions were not compulsive actions as they were not a response to the anxiety typically associated with obsessional thoughts.
>
> 84. There was no evidence of hallucinatory phenomena, and he denied experiencing any perceptual abnormalities.
>
> 85. Mr Tarrant did not describe nightmares, flashbacks or intrusive memories of the killings. He did not describe being traumatised by his attack, and was not avoiding discussing or thinking about the events of 15 March. He did not evidence signs or describe symptoms of hyperarousal such as a startle response to loud noise.
>
> 86. Mr Tarrant was insightful regarding his situation and future prospects.

[182] In summary, Dr Skipworth found:

(a) there was no evidence "that Mr Tarrant is, or has at any time in the past, suffered from a psychotic disorder";

(b) Mr Tarrant's actions were not compulsive actions and he showed no evidence of obsessive compulsive disorder;

(c) Mr Tarrant's behavioural patterns were "not sufficiently severe or restricted to meet a diagnosis of autism spectrum disorder";

(d) "[t]here was no evidence of a major depressive disorder";

(e) "Mr Tarrant did not present with symptoms suggestive of post-traumatic stress disorder; and

(f) there was "insufficient information to make a formal diagnosis of personality disorder".

[183] Dr Skipworth applied the recognised criteria when assessing Mr Tarrant's fitness to stand trial and concluded:

(a) Rather than suffering from a mental impairment, his convictions had "the hallmarks and characteristics of a belief system developed over many years consistent with his life experience, developing personality, ideology and beliefs".

(b) Mr Tarrant had the ability to conduct a defence or instruct counsel to do so.

(c) Mr Tarrant had the ability to plead and satisfied all other criteria for being fit to stand trial.[75]

Mr van Rensburg's report

[184] Mr van Rensburg is the Principal Psychologist at the Mason Clinic. He interviewed Mr Tarrant on 17 April and 15 May 2019 for a total of four and a half hours and interviewed Mr Tarrant's mother on 31 May 2019 by way of a telephone call. Mr van Rensburg also had access to the statements made to police by Mr Tarrant's mother and sister and a range of material regarding Mr Tarrant's background, his offending and his conduct in Auckland Prison.

[185] Mr Tarrant refused to participate in any form of intelligence assessment telling Mr van Rensburg that regardless of the test results it would not be to his advantage to have his intelligence scores revealed. Nevertheless, Mr van Rensburg informally assessed Mr Tarrant's intellectual abilities as being in "the upper end of the average range".

[186] Mr Tarrant did consent to undergo the Millon Clinical Multiaxial Inventory-III (MCMI-III) test to assess his personality profile. Mr Tarrant's answers to this test revealed that he had no severe personality pathology or severe mental illness, although he did show elevations in six of the clinical personality scales and three of the clinical syndrome (mental illness) scales. Mr van Rensburg observed that while none of the elevated scales indicated a "full blown personality disorder or clinical syndrome", the number of significantly elevated scales was of concern. Mr van Rensburg noted that the likelihood of a personality disorder diagnosis may increase where a large number of scales show significant elevations. Nevertheless, Mr van Rensburg was satisfied that even if Mr Tarrant had a personality disorder, it was not sufficiently severe to be a mental impairment within the definition of unfitness to stand trial under the CPMIP Act.

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[75] These criteria included the ability to adequately understand the nature, purpose and possible consequences of the proceedings, the ability to understand the charges, the ability to exercise the right of challenge, the ability to follow the course of the proceedings, the ability to understand the substantial effects of the prosecution evidence, and the ability to make his version of the facts known to the court and to counsel. See *Nonu v R*, above n 30, at [27], referring to *R v Presser*, above n 31, at 48.

[187] In his summary, Mr van Rensburg said:

> 98. … Mr Tarrant displayed behaviour patterns or personality traits that are maladaptive but they do not objectively meet severity levels that would qualify as a mental impairment. In my opinion he does not currently display cognitive or emotional symptoms that would preclude him from pleading, instructing his legal counsel or meaningful participation in the court proceedings.

[188] While acknowledging that ultimately it was a decision for the Court, Mr van Rensburg was of the opinion that Mr Tarrant was not unfit to stand trial.

Dr Skipworth's second report

[189] Dr Skipworth's second report was prepared in anticipation of Mr Tarrant being sentenced in August 2020. By that stage, Mr Tarrant had terminated the services of Mr Tait and Mr Hudson. The Court appointed Mr Hall KC and Mr Lange to be standby counsel for Mr Tarrant. Those lawyers sought Dr Skipworth's second report which is dated 13 August 2020.

[190] In preparing his second report Dr Skipworth assessed Mr Tarrant at Auckland Prison on 28 July and 11 August 2020 over a total period of four hours. He also spoke to Mr Tarrant by phone on 6 August 2020 and accessed the material he had used when he prepared his first report concerning Mr Tarrant's fitness to stand trial.

[191] Mr Tarrant told Dr Skipworth in July and August 2020 that although he identified himself in his manifesto as a white European "ethno-nationalist" he no longer had such views. He said "the ideology referred to in his manifesto was chosen to facilitate the violent resolution of internal conflict he was experiencing, which he expected would end in his death".

[192] Mr Tarrant told Dr Skipworth that he was not honest when he was first interviewed by the police on 15 March 2019, or when he was assessed by Dr Skipworth in 2019. Mr Tarrant expressed remorse about his offending to Dr Skipworth although the psychiatrist observed "[t]he depth of Mr Tarrant's remorse for his actions is difficult to gauge".

[193] Mr Tarrant told Dr Skipworth that he expected to be sentenced to life imprisonment without parole and that he did not wish to oppose that sentence unless he was suffering from mental health issues that were relevant to his culpability. Having said that, Mr Tarrant also said he regarded the prospect of life without parole as "a fate worse than death". Dr Skipworth assessed that in the future, Mr Tarrant is "likely to believe he has nothing to lose, and would regard being killed by Corrections Officers or other prisoners as a desirable outcome". Dr Skipworth assessed Mr Tarrant as being at a high risk of suicide. We will return to this topic when reviewing the prison conditions that applied to Mr Tarrant when he was on remand.

[194] Dr Skipworth's mental status assessment of Mr Tarrant was in all material respects unchanged from when he prepared his 2019 report. In summary Dr Skipworth:

(a) "found no evidence that Mr Tarrant either was, or has at any time in the past, suffered from a psychotic disorder";

(b) found Mr Tarrant's offending was not the product of "compulsive actions, and he showed no evidence of obsessive compulsive disorder";

(c) concluded that since his offending "Mr Tarrant has not presented with symptoms suggestive of post-traumatic stress disorder";

(d) "found no evidence of a major depressive disorder" either at the time of his assessment or at the time of the offending; and

(e) concluded that Mr Tarrant did not meet the diagnostic criteria for autism spectrum disorder.

Mr van Rensburg's second report

[195] Mr van Rensburg's second report was also produced at the request of Mr Hall and Mr Lange and was compiled after Mr van Rensburg interviewed Mr Tarrant over a combined period of about four and a half hours on 3 and 10 August 2020.

[196] Mr Tarrant also told Mr van Rensburg that his current views about his offending were different from when he was assessed by Mr van Rensburg in 2019. He said he was remorseful and regretted his offending saying "nothing good came from it". Mr van Rensburg reported Mr Tarrant stating that "he fully accepts responsibility for what he did but wants the Court to know that he no longer identifies with the beliefs that caused him to launch the attacks".

[197] Mr van Rensburg noted the reliability of Mr Tarrant's "changing motives remains questionable and is evidence of the labile nature of his personality and related mood swings."

[198] Mr van Rensburg administered two psychometric tests when he met with Mr Tarrant on 1 August 2020:

(a) First, the Personality Assessment Inventory. This test reaffirmed the finding of the earlier MCMI-III test that there were "no prominent indications of psychotic symptoms" present in Mr Tarrant. There were however indications of traumatic stress, severe depression and anxiety.

(b) Secondly, the Trauma Symptom Inventory-2. The results of this test reaffirmed Mr Tarrant's high scores in the areas of suicidal ideation, reaction to traumatic experiences, depression, anxiety and identity related issues.

[199] Mr van Rensburg explained:

> 48. The test results converge to provide a picture of persistent feelings of depression, which may have developed into more acute symptoms of depression and anxiety. These symptoms are closely associated with signs of suicidality at the high end of the relevant indicators. There are strong indications of suspiciousness and mistrust in his relations with others, which were more pronounced at the current assessment compared to last year's. These lead to hypervigilance and resentment as a result of perceived slights and insults. He has a poorly established self-concept and his attitude about himself may fluctuate between harsh self-criticism and severe self-doubt to periods of relative self-confidence. However, all the test results indicate the absence of psychotic symptoms or thought disorder.

[200] In his assessment, Mr van Rensburg concluded that Mr Tarrant did not have diminished intellectual capacity at the time of his offending, nor did he display symptoms of that nature at the time of the 2020 assessment.

Mason Clinic reports

[201] Within days of Mr Tarrant's arrival at Auckland Prison, Corrections established a Multi-Disciplinary Team (MDT) for Mr Tarrant. It is usual practice for an MDT to be established to manage complex or high-risk prisoners. The MDT responsible for Mr Tarrant was chaired by Witness C. He explained that in Mr Tarrant's case, the objectives of the MDT were to:

(a) "[m]onitor Mr Tarrant's behaviour and presentation to identify any positive progression and escalate any concerns or issues relating to risk or wellbeing";

(b) "[d]etermine, in the light of all available information and evidence, the most appropriate management plan for Mr Tarrant which prioritises safety, security and wellbeing"; and

(c) "[p]rovide recommendations … for … the care and management of Mr Tarrant … includ[ing] recommendations regarding Mr Tarrant's at-risk status and at-risk management plan".

[202] One of the sources of information relied upon by the MDT were reports from the Mason Clinic. Whenever the MDT had concerns about Mr Tarrant's mental health it engaged the Mason Clinic to assess him. Witness C explained that in Mr Tarrant's case, the threshold for referral to the Mason Clinic was low and "any concerning behaviour that [was] out of the ordinary for him [would] result in a referral".

[203] Exhibited to Witness C's affidavit were nine reports (referred to as "discharge letters" by Witness C) prepared by psychiatrists at the Mason Clinic concerning the period from 9 May 2019 through to 3 November 2020. We will now briefly summarise the key elements of those reports.

Report of 9 May 2019

[204] Dr Pillai reported that he had assessed Mr Tarrant and found no evidence of major mental illness, although Mr Tarrant may have had "recurrent depression with suicidal ideation":

> … Mr Tarrant appears to have high trait anxiety evident throughout his life. This anxiety has led to perfectionism, obsessional pursuit of some activities and interests (but avoidance of others) and somatic preoccupation. Despite the extreme nature of the alleged offending, there is no other information available to us suggesting substantial antisocial personality disorder or a pervasive developmental disorder such as an autism spectrum disorder.

[205] Dr Pillai observed that there was a high long-term risk of suicide and that "[l]ong term close observation [of Mr Tarrant] may be necessary to mitigate this risk".

Report of 19 August 2019

[206] The author of this report said that Mr Tarrant did not present with "a persistent and pervasive disturbance of mood" and that he was "vulnerable to the development of Major Depression". This report noted that Mr Tarrant had the characteristics of a person at very high risk of self-harm.

Report of 16 September 2019

[207] This report was prepared after Mr Tarrant had been granted access to his manifesto. Dr Pillai noted that Mr Tarrant's mood had improved and his suicide risk had decreased following a renewal of his beliefs after reading his manifesto. Nevertheless, Dr Pillai was of the view that Mr Tarrant's suicide risk remained high.

Report of 11 October 2019

[208] The author of this report recorded Mr Tarrant's mood had "substantially lifted" over the past three months and the risk of self-harm had "substantially diminished":

> However the risk of harm to others has likely elevated in the same way. He now justifies violence on the basis of his commitment to a political cause and the survival of his "people". Must be considered a very high risk of harm to others …

Report of 7 January 2020

[209] Dr Chua reported that Mr Tarrant showed no "signs or symptoms indicative of a melancholic depression or other serious mental illness such as psychosis". Nevertheless he remained "at a significant risk of self-harm/suicide".

Report of 8 April 2020

[210] In this report, Dr Chua noted that Mr Tarrant had "previously had periods of low mood if not depression". She also noted Mr Tarrant had lost weight and that there was "an apparent significant change in his thinking as reflected by his change in plea".

[211] Nevertheless, Dr Chua thought there were no grounds for "assertive assessment or treatment because there have been no indications of imminent risks or overt decline in his mental state". Dr Chua was of the view that Mr Tarrant "should continue to be managed as a prisoner with a high risk of suicide and harm to others".

Report of 19 May 2020

[212] Dr Petaia reported that Mr Tarrant did not present with a serious mental illness such as major clinical depression or psychosis that warranted urgent psychiatric treatment. He nevertheless remained at "a chronic high risk of suicide".

Report of 24 June 2020

[213] Dr Chua reported that there had been no indicators of imminent risk or overt decline in Mr Tarrant's mental state, and that there was no presence of a serious mental illness. It was recommended however that he "continue to be managed as a prisoner with a high risk of suicide and harm to others".

Report of 3 November 2020

[214] Dr Chua again assessed Mr Tarrant and concluded:

> … there were no overt symptoms suggestive of mood or psychotic disorder. He described paranoid ideas involving the officers purposely causing him misery (eg: the officers were purposely trying to keep him awake, yelling out for him to kill himself and saying that they should give him a razor blade for him to kill himself) which likely stemmed from his current predicament

> (convictions and restrictive management) and personality structure. There are several features of narcissistic personality disorder which included having a grandiose sense of self-importance, having a sense of entitlement and shows arrogant, haughty behaviours or attitudes and lack of empathy.

[215] Dr Chua recommended Mr Tarrant continued to be managed as a prisoner with a high risk of suicide and harm to others.

Witness B's evidence

[216] Witness B is a clinical psychologist in Australia and was the only witness called to support Mr Tarrant's case. He has practised in both hospital and private practice settings for approximately 50 years. Witness B was engaged by Mr Tarrant's counsel to consider "psychological coercion which included isolation, solitary confinement, sleep deprivation and torture on a person's psyche" and how that related to Mr Tarrant's decision to plead guilty in order "to do anything to make those conditions stop".

[217] Witness B interviewed Mr Tarrant via audio visual link on 13 August and 6 September 2024 over a total period of three hours. Witness B had access to Mr Tarrant's affidavit and the Court of Appeal casebook, including the reports from Dr Skipworth and Mr van Rensburg. He also had access to a document produced by Corrections that contained observations of Mr Tarrant recorded by Corrections staff.

[218] Witness B administered the Depression Anxiety Stress Scale (DASS-21) to Mr Tarrant. When that test was applied to determine Mr Tarrant's level of depression, anxiety and stress in September 2024, the results were all in the normal range. Witness B then attempted to retrospectively apply the DASS-21 to Mr Tarrant's mental state between April and June 2020. This approach produced results in the extremely severe range for symptoms of depression, anxiety and stress.

[219] Witness B drew our attention to a study by Dr Grassian into the psychiatric effect of holding prisoners in solitary confinement.[76] Witness B told us that study demonstrated that severe psychiatric harm can be caused to prisoners who are confined

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[76] Stuart Grassian "Psychiatric Effects of Solitary Confinement" (2006) 22 Washington University Journal of Law and Policy 325.

to a cell alone for long periods of time with minimal environmental stimulation and minimal opportunity for social interaction.

[220] Witness B questioned Mr Tarrant on why the reports prepared by Dr Skipworth and Mr van Rensburg do not refer to him having any obvious mental health issues. Witness B told us that "Mr Tarrant said he was fearful to show any sign of weakness and/or mental deterioration which could be leaked to the public and undermine his cause".

[221] Mr Tarrant also told Witness B that the 2019 and 2020 psychiatric and psychological reports were deficient because they did not "explore the conditions in which he was held, or take into account the obvious effects of solitary confinement, isolation and sleep deprivation and violations of his privacy".

[222] Witness B said:

> 171. Based on Mr Tarrant's description of his level of functioning at its worst point, as reflected in [DASS-21], results as if he was completing the test at his lowest point, I formed the opinion Mr Tarrant was suffering a mental health impairment due to the effects of solitary confinement, sleep deprivation and "harassment" impacting on his ability to think clearly (rational thought), impacting negatively on mood, volition, perception and memory. Based on Mr Tarrant's description of his mental state at that time, the level of mental health impairment was significant and would have impacted negatively on his emotional wellbeing, judgement and behavioural choices.
>
> …
>
> 177. In my opinion, and on the balance of probabilities, and based on Mr Tarrant's description of being subjected to solitary confinement, sleep deprivation, harassment, violation of privacy, the result of constant monitoring (e.g. cameras), and "coercion" impaired his emotional wellbeing, judgement, cognitive processes and ability to make informed choices.

Professor Ogloff's evidence

[223] Professor Ogloff holds qualifications in both law and psychology. He was the Director of Mental Health Services for British Columbia Corrections and held clinical, academic and administrative appointments in Canada and the United States. He was a Professor of Clinical Forensic Psychology at Monash University from 2001 to 2013

and is currently a Professor of Forensic Behavioural Science and Executive Dean of the School of Health Sciences at Swinburne University of Technology in Melbourne.

[224] Professor Ogloff was retained by the Crown to review Witness B's methodology and conclusions. He was not asked to assess Mr Tarrant. Professor Ogloff had access to the same written materials that were provided to Witness B.

Psychological effects of solitary confinement

[225] Professor Ogloff explained that during his career he was influenced by Dr Grassian's article but noted the article is now almost 20 years old and was based on Dr Grassian's experiences in prisons that had very extreme social isolation units. Professor Ogloff noted that critics have questioned the study conducted by Dr Grassian on the grounds that it "was based on a limited sample size and lacked control groups, which may affect the robustness of his conclusions". Professor Ogloff also said that concerns have been raised "about potential confirmation bias, as the [Grassian] study focused on individuals already exhibiting severe psychological symptoms".

[226] Professor Ogloff informed us that in the two decades since Dr Grassian's article:[77]

> 24. … meta-analytic findings involving very large samples [of] prisoners who have been housed in conditions of solitary confinement show a small to moderate relationship between prisoners exposed to solitary confinement and psychological disturbances and mental illness …

[227] Professor Ogloff cited a study by R D Morgan and others which concluded:[78]

> … the magnitude of the adverse effects for administrative segregation placement tended to be small to moderate, and no greater than the magnitude of effects for incarceration, generally speaking.

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77 Footnote omitted.

78 R D Morgan and others "Quantitative syntheses of the effects of administrative segregation on inmates' wellbeing" (2016) 22 Psychology, Public Policy, and Law 439 at 456.

[228] Professor Ogloff informed us that taken together, the more recent studies, which encompass all relevant studies that had been conducted:

> 26. … show that many people who have been held in solitary confinement experience adverse psychological effects and some develop increased psychiatric symptomatology. However the effects are low to moderate, most people are not affected to a significant extent, and those with preexisting serious psychiatric illnesses are more detrimentally affected.
>
> …
>
> 38. In conclusion, solitary confinement has been associated with a small to moderate level of psychological and cognitive harm in some individuals, particularly those with pre-existing vulnerabilities. The severity of these effects depends on both individual and environmental factors. Where solitary confinement is deemed necessary, mitigating strategies can help reduce the risk of psychological injury.

Limitations to the DASS-21

[229] Professor Ogloff expressed three significant concerns about Witness B's reliance on Mr Tarrant's response to the DASS-21.

[230] First, Professor Ogloff explained that the DASS-21 is:

> 63. … a self-report questionnaire designed to measure the severity of symptoms related to depression, anxiety and stress. Although used in clinical, research and occupational settings, the DASS-21 is not a diagnostic tool. Rather its purpose is to assess the severity of current symptoms and monitor changes over time, …

Professor Ogloff stated that Witness B's report did not appear to give any consideration to the limitations of the DASS-21 as a "self-report screening measure" as opposed to a diagnostic tool.

[231] Secondly, the DASS-21 "cannot be used to determine retrospective mental functioning — that is, to assess a person's psychological state at a previous point in time. It is designed for current state assessments".

[232] Professor Ogloff also said:

> 68. In reviewing existing research, no studies have been identified where the DASS-21 has been employed to assess retrospective emotional states. The instrument's emphasis on recent experiences makes it unsuitable for

> accurately measuring emotions or mental health conditions from earlier periods.

[233] Thirdly, while it is valued for its brevity and psychometric properties in clinical and research settings, the DASS-21 was not developed to detect intentional fabrication or exaggeration of symptoms. Therefore, "the measure is inherently vulnerable to manipulation".

Inconsistencies between Mr Tarrant's retrospective descriptions and the reports by Dr Skipworth and Mr van Rensburg

[234] Professor Ogloff was particularly critical of Witness B's reliance on Mr Tarrant's retrospective description of his mental health characteristics and Witness B's lack of regard to the reports prepared by Dr Skipworth and Mr van Rensburg:

> 61. In my opinion, [Witness B's] dismissal of these independent reports is inappropriate. Most importantly, the experts evaluated Mr. Tarrant in 2019 and 2020 prior to and following the time he pleaded guilty. Their assessments were methodically conducted, expressly considered the criteria for fitness to plead and, in the case of Mr. van Rensburg, included psychological tests that included validity scales. By contrast, [Witness B] relied extensively on Mr. Tarrant's retrospective self-reports and does not acknowledge that [they] are — at least to some extent — self-serving.

Analysis: Mr Tarrant's state of mind when he pleaded guilty

Assessment of Witness B's evidence

[235] We commence our analysis by considering Witness B's evidence and our reasons why we did not find it cogent.

[236] The starting point is Witness B's instructions. His evidence was predicated on the basis that Mr Tarrant pleaded guilty in response to "psychological coercion" and "torture" in order to change his prison conditions. There was however no evidence that supported this proposition. The closest that Mr Tarrant came to suggesting that he pleaded guilty in order to change his prison conditions concerned his response to the sentencing process which occurred five months after he pleaded guilty. Witness B needed to focus upon Mr Tarrant's state of mind at the time he pleaded guilty.

[237] Furthermore, when cross-examined, Witness B resiled from many of the propositions he initially advanced, but at the same time persisted with the contention that his conclusions had not depended on those propositions despite the fact that his written report clearly indicated that they did.

[238] More specifically our concerns can be distilled to the following points.

[239] First, Witness B said in his report that Mr Tarrant was suffering a significant mental impairment at the time he entered his guilty pleas. That conclusion was at complete odds with the four reports completed by Dr Skipworth and Mr van Rensburg. It was also contrary to the assessment of all of Mr Tarrant's counsel, both trial and appellate. When cross-examined on this aspect of his report, Witness B quickly resiled saying that he did not disagree with any aspect of the findings of Dr Skipworth and Mr van Rensburg. This volte-face profoundly undermined the credibility of the key conclusions in Witness B's report.

[240] Secondly, although he defended the conclusions he reached from administering the DASS-21 instrument, Witness B said that he did not take issue with anything that Professor Ogloff said about the limitations of the DASS-21 methodology. This change of position also significantly eroded the stance Witness B adopted in his written report.

[241] Thirdly, Witness B's understanding of the effect of long-term segregation on prisoners' mental wellbeing was firmly anchored in Dr Grassian's study. He did not acknowledge in his report the more recent studies that Professor Ogloff referred to which established that prisoners in segregation reacted differently to their conditions. Many prisoners do not suffer psychological ill effects from being in segregation. Again Witness B said in cross-examination that he took no issue with Professor Ogloff's evidence on this point and the studies Professor Ogloff cited. Witness B also did not appear to appreciate that whenever Mr Tait or Mr Hudson raised concerns with Corrections about Mr Tarrant's prison conditions, steps were taken to address those concerns.

[242] Finally, although he did not have access to the evidence of Mr Tait and Mr Hudson and did not read the reports from the Mason Clinic (despite the existence

of those reports being known to him) it is very difficult to reconcile his findings with that evidence. We agree with Professor Ogloff's concern that Witness B appears to have fallen into the trap of accepting Mr Tarrant's account at face value without considering the surrounding evidence and the thorough and uncontested reports prepared by Dr Skipworth and Mr van Rensburg.

[243] In summary, Witness B's opinions in support of Mr Tarrant's case were significantly undermined by the fact the basis upon which he was asked to assess Mr Tarrant's state of mind when he pleaded guilty was not borne out by the evidence, and by his responses to the Crown's questions of him in cross-examination. Ultimately, we have derived little assistance from his evidence.

Our findings concerning Mr Tarrant's state of mind when he pleaded guilty

[244] Having regard to all the evidence, we reject Mr Tarrant's evidence that in the weeks leading up to his guilty pleas he was in a "state of nervous breakdown" and that he had a "mental breakdown" which meant he was "incapable of rational decision making and … did not make an [adequately] informed choice about [his] pleas". Similarly, we reject his assertion that within 11 months of being imprisoned he had been "driven into … near-insanity by the actions of the staff and management [of the prison] and was struggling to stay alive".

[245] As we have previously noted, Mr Tarrant acknowledges that he misused the term psychosis in his affidavit. He no longer maintains that he was psychotic in the sense that he "never suffered any hallucinations a[t] any stage".

[246] We accept that it is likely Mr Tarrant was somewhat anxious and suffering a degree of depression in the weeks preceding his guilty pleas. We also accept that he was regularly at risk of self-harm and suicide. He was nevertheless able to function at a high level of cognitive ability as illustrated:

(a) by his calculated and strategic decision to plead guilty the day after New Zealand entered into COVID-19 lockdowns in order to catch the media off guard;

(b) his determination to be convicted on the terrorism charge, given its fundamental importance to his ideology;

(c) his ability to engage with the Commission after he pleaded guilty in a way that raised no concerns about his cognitive abilities; and

(d) his decision to feign remorse in an effort to influence his sentence.

[247] Our reasons for reaching the conclusions we have summarised above are as follows.

[248] First, internal inconsistencies in Mr Tarrant's own evidence, including his descriptions of the severity of his mental state in the period leading up to his guilty pleas. For example, when he was cross-examined, Mr Tarrant said he was not capable of understanding proceedings, communicating with his lawyers or understanding the effects of his decision. He later acknowledged, however, that he could understand his lawyers and knew the effects of pleading guilty:

> Q. Right, the question was: in March 2020, on the day that you pleaded guilty to the charges, you could understand the proceedings, communicate with your lawyers, and understand the effects of your decisions, couldn't you?
>
> A. I would actually say no. At that time, I was actually quite irrational, and I was not certain of what my thoughts were or what my ideas were or what I should be doing. [S]o I would say no, actually, I was probably not fit to plead at that point.
>
> …
>
> Q. … You did understand what was happening, you could communicate with them, and you knew the effects of pleading guilty?
>
> A. I did understand what they were saying. And I could communicate, even though at that time I was sort of having a – somewhat of a nervous exhaustion. I was having difficulty communicating in terms of how I spoke, but I think the issue is: did I really know what I wanted to do, or what would be a good idea, …
>
> …
>
> Q. … [Mr Tait and Mr Hudson] say that over the whole time that they represented you, they had no concerns on this front, that you were not understanding or unable to communicate or not following?

A. I don't think I had any issues in regards to that at any point, not following or unable to understand them, I think I could understand them just fine.

…

Q. And you knew that pleading guilty meant accepting responsibility, didn't you?

A. Sure.

Q. And that there wasn't going to be a trial as a result.

A. Sure.

Q. You knew that life without parole was a likely outcome as well, didn't you?

…

A. … Correct.

[249] Mr Tarrant endeavoured to rationalise these conflicting positions by suggesting that he gained mental clarity when he spoke to other people such as his lawyers. This was a far from convincing explanation. Regardless, Mr Tarrant did eventually accept that he understood the advice he received from his lawyers and that he knew the consequences of pleading guilty.

[250] Secondly, Mr Tarrant's description of his seriously deteriorated state of mind is at complete odds with the observations of prison authorities and the contemporaneous records made by those responsible for monitoring him.

[251] Mr Tarrant maintained that prison staff lied about what was happening to him and would purposefully not write down or record his obvious mental distress. That assertion is however difficult to reconcile with Mr Tarrant's other evidence that staff recorded his "every action".

[252] It is noticeable how detailed the prison records are of Mr Tarrant's time in prison. The daily update reports written by senior Corrections officers were reviewed by the Principal Corrections Officer each day and then reviewed on a weekly basis by the MDT. It is also significant that any concern about Mr Tarrant's mental wellbeing would immediately trigger a request from the MDT to have the Mason Clinic assess

Mr Tarrant and that when there were concerns about his "low mood if not depression" and his risk of self-harm and suicide, they were in fact recorded. But the medical records in the period leading up to Mr Tarrant's pleas of guilty convey the picture of a man who was not in a state of melancholic depression or experiencing any other serious mental illness such as psychosis. Rather, the reports convey that Mr Tarrant's mental state during the relevant time was nowhere near as serious as he claims.

[253] We have noted at [128] that Witness C raised concerns about Mr Tarrant's mental wellbeing in August 2021. This is further evidence of Corrections staff recording information about Mr Tarrant's state of mind and undermines his claim that Corrections staff chose not to accurately record their observations of him.

[254] Mr Tarrant endeavoured to rationalise the difference between his description of his mental state and the observations of those who saw him with another explanation. When cross-examined he told us that he was:

> … doing everything possible to come across as being … quite confident, assured … mentally well, …

[255] He explained he was doing this for political purposes because:

> … how [he] presented [him]self would also reflect [on] the political movement [he is] a part of, so [he] wanted to always put on the best front possible.

[256] Mr Tarrant told us he maintained his outward appearance of normality "for years".

[257] When it was put to Mr Tarrant that it was not possible for his distress and true condition to be both obvious and at the same time concealed, Mr Tarrant changed course and said that he was only concealing his true state from those he did not meet with regularly. This attempt to explain his irreconcilable accounts of his mental state was disingenuous.

[258] Thirdly, Mr Tarrant's claims that in March 2020 he was "quite irrational" and "not certain of what [his] thoughts were or what [his] ideas were" and therefore "not fit to plead [guilty]" is at complete odds with the detailed assessments of Dr Skipworth

and Mr van Rensburg. Those specialists were quite satisfied Mr Tarrant was in fact fit to plead guilty to the charges. As we have noted, Witness B, who initially raised questions about Mr Tarrant's fitness to plead made clear in his evidence that he took no issue with the assessments of Dr Skipworth and Mr van Rensburg.

[259] We have no hesitation in accepting the overwhelming and unanimous opinions of the highly qualified professionals who are satisfied Mr Tarrant was fit to plead guilty. Although they were assessing fitness to plead, and he admits he was fit to plead, the fact remains that if his graphic descriptions of his mental state were true they would have been observed by the court-appointed assessors and reported on. In our view, his assertions about his mental health are a shallow fiction which he has constructed to try and enhance his appeal.

[260] Just as significantly, Mr Tarrant's claims about his seriously eroded mental capacity is at odds with the evidence of his two experienced and competent trial lawyers who had extensive interactions with Mr Tarrant over a significant period of time and had no concerns about Mr Tarrant's mental capacity when he pleaded guilty. On the contrary, they were impressed by his ability to grasp all of the legal issues associated with his case and to read and absorb large quantities of detailed material supplied by the prosecution. Mr Tarrant continued to display full awareness and cognitive competence when, in the weeks following his guilty pleas, he engaged with giving evidence to the Commission and consulted other lawyers who also gave evidence of not observing any mental health issues.

[261] We were impressed by the extraordinary lengths that Mr Tait and Mr Hudson took to attend upon Mr Tarrant and answer his questions, and the thorough and compelling advice which they gave him. There was no basis to suggest they were mistaken or endeavouring to mislead us when they described Mr Tarrant's grasp of legal issues, his understanding of the criminal justice process, and the consequences of pleading guilty.

[262] Similarly, neither Mr Tait nor Mr Hudson had any reason to mislead us when they said Mr Tarrant always intended to plead guilty, and that the only issue was when he would do so. Their evidence on this point, and all other issues, was entirely

plausible in light of the overwhelming strength of the case against Mr Tarrant. Pleading guilty was entirely logical as was the time he chose to do it.

[263] As Counsel A acknowledged, if we accepted the evidence of Mr Tait and Mr Hudson that Mr Tarrant had always intended to plead guilty, as we do, that would seriously undermine his case.

[264] Mr Tarrant accepted that his lawyers advised him he would not be allowed to run the defence he wished to rely upon. That would obviously be the case regardless of whether he was represented by counsel in a trial or was representing himself.

[265] Finally as regards Mr Tarrant's expressions of remorse to the pre-sentence report writer and the court-appointed health assessors immediately prior to sentence, this was presented as evidence of his mental deterioration because it showed he had lost his true self. However, it is noteworthy that there was no evidence he ever expressed remorse to his lawyers. That and evidence that throughout he declined to countenance any plea deal over the terrorism charge means in our view the much more likely inference is that the expressions of remorse were motivated by the hope (albeit it a forlorn one) that they might assist him at sentencing.

[266] To summarise, Mr Tarrant lied when he described his state of mind during the period leading up to him pleading guilty. He was not suffering from a mental impairment or any other form of mental incapacity which rendered him unable to voluntarily change his pleas to guilty. He endeavoured to mislead us about his state of mind in a weak attempt to advance an appeal in circumstances where all other evidence demonstrated that he made an informed and totally rational decision to plead guilty.

Were Mr Tarrant's guilty pleas voluntary?

[267] Similarly, we are very satisfied that Mr Tarrant's guilty pleas were voluntary in the sense identified by the authorities which we have explained at [50]–[56]. He was not coerced or pressured in any way to plead guilty. He chose to do so on 26 March 2020 in order to take advantage of New Zealand entering a COVID-19 lockdown. He believed that pleading guilty at that time would catch media "off-guard". It was fundamentally important to him to be convicted on the terrorism

charge. He knew he would not be able to run his intended defence. He may also have been motivated by a desire to be interviewed by the Commission in a way that would have no impact upon a trial, which could only occur if he pleaded guilty.

[268] Our conclusions relating to Mr Tarrant's state of mind when he pleaded guilty renders it unnecessary to labour upon his argument that his so-called involuntary decision to plead guilty was induced by his prison conditions. Suffice for us to make the following points.

[269] First, we are in no doubt that the segregation of Mr Tarrant from the time he entered Auckland Prison created for him levels of stress, anxiety and depression. However, Mr Tarrant was expecting to be placed in isolation from other prisoners and his anticipation of the conditions he faced may have assisted him in dealing with what was undoubtedly a challenging environment.

[270] Secondly, Corrections staff carefully monitored Mr Tarrant because he was often at risk of self-harm and suicide. The careful monitoring of Mr Tarrant was supported by independent medical assessments concerning his risk of self-harm and suicide. Contrary to Mr Tarrant's evidence, he was monitored because of concerns about his welfare and not to torment him or treat him cruelly. The segregation and monitoring of Mr Tarrant was underpinned by concerns for his wellbeing and not through any desire to punish him.

[271] Thirdly, the reports which Mr Tarrant relied upon about conditions in the PERU concerned events at least two to three years after the time when Mr Tarrant decided to plead guilty. Those reports did not focus specifically on Mr Tarrant and do not address the expert evidence provided by Professor Ogloff which establishes that many prisoners in segregation do not suffer any psychological ill effects from being in segregation. In Mr Tarrant's case the evidence overwhelmingly demonstrates that he was not suffering any significant psychological impacts as a result of his prison conditions at the time he pleaded guilty. Consequently, the reports relied upon by Mr Tarrant and his counsel have not assisted us in assessing the effects upon him of the conditions he experienced in prison before he pleaded guilty.

[272] Fourthly, we accept the evidence from Mr Tait and Mr Hudson that whenever Mr Tarrant raised with them concerns about his prison conditions they wrote to prison authorities who responded appropriately to those concerns. They were alive to the potential for mental health issues and would have addressed them had they been concerned.

THE APPLICATION TO EXTEND TIME TO APPEAL

Explanation for the delay

[273] Mr Tarrant said that his mental state "effectively block[ed] [him] from undertaking any legal actions or decisions due to worries about [his] mental state and ability to make rational, informed decisions". He claims that he was mentally unwell until he started to have the company of other prisoners.

[274] He says his health started to improve in late 2020 and early 2021, and it was only once this occurred that he was able to begin to make "rational choices" about an appeal. In addition to his claims relating to his mental state, Mr Tarrant gave three reasons as to why he did not file his notice of appeal until 3 November 2022:

(a) Corrections staff frustrated his access to lawyers;

(b) he could not find a lawyer who was willing to follow his instructions to file a notice of appeal; and

(c) two lawyers whom he engaged between June 2021 and April 2023 ignored his instructions to pursue an appeal.

[275] We have already explained our findings about Mr Tarrant's actual mental state in the period leading up to his decision to plead guilty. By his own admissions, Mr Tarrant's state of mind in the months following his sentence began to improve. That acknowledgement, when coupled with our findings about his state of mind, completely undermines his claim that his mental health precluded him from filing an appeal in a timely manner.

[276] The evidence from Corrections staff refuted Mr Tarrant's allegations that they frustrated Mr Tarrant's access to lawyers.

[277] Aside from limited periods in 2020 and 2021 when COVID-19 lockdown restrictions meant lawyers were not permitted to visit Auckland Prison in person, prison records show Mr Tarrant had almost unlimited access to lawyers. Exhibited to an affidavit sworn by a third witness from Corrections is a schedule of telephone calls facilitated by Corrections staff between Mr Tarrant and approximately 22 lawyers (the records do not identify the names of every lawyer whom Mr Tarrant spoke to). The records show that 48 calls were made to lawyers between 17 June 2021 and 22 October 2022. On approximately eight of those occasions, lawyers were either not available or declined to accept Mr Tarrant's call. The accuracy of those records was not challenged.

[278] Unusually, prison staff went so far as to make direct contact with at least one lawyer to see if that lawyer would work for Mr Tarrant. Witness D explained in his affidavit that, for example, "between 1 and 24 June 2021 offender notes record PERU staff [made] phone calls on behalf of Mr Tarrant, attempting to find him a lawyer". A record dated 3 June 2021 notes "staff have tried to find [him] a lawyer but at present no-one wants to work on his behalf".

[279] The lawyers who acted for Mr Tarrant described their access to him. Aside from on one occasion when Mr Tait forgot to bring his required identification, the lawyers describe having regular access to Mr Tarrant.

[280] Witness D also explained Mr Tarrant had access to over 90 boxes of legal materials and that he also could access an index system outlining what each box contained. He could request two boxes at a time. The evidence from Corrections was that prior to sentencing, Mr Tarrant had access to his legal materials between 8 am and 8 pm each day. After his sentencing he was permitted access to his legal materials from 8 am to 5 pm each day. His access to these materials was increased for a short period in February 2022 from 8 am to 10 pm. Since 31 March 2022, Mr Tarrant has had access to his legal materials between 8 am and 6 pm.

[281] The evidence from Witness D and other Corrections staff concerning Mr Tarrant's access to lawyers and his legal materials was not challenged in any material way by his counsel. Most of that evidence was supported by contemporaneous records and, contrary to Mr Tarrant's assertions, it clearly demonstrated that Corrections staff did not frustrate Mr Tarrant's access to lawyers.

[282] We accept Mr Tarrant was not able to find a lawyer who was willing to accept his instructions to file a notice of appeal. Nevertheless, Mr Tarrant is an intelligent person who had discussed with Mr Hudson the process of filing a notice of appeal in relation to Mander J's decision declining his application to change the trial venue. It is instructive that Mr Tarrant had no difficulty in personally filing his notice of appeal on 3 November 2022. He claims he did not do so earlier because he believed either Dr Ellis or Mr Mansfield KC were going to file a notice of appeal on his behalf.

[283] Dr Ellis was instructed by Mr Tarrant on 17 June 2021 in relation to a proposed coronial inquiry into the deaths of the 51 victims of Mr Tarrant's offending and to obtain a copy of the report completed by the Commission.[79] Dr Ellis's instructions were abruptly terminated in November 2021.

[284] Dr Ellis explained in his evidence the limits to his instructions and was very clear that he did not receive instructions to file a notice of appeal on behalf of Mr Tarrant.

[285] Dr Ellis did discuss an appeal with Mr Tarrant on 1 November 2021. Dr Ellis recalled Mr Tarrant "was not sure he wanted to appeal, but if he did, he wanted to instruct his lawyer to effectively be his mouthpiece". Dr Ellis said he would not act on those terms and their discussion moved on to other matters.

[286] Dr Ellis kept file notes recording most of his interactions with Mr Tarrant. He had approximately 12 telephone conversations with Mr Tarrant. We were told by

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79 Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 | Te Kōmihana Uiui a Te Whakaeke Kaiwhakatuma i Ngā Whare Kōrana o Ōtautahi i Te 15 O Poutū-Te-Rangi 2019 *Ko tō tatou kāinga tēnei: Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (26 November 2020).

Dr Ellis that he was "in no way instrumental in delaying an appeal, [he] was not aware of, or instructed on".

[287] Mr Mansfield was engaged by Mr Tarrant from 14 January 2022 until 19 April 2023 in relation to the coronial inquiry and to investigate a judicial review concerning Mr Tarrant's prison conditions and of the Commission's report.

[288] Mr Mansfield told us he had a general discussion with Mr Tarrant about filing an appeal against his convictions and sentence. Mr Mansfield told Mr Tarrant about the likely success of such an appeal and that there might be some prospect of success in relation to the terrorism conviction and a sentence appeal:

> 11. However, Mr Tarrant expressed a clear intention to appeal all the convictions and on his own behalf. Counsel certainly never had instructions to file an appeal and did not agree to do so.

[289] Mr Mansfield observed that Mr Tarrant was "very informed of his rights", that he "always had a very clear view of what he wanted to do" and that Mr Mansfield had "little ability to influence or control" Mr Tarrant.

[290] We have no hesitation in accepting the assurances of Dr Ellis and Mr Mansfield that they never had instructions to file a notice of appeal on behalf of Mr Tarrant. Furthermore, it is clear from the evidence that Mr Tarrant had a reasonable understanding of the process for pursuing an appeal and was more than sufficiently capable of filing a notice of appeal on his own behalf.

[291] Mr Tarrant has failed by a considerable margin to adequately explain the extraordinarily long delay in filing his notice of appeal.

[292] At [34] we set out the other factors relevant to extending time to file a notice of appeal. We will briefly deal with the key matters.

Strength of the proposed appeal

[293] As we have previously explained, the facts concerning Mr Tarrant's offending are beyond dispute. He has not identified any arguable defence, or indeed any defence

known to the law. We have also rejected his claim that his guilty pleas were the product of him having an irrational state of mind induced by his prison conditions.

[294] Mr Tarrant's proposed appeal is utterly devoid of merit.

The wider interests of society and finality of criminal cases

[295] The wider interests of society, and particularly the victims of Mr Tarrant's offending, strongly favour declining the application to extend time to appeal.

Administration of justice

[296] This Court has devoted five days to hearing and determining Mr Tarrant's appeal. The hearing has involved considerable judicial and court resources. Mr Tarrant cannot validly complain that the Court has failed to properly hear and determine his application. Declining his application to appeal out of time is in the best interests of the administration of justice.

Conclusion

[297] The other factors referred to at [34] neither favour, nor tend against, extending time to appeal.

[298] The absence of merit to the appeal, the lack of any convincing explanation for the delays in filing the notice of appeal and the overall interests of society and the administration of justice outweigh all other considerations and overwhelmingly favour our decision to decline the application to extend time to appeal.

[299] As we have made clear in this judgment, even if we were to determine his appeal against conviction, there are no merits to his appeal and any such appeal would inevitably be dismissed.

SUPPRESSION

[300] At the hearing, the Crown made an application for an order under s 202 of the Criminal Procedure Act suppressing the name of a further Corrections official. The

application was not opposed. As the same safety considerations that applied to Witness C and Witness D also apply to this Corrections official, we granted the application and ordered accordingly. For the purposes of consistency, we make an order under s 202 in respect of Witness C and Witness D.

RESULT

[301] The post-hearing application to abandon the application for an extension of time in which to appeal against conviction is declined.

[302] The post-hearing application to abandon the application for an extension of time in which to appeal against sentence is granted.

[303] The application for leave to appeal against conviction out of time is declined.

[304] Order prohibiting publication of name, address or identifying particulars of Department of Corrections officials pursuant to s 202 of the Criminal Procedure Act 2011. Publication of their occupation is permitted.

[305] We make an order prohibiting publication of this judgment, the media release, and any information therein, until the judgment is made publicly available at 2.00 pm on Thursday 30 April 2026.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent