

**IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2026-463-68
[2026] NZHC 2348**

BETWEEN	KACI TAUROA Appellant
AND	THE KING Respondent

Hearing: 27 July 2026

Appearances: R K Raukawa and T S Keith for Appellant
A L McConachy for Respondent

Judgment: 11 August 2026

**JUDGMENT OF BECROFT J
[Appeal against sentence]**

*This judgment was delivered by me on 11 August 2026 at 4.00 pm
pursuant to s 341 of the Criminal Procedure Act 2011.*

Registrar/Deputy Registrar

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Solicitors:
Tui Law, Rotorua
Gordon Pilditch, Rotorua

This appeal

[1] Ms Kaci Tauroa pleaded guilty to one charge of dangerous driving causing death.¹ The victim was her 10-year-old stepbrother. Ms Tauroa was 23.

[2] Ms Tauroa was sentenced to two years and eight months' imprisonment by Judge Hollister-Jones in the Taupō District Court on 29 April 2026. She was also disqualified from driving for two years.²

[3] Ms Tauroa now appeals against that sentence. She argues it was manifestly excessive. In particular, it is submitted that more than a 40 per cent reduction for various mitigating factors should have been allowed, although that was all that was asked for at the time of sentencing.

[4] Ms Raukawa, who appeared for Ms Tauroa, sought to have the end sentence reduced to two years' imprisonment or less, which would then open the way for consideration of home detention.

[5] There is also an application to call further evidence, which if granted, as I will later outline, is of limited assistance to this appeal.

[6] Ms Tauroa previously applied for bail pending this sentence appeal. Johnstone J declined the application as he was not satisfied that granting the application would be in the interests of justice.³

[7] In that decision, Johnstone J noted that Ms Tauroa was caught by the 40 per cent cap for allowances as to mitigating factors under the amendments to the Sentencing Act 2002, which had come into force five days prior to Ms Tauroa's offending. Johnstone J noted:⁴

¹ Land Transport Act 1998, s 36AA(1)(b). Maximum penalty of 10 years' imprisonment, \$20,000 fine.

² *R v Tauroa* [2026] NZDC 8969.

³ *Tauroa v R* [2026] NZHC 1529.

⁴ At [13].

... in order for Ms Tauroa's appeal (as it is currently framed) to succeed to the extent she may be granted home detention, she will need to establish [under s 9R of the Sentencing Act 2002] that the total reduction needed to avoid [manifest] injustice was 55 per cent. I do not rule out success on appeal, but I am not persuaded in the manner required that the prospects of Ms Tauroa succeeding on appeal are very strong, or compelling.

[8] This catastrophic driving incident has caused immeasurable heartache. Its consequences have rippled through a now divided whānau and have also affected the wider Tūrangi community. As I did at the start of the hearing, I begin this decision by acknowledging that a life has been lost and that nothing in this appeal can undo the tragedy that has occurred.

Facts

[9] I adopt the sentencing Judge's summary of facts as follows:⁵

[3] ... on 4 July 2025, Ms Tauroa was driving a Toyota motor vehicle that she had purchased that day in Tauranga. Ten-year-old Jax, who is Ms Tauroa's brother, was seated in the front passenger seat of the vehicle. Ms Tauroa's partner had driven Ms Tauroa and Jax to Tauranga to purchase the vehicle and Jax was travelling back to Tūrangi with Ms Tauroa.

[4] The vehicle that had been purchased was second-hand and it had a known air-conditioning fault. The air-conditioning fault meant that the demister did not clear the windscreen. This was winter. The time was half past seven at night and it was raining. In the wet conditions, the air-conditioning fault caused the windscreen to fog.

[5] Ms Tauroa was driving south on State Highway 1 between Hatepe and Motutere. This is well known as a very challenging piece of State Highway 1. It is narrow in places with steep cliffs on the left-hand side as you travel south and steep drop offs toward the lake on the right-hand side as you travel south. There are some corners that have a 25 kilometre hour speed advisory sign. Whilst the road has a legal speed limit of 100 kilometres per hour, this section of road could not safely be driven at 100 kilometres an hour even in good conditions.

[6] The road was wet and it had been heavily raining prior to the crash. While travelling south, Ms Tauroa's vehicle was noted to be tailgating other vehicles to the extent that the headlights of the Toyota were not visible in the rearview mirrors of the vehicles that were being tailgated.

[7] Just after a corner which had a 25 kilometre per hour advisory, Ms Tauroa overtook a Ford Ranger vehicle; at the same time a fully loaded car transporter was travelling northbound [the truck]. The section of road contains several blind corners and brows where there is a limited visibility making a passing manoeuvre inherently unsafe.

⁵ *R v Tauroa*, above n 2.

[8] Ms Tauroa completed the passing manoeuvre, returning to her lane, immediately before approaching a brow with a blind right-hand bend in the road. As Ms Tauroa entered this bend, she was travelling in excess of 120 kilometres per hour and lost control of the vehicle, causing it to slide passenger side into the front right-hand side of the truck.

[9] As a result of this collision, 10-year-old Jax died at the scene.

[10] Ms Tauroa suffered moderate to serious injuries as well. Ms Tauroa was taken to Rotorua Hospital where a blood sample was taken. That sample showed a level of 4.0 nanograms per millilitre of Tetrahydrocannabinol, or THC, which is considered a high level. However, there is a 1.1 nanogram per millilitre of uncertainty built into the test which means that the range is between 2.9 to 5.1 nanograms per millilitre. Two point nine nanograms per millilitre of Tetrahydrocannabinol is considered a low level, but as I have observed during the hearing, it is just 0.1 off what legally is a high level.

[11] In explanation, Ms Tauroa said she has passed in this location before and for her it was a safe manoeuvre. She admitted consuming cannabis the night before.

Decision under appeal

[10] In sentencing Ms Tauroa, the Judge outlined the facts and recorded that the Court had the benefit of two victim impact reports: one from Jax's mother and the other from his father. Both spoke of the devastating loss they have experienced.

[11] The Judge then observed that Ms Tauroa had no prior convictions, and that the Court had received several letters of support that speak of the high regard in which Ms Tauroa is held by her whānau and hapu, and at the Wānanga she attends. The Judge noted the submission that Ms Tauroa was of previous good character.

[12] The Judge recorded that Ms Raukawa, for Ms Tauroa, submitted that the "total discounts should be 40% and that in these circumstances, the Court could consider an electronic sentence".⁶ The Judge noted there was a suitable home detention address available.

[13] After addressing the submissions, the Judge assessed the aggravating features of the offending as follows:⁷

⁶ *R v Tauroa*, above n 2, at [22].

⁷ At [24].

(a) The consumption of drugs. At the time the blood sample was taken in hospital following the crash, the THC level was 0.1 nanograms per millilitre under the high-risk level. Whilst the bottom end of the range places it in the range for lower risk, my view is that the consumption of drugs likely impaired your judgement in the hours preceding the crash.

(b) This was a prolonged course of very bad driving. As I have already noted, the section of State Highway 1 between Hatepe and Motutere is one of the most challenging pieces of State Highway 1 and in my view is a dangerous piece of road if not driven cautiously. There are blind corners and brows, visibility is limited, and there are 25 kilometre per hour speed advisory signs on the tightest corners. In this case, you have overtaken on a 25 kilometre per hour speed advisory sign which was madness. It was night. The driving conditions were poor. Your bad driving included aggressive driving by tailgating other vehicles, as I have noted following so closely that the headlights of the Toyota could not be seen, the prior dangerous overtaking manoeuvre I have just referred to, and most significantly, immediately prior to the crash, grossly excessive speed at 125 kilometres an hour into a blind corner resulting in the loss of control.

(c) The failure to adjust your driving to a fault in the vehicle is another aggravating feature. The air-conditioning fault required you to slow down and to proceed with caution.

(d) I accept the Crown submission about the breach of trust and victim vulnerability. The victim was your younger brother. You were responsible for his safety. He should not have been in the car with you as you are not licenced to carry him. There was another alternative for his transport that day.

(e) The harm caused, whilst death is inherent in the charge, I have heard about the devastating loss that Jax's death has caused.

[14] Applying the *R v Cooksley*⁸ factors approved in *Gacitua v R*⁹ and after considering the comparable cases of *Dixon v R*¹⁰ and *N v R*,¹¹ the Judge set a starting point of four years and six months' imprisonment.

[15] As to personal mitigating factors, the Judge addressed them in the following way:¹²

[26] ... Ms Tauroa, I accept you are genuinely remorseful. That is clear in your remorse letter. There is a five per cent discount for remorse.

[27] You have no prior convictions. The references I have received speak highly of you. You are noted as being a present aunt, a member of your whānau who contributes highly, and a respected member of your community.

⁸ *R v Cooksley* [2003] EWCA Crim 996, [2023] 3 All ER 40.

⁹ *Gacitua v R* [2013] NZCA 234.

¹⁰ *Dixon v R* [2025] NZHC 1813.

¹¹ *N v R* [2019] NZHC 2083.

¹² *R v Tauroa*, above n 2.

In my view, you have very good prospects of rehabilitation. You have got a strong connection with Te Ao Māori. You are studying for a bachelor's degree in Poutuarongo Kaitiakitanga Pūtaiao. Ms Raukawa submits there should be a discount of 10 per cent for remorse.

[28] My view is the discount for remorse is limited to five per cent because of your admission to the pre-sentence report writer that you were regularly taking your brothers and sisters in the vehicle in breach of the terms of your restricted licence. In the context of this case this reduces any discount available for prior good character.

[29] I also consider there should be a discount for the shock you experienced from realising your brother was dead. That comes through in the pre-sentence report and your letter. Together with the whakamā and poapoataunu that you are likely to experience for many years, there will be a discount of five per cent for that.

[30] There is the full discount for guilty plea of 25 per cent. The total discounts are 40 per cent.

[16] That resulted in an end sentence of two years, eight months' imprisonment and a disqualification of two years.

Legal principles on appeal

[17] The Court must allow Ms Tauroa's appeal if satisfied that:¹³

- (a) there was an error in the sentence imposed on conviction; and
- (b) a different sentence should be imposed.

[18] In any other case, the appeal must be dismissed.¹⁴

[19] As the Court of Appeal identified in *Tutakangahau v R*, the court will ordinarily not intervene where the sentence is within the range that can be properly justified by accepted sentencing principles.¹⁵ It is appropriate for the appeal court to intervene and substitute its own views only if the sentence appealed is "manifestly excessive" and not justified by the relevant sentencing principles, or where the sentence is in range but what has gone wrong requires correcting in those particular circumstances.¹⁶

¹³ Criminal Procedure Act 2011, s 250(2).

¹⁴ Section 250(3).

¹⁵ *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].

¹⁶ At [32]–[36].

Application to adduce fresh evidence

[20] The principles for admitting fresh evidence on appeal are well established and were stated in *Mark v R*:¹⁷

If the fresh evidence is not credible, it should not be admitted. If it is credible, assessment needs to be made as to whether or not it could have been presented to the sentencing Court with reasonable diligence. If the evidence is both credible and fresh, it should be admitted unless the appellate court is satisfied it would have had no effect on the sentence. If the evidence is credible but not fresh, the appellate court should assess its strength and its potential impact on the sentence. If the appellate court considers that the sentence could be manifestly excessive if the evidence is excluded, then it should be admitted notwithstanding that it is not fresh.

[21] Ms Tauroa seeks leave to adduce four types of fresh evidence:

- (a) a new psychiatric report prepared by Dr Shailesh Kumar;
- (b) 25 additional letters in support of Ms Tauroa;
- (c) a background report completed by Kōhatu Mauri for Hōkai Tapuwae;
and
- (d) an updated letter from Ms Tauroa's mother.

[22] In these circumstances, I will not take a technical approach. All the new evidence has some relevance, but only the last could properly be called fresh. Ms McConachy, for the Crown, must be right that most of the new evidence could have been sought in time to present to the sentencing Court. However, in fairness to Ms Tauroa, I will consider all of it. I will address each piece of new evidence as it arises in this decision.

Starting point accepted

[23] No issue was taken by Ms Raukawa with the starting point of four years and six months' imprisonment. Neither could it be.

¹⁷ *Mark v R* [2019] NZCA 121 at [16], cited in *M v R* [2023] NZCA 151 at [27].

[24] In the District Court, the Crown submitted that the starting point should be at least five years.

[25] Given all the aggravating features listed by the Judge, which I have set out previously in summarising his decision and with which I agree, the Crown (as I will discuss) was on sound ground.

[26] Ms Raukawa candidly accepted that she had anticipated the Judge would adopt a lower starting point. In that context, she did not seek more than a 40 per cent total allowance for mitigating factors. However, given this is a defendant's appeal I will not interfere with the starting point.

[27] All that said, when assessing this appeal, it is important to stress from the outset that, while Ms Raukawa now submits that more than 40 per cent should have been allowed, the starting point could in fact have been higher. Ms McConachy is persuasive that a starting point of at least five years' imprisonment for this very bad piece of prolonged driving, together with the presence of cannabis and the knowing and deliberate breach of her restricted licence, a five-year starting point (given the 10-year maximum) would have been more appropriate.

[28] When all the aggravating features are considered collectively, while more serious instances of dangerous driving can always be imagined, this was an extremely serious episode. It was not a single incident caused by one decision to drive objectively dangerously (i.e. overtaking on a blind corner), nor a very short period of deliberately bad driving. Indeed, Ms McConachy advised that the only reason a manslaughter charge was not laid against Ms Tauroa was because of her very close and enduring relationship with her little stepbrother, who was the victim.

[29] In the District Court, Ms Raukawa sought a starting point of two years' imprisonment. The Judge noted part of that submission was based on a sentencing case¹⁸ decided before the amendment to the penalty for dangerous driving, which doubled the maximum sentence from five years to 10 years.

¹⁸ *R v Barclay* HC Nelson CRI-2006-042-4085, 31 May 2007.

[30] With respect, the defence submission was plainly unsustainable, though it may explain Ms Raukawa’s approach to seeking no more than a 40 per cent combined allowance for mitigating factors. To those mitigating factors I now turn.

Guilty plea

[31] The 25 per cent reduction for the guilty plea was entirely appropriate and is not disputed.

Other mitigating factors that should have been considered?

[32] Ms Raukawa highlighted four other mitigating factors, all of which she argued could and should have been given “discounts” or in some cases higher “discounts”.¹⁹ She submitted that when added to the guilty plea allowance, they would result in a total “allowance” of 60 per cent. Ms Raukawa forcefully argued that this allowance should originally have been given in the District Court (although not then sought by her) and should be given on appeal.

[33] I deal with each of those identified factors in turn.

Remorse

[34] Ms Raukawa submitted that 10 per cent should have been allowed for Ms Tauroa’s remorse rather than the five per cent given by the Judge. Assessing and quantifying remorse is always difficult. Eaton J has observed:²⁰

[34] The Court of Appeal in *Hessell v R* found that, in general, remorse should not be considered independently of the guilty plea but that “exceptional remorse”, demonstrated in a practical and material way, could attract its own credit, discrete from a guilty plea. However, on appeal the Supreme Court found that approach did not fit well with the terms of the Sentencing Act, and in particular s 9(2)(f), which treats “any remorse shown by the offender” as a mitigating factor that is separate from a guilty plea. The Supreme Court said:

¹⁹ I consider the use of the word “discount” is problematic and entirely inappropriate in the sentencing process. It conveys the wrong impression and misleads the public. For a fuller discussion of these concerns see *Thompson-Bell v R* [2025] NZHC 3730 at [70]-[78]. For the remainder of this decision, instead of the word “discount” I use the word “allowances” to refer to the statutory mitigating factors.

²⁰ *Barnett v R* [2023] NZHC 1667, citing *Hessell v R* [2009] NZCA 450, [2010] 2 NZLR 298.

...a proper and robust evaluation of all the circumstances may demonstrate a defendant's remorse. Where remorse is shown by the defendant in such a way, sentencing credit should properly be given separately from that for the plea.

[35] And further, the Court of Appeal in *Moses v R* stated:²¹

... remorse is a personal mitigating factor that may justify a discount separately from any guilty plea discount. Remorse is a question of fact and judgement. The defendant bears the onus of showing that it is genuine, meaning that it qualifies as remorse and he or she actually experiences it. Remorse need not be extraordinary to earn a discount, but it does require something more than the bare acceptance of responsibility inherent in the plea. Courts look for tangible evidence, such as engagement in restorative justice processes.

(footnotes omitted)

[36] Here, while remorse is to a limited extent reflected in the full allowance for the guilty plea, it must be considered separately. It is also reflected in the five per cent that the Judge allowed for shock and trauma arising from the accident and the lifelong effects that Ms Tauroa will experience. These factors merge. After consideration, I accept the Crown's submission that the five per cent allowance for remorse was modest but within range.

[37] A point to note is that the Judge considered that the remorse allowance should be tempered because of Ms Tauroa's persistent and deliberate breach of the terms of her restricted licence by regularly driving her (step) brothers and sisters in her vehicle. That approach is a little problematic if it is used solely to reduce the allowance for remorse, given that it has already been considered (and used) as an aggravating feature of the offending. However, it may be that the Judge was making those comments to put Ms Tauroa's remorse in perspective which is a more appropriate way of addressing that issue. I add the following.

[38] While it seems clear that Ms Tauroa's mother and/or stepfather wished Ms Tauroa to play a family transportation role for her siblings, Ms Tauroa did so with her eyes wide open, knowing that doing so was unlawful. It is an irresistible

²¹ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [24].

conclusion that her family knew this was a breach as well, or at least they chose not to check.

[39] There was also the blunt reality that Ms Tauroa did not need to be driving her young stepbrother on this occasion. He was effectively coming along for the ride, excited to see the new car that his older stepsister had purchased. In fact, the Crown suggested that he could lawfully have been driven back by Ms Tauroa's partner, who drove them to Tauranga in the first place.

[40] For the reasons already outlined, I see no significant error in the Judge's approach to remorse. Even without the Judge's assessment of the "tempering" effect of the repeated flouting of the restricted licence conditions, the five per cent allowance was within range.

Background factors

[41] The Judge did not address this issue. That must be because this issue does not seem to have been emphasised at sentencing by Ms Raukawa. Ms Raukawa relies on the new Hōkai Tapuwai report, setting out in some detail Ms Tauroa's background. The report mentions difficulties in her upbringing arising from a problematic relationship with her stepfather, but also emphasises the significant academic success that she achieved at secondary school and in her later tertiary study.

[42] Some of this material was already well set out in what was a very full report from Corrections for sentencing and was available to the Judge.

[43] The additional background material, while of some relevance, does not establish any causative link to Ms Tauroa's driving on the evening in question nor the surrounding decisions she made, such as not stopping the car and wiping the windows to ensure clear visibility.

[44] Ms Tauroa's background was not significantly deprived, even given the family difficulties she experienced. These do not need to be detailed in the sentencing. In my view, there is no basis for any additional allowance for background factors, and I infer the Judge clearly reached this conclusion, with which I agree.

Good character

[45] I accept that Ms Tauroa is of good character with no previous convictions. She is very well spoken of by her wider whānau, friends, employers, and the Tūrangi community.

[46] The additional 25 letters all paint a very positive picture of a highly respected young woman, fully involved in Te Ao Māori, the wider whānau, and the community. All the letters, to varying degrees, make a plea for a lenient and community-based sentence as being preferable for Ms Tauroa's healing and rehabilitation.

[47] Many of the letters emphasise or at least reference that Ms Tauroa's family has already lost a son. Sentencing Ms Tauroa to prison constitutes a second traumatic loss for the family, which is proving very difficult to cope with. I accept all those letters. It is clear that Ms Tauroa has deep support from many within the Tūrangi community.

[48] I also take into account Ms Tauroa's mother's explicit plea that she not have to suffer the double loss of her son's death and her daughter's incarceration. Her plea is articulate and measured. As I understand it, it was not made at sentencing, at least not as forcefully and as clearly as on appeal.

[49] Ms Raukawa seeks an additional five per cent allowance for good character.

[50] I consider that Ms Tauroa's use of cannabis and the deliberate and ongoing breach of a restricted licence reduce the force of good character considerations. However, Ms Tauroa is still young. She is still developing and has much of her life ahead of her. So far as it goes, some allowance could well have been made. At most, it would have been somewhere between two and five per cent.

Prospects for rehabilitation and youth

[51] It is not entirely clear how the Judge quantified his allowance for this factor. His decision refers to his view that Ms Tauroa had very good prospects of rehabilitation. He noted that Ms Tauroa had a strong connection with Te Ao Māori and was studying for a bachelor's degree in Poutuarongo Kaitiakitanga Pūtaiao.

[52] Both counsel agree that given the structure of the decision, the sentencing Judge must have allowed five per cent for this factor.

[53] Ms Raukawa submitted that an additional 10 per cent should have been allowed for this factor, together with Ms Tauroa's youth, as I later explain.

[54] It is in this respect that Ms Raukawa relied on Dr Kumar's report and his diagnosis of post-traumatic stress disorder (PTSD) following the accident.

[55] Ms McConachy did not quibble with the report's findings. But she emphasised that Ms Tauroa's PTSD could be considered a natural and understandable, albeit very sad, consequence of Ms Tauroa's driving, but not a factor mitigating the offending itself.

[56] Dr Kumar indicated that Ms Tauroa was making progress in coping and addressing her PTSD. The report also concluded that the risks of Ms Tauroa reoffending were very low.

[57] This is all reassuring for Ms Tauroa's future but does not go substantially further than what the Judge accepted at sentencing. That is why I earlier observed that Dr Kumar's report does not take Ms Tauroa's appeal much further.

[58] Ms Raukawa argued at this stage that the Judge should have included Ms Tauroa's youth as part and parcel of the prospects for rehabilitation. She submitted that 15 per cent should have been allowed for these two factors. In terms of youth, if Ms Tauroa had been in her late teens, the point would have been more obvious.

[59] The Crown accepted that Ms Tauroa could still be classified as a young person in light of what is now well known about brain development, particularly that the prefrontal cortex is not fully developed until 25 years of age. Ms McConachy emphasised that Ms Tauroa was 23, was obviously considered relatively mature by all those who she dealt with and could only have been given a modest allowance for youth. I agree. But on conventional and settled principles, some allowance for that mitigating factor should have been allowed.

[60] In fairness to the sentencing Judge, Ms Raukawa did not ask for any allowance for youth. It is a little tough now for her to criticise the Judge for not recognising it when it was not in Ms Raukawa's original thinking as justifying any mitigation.

[61] Ms Raukawa was of the view that sentencing judges should effectively cast around to ensure that other mitigating factors, not mentioned or addressed by counsel, are nevertheless still addressed. In a busy sentencing court, this is a counsel of perfection. Unless there is an obvious omission by defence counsel, I am reluctant to place such an obligation on the Judge. Here, given Ms Tauroa's age and her references before the Judge, I can well understand why he did not take this factor into account in his sentencing, and I am unwilling to level criticism at him in this respect.

[62] A modest allowance for youth, rounded up with prospects for rehabilitation, would have resulted in a total allowance of 10 per cent rather than the five per cent apparently allowed.

[63] Dr Kumar also concluded that Ms Tauroa met the criteria for cannabis use disorder. To that extent, Ms Raukawa urged the Court to accept Ms Tauroa's cannabis dependency (now in remission) as a mitigating factor and which would enhance her prospects of rehabilitation.

[64] More specifically, Ms Raukawa submitted that Ms Tauroa's cannabis impairment on the night of driving could be taken into account as a mitigating factor. However, with respect, that approach is specifically prohibited by s 9(3) of the Sentencing Act, which provides as follows:

Despite subsection (2)(e), the court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).

[65] Ms Raukawa accepts that Ms Tauroa voluntarily consumed cannabis the evening before, and, given the level at the time of testing, the effect of cannabis was at the very highest edge of the low range of impairment. Far from being a mitigating factor, the Judge was correct to consider it an aggravating factor of the actual driving.

Were the total allowances sufficient?

[66] I have sympathy for Ms Raukawa's submission that an allowance for youth should now be factored into the sentencing exercise. Some limited allowance for good character and that she was a first offender might also have been specifically made. These sorts of allowances and the calculations are not easy. In the sentencing exercise, it is important to note that many of the factors highlighted by Ms Raukawa shade into one another. I have already mentioned that remorse is to some extent reflected in the separate allowance for trauma. Good character shades into prospects for rehabilitation. Similarly, Ms Tauroa's remorse, obviously significant and traumatic, enhances prospects for rehabilitation. The demarcation between every identifiable mitigating factor is often unclear.

[67] The total allowances might have been at least 45 per cent and perhaps a little more. For the purposes of this appeal, I am content to proceed on this basis.

[68] If the allowances should have exceeded 40 per cent, that would trigger ss 9Q and 9R of the Sentencing Act, which provide:

9Q General rule: total reductions must not exceed 40% of sentence

- (1) If a sentence of imprisonment for offending of any kind is reduced under 1 or more personal mitigating factors, total reductions under all those personal mitigating factors must not exceed 40% of the sentence.
- (2) This section is subject to sections 9R and 9T.
- (3) This section does not apply to the mitigating factor that the offender assisted the authorities to maintain the law in respect of an offence.

Example

Assisting authorities to maintain law in respect of offence

The offender assisted the authorities in relation to the prevention, detection, investigation, prosecution, or punishment of an offence.

- (4) However, for the purposes of the 40% cap in this section, total reductions to the sentence under 1 or more personal mitigating factors—
 - (a) include a youth mitigating factor reduction to it only if one is available under sections 9B to 9F;
 - (b) include a guilty plea mitigating factor reduction to it only to the extent that one is available under sections 9G to 9K;
 - (c) include a remorse mitigating factor reduction to it only if one is available under sections 9L to 9P.

9R Exception: duty to avoid sentence being manifestly unjust

If the application of the general rule in section 9Q would result in a sentence that is manifestly unjust, the court must make total reductions to the sentence under all personal mitigating factors that exceed 40% of the sentence to the extent needed to avoid the sentence being manifestly unjust.

[69] Here, the real question is whether applying the 40 per cent cap would result in a sentence to Ms Tauroa that is manifestly unjust. If so, the Court must make total reductions to the sentence under the personal mitigating factors that exceed 40 per cent to the extent needed to avoid the sentence being manifestly unjust. I record that counsel did not provide detailed submissions on this issue.

[70] “Manifestly unjust” is not defined in the Sentencing Act with relevance to s 9R.²² I am also conscious that there is (thus far) little High Court authority addressing the meaning or application of that term in this context. Nor does the Sentencing Act, or the Sentencing (Reform) Amendment Act 2025, which introduced the cap, provide a clear statutory purpose or objective directed to the circumstances in which the cap may produce a manifestly unjust result. It is therefore helpful to consider the statutory context, having regard to s 10 of the Legislation Act 2019.²³

[71] The Government’s policy was made crystal clear during the first reading of the Sentencing (Reform) Amendment Bill, when the Minister of Justice, the Honourable Paul Goldsmith, emphasised (in respect of the practice of allowing unlimited cumulative allowances) that:²⁴

²² The following comments from the learned authors of *Hall’s Sentencing* are helpful and I agree with them:

The only guidance as to the meaning of the expression “manifestly unjust” in the Act is in s 86T. Section 86T(3) provides that a sentence is “manifestly unjust” only if it is “grossly disproportionate” (and therefore in breach of the right in s 9 of the New Zealand Bill Of Rights Act 1990 not to be subject to disproportionately severe punishment). However, s 86T expressly only applies to the three strikes provisions, which deal with serious recidivist offenders. The context is very different, and it is not likely that the term “manifestly unjust” in s 9R will be interpreted in such a restrictive fashion.

See, Geoff G Hall *Hall’s Sentencing* (online ed, LexisNexis) at [SA9R.1].

²³ Section 10 (1) of the Legislation Act 2019 provides that the “meaning of legislation must be ascertained from its text and in the light of its purpose and context.” It is sufficient to say that for present purposes, *context* legitimately includes reference to previous legislation, the so-called scheme of the Act, the parliamentary history including Select Committee reports (which may well have recommended and explained the need for changes), and Hansard containing the record of Parliamentary debates. See, for example Ross Carter *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 286.

²⁴ (24 Sep 2024) 778 NZPD 6369.

The Sentencing (Reform) Amendment Bill will put an end to this practice by capping the sentence discount at 40 percent. On current estimates, around 20 percent of cases involve discounts that exceed this cap. I expect this policy will have a significant and measurable impact on sentencing outcomes. I recognise that there will be exceptional circumstances in which a larger discount may be justified—for example, when an offender provides substantial assistance to the authorities. For this reason, the bill provides a limited judicial discretion to guide against the risk of manifestly unjust sentences.

[72] As to the interpretation of the term, the Ministry of Justice’s Regulatory Impact Statement commented:²⁵

[160] The interpretation of manifest injustice in relation to sentencing discounts will also evolve through case law, similar to the application of manifest injustice exception for murder offences involving young offenders in *Dickey v R* [2023] NZCA 2 and subsequent cases. This ensures the application of the law remains pragmatic and compliant with NZBORA.

[73] To similar effect, the Departmental Report on the Bill noted:²⁶

We expect and intend for case law to develop to interpret the manifest injustice exception so that courts can set the appropriate threshold. We do not expect amending the phrasing will provide any clarity on its impacts. Although a ‘manifest injustice’ threshold is a new concept for sentence reductions, this phrase has been chosen as some precedent surrounding the concept already exists in sentencing law (albeit in different contexts). Introducing a different type of test would likely create confusion and increased litigation. We will monitor the development of the law to ensure that the policy outcomes are being met.

[74] Against that background, I observe that the Court of Appeal in *Dickey v R*,²⁷ concluded the term “manifest injustice” has come to a generally consistent meaning under the Sentencing Act:²⁸

- (a) it requires that the instant case be “exceptional” in the sense that it justifies departure from the legislative policy;
- (b) it requires that the injustice be manifest, that is, clear; and

²⁵ Ministry of Justice Regulatory Impact Statement: Amendments to the Sentencing Act 2002 (30 May 2024) at 43.

²⁶ Ministry of Justice Departmental Report for the Justice Committee: Sentencing (Reform) Amendment Bill (12 December 2024) at [203].

²⁷ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [194].

²⁸ At [167].

- (c) each case must be assessed on its own merits, having regard to the full register of sentencing purposes, principles and factors, and qualifying cases need not be rare.

[75] In my view, the Court must stand back and decide as a matter of overall analysis, assessment, or perhaps even impression, as some of the cases put it,²⁹ if there is manifest injustice. That said, the policy of the legislation is clearly to confine cases where the 40 per cent cap is exceeded to those that are exceptional, with the injustice being manifest, or patently obvious.

[76] I would have thought that exceeding the cap should probably be to the least extent necessary to cure manifest injustice. Given the obvious parliamentary intent that the default position should be adherence to the cap – any increase should be cautiously and carefully applied.

[77] I also consider that there may be a qualitative, not just quantitative, aspect to assessing “manifestly unjust,” such as where, as here, an important mitigating factor, such as youth, is not included in the sentencing process. To omit it would be manifestly unjust.

[78] In the present case, I am persuaded that an allowance of 45 per cent, and at most 47.5 per cent, is the least extent necessary to avoid manifest injustice. This has regard to Ms Tauroa's youth, her otherwise good character (as a true first offender), her community support — all of which were not allowed for. And this is together with her guilty plea, remorse, capacity for rehabilitation, the profound trauma arising from the offending causing the death of her young stepbrother, and the lifelong consequences she will endure (which were factored in).

[79] I note again that the sentencing Judge was not invited to consider more than 40 per cent, and I make no criticism of him in that respect. However, those aspects I have listed earlier in this paragraph as not being allowed for are just too important,

²⁹ See for example *R v Smith* [2021] NZCA 318 at [43]; *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [194]; and *R v Williams* [2005] 2 NZLR 506 (CA) at [64].

qualitatively, to be left out of the sentencing process. A manifestly unjust sentence would result if this Court did not intervene.

[80] I consider that exceeding the cap in this way does fulfil one of the objectives set out in the explanatory note to the Sentencing (Reform) Amendment Bill, which is to “limit the use of sentence reductions to prevent unduly lenient sentencing”.³⁰ The end sentence here, after the cap has been exceeded, will not be unduly lenient.

[81] However, regardless of how the matter is analysed, I am unable to conclude that the circumstances justify the 55 per cent allowance that would be required to reduce the sentence to a level capable of being converted to home detention. Nor can I accept Ms Raukawa’s plea for a total of 60 per cent allowances.

[82] In reaching that conclusion, I immediately accept the family issues in this case, with the victim being a close and deeply loved stepbrother of Ms Tauroa, whose offending has effectively split the whole family. She will bear the scars for life and, humanely speaking, will never be able to forget it.

[83] On the other hand, this was exceptionally dangerous and prolonged driving, to some extent under the influence of cannabis voluntarily consumed, and in knowing breach of her restricted licence.

[84] The victim’s father (Ms Tauroa’s stepfather), for instance, has clearly expressed the view that there must be accountability. For driving as bad as this, there must be a line in the sand and his view, conveyed by the Crown, is the same as he conveyed at sentencing, namely that a period of imprisonment (and on appeal in respect of the actual sentence), is inevitable to mark the constellation of aggravating factors in this case.

Manifestly excessive end sentence and/or wrong in principle?

[85] Even given the conclusion I have reached as to the small extent to which the cap should be exceeded, it still perhaps remains for this Court to stand back and assess

³⁰ Sentencing (Reform) Amendment Bill (77-1) (explanatory note) at 2.

the original end sentence under conventional appellate sentencing principles. Was that sentence manifestly excessive, plainly wrong in principle, or did the sentencing process otherwise miscarry?

[86] The sentencing Judge's approach was entirely orthodox, save that, for the reasons already given. I consider that, at the very least, a further five per cent allowance, and a little more (seven and a half per cent), should have been made to recognise Ms Tauroa's youth and her previous good character as a first offender. Not to include that allowance is plainly wrong in principle. But it reflects Ms Raukawa's original plea for a 40 per cent allowance. To that extent, the sentencing process can also be said to have miscarried. The reduction I have already specified (of about 4 months from the end sentence of two years and eight months' imprisonment) is therefore justified on those grounds.

[87] I am not required to finally decide whether the original end sentence was manifestly excessive (because the appeal succeeds on other grounds). Nor do I need to address the more difficult question of the interrelationship between a manifestly unjust sentence under s 9R (and whether exceeding the forty per cent cap is justified) and a manifestly excessive sentence under orthodox appeal principles.

[88] However, once that additional seven and a half per cent allowance is made, the resulting sentence certainly cannot be said to be anything near manifestly excessive. Having regard to the merciful starting point (in light of the five serious aggravating factors highlighted by the Judge), the overall allowance for personal mitigating factors, and the comparable authorities referred to by counsel,³¹ a sentence of two years and four months' imprisonment³² falls comfortably within the available range.

[89] Ordinarily, such a relatively small decrease might be considered judicial "tinkering" which is to be avoided. But here, where the imprisonment sentence is towards the lower end of the scale, and any reduction will make a difference (for instance to parole eligibility) and any months in prison will be burden for a young first

³¹ *Scott v R* [2014] NZHC 1598; *R v Roberts* [2013] NZHC 2233; *N v R*, above n 11; and *Dixon v R*, above n 10.

³² This is with "round-downs" in Ms Tauroa's favour.

offender, the reduction is justified. In any case errors of principle (as here) invariably require correction.

[90] Of course, humanely speaking, the prison sentence will take a huge toll on Ms Tauroa and her mother and some of her family. But there is a public interest in ensuring accountability, parity of sentencing, and marking cases of particularly serious and prolonged episodes of dangerous driving where a life is lost.

[91] In other words, while a merciful approach is an aspect of sentencing (particularly where the death is of a family member), accountability and consequences are also a necessary component of justice. In my view, a sentence of two years and four months' imprisonment properly reflects that balance. In time, I hope that Ms Tauroa and those of her family who support this appeal can come to accept this.³³

Result

[92] The appeal is allowed in part.

[93] I quash the sentence of two years and eight months' imprisonment. I impose instead a sentence of two years and four months' imprisonment. The disqualification remains.

Becroft J

³³ It is worth noting that some of Ms Tauroa's supporters referred generally to sentences of imprisonment not being imposed for driving offences causing death. Everything depends on the charge. In the case of careless driving causing death (where the maximum penalty is three months' imprisonment), custodial sentences are rare, especially in cases of brief and understandable inadvertence. But a dangerous driving causing death charge (with a 10-year maximum) is quite different. This is especially so where the dangerous driving, as here, is extremely serious with a number of aggravating factors. In these cases, imprisonment will be the usual result.