IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE

CRI-2020-425-000017
[2020] NZHC 1896

BETWEEN	NGAPUAHI HURIWAKA TE PAEA KINGI Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 14 July 2020

Appearances: R J Little for the Appellant
M B Brownlie for the Respondent

Judgment: 31 July 2020

JUDGMENT OF NATION J

Introduction

[1] On this appeal, Mr Kingi's counsel argued Mr Kingi should not have been sentenced to imprisonment. In doing so, he referred to the report from He Waka Roimata written by Uepū Hāpai i te Ora – the safe and effective justice advisory group. This report noted the concerning statistics regarding the rate of imprisonment for Māori. While one in 12 New Zealand males have been imprisoned by age 35, for Māori males this figure is one in five.

[2] This appeal is a paradigm case demonstrating the difficulties the courts face in endeavouring to keep such an offender out of prison.

[3] To support the appeal, a cultural report was presented by the defence. It referred to the way Mr Kingi had deep mātauranga (knowledge) of Te Ao Māori (the Māori World), a strong connection to Māori culture and was fluent in Te Reo. Mr Kingi was motivated to engage in programmes with a Māori focus and there was other

information to suggest Mr Kingi could benefit from a non-violence programme with a Kaupapa Māori focus.

[4] It appears Judges in the District Court have recognised the need for Mr Kingi to engage in rehabilitative programmes. However, they were also conscious that Mr Kingi has been violent to people he lived with and so needed to be somewhere safe while engaged in such a programme. Mr Kingi has thus received a number of relatively short sentences of imprisonment with leave to apply for home detention if an appropriate address became available. No such applications have been made.

[5] Although the s 27 cultural report identified ways Mr Kingi might benefit from a Māori focused rehabilitation programme, it provided no information as to processes that are available to resolve issues relating to his offending or how support from his whānau or community might be available to help prevent further offending. These are matters which the Sentencing Act expressly says may be addressed in a s 27 report.[1]

[6] On this appeal, as the Judge in the District Court likely recognised, there could have been benefit to Mr Kingi, the victim of his offending and the community generally if he could be given the opportunity and challenge of being in the community while engaged in such a programme. The information before the Court however was that, if in the community, Mr Kingi would need to be in a pro-social environment where there would be minimal risk of him doing harm to others through further violent offending.

[7] Two potential family addresses were identified for consideration. Information from Corrections indicates that at one such address the family member has been the victim of a previous incident of violence involving Mr Kingi. The other address is close to that of the victim who has been the victim of serious violence from Mr Kingi in the past. She has the benefit of a protection order against him.

[8] The only possible residential address available seemed to be effectively a boarding house. There is no suggestion there would be any supervision or pro-social support available at that establishment to promote and support Mr Kingi in a

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1 Sentencing Act 2002, ss 27(1)(c), (d) and (e).

rehabilitative programme and to ensure he complies with the conditions of a sentence of intensive supervision.

[9] The Court is thus faced with the reality that the Department of Corrections, welfare agencies in the community and Mr Kingi's whānau or iwi are all unable to offer any other residential establishment at which Mr Kingi might safely reside while engaged in the sort of programme he needs to avoid a future return to prison. That limits the ability of the courts to deal with Mr Kingi's offending other than through a sentence of imprisonment. There is however limited scope for him to benefit from the sort of rehabilitative programme he needs while in prison. In part, that is because of the relatively brief term of his prison sentence. The potential for him to be engaged in such a programme may also be limited by Mr Kingi's non-compliant behaviour while in prison.

[10] Ultimately, it is the reality of these difficulties which have dictated the outcome on this appeal. That reality may well have been all too familiar to the District Court Judge when he had to sentence Mr Kingi.

The appeal

[11] Mr Kingi pleaded guilty to one charge of breaching a protection order and one charge of breaching release conditions. He was sentenced by Judge Flatley on 9 June 2020 to 11 months' imprisonment with standard and special conditions of release extending six months beyond the sentence date.[2] Judge Flatley also gave leave for the sentence to be converted to home detention with specific conditions if a home detention address became available.

[12] Mr Kingi appeals his sentence on the grounds a sentence of intensive supervision should have been imposed, there was no consideration for rehabilitation, no credit was given for his youth or cultural identity and the Judge incorrectly considered that deterrence and denunciation meant imprisonment was the only option.

[13] Alternatively, Mr Kingi submits the sentence of imprisonment was excessive when considered against sentences imposed in other similar cases.

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2 *Police v Kingi* [2020] NZDC 10487.

Facts

[14] Mr Kingi is aged 22. He and the victim have been in a relationship for approximately four years. She is aged 18. Their relationship has been particularly traumatic for the victim and probably also for Mr Kingi because of medical events the victim suffered through that relationship. The victim has also suffered from Mr Kingi's violence towards her.

[15] On 3 October 2017, Mr Kingi was sentenced to 11 months' imprisonment with leave to apply for home detention on a charge of injuring with intent to injure/reckless disregard and three offences of male assaults female, those offences were committed on 7 May 2017. The victim was granted a protection order at the same time.

[16] On 12 August 2019, Mr Kingi was sentenced to one year' imprisonment with leave to apply for home detention on a charge of assaulting the same victim with intent to injure on 22 April 2019, and a charge of contravening a protection order. On 25 November 2019, Mr Kingi was released from prison on that sentence.

[17] Mr Kingi was subject to one year and one day release conditions following his release from prison. He was required to report weekly. Before March 2020, he failed to report on two occasions and was issued a verbal and written warning. He had not reported after 13 March 2020. Due to the COVID-19 lockdown, Mr Kingi was required to make phone contact in place of face-to-face contact. He failed to do so.

[18] On 24 April 2020, during the COVID-19 lockdown, the victim went to a friend's house. At 11.30 pm Mr Kingi began sending derogatory and threatening text messages to the victim. Using a friend's phone, he told the victim to come home. After she failed to answer several messages, he threatened to "hunt her down". Mr Kingi then threw all the victim's clothes out of their bedroom window.

[19] The victim received the texts when she returned home as her phone battery had been flat. She requested her flatmate call the Police. Mr Kingi was verbally abusive to the victim when the Police arrived.

[20] On 24 April 2020, Mr Kingi was arrested and charged with breaching a protection order. On 30 April 2020, he was charged with breaching release conditions in failing to report on 22 April 2020.

[21] At the time of the latest events, the victim and Mr Kingi were living together. In the victim impact statement dated 2 June 2020 the victim referred to Mr Kingi as her ex-partner. She said, although he had not physically harmed her on the latest occasion, he had done so in the past and this had left her petrified of him. She said she was scared of what he would do to her on his release from prison.

District Court decision

[22] Judge Flatley considered Mr Kingi's relevant prior convictions illustrated a clear pattern of offending. Given Mr Kingi's history and the circumstances of that offending, the Judge considered intensive supervision was not appropriate. While the offending was relatively low gravity, the context of the previous convictions increased its seriousness. The Judge also considered the need to protect the victim and prevent re-offending. He came to a starting point of 15 months' imprisonment, with a 25 per cent discount for a guilty plea, leading to an end sentence of 11 months' imprisonment.

[23] A non-violence programme with a Kaupapa Māori focus, and a rehabilitative programme based on home detention could be provided if a home detention address became available. Considering Mr Kingi's youth and his need for rehabilitative interventions, the Judge agreed Mr Kingi should have leave to apply for home detention if an address became available.

Principles on appeal

[24] Appeals against sentence are allowed as of right by s 244 Criminal Procedure Act 2011 and must be determined in accordance with s 250 of that Act. An appeal against sentence may only be allowed by this Court if it is satisfied there has been an error in the imposition of the sentence and a different sentence should be imposed.[3] As the Court of Appeal mentioned in *Tutakangahau v R*, quoting the lower court's decision, "…[an appellate] court 'will not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles'".[4] It is only appropriate for this Court to intervene and substitute its own views if the sentence being appealed is "manifestly excessive" and not justified by the relevant sentencing

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3 Criminal Procedure Act 2011, ss 250(2) and 250(3).

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

principles.[5] The focus of an appellate court must "primarily be on the appropriateness of the end sentence, not the means by which that end sentence has been reached".[6]

Appeal against the length of the prison sentence

[25] Mr Little submitted the length of imprisonment was excessive. He said the offending occurred during the COVID-19 lockdown where Mr Kingi was required to get in contact via phone. He said Mr Kingi did not own a phone. He suggested a starting point of two or three months would be justified for this offence. Mr Little submitted it may have warranted a cumulative sentence but, in that case, the totality principle would also have to be applied

[26] As to the breach of the protection order, Mr Little submitted it was a longstanding order with only one recorded breach. He submitted the Judge should have recognised the stress associated with the lockdown restrictions. He emphasised there was no physical violence. This was a situation where the victim and Mr Kingi were living together so it was different from the scenario where a protected person wanted no contact with the offender and was fearful of such contact.

[27] Mr Little argued the starting point of 15 months' imprisonment was excessive, having regard to the starting point adopted or the sentence imposed on appeal in a number of other cases where the Court was dealing with protection order breaches.[7]

[28] Mr Brownlie submitted there was no error in the starting point the Judge adopted where there had been repeat offending over a brief period. There could also have been a separate uplift for his previous criminal offending.

[29] Mr Brownlie submitted, in the Judge's decision to grant leave to apply for home detention, there was implicit recognition of Mr Kingi's youth, the requirement for the least restrictive sentence and Mr Kingi's rehabilitation needs.

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5 *Ripia v R* [2011] NZCA 101 at [15].
6 *Skipper v R* [2011] NZCA 250 at [28].
7 *Prince v Police* [2019] NZHC 1742; *Edwards v Police* [2017] NZHC 2834; *Whiu v Police* [2020] NZHC 298; *Turner v Police* [2017] NZHC 1113; *Bartlett v Police* [2016] NZHC 850.

[30] Mr Brownlie referred to certain judgments of the High Court in submitting the starting point adopted for the offending was not out of line with other cases.[8]

Analysis

[31] As Mr Little acknowledged, Mr Kingi's explanation that he did not own a phone was no excuse for his not keeping in contact with his probation officer as he was required to do. He was able to access a phone when sending abusive text messages to the victim on 24 April 2020. Presumably her phone would have been available to him in the weeks before that time. Although the charge was specifically as to his not making contact on 22 April 2020, he had failed to make contact and received warnings for not making contact prior to March 2020. Mr Kingi had convictions for breaching release conditions from 5 July 2018 and three convictions for failing to answer District Court bail from July 2015.

[32] The offending did warrant a cumulative sentence. Because the offending was distinct from the offence of breaching a protection order, there did not have to be any adjustment for totality.

[33] The lead charge in this offending was the breach of a protection order, which carries a maximum sentence of three years' imprisonment. There is no tariff for this offence and, as the cases canvassed by both counsel indicate, the starting point will be heavily contextual.[9] As noted by Hinton J, in *Jackson v Police*, it may be that offending that is a minor breach of itself is significant in the context of the history between the defendant and the victim.[10]

[34] It was submitted some allowance should have been made because of stresses associated with the COVID-19 lockdown. I note the victim and Mr Kingi were not physically together at the time he sent abusive texts. It seems likely that Mr Kingi became angry with the victim because she was asserting her independence in a modest way. Although he did not physically hurt her, he acted with unrestrained anger in

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8 *Morris-Stewart v Police* [2016] NZHC 1030; *Bartlett v Police*, above n 7; *Robinson v Police* [2019] NZHC 1412.

9 *Jackson v Police* [2019] NZHC 281 at [41].

10 At [42].

throwing her belongings out a window and then abusing her in the presence of the Police. With his previous history of actual violence towards the victim, his behaviour showed he had no respect for the protection order and he was also a danger to the victim.

[35] I do not accept the breach of protection order was less serious because Mr Kingi had only one previous conviction for breaching a protection order. For part of the time after the protection order was made on 3 October 2017, Mr Kingi was serving a sentence of 11 months' imprisonment. Despite his youth, Mr Kingi had quickly accumulated a number of convictions for family violence, not involving the current victim. He also had a conviction for injuring with intent to injure/reckless disregard for an offence committed on 23 July 2017, and a conviction for male assaults female in another instance of family violence on 7 December 2017. He had six previous convictions for breaching release conditions for offences committed between 3 October 2015 and 1 February 2018.

[36] The purpose of a penalty is to convey a clear message that family violence is unacceptable and tough penalties will be applied. Once made, protection orders must be upheld by the Court and dealt with firmly otherwise they will become meaningless.[11] As Mr Brownlie submitted, where there has been repeat offending over a brief period, a short term of imprisonment could be the proper response.[12]

[37] Having regard to all these circumstances, I do not consider that, if a sentence of imprisonment had to be imposed, it could be said the end sentence imposed on Mr Kingi was manifestly excessive.

Appeal against the sentence of imprisonment rather than intensive supervision

[38] Mr Little submitted the imposition of a prison sentence of any length was manifestly unjust and, in Mr Kingi's particular circumstances, a lesser community-based sentenced should have been imposed.

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11 *Police v Tule* HC Rotorua AP87/02, 10 October 2002 at [14]
12 *R v Nathan* CA209/06, 29 November 2006 at [25].

[39] Mr Brownlie submitted the Judge was obviously conscious of the principles of denunciation and deterrence given Mr Kingi was appearing for sentence for his seventh domestic violence conviction against the same victim. He submitted, having regard to the seriousness of the offending, the Judge was not in error in deciding a sentence of home detention would be the least restrictive sentence. He said the Judge was faced with a situation where no suitable address was available. He submitted the Judge dealt with that situation appropriately by reserving leave to Mr Kingi to apply for home detention if an address became available. He had recognised the need to provide for Mr Kingi's rehabilitation needs through imposing standard and special conditions on the sentence of imprisonment.

[40] Mr Little urged the Court to impose a community-based sentence where there could be an emphasis on rehabilitation in a way that has not previously been available for Mr Kingi. He put before the Court a cultural report obtained by the defence, pursuant to s 27(1) Sentencing Act 2002. He said information in that report suggested Mr Kingi would benefit from engaging in a rehabilitative programme with a Kaupapa Māori focus. Mr Little said Mr Kingi had wanted to participate in relationship counselling with such a programme before the COVID-19 lockdown but was prevented from doing so with the lockdown and then with his arrest for his latest offending.

[41] Mr Little acknowledged there is no information before the Court now to indicate Mr Kingi has any appreciation of how his actions and attitudes towards other people are damaging for them, put him at risk of further prison sentences and detracts from any mana he might otherwise have. Mr Little submitted, if Mr Kingi is to be able to show empathy for those who might otherwise be the victims of his offending, he needs to participate in a rehabilitation programme or counselling which will help him achieve this. He submitted, if denied that opportunity at a young age, Mr Kingi will likely continue with his present pattern of offending, putting both himself and others in the community at risk.

[42] When asked whether Mr Kingi has an address at which he could reside, with safety for the victim of his offending, Mr Little said Mr Kingi retained the support of his mother and would be able to reside with her. She had not been willing to have him

at her home if he was subject to all the constraints of a sentence of home detention because of the particular stresses for both her and Mr Kingi associated with such a sentence. Mr Little considered accommodation with his mother would be available in different circumstances. The first pre-sentence report advised Mr Kingi said he has heaps of family support.

[43] Mr Little's further careful submissions are reflected in the discussion that follows.

[44] The principles of denunciation and deterrence are important when sentencing for breaches of a protection order but Mr Kingi's offending history shows that prison sentences have not deterred him from further offending, both by way of breaching a protection order and being involved in domestic violence.

[45] Mr Kingi was first sentenced to imprisonment on 21 July 2015 when he was sentenced to seven months on a number of charges, including failing to answer District Court bail, being unlawfully in a building and two charges of burglary. He was then aged 17.

[46] On 11 February 2016, Mr Kingi was sentenced to imprisonment for two months and three days on three charges of breaching court release conditions. It seems likely that sentence equated to time he had already been in custody on remand.

[47] On 15 December 2016, Mr Kingi was sentenced to imprisonment for five months on charges of wilful damage and injuring with intent to injure/reckless disregard.

[48] On 3 October 2017, Mr Kingi was sentenced to 11 months' imprisonment on charges for offending against the current victim.

[49] On 12 August 2019, Mr Kingi was sentenced to imprisonment for one year for further offending against the current victim.

[50] In each instance, other than when the prison sentence was imposed for time served, the sentencing Judge reserved leave for Mr Kingi to apply for home detention. That would be consistent with the sentencing Judge wanting Mr Kingi to be able to participate in a rehabilitative programme under the oversight of Corrections, with there

being both an element of punishment for Mr Kingi and protection for the public through his being subject to home detention. Presumably because no suitable address has been available, it has not been possible for that objective to be achieved. Mr Kingi has however been released from prison subject to release conditions which would have been imposed to ensure he could benefit from such counselling or programmes his probation officer considered appropriate. This also has never been achieved because Mr Kingi has not complied with release conditions and has been involved in further offending, ultimately resulting in his return to prison.

[51] Even without the benefit of a cultural report, the sentencing Judge recognised Mr Kingi had rehabilitative needs due to his repeat offending. He said to Mr Kingi "you clearly need interventions and rehabilitation. Your thinking needs to change and your behaviour needs to change." He noted that repeat visits to prison did not seem to be having the desired effect.

[52] The initial pre-sentence report to the Court of 3 June 2020 noted Mr Kingi seemed to have often missed out on opportunities to engage with his identified rehabilitative needs due to his repeated offending. Corrections put forward what they said was a new approach where Mr Kingi could be supported by referring him to attend a non-violence programme with a Kaupapa Māori focus.

[53] In that pre-sentence report, Corrections recommended, for the protection of his victim, Mr Kingi be subject to an electronically monitored sentence. Corrections noted the Court had requested "for home detention only to be canvassed as an alternative to imprisonment". It was in that context Corrections suggested the Court might consider a short term of imprisonment with leave to apply for home detention.

[54] Mr Kingi continued to be remanded in custody prior to sentence. On 8 June 2020, Corrections submitted a further report to the Court advising that, during his remand in custody, Mr Kingi had accumulated five misconducts since May 2020. These included behaving in an abusive and defensive manner, including to medical staff and prison authorities, assaulting another prisoner, offering staff money for information and threatening staff. Corrections sought a more robust selection of special conditions on release to be included in the Court's consideration should Mr Kingi be sentenced to a term of imprisonment under two years because of the way he

posed a significant risk of further offending in relation to the victim of his current offending.

[55] Despite that, Corrections advised home detention continued to be identified as the most suitable sentencing outcome, ensuring Mr Kingi would remain at all times at an approved address, engage in suitable rehabilitation and be subject to other relevant special conditions related to the victim. This was all still in the context of the Court having directed that Corrections were only to consider home detention as an alternative to imprisonment. Corrections said their recommendation remained at "other" given Mr Kingi had not yet been able to supply an address which could be assessed for home detention. Despite that, Corrections referred to an intensive supervision sentence with GPS monitoring as an alternative community-based sentence.

[56] All this suggests Corrections has recognised a real need for Mr Kingi to be engaged in a rehabilitative programme but the ability for him to benefit from that has been significantly limited through the Court deciding this would have to be achieved within the context of a home detention sentence. Such a sentence has not been available because Mr Kingi has not been able to provide a suitable address.

[57] This Court now has the benefit of the cultural report obtained by Mr Kingi's counsel. This report, dated 13 July 2019, was written by Mrs Kereru[13] and is based on Te Whare Tapa Wha, which looks at the four dimensions of wellbeing central to Māori cultural behaviours and norms. If one of these dimensions are damaged this may affect personal development and decision-making. This report was not available to the sentencing Judge but Mr Brownlie accepted I could have regard to it.

[58] Mrs Kereru describes Mr Kingi's whānau on both his mother and father's side. His father died when Mr Kingi was one year old. Mr Kingi has deep knowledge (matauranga) of the Māori world, his identity, his mother and father's whakapapa and he speaks fluent Māori.

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[13] Mrs Kereru is a practising lawyer, specialising in Family Law with association with Waikato Iwi Tainui and knowledge of Māori society, Te Reo, history and law.

[59] Mrs Kereru describes Mr Kingi's Te Taha Whānau (family strength). While Mr Kingi was a loved and spoilt child, he has memories of family violence and a party culture until the age of nine when his mother stopped drinking. His stepfather treated his mother badly but his stepfather was Mr Kingi's only role model and taught him to dive, fish and provide for himself. Mr Kingi defended his mother from his stepfather a number of times but loves his stepfather. Mr Kingi was placed in the care of Child and Young Persons Service (CYPS) at the age of 12 and in the care of his Koro (elder) in Dunedin when he was 14. He has no academic qualifications.

[60] Mrs Kereru describes Mr Kingi's Te Taha Wairua (spiritual health) as impaired as he feels the loss of his father and his mother has separated from his stepfather. Mr Kingi's mental health (taha hinengaro) is likely to also be impacted by childhood family violence, trauma and other events suffered by Mr Kingi's ex-partner. His Te Taha Tinana (physical health) is reasonable although he requires weekly physiotherapy for an injury sustained from punching a window. Mr Kingi acknowledges that anger controls his emotions and he must address this otherwise he will continue to offend.

[61] In her report, Mrs Kereru thus submits Mr Kingi's family strength and mental and spiritual health have been impaired from a young age. While he was nurtured in the Māori world he was also exposed to adult issues, placed in CYPS's custody and faced the pain of losing both his father and the opportunity to be a father. She said it is these weaknesses in his Te Whare Tapa Wha which have led to poor decision-making and warrant consideration for his sentence.

[62] This report does not indicate that Mr Kingi has suffered cultural deprivation in a way that is often the case with serious criminal offenders who have ultimately become dislocated from their Māori world and become involved in gangs or some other substitute for what they have lost. Mr Kingi's mother (Ms Yakas) is his strong supporter. She was upset that a cultural report was being obtained for Mr Kingi. She felt that Mr Kingi had been gifted a high level of matauranga (knowledge) from Te Ao Māori and had been given more opportunity to make something of his life, more than other children and whānau, and he had wasted this opportunity and lost mana because of his offending. Ms Yakas believes Mr Kingi must learn humility and was hopeful

her son would change his life, regain his mana and give back to his people, as was given to him.

[63] What the report does however indicate is that Mr Kingi has a deep knowledge of Te Ao Māori and speaks fluent Māori, so may well benefit, more than many, from involvement in a Māori rehabilitative programme such as Corrections recommended.

[64] As Mr Little referred to, in *Tawhara v Police*, Toogood J summarised sentencing principles related to community-based sentences as taken from the Court of Appeal decision of *R v Rawiri*.[14] Relevantly, these included:

> (a) When the criteria for home detention are met, but the offender is unsuitable for that sentence or it is unavailable for other reasons, the appropriate sentence does not automatically revert to a sentence of imprisonment.
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> ...
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> (d) When considering the imposition of a period of sentence of imprisonment for a particular offence, the Court must have regard to the desirability of keeping an offender in the community as far as that is practicable and consonant with the community's safety. It follows from this principle that the Court must impose the least restrictive outcome that is appropriate in the circumstances according to the hierarchy of sentences set out in the Act. The Court cannot impose a sentence of imprisonment unless it is satisfied that:
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> (i) the sentence is being imposed for a statutory purpose or purposes;
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> (ii) that those purposes cannot be achieved by a sentence other than imprisonment; and
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> (iii) that no other sentence would be consistent with the statutory principles as applied to the particular case.
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> (e) Judges "will generally strive to avoid a custodial sentence where there is a genuine prospect of rehabilitation, unless other sentencing principles or purposes operate to rule out that option".
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> (footnotes omitted)

[65] I accept the submission that, with the benefit of the cultural report now available, it can be said the Court should not have defaulted to imprisonment when home detention was not available, given the recognised need for rehabilitative

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[14] *Tawhara v Police* [2015] NZHC 2246 at [31], citing *R v Rawiri* [2011] NZCA 244.

intervention and the fact Mr Kingi would benefit from such intervention but had not previously had the opportunity to do so.

[66] I was tentatively satisfied a sentence of intensive supervision would reduce the likelihood of Mr Kingi further offending through his rehabilitation and reintegration. The nature of his rehabilitative needs would have required the imposition of conditions for a period longer than 12 months which were not available through the sentence of supervision alone.

[67] In a pre-sentence report, the Department of Corrections had recommended the imposition of an electronic monitoring condition. I was satisfied that such a condition would have been necessary because there is a significant risk of Mr Kingi further offending in relation to the person who has the benefit of a protection order. Standard conditions alone would not adequately reduce that risk.

[68] I was also satisfied the imposition of certain special conditions proposed by Corrections would reduce the likelihood of Mr Kingi further offending through his rehabilitation and reintegration.

[69] I had anticipated that, with a sentence of intensive supervision, subject to conditions, Mr Kingi would be given the opportunity, as his mother wants for him, of re-establishing his mana and of showing he can live in the community without reoffending in a manner that would put him in jeopardy of further prison sentences.

[70] In the particular circumstances of this case, for the protection of the public and for the victim, the least restrictive sentence the Court could potentially have imposed was one of intensive supervision. There would have had to be conditions attached to such a sentence to promote Mr Kingi's compliance with the conditions of that sentence, his involvement in programmes that were likely to promote his rehabilitation and which would have ensured the safety of the person who had the benefit of a protection order.

[71] For all that to be achieved, Mr Kingi would have to be residing at an address which was safe for him, safe for the victim of the latest offending and safe for people,

especially children, living at such an address. I gave Mr Kingi, his counsel and Corrections the opportunity to see if such an address is available. The Court has been informed there is no such address. For that reason, the Court is not satisfied that the sentence imposed in the District Court was manifestly excessive or that a different sentence should have been imposed.

Result

[72] Mr Kingi's appeal is thus dismissed.

[73] He will remain subject to the sentence of imprisonment with leave to apply for home detention if he can come up with an address which the Department of Corrections can approve for a sentence of home detention. On his release from prison, he will remain subject to special conditions which should ensure he can participate in suitable rehabilitation programmes. Mr Kingi will have the challenge of making the most of that opportunity, not again breaching release conditions or offending in any other way that might result in a return to prison.

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