



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

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MEDIA RELEASE

F (SC 98/2025) v THE KING
(SC 98 /2025)

N (SC 102/2025) v THE KING
(SC 102/2025)

[2026] NZSC 78

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.courtsofnz.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 names, addresses, occupations or identifying particulars of any persons under the age of 18 years who are complainants or who appeared as witnesses is prohibited by s 204 of the Criminal Procedure Act 2011. Publication of details of the previous convictions of the appellant in SC 102/2025 is prohibited by s 199A of the Criminal Procedure Act 2011.

What this judgment is about

This Court’s recent decision in *G (SC 130/2024) v R* [2026] NZSC 19 changed the sentencing methodology for young offenders who have aged out of the youth justice system by the time they are charged. An “aged-out offender” is someone who offends before turning 18 but is not charged until they are 19 or older. The Oranga Tamariki Act 1989 (OTA) provides that such a person is not required to be brought before the Youth Court; however, *G* held that in the case of such offenders, the court must first take into account the likely outcome had the offender been dealt with as a young person under the OTA before passing sentence under the Sentencing Act 2002. This was a significant change for a narrow group of offenders.

The appellants, F and N, were sentenced before the decision in *G* was delivered. Their sentence appeals were therefore decided by the Court of Appeal without consideration of what the likely outcome would have been had F and N been sentenced as young people under the OTA. The appellants argue and the Crown accepts that their sentence appeals to the Supreme Court must be allowed. Two additional matters were raised for consideration. The first was whether the appropriate course now was to remit both proceedings to the District Court for resentencing or whether that exercise should be undertaken in the Supreme Court. The second was whether further general guidance on sentencing methodology was required to supplement or clarify that provided in *G*.

Background

F was found guilty of two representative charges of rape committed over a two-year period between 2014 and 2016. He was aged between 15 and 16 years old at the time and was 22 when charged. In the District Court, F was sentenced to five years and seven months' imprisonment after the Judge applied a 30 per cent discount for youth. The Court of Appeal upheld that sentence, applying the pre-*G* approach under which youth was addressed solely at the second stage of the sentencing methodology.

N was found guilty of one charge of rape committed when he was either 15 or 16. He was 19 when charged. N also faced multiple sexual offending charges involving another victim. N was between 18 and 19 years old by then. In relation to that adult offending, N pleaded guilty just before trial to some charges and was either acquitted, or the jury was unable to agree on the verdict, in relation to the others. In the District Court, N was sentenced to four years and one month's imprisonment after the Judge applied discounts totalling 45 per cent for youth, personal factors and the late guilty pleas. The Court of Appeal allowed N's appeal against sentence, applying a reduced starting point and increased discounts, resulting in an end sentence of three years and six months' imprisonment.

Supreme Court decision

The Supreme Court has unanimously allowed both appeals. The Court has issued two sets of reasons: one by a majority comprising Ellen France, Williams, Kós and Cooke JJ; and the other by Miller J concurring.

The majority held that, applying *G*, the likely disposition under the OTA should have been considered at the start of the sentencing evaluation for both F and N. That was not done in either case. The appeals therefore had to be allowed. The majority also accepted that both proceedings should be remitted to the District Court for the required interventions and assessments to be completed before resentencing (see [22]–[23]).

The majority took the view that supplementary guidance on *G* was generally unnecessary. It did, however, make some brief specific comments.

The majority reiterated that *G* introduced an adjustment to the *R v Taueki* sentencing methodology: if a community-based outcome would have been reasonably likely under the OTA, that will be the starting point for the purposes of the *R v Taueki* sentencing methodology, although subsequent events may show that such an outcome is no longer appropriate (see [28]–[29]).

The majority held that it is an important feature of the OTA that offenders are given an opportunity to be brought to acceptance of responsibility even when they start with denial, and that processes in the adult system could provide this opportunity. It followed that where aged-out offenders entered not guilty pleas before *G*, it cannot automatically be inferred that they would have done so had *G* been applied instead. Further, the majority did not exclude the possibility that a court-directed post-trial intervention aimed at bringing an offender to accepting responsibility could result in a community-based sentence. The case would, however, need to be a clear one—such as an emerging adult with maturity deficits affecting their ability to accept responsibility, as opposed to a mature adult facing trial for historical offending. The majority emphasised that interventions aimed at bringing an offender to accepting responsibility must be genuinely pursued by the offender, and all involved must proceed with expedition in the interests of justice for both offenders and victims (see [30]–[36]).

The majority declined to provide guidance on the applicable version of the OTA to aged-out sentencing, except to note that cl 20 of sch 1AA of the OTA—which provides that any proceeding brought against a person who was 17 years old at the date of their alleged offence must be “commenced and dealt with” under the OTA as if the upper age limit was 17 at that date—does not change the aging-out line in s 2(2)(d) of the OTA (see [40]–[43]).

The majority also rejected the Crown’s submission that *G* should be applied with the more limited retrospective effect customarily applied in guideline judgments. The majority held that *G* is not a guideline judgment and must be applied on its terms for future cases, and in any case where an applicant is able to persuade the court to reopen a sentencing outcome (see [44]–[45]).

Miller J agreed that the appeals must be allowed and the appellants must be resentenced in the District Court. He also agreed that the Court should resist the Crown’s plea for guidance on reconciling *G* with the Sentencing Act 2002. However, Miller J considered it was appropriate to clarify that the two-step methodology in *G* should not be confused with the *R v Taueki* methodology. Miller J held that pursuant to *G*, a sentencing court, having ascertained the Youth Court outcome had the offender been dealt with at the time, should do three things. First, it should consider what has happened between the offending and sentencing. Second, it should assess those developments through the lens of applicable Sentencing Act purposes, principles and factors. Third, it should stand back and decide what sentence is appropriate (see [49]–[55]).

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