IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA222/2025
[2026] NZCA 62

BETWEEN	CHRISTOPHER TEAN SALT Appellant
AND	THE KING Respondent

Hearing:	4 November 2025
Court:	Cooke, Walker and Cull JJ
Counsel:	E P Priest and P D Wilks for Appellant M W Nathan for Respondent
Judgment:	6 March 2026 at 12.30 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

B The minimum period of imprisonment of 12 years is set aside and replaced with a minimum period of imprisonment of 11 years.

REASONS OF THE COURT

(Given by Cull J)

[1] Mr Salt appeals his sentence of life imprisonment with a minimum period of imprisonment (MPI) of 12 years.[1] He was convicted by a jury of the murder of Tofimua Matagi (the deceased).[2]

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1 *R v Salt* [2025] NZHC 825 [sentencing notes].
2 Crimes Act 1961, ss 167(b) and 172. Maximum penalty: life imprisonment.

[2] Mr Salt contends that the MPI is manifestly excessive because the starting point for the MPI was too high and insufficient weight was placed on his personal mitigating factors.

Background to the offending

[3] On the evening of 31 August 2023, Mr Salt was at a bar with some friends. The deceased arrived later with work associates. Mr Salt and the deceased met and engaged for a period with others in the outdoor smoking area.[3]

[4] At around 10:30 pm, Mr Salt and the deceased entered the games room and began playing darts. Initially, Mr Salt and the deceased got along well. However, at about 10:55 pm, Mr Salt appeared to become angry at the deceased, walking close to him and speaking intently at his face. The deceased did not appear to respond and prepared to throw his dart. Mr Salt stepped behind the deceased and to his side. As the deceased was about to throw the dart, Mr Salt hit him hard to the side of his face. The force of Mr Salt's punch knocked him to the floor.

[5] Mr Salt then kicked the deceased in the face with significant force. The deceased tried to protect his head with his arms while Mr Salt stood over him. Mr Salt stomped on the deceased's head four times until he was unconscious. The attack lasted about 12 seconds and was captured on CCTV.

[6] Mr Salt then proceeded to rummage through the deceased's pockets. Mr Salt took his cell phone, his passport and his wallet. Mr Salt tried unsuccessfully to roll the deceased onto his side. Mr Salt then left the room, returning to the smokers' area, and left the deceased lying on the ground, unconscious.

[7] Mr Salt removed various items from the deceased's wallet, including bank cards, and gave them to his associates. One of Mr Salt's associates used the deceased's debit card to buy drinks and later used it elsewhere. Mr Salt handed the wallet and passport to one of his associates who returned them to the deceased in his cap. The deceased was still lying on the ground unresponsive.

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3 We adopt Robinson J's summary of the facts: see sentencing notes, above n 1, at [5]–[14].

[8] The deceased remained unconscious on the ground for about an hour and 20 minutes after the assault. Mr Salt and his associates checked on him a couple of times. Mr Salt heard the deceased breathing. They did not call an ambulance. Eventually, the deceased's friends came looking for him and found him lying on the ground, unconscious. Various people, including Mr Salt, asked the bar man to call paramedics. The paramedics carried out CPR, but the deceased was later declared dead. The cause of his death was the blunt force trauma to his head inflicted by Mr Salt.

Sentencing decision

[9] There was no issue that a sentence of life imprisonment had to be imposed.[4]

[10] The first issue the Judge addressed was whether s 104 of the Sentencing Act 2002 (the Act) applied and the imposition of an MPI of 17 years' imprisonment was warranted, as the Crown submitted. The Judge was not satisfied beyond reasonable doubt that Mr Salt carried out his attack on the deceased for the purpose of robbing him, noting that the evidence was consistent with an opportunistic robbery after the attack. He concluded that the murder was not committed in the course of another serious offence and s 104(1A)(d) did not apply.[5]

[11] The Judge identified the following aggravating features to be present in the offending: the use of significant violence including attacks to the head until the deceased was unconscious; the deceased's vulnerability as Mr Salt attacked him from behind and while he was on the ground; a degree of callousness as the deceased was left unconscious for well over an hour before an ambulance was called, although the Judge noted that Mr Salt did not flee; and the devastating impact on the deceased's family and their wider community. The Judge rejected Mr Salt's submission, as did the jury, that the deceased told him he had a gun and that Mr Salt was acting in self-defence.[6]

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4 At [20]; and Sentencing Act 2002, s 102.
5 At [29]–[32].
6 At [34].

[12] In considering the appropriate MPI under s 103 of the Act, the Judge took into account the aggravating factors and the authorities referred to by the parties, and reached a starting point for the MPI of 12 and a half years.[7]

[13] The Judge observed that personal circumstances carry less weight in sentencing for murder, compared to other criminal offending. The Judge declined to impose a reduction for remorse. While the Judge acknowledged Mr Salt had accepted responsibility for causing the deceased's death, he noted that it would have been difficult for him to deny, given that the offending was captured on CCTV. The Judge imposed a six-month reduction for Mr Salt's background. This included the abuse he suffered in state care; that he likely suffers from PTSD; his rehabilitative prospects arising from work he had done in prison; and his desire to continue his relationships with his teenage children.[8]

[14] The Judge sentenced Mr Salt to life imprisonment with an MPI of 12 years.[9]

Principles on appeal

[15] The appellant's right of first appeal against sentence is under s 244 of the Criminal Procedure Act 2011. An appeal against sentence is an appeal against the Judge's discretion.[10]

[16] To succeed, Mr Salt must show that there was an error in the sentence reached and that a different sentence should have been imposed.[11] The Court will not intervene where the sentence is within the range available to the sentencing Judge.[12] The Court will intervene only if the sentence is manifestly excessive.[13]

[17] Section 103 of the Act provides that if a court sentences an offender convicted of murder to imprisonment for life, it must order that the offender serve an MPI that is not less than 10 years and is the minimum term of imprisonment the court considers

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7 At [37].
8 At [38]–[52].
9 At [54].
10 *Filivao v R* [2024] NZCA 103 at [30].
11 Criminal Procedure Act 2011, s 250(2).
12 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].
13 *Kumar v R* [2015] NZCA 460 at [81].

necessary to satisfy all or any of the following purposes: holding the offender accountable for the harm done to the victim and the community by the offending; denouncing the conduct in which the offender was involved; deterring the offender or other persons from committing the same or a similar offence; and protecting the community from the offender.[14]

Grounds of appeal

[18] Ms Priest, for Mr Salt, submits the starting point for the MPI of 12 and a half years' imprisonment was too high and that the Judge erred in finding that the elements of callousness and the vulnerability of the deceased were aggravating factors of the offending. Ms Priest submits a starting point of 11 years would have been appropriate when compared with the authorities.

[19] Ms Priest further submits additional reductions should have been imposed for Mr Salt's personal mitigating factors. The Judge erred, she says, by declining to impose reductions for remorse and in failing to adequately take into account his rehabilitative efforts. Ms Priest says a reduction of 12 months was appropriate.

Aggravating factors

Vulnerability

[20] Vulnerability is not confined to those who are inherently vulnerable due to age or health. This aggravating factor will be present where the victim is regarded as "vulnerable" for this purpose if "disabled in some way", or otherwise rendered "defenceless".[15] This Court's guidance in *Graham v R* reinforces that the assessment will depend on the facts:[16]

> Many victims will have been vulnerable to some extent. Whether or not a particular factor truly aggravates offending will be a question of fact and degree requiring judicial assessment.

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14 That is unless the court is satisfied that no minimum term of imprisonment would be sufficient to satisfy one or more of the purposes, in which case the court may order that the offender serve the sentence without parole: see Sentencing Act, s 103(1)(b) and (2A).

15 *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(i)]; and *Tuau v R* [2013] NZCA 623 at [26].

16 *Graham v R* [2011] NZCA 131 at [13].

[21] The relevance of the specific factual context to the vulnerability assessment is borne out by two decisions of this Court. In *Sheppard v R*, an authority relied on by Ms Priest, a security guard, who was the subject of an unexpected attack in a bar, was not considered to be vulnerable.[17] However in *Feau v R*, this Court considered that the trained security guard there was nevertheless vulnerable because he was preoccupied in breaking up a fight among others when he was subjected to an unprovoked attack from an offender who was larger than him.[18]

[22] The distinction to be drawn from the two cases above is the defencelessness of the victim. The victim here was untrained, not equipped for unexpected attacks, drinking socially, participating in a relaxed game of darts, and was attacked in the head from behind without warning.

[23] We consider there is no error in the Judge's finding that the attack was a king hit from behind in circumstances where the deceased had no opportunity to defend himself. It was open to the sentencing Judge on these facts to find that the deceased was indeed vulnerable.

Callousness

[24] We deal next with the submission that the Court erred in finding that the offending was aggravated by a degree of callousness. Ms Priest submits that, while Mr Salt did not seek medical assistance for the deceased, he did not flee. Mr Salt checked on the deceased and heard him breathing and snoring and believed him to be alive.

[25] We cannot find error in the Judge's view that allowing the deceased to lie unattended for over an hour without seeking or calling for assistance constitutes a degree of callousness. The fact of the victim's unresponsiveness and unconsciousness for a sustained period of time supports an inference that Mr Salt must have been aware that the deceased required medical treatment. The primary interaction Mr Salt had with the deceased was an attempt to roll him onto his side unsuccessfully and steal his

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17 *Sheppard v R* [2013] NZCA 639 at [12]–[19].
18 *Feau v R* [2019] NZCA 72 at [4] and [10].

cell phone, passport and wallet. Further, as the Crown submits, it was not until the deceased's friends discovered that he was unresponsive that Mr Salt accompanied them inside the bar as they called out for assistance. For these reasons, we consider it was open to the Judge to find that the aggravating feature of callousness was present.

MPI starting point

[26] The Judge reviewed the authorities on MPI starting points for similar offending, relied on by both the Crown and the defence. He observed that they were "all different in various ways, and the reasons for the different outcomes are not always apparent".[19]

[27] The Judge considered the most similar authorities, taking into account the aggravating factors of this offending, were *R v Berry* and *R v Shaheem* and gave his reasons in an expansive footnote to his sentencing notes.[20] He noted in *R v Berry*, where an MPI of 13 years was imposed, the victim was more vulnerable but was kicked and stomped in the head four times and left unconscious. In *R v Shaheem*, the victim was kicked and stomped in the head and body, although there was more than one attacker, and the defendant fled.[21] The MPI was 12 years' imprisonment.[22]

[28] In *R v Howse*, this Court described the approach to increasing an MPI to more than 10 years under s 103 in the following way:[23]

> [62] Section 103 of the Sentencing Act indicates that the statutory norm is designed for the ordinary range of offending of the particular kind. There are difficulties in determining the extent of that range ... But it is necessary for the Court in a broad and realistic way (for that is all that can be achieved) to assess how much additional culpability is involved in the instant offending when compared with the culpability involved in offending which is within the ordinary range. … The exercise upon which Judges are required to embark is

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19 Sentencing notes, above n 1, at [37], n 10, referring to *R v Knight* [2012] NZHC 2866; *R v Berry* HC Auckland CRI-2010-092-2165, 7 December 2010; *R v Rangiwhaiao* [2012] NZHC 1751; *R v Sullivan* HC Wellington CRI-2009-485-86, 10 February 2010; *R v Shaheem* [2019] NZHC 1200; *R v Solomon* [2017] NZHC 3057; *R v Aiono* [2012] NZHC 1752; and *R v Ranapia* HC Whangarei CRI-2008-088-4443, 23 October 2009.

20 Sentencing notes, above n 1, at [37], n 10, referring to *R v Berry*, above n 19; and *R v Shaheem*, above n 19.

21 Sentencing notes, above n 1, at [37], n 10, referring to *R v Berry*, above n 19; and *R v Shaheem*, above n 19. *R v Shaheem* was considered and confirmed on appeal in *Shaheem v R* [2022] NZCA 214.

22 *R v Shaheem*, above n 19, at [64].

23 *R v Howse* [2003] 3 NZLR 767 (CA).

> at one level an exercise in comparing incomparables. Nevertheless, Parliament's broad purpose must be recognised and the necessary comparisons must be undertaken.

[29] This Court has also explained that the primary comparison is between the particular case and the ten-year period, with "[c]omparison with other cases … a secondary requirement, albeit necessary and important as a check".[24] The task requires the sentencing judge to assess whether the factors identified in s 103(2) mean that it is necessary for a higher minimum term to be imposed, but other sentencing principles, including the requirement in s 8(1)(g) that the sentence be the least restrictive outcome that is appropriate in the circumstances, will still apply.[25]

[30] Here we agree with the Judge that the level of culpability was outside of the ordinary range involved in murder, and that it was appropriate to increase the MPI in order that the purposes identified in s 103(2) were satisfied.[26] But we accept Ms Priest's submission that the particular factors that increase that culpability did not require a starting point for the MPI of 12 and a half years. We also consider that this starting point was not consistent with other cases where an MPI starting point at that level was considered necessary.

[31] The Judge identified four relevant factors: that the attack was not in self-defence and was entirely unreasonable; the use of significant violence on someone who was vulnerable as he was attacked from behind; that there was a degree callousness involved; and the devastating effect for the victim's family and wider community.[27]

[32] We do not accept that the first factor above — the fact the attack was not in self-defence and was unreasonable — means that it was outside the ordinary range of murder offending. Those are considerations that are likely to be inherent in all murders. Equally, the devastating effect of the offence on the victim's family and community arises from the fact of the murder itself, rather than being a factor that increased its culpability.

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24 *Robertson v R* [2016] NZCA 99 at [80].
25 Section 104 of the Sentencing Act illustrates the kind of factors that may increase culpability.
26 Sentencing notes, above n 1, at [34]–[37].
27 At [34].

[33] But we agree with the Judge that the significant level of violence was a factor in favour of increasing the MPI given its king hit characteristics. Having said that, all attacks with murderous intent without a weapon that result in death will likely involve a significant level of violence. Unlike other cases of murder as a consequence of manual attacks the period of the assault here was comparatively short, lasting some 12 seconds. It was not a prolonged attack of the kind considered in other cases. So whilst this factor is relevant to increasing the MPI under s 103, its significance should not be overstated.

[34] We also agree that the culpability was higher because the victim in this case was vulnerable as he was attacked by surprise from behind. But again, while that is a consideration relevant to increasing the minimum period under s 103, its significance should not be too overstated.

[35] Finally, we also agree that there was a degree of callousness because the victim was left lying on the ground, and no medical assistance was sought for him for some time. But that involves a lower level of callousness than cases where the defendant flees from the scene, or takes steps to hide the victim. Whilst he was left on the ground, the defendant did not leave the premises, the victim was checked on from time to time, and an ambulance was ultimately called. This is consistent with the defendant not initially appreciating that his assault had put the victim's life in jeopardy. So whilst it is relevant, it does not involve the level of callousness apparent in other cases.

[36] Although comparisons always present difficulties, cases involving manual attacks that have adopted an MPI starting point around 12 and a half years have more frequently involved multiple attackers, a prolonged or sustained assault, the defendant being in an intimate partner relationship with the victim or a combination of factors of this kind.[28] We consider the most relevant case is the decision of this Court in *Shaheem v R* where a starting point of 11 and a half years was upheld when there were multiple attackers, the victim was left without assistance, and the assault was in connection

[28] *R v Poihipi* [2019] NZHC 3048 (12 years); *R v Solomon*, above n 19 (less than 11 years); *R v Rangiwhaiao*, above n 19 (12 years); and *R v Berry*, above n 19 (13 years).

with recovering drugs or money said to be owed.[29] We do not consider that the present case can be said to warrant a materially higher MPI starting point.

[37] We accept that the level of culpability was higher that the ordinary range, but do not accept that it was at the level warranting an increase in the starting point to 12 and a half years. We accordingly consider that the High Court erred, and a starting point of 11 and a half years should have been adopted.

Personal mitigating features

[38] As noted, the Judge made an allowance of six months' imprisonment for Mr Salt's background and personal circumstances but declined to impose a discrete reduction for remorse.[30]

[39] We do not accept that a larger reduction was warranted for Mr Salt's background and rehabilitative potential. We consider that the Judge's approach was correct, given that reductions for personal mitigating features are restrained in murder sentencing.[31] Nor do we find fault with the Judge's decision not to allow for remorse. While Mr Salt took responsibility for causing the fatal injuries, as captured on CCTV footage, we consider the appellant's trial strategy of self-defence, and his continued submission on sentencing that he was acting in self-defence, weighs against a finding of remorse. We also note from the PAC report that Mr Salt attributed the outcome of the trial to police trickery.

[40] Similarly, we reject Ms Priest's submission that the Judge should have imposed a reduction for the effect on Mr Salt's children. The children are almost young adults, and he sees them once a week. They are not in a stage of life where Mr Salt's presence is an important protective factor.[32] Further, his relationship with his children has been strained at times due to his offending and substance abuse. In summary, we are not

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29 *R v Shaheem*, above n 19; and *Shaheem v R*, above n 21 (11 and a half years). That case did not involve the surprising "king hit" assault from behind, but there were multiple attackers inflicting similar violence and the victim was attacked at his home in association with drug-related activities.

30 Sentencing notes, above n 1, at [38]–[52].

31 Geoff Hall *Hall's Sentencing* (online ed, LexisNexis) at [SA 103.1(a)]; and *Thompson v R* [2024] NZCA 266 at [26]. See also Sentencing Act, ss 103(2) and 104; *Webber v R* [2021] NZCA 133 at [33]; and *Hohua v R* [2019] NZCA 533 at [44].

32 *Campbell v R* [2020] NZCA 356 at [41]–[43].

persuaded that the Judge placed insufficient weight on Mr Salt's personal mitigating factors.

Conclusion

[41] For the above reasons we consider that the minimum period of imprisonment of 12 years was manifestly excessive, and that a minimum period of imprisonment of 11 years ought to have been imposed. We do not consider that substituting that sentence involves tinkering as a reduction in one year involves lowering the period of time the defendant must actually serve.

Result

[42] The appeal is allowed.

[43] The minimum period of imprisonment of 12 years is set aside and replaced with a minimum period of imprisonment of 11 years.

Solicitors:
Crown Solicitor, Auckland for Respondent