



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

24 MARCH 2026

## **MEDIA RELEASE**

G (SC 130/2024) v THE KING

(SC 130/2024) [2026] NZSC 19

## **PRESS SUMMARY**

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: [www.courtsfnz.govt.nz](http://www.courtsfnz.govt.nz).

### **Suppression**

Publication of the names, addresses, occupations and identifying particulars of the complainants is prohibited by s 203 of the Criminal Procedure Act 2011. Publication of the name, address, occupation or identifying particulars of the child complainant is prohibited by s 204 of the Criminal Procedure Act 2011.

### **What this judgment is about**

This appeal is about how an adult should be sentenced for offending committed as a young person. When a person offends before turning 18, but is not charged until they are 19 or older, this becomes an issue. That is because the Oranga Tamariki Act 1989 (OTA) provides that such a person is not required to be brought before the Youth Court. Instead, they are treated as, in effect, having “aged-out” of the youth justice system and so they must be sentenced under the Sentencing Act 2002.

The issue in this appeal is whether such an adult, when sentenced under the Sentencing Act, should be sentenced taking into account the outcome that would have applied had they been charged when they committed the offending and dealt with in the Youth Court.

### **Background**

G was 19 years old when, in 2021, three sexual violation charges were laid against him: two of unlawful sexual connection against separate victims and one of rape against a third. G committed the rape when he was 15. He chose to go to trial on the rape charge, was found guilty and was sentenced under the Sentencing Act. Had he been charged before his 19th

birthday, the OTA would have applied. G was 18 when he committed the two unlawful sexual connection offences, so the OTA did not govern their disposition. He pleaded guilty to those charges.

On 9 April 2024, G was sentenced in the District Court to a total of three years and four months' imprisonment on all three charges, despite discounts for youth and other factors. On 10 October 2024, the Court of Appeal dismissed G's appeal against conviction and sentence. G did not seek to reprise the challenge to his conviction in the Supreme Court.

On 4 April 2025, the Supreme Court granted G leave to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeal against sentence.

### **Supreme Court decision**

The Supreme Court has unanimously allowed G's appeal. The Court has issued two sets of reasons: one by a majority comprising Winkelmann CJ, Glazebrook, Williams and Kós JJ; and the other by Miller J concurring.

#### *Reasons of the majority*

The majority held that, for multiple reasons, the District Court should have taken into account the likely outcome had G been charged with the rape offence in time to be dealt with under the OTA when it sentenced G under the Sentencing Act. First, the gravity of offending and the culpability of an offender (assessed at stage one of the normal sentencing methodology) does not increase with the passage of time, and therefore with the aging out of a young offender. Second, given this, the fundamental importance of consistency in sentencing requires the same judicial response to a young person as to a young person who has aged out. Third, tariff consistency in sentencing requires reference to the likely sentence had the offender been sentenced at the time of the offence. Fourth, the Sentencing Act, correctly construed, does not require otherwise—indeed, it provides processes that approximate those in the OTA in function. Fifth, taking any other approach would place New Zealand peculiarly out of step with cognate jurisdictions such as England and Wales, Canada and Australia (see at [8]–[9]).

In reaching its decision, the majority concluded that, under current sentencing practice, aged-out offenders are likely to receive harsher penalties under the Sentencing Act than equivalent offenders charged in time to be dealt with under the OTA, and that this is for reasons unrelated to either the offence or the offender. The majority held this cannot be justified, referring to the fundamental value of the law that those whose circumstances are materially similar should be treated consistently. The majority noted that the sentencing methodology in *R v Taueki* [2005] NZCA 174, [2005] 3 NZLR 372 was designed to ensure greater sentencing consistency. It considered this value must be given effect unless statutory language plainly requires otherwise, especially in sentencing. It held that the Sentencing Act does not plainly require such differentiated treatment. Rather, it allows sentencing judges to prioritise consistency of treatment over other sentencing purposes and principles (see at [36]).

The majority therefore rejected the view that the OTA and Sentencing Act are incompatible such that OTA-based outcomes are irrelevant to the circumstances of aged-out offenders. It held that, provided the circumstances of the offence and offender justify it, there is room within the Sentencing Act for general courts to reach outcomes that are broadly consistent with those of the OTA. In this respect, the majority overruled the approach in *Pouwhare v R*

[2010] NZCA 268, (2010) 24 CRNZ 868, which had rejected the relevance of the OTA outcome to the sentencing starting point when sentencing an aged-out offender. The majority considered an appropriate adjustment to the *Taueki* framework is necessary to ensure that consideration is given at the outset to the likely outcome under the OTA in the case of aged-out offenders (see at [66]–[74]).

The majority also held that the consistency principle is not otherwise displaced by existing protections in the Sentencing Act for young offenders in the general courts. These, the majority considered, affirmed that special consideration should be given to the circumstances of young offenders. Nor did the majority consider the consistency principle displaced by s 128B of the Crimes Act 1961, which contains a presumption of imprisonment for sexual violation offences. The majority reasoned that youth-based considerations remain highly material to the presumption in s 128B, as does the desirability of consistent treatment (see at [76]–[79]).

The majority proceeded to set out the correct approach to sentencing aged-out offenders. It held that, in aging out cases, the likely outcome under the OTA must be taken into account in setting the starting point at the first stage of the normal sentencing process (see at [81]–[83]).

The majority noted that community-based sentences may still be inappropriate—consideration of the likely outcome under the OTA may not, in the event, produce a community sentence. The majority considered as an example that the seriousness of the index offending or the culpability of the offender may mean discharge or a community-based sentence was never going to be appropriate even at the time of the offending. The majority also considered a community-based sentence may not be appropriate where relevant offending has become an established pattern persisting well into adulthood as this may suggest rehabilitation by means of a community sentence is too unlikely a prospect. Further, the majority held that where the offender is also being sentenced, as in this case, for offending committed as an adult, the sentence for the adult offending would proceed in accordance with the relevant guideline judgment, which may mean a custodial response (see at [84]–[86]).

Because G was not sentenced according to these principles, the majority held that the appeal must be allowed and G must be resentenced on all three charges. The majority considered resentencing G to time served, given the length of time he had spent in prison and on restrictive bail conditions akin to home detention. But, in order to provide for G's rehabilitation, and to address the pressing need for him to receive treatment for mental health and substance use, the majority decided to remit G for resentencing in the District Court (see at [93]–[94]).

Finally, the majority dismissed G's application for name suppression. It instead elected to anonymise the Court's judgment. It considered this approach sufficiently addressed any risk of identifying the complainants, and struck an appropriate balance between the primary importance of open justice and G's needs, particularly in respect of his rehabilitation (at [95]–[98]).

#### *Reasons of Miller J*

Miller J agreed with the majority that G must be resentenced, but for different reasons.

Miller J agreed that the OTA provides a distinctive response to youth offending, but considered that *Pouwhare v R* confirms that, when a young person is sentenced in an adult court, the Sentencing Act governs the sentencing and the OTA's youth justice principles do not apply, although there is no fixed limit to the discounts that may be given for youth (see at [111]–[117]).

Miller J considered that the immediate problem in this case was the application to young offenders of the sentencing bands in *R v AM* (CA27/2009) [2010] NZCA 114, [2010] 2 NZLR 750, not the *Taueki* methodology itself, and that existing methodology is capable of delivering lower starting points for young offenders under *AM* (see at [124]–[132]).

Miller J considered it is not self-evident that the legislation calls for consistency of treatment for offenders who are sentenced in an adult court but who might have been dealt with in the Youth Court in different circumstances. However, Miller J accepted there may be circumstances in which it is unfair to hold an offender responsible for a delay in charging and in those cases, the general principle of consistency of treatment allows courts to give some weight to the hypothetical outcome for the same offender had they been dealt with in the Youth Court at the time (see at [133]–[136]).

On the facts, Miller J rejected that G was only dealt with in the District Court because he was aged-out by the time he was charged. Miller J noted that G denied the rape charge, elected trial by jury, and continued at sentencing to deny all offending and accuse the victims of lying about it. Miller J therefore inferred that G would have reached the District Court by a different pathway, such that it was not necessary to take a notional Youth Court outcome into account when sentencing him (see at [144]–[145]).

Miller J was not persuaded that the sentence passed in the District Court was manifestly excessive. However, he agreed that G should be resentenced because it would be unjust if time he spent on bail was not brought into account and because there was a pressing need for treatment for G's mental health and substance abuse issues (see at [148]–[153]).

As to suppression, Miller J agreed with the majority that G should not receive name suppression and deferred to the majority view that his name should be anonymised (see at [154]).

## **Result**

The formal orders of the Court are as follows:

- A The appeal is allowed.
- B The proceeding is remitted to the District Court for resentencing.
- C The applications to adduce further evidence and for name suppression are dismissed.
- D Bail is granted on the terms currently applicable, as amended by this Court's minute of 10 March 2026. Any application for variation to bail shall be addressed by the District Court.

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