IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2018-092-2495
[2019] NZHC 1703

THE QUEEN

v

FRASER MILNE

Hearing:	19 July 2019
Counsel:	JJ Rhodes and FE Gourlay for the Crown MW Ryan for defendant
Sentenced:	19 July 2019

SENTENCING NOTES OF FITZGERALD J

Solicitors:	Kayes Fletcher Walker, Auckland
To:	M Ryan, Auckland

[1] Mr Milne, as you know you are being sentenced by me today having pleaded guilty to one charge of injuring with intent to cause grievous bodily harm,[1] four charges of injuring with reckless disregard,[2] and one representative charge of dangerous driving.[3]

[2] I am first going to outline the facts of your offending. These facts will be well known to you and to many of those here in Court today. But it is important the broader public are aware of the basis upon which I am going to sentence you today.

Facts

[3] On 4 March 2018, you were driving in the Awhitu Peninsula. You knew the roads well. The victims were also driving in the area that day, on a family outing. They comprised a family of four (the two children who were then aged 12 and 10) and a family friend. The parents had emigrated to this country from China, but at that time, they had been living in New Zealand for 17 years.

[4] The speed limit in the area is 80 kilometres per hour. You were driving at around 100 kilometres per hour.

[5] Your and the victims' vehicles approached each other on a hill and as they did so, you believed the victims' vehicle had crossed the centre line into your side of the road. You swerved to avoid a collision, and as a result ended up driving into a drain and striking a fence. This caused some minor damage to your car.

[6] You became very angry at this point, as you believed the victims were at fault in causing the crash. You got your car out of the drain and drove after them. You overtook their car at speed, did a U-turn in front of their car, forcing them to stop. The father of the family, who was driving, and the family friend, got out of the car to talk to you. The family friend did so to translate between English and Mandarin. You demanded they pay for the damage to your car; and the father responded that it was

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1 Crimes Act 1961, s 189(1). Maximum penalty of 10 years' imprisonment.
2 Crimes Act 1961, s 189(2). Maximum penalty of 5 years' imprisonment.
3 Land Transport Act 1998, s 35. Maximum penalty of either 3 months' imprisonment or a $4,500 fine, and disqualification from driving for at least 6 months.

not their fault. You were shouting and swearing at them. You told them that you belonged to a gang. Worried, the two got back into the car and they drove away.

[7] Shortly after this, the victims noticed that you were following them. You tried to cut them off. They stopped their car because of the way you were driving. You got out of your car with your pit bull dog. The victims locked their car because they were scared of the dog. You tried to open the driver's door, and you hit the victims' car several times with your hand, continued to shout and swear, and yelled that your dog would eat the victims. Fearing for their safety, the victims drove away.

[8] At this point, you lost sight of the victims' car. You then went to a group of shops nearby. You made several racist remarks about the victims to people nearby, and continued to attribute blame to them for causing the accident.

[9] You then saw the victims' car driving past the shops. You said in an interview with Police later that day that at this time, you were "at boiling point". You got back into your car, pulled away at speed, narrowly missing another car, and chased the victims for around seven kilometres, at speeds of over 140 km an hour. This took some 10 minutes. When you caught up to them, you pulled your car alongside theirs and signalled for them to stop. When they did not, you pulled your car back slightly, and deliberately hit the back end of the victims' car, causing it to spin out of control, hit a bank and flip into the air. In your interview with Police that day, you said you were "so pissed off", "fuming", and had "so many emotions rolling through your brain". You said you realised someone could "come out of it dead", particularly given the presence of a steep drop on either side of the road.

[10] After the victims' vehicle hit the bank and flipped into the air, it landed upside down on the top of your car. You braked suddenly, causing the victims' vehicle to fall off and slide along the road. Their car narrowly avoided falling down the steep drop. During the crash, the two children in the back seat were thrown from the vehicle, as they had earlier taken off their seatbelts, because they were frightened of you and thought they might need to run away from you quickly.

[11] You then approached the victims' car and began to yell at the father who had been driving. You continued to yell racial slurs and yelled "get out of the fucking car, I'm going to smash you". You retreated once locals arrived to provide assistance. You did not yourself provide any assistance.

[12] All five victims were hospitalised. The youngest child suffered an undisplaced fracture to his skull, a laceration to his scalp, and a small subdural haematoma, as well as significant grazing over his body. The other child suffered grazes to her face and body. The family friend suffered a laceration to the top of her head and elbow, a small subarachnoid haemorrhage (which is bleeding around the brain), concussion and an undisplaced spine fracture. The parents suffered bruising and grazes. It is quite extraordinary that nobody was more seriously injured.

Victim impact statements

[13] Two victim impact statements have been filed and you have heard then read here in Court this morning. The victims have obviously suffered significant and ongoing emotional trauma because of your actions. They have described the physical injuries they and their children suffered. They are worried their children's scars will be permanent, and say their son's personality has changed since the offending. The victims are self-employed and because of your actions, were unable to work for a time, and have had to cut back their business because they were too afraid to drive long distances. Their car was uninsured and was written-off in the crash. The victims express their sadness that after living 17 years happily in New Zealand, something like this could have happened to them.

Personal circumstances

[14] You will very shortly turn 22 years of age. You were 20 at the time of the offending. You report to the writer of a Department of Corrections report prepared for the Court that prior to your offending, you had had a problem with methamphetamine use, but had got yourself off what can only be described as a dreadful drug about a month before the offending. Prior to then, you report having used methamphetamine daily for about four months. You had been hospitalised for your drug use one point, given the impact it was having on your mental health. You had moved out to your

grandmother's home located near the area of your offending to avoid local drug associates.

[15] You told the report writer that you did not recall making any racially charged statements during the offending, but if you did, these would have been motivated by your rage rather than any inherent prejudice. You explained your offending as an extreme road rage incident, affected by a "muddled" mind as the result of historic methamphetamine use and the fact you had only come off it about a month earlier. You also suggested you might have been concussed at the time.

[16] You advise that you have now been drug free for well over a year. During your time on bail for the present offending, you have been working for your father's waste water management business, and from the materials I have read, you are clearly a valued employee. The Department of Corrections report also notes your willingness to make a payment of $10,000 reparation for the loss of the victims' vehicle, as well as additional emotional harm reparation payments.

Section 27 report

[17] Section 27 of the Sentencing Act 2002 allows an offender to provide additional information to the Court about their family and cultural background, and ways that background might have either contributed to the offending, or provide a pathway to rehabilitation. Your mother, Ms Dobbs, has prepared a s 27 report. The following represents a very brief summary only of that report, which I have carefully read.

[18] Ms Dobbs accepts you do not have as deprived a background as many others who come before this courts. However, she says you have nonetheless faced some difficulties, including because of the breakdown of your parents' marriage and bullying.

[19] Ms Dobbs notes that you began using cannabis regularly from the age of 15 and later began to use methamphetamine. She says you began to associate with anti-social people and describes how your misuse of illegal drugs lead you to be hospitalised at one point. Ms Dobbs says that you had been one month clean from methamphetamine at the time the offending took place, and opines that withdrawal

effects materially contributed to your offending, by causing you to be aggressive and hostile. I can place only limited weight on this however, as there is no independent expert medical evidence before me on that issue.

[20] You have attended sessions of the Man Up program, and have had discussions with your family about ways to avoid methamphetamine relapses. Your mother advises that your broader family will be available to support you in your rehabilitation. Finally, your mother reports that she has always known you to be respectful and friendly towards those from other ethnicities or religions.

[21] I am now going to summarise very briefly the Crown and defence submissions.

Crown submissions

[22] The Crown suggest the aggravating factors in a case called *Taueki* provide guidance in determining the start point for your sentence.[4] Mr Rhodes submits your offending was aggravated by the fact it was prolonged and gratuitous, suggesting the later episodes display a "critical degree of premeditation", because during the time at which you were at the local shops and saw the victims' car again, you made an active decision to pursue them. He submits this distinguishes the present offending from cases where there was a spontaneous or "heat of the moment" aggression.

[23] The Crown also says your offending contains an element of vigilantism, and racial hatred. Mr Rhodes says the racial slurs by you at various points during your offending, and in your Police interview later the same day, means this incident goes beyond road rage to one motivated at least in part by racial hostility. He says the Court can infer that if the driver of the other car had not been Asian, the offending would not have happened. Mr Rhodes accordingly submits the racial aspects of the offending fall within s 9(1)(h) of the Sentencing Act and therefore must be taken into account as a serious aggravating factor.

[24] Mr Rhodes also stresses the car was used as a weapon. He also submits that the victims, who did not know the area well and were trying to flee you, were in those

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4 *R v Taueki* [2005] 3 NZLR 372 (CA).

circumstances inherently vulnerable. The impact on the victims has clearly been high. Mr Rhodes also notes that your actions put other members of the public at risk.

[25] Drawing these aggravating factors together, and by reference to the guidelines given in *Taueki,* Mr Rhodes proposes a global starting point of eight to nine years' imprisonment. Mr Rhodes acknowledges this is near the maximum 10-year penalty for the lead offence of injuring with intent to cause grievous bodily harm. But he says this is justified by what the Crown says were racial motivations and a sustained level of premeditation, coupled with the other aggravating factors I have discussed.

[26] Mr Rhodes accepts that some discounts from this starting point will be warranted, for example for your youth and guilty plea. And I am going to address the Crown's position on those matters when I come to discuss them later.

Defence submissions

[27] Mr Ryan on your behalf has referred to various authorities[5] and suggests a three-year six month starting point on the lead offence is appropriate, with a one-year uplift for the remaining charge. This produces a global starting point of four years and six months' imprisonment. He accepts the use of the car as a weapon is an aggravating factor. But he cautions against relying too directly on *Taueki* as a guide, noting that you have been charged with inflicting only injury, not grievous bodily harm. Mr Ryan also firmly disputes a number of the Crown's submissions on other aggravating factors. He says this was not premeditated or gratuitous offending, and that you accept the stupidity of your actions and the extremely hazardous way in which you drove your car. Mr Ryan submits the offending is better characterised as a serious road rage incident in which you displayed extreme, but spur of the moment, anger. He therefore urges the Court to reject the suggestion that the offending was pre-meditated.

[28] He also strongly disputes the offending was caused or motivated by racial hostility, rather than by your view that the driver of the other car had caused the original crash. Mr Ryan says it can be inferred that you would have chased after the victims in those circumstances, irrespective of their ethnicity. While Mr Ryan accepts

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5 Including *Roberts-Tuahuru v Police* [2019] NZHC 1444.

that you made the comments attributed to you, he says there is nothing to suggest the *offending itself* was racially motivated, rather than ill-advised and unacceptable comments being made in the course of that offending.

[29] Mr Ryan also says there should be a number of discounts from the global starting point. And again, I will discuss the defence position on these matters when I come to consider discounts.

[30] The defence submissions also attach several letters of support from family, friends and colleagues. And, I have read all of these. They attest to your good temperament, say the offending was totally out of character for you, and express the hope that a non-custodial sentence might be considered.

Evaluation

[31] Mr Milne, I am now going to explain how I view the Crown and defence submissions, and how I reach the sentence that I do today.

[32] It is first necessary for me to consider the sentencing principles which are set out in the Sentencing Act which are relevant in this case.[6] I must hold you accountable for your offending, promote in you a sense of responsibility for your offending and denounce your conduct. I must provide for the interests of the victims. I must also assist in your rehabilitation and impose the least restrictive outcome that is appropriate in the circumstances.

[33] I turn now to the appropriate starting point. This addresses the nature and seriousness of the offending, including, where possible, by comparison to similar offending, so that there is consistency in sentencing.

[34] After arriving at the starting point, I will then consider whether that needs to be adjusted, up or down, to reflect matters personal to you.

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6 Sentencing Act 2002, ss 7, 8.

Starting point

[35] The Court of Appeal's decision in *Taueki*, as a guideline case is helpful, but not entirely apposite. *Taueki* dealt expressly with offending that *causes* grievous bodily harm (which means really serious harm), rather than offending that leads to less serious harm as in this case. Accordingly, the Court of Appeal in *Taueki* expressly recognised that the guidelines would need to be adapted if applied to other, but less serious, offending.[7] The Court of Appeal has also cautioned against "mechanical adjustment" to the *Taueki* bands for lesser offences, including the lead charge in this case.[8] The Court stated that "considerable care" is required in applying the *Taueki* guidelines to such offending.

[36] Therefore, while I accept the aggravating factors identified in *Taueki* are useful in assessing your overall culpability, too direct an application of the bands in *Taueki* is inappropriate.

[37] I have found it helpful to consider a number of other cases in which a vehicle has been used as a weapon, to assess whether your overall offending is more or less serious than in those cases. In saying that, however, I agree with Mr Rhodes that there is a dearth of truly comparable other cases.

[38] Now Mr Milne, please bear with me while I go through the starting points that have been adopted in these other cases.[9]

[39] In *Kavenga v Police*,[10] Mr Kavenga pleaded guilty to one charge of injuring with intent to cause grievous bodily harm; so, the same charge as the lead charge in this case. Completely unprovoked, Mr Kavenga took exception to a co-worker and drove a forklift (carrying a full load of 700-800 kilograms) directly at the co-worker. He pinned the victim between a fence and the forklift, then threatened to attack the victim with an axe, before being stopped by other co-workers. The victim suffered two broken bones in his leg and required surgery. The District Court adopted a start

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7 *R v Taueki* [2005] 3 NZLR 372 (CA), at [9].
8 *R v Brown* [2009] NZCA 288 at [14].
9 I note that I also considered *Manuel v Police* [2014] NZHC 2648, but do not consider it particularly comparable. I have therefore not expressly addressed it in these sentencing notes.
10 *Kavenga v Police* [2015] NZHC 2599.

point of five-years. That was upheld on appeal to this Court, but Brewer J acknowledged that the start point was at the top of the available range, but was justified because it also factored in Mr Kavenga's previous convictions for violence.

[40] In *R v Roycroft*, Mr Roycroft pleaded guilty to a charge of injuring with intent to cause grievous bodily harm.[11] He found his partner and a male (the victim) sitting in a car. He punched the victim in the face. When the victim tried to chase him away, Mr Roycroft got into his car and accelerated towards the victim, hitting him and causing him to fly through the air into a fence. Mr Roycroft then used his car to pin the victim against the fence. Mr Roycroft then got out of the car and kicked and stomped the victim. The Court of Appeal upheld the five-year start point on the grounds of Mr Roycroft's previous charge for manslaughter, which involved very similar facts.[12]

[41] In *R v Heremaia*, Mr Heremaia pleaded guilty to one count of causing grievous bodily harm with intent (so a more serious charge than in this case), and one of injuring with reckless disregard. [13] After a verbal altercation with one of the victims, Mr Heremaia told others he was going to run them over. He drove at a group standing on the footpath, reversing back over one of the victims several times. Another victim tried to remove the keys from the ignition but Mr Heremaia drove off with him hanging out the window, causing him to fall from the car. The victim who had been run over suffered life threatening injuries and spent three months in hospital. Gilbert J in this Court adopted a global start point of six years and six months' imprisonment on both charges.

[42] In *R v Clarke*, Mr Clarke was found guilty of causing grievous bodily harm with intent to do so (so, again a more serious charge), and driving with excess blood alcohol.[14] Following an argument, he intentionally drove into his partner outside their house. The victim suffered serious injuries to her pelvis and ribs which required some 12-18 months to heal. A starting point of five years three months was adopted.

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11 *R v Roycroft* CA312/01, 4 September 2002.
12 At [27].
13 *R v Heremaia* [2012] NZHC 3361.
14 *R v Clarke* HC Auckland CRI-2010-090-1184, 7 April 2011.

[43] In *R v Bolt*, Mr Bolt pleaded guilty to attempted murder, again a more serious charge than in this case.[15] Mr Bolt and several others were out driving. Mr Bolt drove past the 15-year-old victim and unprovoked, yelled abuse and racial slurs. He and the group then chased the victim on foot with baseball bats. Mr Bolt got back into his vehicle and located the victim and ran him over. While the victim lay injured in the grass he attacked him in the head with a claw hammer. The victim suffered very serious injuries. The offending was prolonged, and Mr Bolt was on bail when he committed the offending. A starting point of 10 years 6 months was adopted.

[44] In *R v Stretch*, Mr Stretch pleaded guilty to one charge of assault with a weapon and one of intentionally causing grievous bodily harm.[16] He got into an argument with his girlfriend and her boarder. When his girlfriend refused to get into the car with him he followed her and drove up onto the footpath at her, narrowly missing her. He then got into an argument with the boarder, and deliberately drove at him, so he was lifted onto the car bonnet. The boarder tried to hold on but Mr Stretch drove in such a manner that he was thrown off the bonnet and under the vehicle and run over. He suffered very serious injuries. The Crown accepted that Mr Stretch had not intended to run over the boarder after he fell off the car. A five year start point was adopted for the offending against both victims.

[45] Finally, in *Roberts-Tuahuru v Police*, the defendant was charged with dangerous driving, reckless driving, common assault, and assault with a weapon (so these are less serious charges than the lead charge in this case).[17] The assault with a weapon charge arose out of a road rage incident, in which the defendant gave chase to the victim's car after perceiving it had wrongfully overtaken him, rammed it at least twice causing it to go off the road and into a ditch. This Court upheld a two-year start point.

[46] Returning to the present case, I accept that your offending is aggravated by the presence of multiple victims, by the duration of the offending, and by the use of a car as a weapon. I do not, however, consider premeditation to be an aggravating factor, at

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15 *R v Bolt* HC Rotorua, CRI-2009-077-1497, 28 October 2010.
16 *R v Stretch* HC Hamilton CRI-2009-019-10192, 13 July 2010.
17 *Roberts-Tuahuru v Police* [2019] NZHC 1444.

least in the sense urged on me by Mr Rhodes. The summary of facts instead suggests you were motivated by extreme anger and at the outset, made a spur of the moment decision to chase the victims. The decision to restart the chase after you had been at the shops is in my view more accurately viewed as a continuation of your uncontrolled rage, rather than anything particularly premeditated, at least in the more extreme sense discussed in the authorities.

[47] I also disagree with the Crown's submission that your offending was racially motivated, at least to the extent of being a *significant* aggravating factor. Moreover, it would be quite wrong, in my view, for your offending to be described as a "hate crime". Mr Rhodes is quite right when he says that the courts have been cautious about labelling offending as hate crimes. I have read several cases in which the courts, including the Court of Appeal, have considered such offending.[18] I have found the Court of Appeal's comments in a case called *R v Galloway* particularly instructive. In all of the cases in which it has been accepted offending was motivated by hatred to a group in society with particular characteristics, the defendant has actively singled out their victim for that reason and offended against them. For example, bombing a Sikh Temple; manslaughter of a victim because they were transgender; singling out and offending against a victim because of their sexual orientation; singling out and offending against a victim because of their race. In other words, the offending has *only* come about because of the victim's characteristics.

[48] I do not consider that to be the case here. There is nothing in the summary of facts which indicates the *underlying and predominant cause* of your offending was racial hatred. The summary of facts does not suggest you were aware of the victims' ethnicity when you flew into an uncontrolled rage and decided to chase the other car. I accept that during the latter parts of your offending and in your Police interview, you made several appalling comments concerning the victims' ethnicity. Please be assured that I am not downplaying the inappropriateness of these comments in any way. They were abhorrent. But I must stand back and consider whether the offending itself was

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[18] Being offending which engages s 9(1)(h). See *Kemp v Police* HC Whangarei CRI-2004-488-0020, 27 July 2004; *R v McKenzie* [2009] NZCA 169; *Rudduck v Police* HC Auckland CRI-2009-404-45, 3 April 2009; *Galloway v R* [2011] NZCA 309; *Landon v R* [2018] NZCA 264; *Dooley v Police* HC Christchurch CRI-2008-409-001, 21 February 2008.

racially motivated in the manner and to the extent the Crown suggests. For the reasons I have given, I do not.

[49] Accordingly, while I do take into account that the views you expressed while at the shops in particular appear to have "amped up" your rage and may have contributed in some part to your decision to continue the chase, I do not apply *very* significant weight to this factor. I consider it quite possible that whoever had been driving the other car that day would have generated the same or at least similar rage and vitriol from you.

[50] Because of my rejection of the degree of pre-meditation and racial motivation suggested by the Crown, I consider the Crown's proposed starting point to be too high by a significant margin. Having carefully considered the other cases to which I have referred, I consider a global starting point for all of your offending of **four years, six months**' imprisonment is appropriate. Broadly speaking, I consider the offending in *Heremaia, Kavenga, Roycroft, Clarke, Bolt and Stretch* to be more serious than yours, *Bolt* in particular. Many of those cases involved more serious charges, and *much* more serious injuries. Some of the starting points adopted also took into account serious prior offending, of which you have none. I accept that your offending took place over a longer period of time. But countering that is that in most of the other cases referred to, the defendant intentionally drove a car (or other vehicle) *directly* at a person – that person therefore being extremely vulnerable and hence the often very serious injuries sustained – rather than driving the car at another vehicle.

[51] So, having arrived at this start point, I now turn to consider whether it needs to be adjusted upwards or downwards to cater for factors personal to you.

[52] You have three prior convictions,[19] but for very minor offending quite unlike the present charges. The most serious sentence you have previously received is 80 hours community work.[20] The Crown does not suggest any uplift is warranted for these convictions and I agree.

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19 Two for sustained loss of traction and one for theft.
20 Sentencing Act 2002, s 10A(2).

[53] I therefore turn to discounts from the starting point.

Youth discount

[54] Counsel are agreed that some discount is warranted for youth.

[55] The Court of Appeal in a case called *Churchward* confirmed that youth discounts can be awarded to reflect an offender's limited maturity, as well as to promote rehabilitation, recognising that a sentence of imprisonment can have a severe impact on a young person.[21] Discounts for youth can be substantial.[22] However, they are generally limited when an offender is a young adult, rather than in their teens.[23] The Crown note that reductions of between 10 to 17 per cent are typically awarded to offenders aged 18 or 19.[24]

[56] The Crown submit your offending is ill-suited to a youth discount because it was "seriously prolonged and premeditated". As noted earlier however, I consider the offending is best characterised as being carried out in a fit of rage, which was no doubt aggravated by your youth and immaturity.

[57] In my view, a relatively substantial discount, of 20 per cent, is warranted to capture both your youth *and* your prospects for rehabilitation, which appear to be good.[25] It seems you have been drug free for some time now, you have fully complied with your bail terms and you have strong family support. I note that with reference to a case called *Gacitua*, Mr Ryan suggests a 20 per cent discount for youth alone. However, that case involved a 20 per cent combined discount for youth, lack of previous convictions and genuine remorse.[26]

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21 *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].
22 See, for example, the survey of cases in *Whitcombe v Police* [2018] NZHC 1409 at [53]-[66], where discounts of 30-50 per cent were awarded – albeit for offenders in their teens.
23 *R v Martin* [2016] NZCA 213 at [13].
24 Citing Simon France (ed) *Adams on Criminal Law* (online looseleaf ed) at [SA9.17(2)].
25 *R v Hura* [2018] NZHC 3347 at [42].
26 *Gacitua v R* [2013] NZCA 234 at [13].

Remorse and offer of reparations discount

[58] As noted, you are willing to make a $10,000 reparation payment to the victims. And I must take that into account.[27] The victims have indicated a willingness to accept that offer. But they see that as going to assisting with financial issues, given the write-off of their car. They do not see it as mitigating the offending and its emotional toll on them. I must take into account the victim's views in this regard.[28] The Crown also points to the Department of Corrections report which suggests you sought to downplay the seriousness of your offending. Because of this and the victims' response to the reparations offer, the Crown says no separate discount for remorse and reparations is warranted. Mr Ryan on your behalf seeks a 15 per cent discount.

[59] The availability of discounts for offers of reparation and remorse are generally limited.[29] Discounts of five per cent have been considered in range.[30] In a case called *Johnson*, a five per cent discount was suggested as appropriate for an offer to pay the victim $10,000. In a case called *Pollard v R*, a combined discount of 17 per cent for remorse and reparation payments was described as "generous" (although it was not interfered with on appeal).[31]

[60] In this context, I must also consider your remorse. I have read your letter to the victims. I accept it genuinely reflects your views. The writer of the report to the Court also notes you exhibit a degree of shame and remorse, though as noted, it also seemed you sought to downplay your offending. Overall, however, I do consider you to be genuinely remorseful. Combined with your offer to pay $10,000 in reparations, which I accept is significant for a young man like you, I am prepared to give you an overall discount of 10 per cent for remorse and reparations.

[61] Together with the youth discount, this equates to a 30 per cent discount, or a 16-month reduction. This brings the sentence at this point to **three years, two months** imprisonment.

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27 Sentencing Act 2002, s 10.
28 Sentencing Act 2002, s 10(2).
29 *R v Johnson* [2010] NZCA 168 at [28].
30 At [29]. See also *R v Ralph* [2018] NZHC 794 at [25].
31 *Pollard v R* [2018] NZCA 244 at [37].

Guilty plea discount

[62] I turn now to your guilty plea. The Crown suggests that given it was only made two weeks before trial, a discount of only 10 per cent is warranted. Mr Ryan suggests 20 per cent. He notes the timing of the plea was related to the timing of the Crown's agreement to withdraw a charge of attempted murder.

[63] There is no information before me as to the communications around the withdrawal of the attempted murder charge. I accept, however, that so long as that charge was in the mix, it likely made it difficult for you to have entered a guilty plea. I accordingly agree with the defence that a discount of 20 per cent (or eight months) is warranted for your guilty plea. This also reflects that the plea avoided what would have been an extremely difficult trial for the victims in particular.

[64] This brings your end sentence to one of **two years and six months' imprisonment.** That is the sentence I will impose today. I will impose it on the lead charge of injuring with intent to cause grievous bodily harm. I will impose lower sentences on the remaining charges, but order that they are to be served concurrently, or alongside, the lead charge, so your total sentence will still be two years, six months' imprisonment.

[65] Mr Milne, this end sentence does not enable me to consider home detention. Despite your lack of prior offending and what I accept to be good prospects at rehabilitation, this was nevertheless serious offending. In my view, the sentence I have reached is the least restrictive outcome in all of the circumstances, when the matter is approached on a principled basis. I am also satisfied the discounts I have given you are at the upper end of what is properly available.

Disqualification from driving

[66] As both the Crown and defence acknowledge, I am also required to disqualify you from driving for at least six months. There is no corresponding maximum provision.[32] The Crown seeks a two-year disqualification period. They also seek the

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[32] *Grant v Police* [2017] NZHC 953 at [17]. See also *Cole v Police* [2013] NZHC 308.

disqualification to be delayed to commence when you are released from custody.[33] The defence does not oppose either the period or when it should start.

[67] Having considered the principles applicable to the period of disqualification,[34] and taking into account the prospects for rehabilitation, while I agree that the disqualification should take effect upon your release from custody, I consider a shorter period is appropriate. This reflects the need to balance the fact that long periods of disqualification can impinge rehabilitation (for example, preventing or interfering with gainful employment), against the need to keep dangerous drivers off the road. Balancing these factors, and taking into account what I see to be your good prospects for rehabilitation, I impose a one-year period of disqualification to commence upon your release from custody.

Sentence

[68] Mr Milne, would you please now stand.

[69] On the charge of injuring with intent to cause grievous bodily harm, I sentence you to two years, six months' imprisonment.

[70] On each of the four charges of injuring with reckless disregard, I sentence you to one year, six months' imprisonment.

[71] On the charge of dangerous driving, I sentence you to two months' imprisonment.

[72] All these sentences are to be served concurrently, which means your total sentence is **two years, six months' imprisonment.**

[73] I also disqualify you from driving for a period of 12 months, which is to commence upon your release from custody.

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33 Land Transport Act 1998, s 85(1).
34 Usefully surveyed in *Grant v Police* [2017] NZHC 953 at [15]-[17].

[74] You may now stand down, please.

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Fitzgerald J