**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA707/2017**
**[2018] NZCA 162**

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| BETWEEN | SOLICITOR GENERAL<br>Appellant |
| AND | CHASE HUTCHISON<br>Respondent |

Hearing: 17 April 2018

Court: Kós P, French and Miller JJ

Counsel: K S Grau for Appellant
A J Bamford for Respondent

Judgment: 12 June 2018 at 10 am

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**JUDGMENT OF THE COURT**

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**A The Crown's appeal against sentence is allowed.**

**B The sentence imposed in respect of the charge of wounding with intent to cause grievous bodily harm is quashed. A sentence of eight years and six months' imprisonment with a minimum period of imprisonment of four years and three months' imprisonment is substituted.**

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**REASONS OF THE COURT**

(Given by Kós P)

[1] Mr Hutchison attacked his partner on three occasions. At the time he was already serving a sentence of home detention for charges unrelated to the present offending. The first incident, in December 2015, involved threats with a filleting knife, a struggle (in which the complainant received serious cuts to her fingers

and one to her chest) and an assault with a cigarette lighter (which caused bleeding).[1] The second incident, in January 2016, involved kicking, stomping and punching in what the sentencing judge, Judge Davidson, called a "frenzied physical attack".[2] After the offending Mr Hutchison gave the complainant Tramadol medication to relieve her pain. The third incident occurred two days later and involved a violent, prolonged beating using a metal-legged bar stool.[3] The blows tore through the tissue on one of the complainant's legs and damaged an adjacent door, splattering it with blood. These two incidents together left the complainant with a perforated ear drum, serious contusions on the back of her head, neck, chin, back, groin and limbs and (where the bar stool tore her leg tissue) the need for a skin graft to repair her leg wound.

[2] The complainant is permanently scarred and has been diagnosed with post-traumatic stress disorder. Her physical recovery was lengthy, causing her to lose her job. Her memory has been affected by her injuries. She now lives overseas, in part in consequence of this offending.

[3] Mr Hutchison was sentenced to six years and nine months' imprisonment. The Crown now appeals that sentence, submitting that it is manifestly inadequate.

**Sentencing at the District Court**

[4] A sentence indication was given of eight and a half years' imprisonment. It was not accepted, but guilty pleas followed five months later. At sentencing, Judge Davidson departed from that indication. He sentenced Mr Hutchison to six years and nine months' imprisonment with a minimum period of imprisonment of three years and four months.[4]

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1 This gave rise to three charges: threatening to cause grievous bodily harm (Crimes Act 1961, s 306(1) with a maximum penalty of seven years' imprisonment); injuring with intent to injure (s 189(2) maximum penalty five years' imprisonment); and assault with a weapon (s 202C(a)(a) with a maximum penalty of five years' imprisonment).

2 *R v Hutchison* [2017] NZDC 26181 at [5]. That gave rise to the charge of injuring with intent to cause grievous bodily harm contrary to s 189(1) which carries a maximum penalty of 10 years' imprisonment.

3 Wounding with intent to cause grievous bodily harm (Crimes Act, s 188(1) with a maximum penalty of 14 years' imprisonment).

4 *R v Hutchison*, above n 2, at [36] and [37].

[5] The Judge's sentencing notes include the following considerations. First, that the complainant "almost certainly has been destroyed for life".[5] Secondly, that Mr Hutchison was not an inherently cruel man, but reacted with uncontrollable rages. Treatment of that condition would be "long, difficult, and very, very challenging".[6] Thirdly, the aggravating features of the offending were self-evident but included use of weapons (a knife and a stool), a frenzied physical attack, serious injuries, blows to the head and upper body, a profound if not life changing effect on the complainant, vulnerability, the offending occurring while serving a sentence of home detention, and the existence of previous convictions for violence (including domestic violence).[7] Mitigating considerations included guilty pleas (albeit late), steps taken to obtain treatment while in custody, and psychiatric and psychological material suggesting that the offending was caused by impulsive rage. Some credit for remorse was also given.[8]

[6] The Judge constructed his sentence as follows. The Judge took a cumulative sentencing approach to the three incidents. The first resulted in a three-year starting point. The second incident resulted in a four-year starting point. The third incident, the most serious one involving use of the bar stool as a weapon, resulted in a starting point of six years' imprisonment. These starting points were consistent with the sentencing indication, save that the indication had been seven years' imprisonment for the third incident.[9]

[7] Taking a cumulative approach, a notional starting point of 13 years' imprisonment was reached. Allowing for totality of offending, the Judge took an overall starting point for the offending of 10 years.[10] That was a significant reduction from the 12-year starting point in the sentencing indication.

[8] Turning then to considerations personal to the offender, a six-month uplift was required for previous violent offending and offending while subject to an extant sentence of home detention, increasing the starting point to 10 and a half years'

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5 At [8].
6 At [15].
7 At [16].
8 At [17] and [19].
9 At [24]–[26].
10 At [28].

imprisonment.[11] There were some mitigating factors. First, an 18-month discount was given for rehabilitative steps taken in custody, remorse "that is now beginning to develop" and for the psychological explanation for the offending being attributable to impulsive rage.[12] Secondly, a full discount of 25 per cent for guilty pleas was allowed.[13]

**Appeal**

[9] The Crown takes two points:

(a) the starting point adopted was too low; and

(b) the discounts for remorse, rehabilitation and the psychological explanation for offending, and the full 25 per cent guilty plea discount, were unwarranted.

[10] Ultimately the Crown accepts that the sentencing indication starting point of 12 years', and end point of eight and a half years' imprisonment (after adjustment for personal circumstances), were within range.

[11] As this is a Solicitor-General sentence appeal,[14] we regard that concession as being an upper band for sentencing. As *Adams on Criminal Law* notes:[15]

> Where the Court finds a sentence should be increased on the grounds of manifest inadequacy or error of principle, the increase will not be to the level that would have been imposed were the appellate Court the original sentencing Court. Rather, it is to the maximum extent required to remedy the manifest inadequacy. … The sentence should only be increased to the level which accords with the lowest range of appropriate sentences …

As will be seen, we consider that a longer sentence was justifiable here.

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11 At [29]–[30].

12 At [31]. At the sentence indication, four months for steps taken in custody for undertaking counselling, six months reflecting the psychological evidence and no discount for remorse at that stage was allowed. The discount then was 10 rather than 18 months.

13 A similar allowance was given at the sentence indication.

14 Criminal Procedure Act 2011, s 246.

15 Bruce Robertson *Adams on Criminal Law* (looseleaf ed, Brookers) at [SAB5.09(h)].

**Starting point**

[12] Sentencing usually involves three steps. The first step seeks to establish a starting point that takes account of the aggravating and mitigating features of the offending, but that excludes the second step, which takes account of aggravating and mitigating features relating to the offender. The starting point "is the sentence considered appropriate for the particular offending (the combination of features) for an adult offender after a defended trial".[16] The third, separate step, adjusts the product of the first two steps for any guilty plea entered.[17] We adopt that approach here and begin by assessing the starting point.

[13] Ms Grau for the Crown submits that the sentencing-indication starting point of 12 years for the three incidents together was an available option. The third incident involving the bar stool, being the most serious and lead offence, she submits sat properly at the very top end of band 2, possibly into band 3, of the bands identified in this Court's sentencing guideline judgment in *R v Taueki*.[18] We note that band 2 attracts an imprisonment range of five–10 years, and band 3 nine–14 years.

[14] Ms Grau refers to two prior decisions of this Court. The first, *King v R*, involved a single incident in a domestic setting involving physical offending with a weapon (a piece of wood) against a person accused of infidelity with the offender's partner.[19] Life threatening head injuries resulted, as did a 12-year starting point.

[15] The other decision is *Muliipu v R*.[20] That involved seven offences of violence against a domestic partner across two weeks, including kidnapping her from a Women's Refuge and prolonged beating including stabbing in the eye which resulted in loss of that eye. A starting point of 11 years for the offending of wounding with intent to cause grievous bodily harm was upheld on appeal. Ms Grau acknowledges that the offence in that case was more serious but notes that this Court had said that a sentence of 14 years would have been available for the lead offence given the very serious injury that had been caused. In this case she submits that a starting point for

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16 *R v Mako* [2000] 2 NZLR 170 (CA) at [34].
17 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.
18 *R v Taueki* [2005] 3 NZLR 372 (CA) at [34]–[35].
19 *King v R* [2015] NZCA 436.
20 *Muliipu v R* [2013] NZCA 257.

the third incident of 9–10 years, at the top end of band 2 of *R v Taueki*, with an uplift of two–three years for the other offending, and for offending while serving a sentence, could not have been questioned. A starting point of 10 years' imprisonment was inadequate, but 12 years would have been within range.

[16] Mr Bamford for Mr Hutchison submitted that the offending fell within band 2, and not at the upper end thereof. The offending was impulsive, did not involve a weapon brought to the site (but rather the opportunistic use of the bar stool), and there were only limited attacks to the head. Departing as he had to to some extent from his written submissions, he accepted that (treating the second and third incidents together as effectively a single incident), a starting point of eight–nine years' imprisonment would be appropriate, with a two-year uplift for the earlier December incident.

*Analysis*

[17] We will approach sentencing in this appeal on a concurrent basis. The third incident must be treated as the lead offence. It resulted in a charge of wounding with intent to cause grievous bodily harm (which carries a maximum term of imprisonment of 14 years' imprisonment).[21] We will fix a sentence appropriate to that offending, and then uplift it to take due account of the other two incidents.

[18] We have reviewed prior decisions of this Court involving charges of wounding with intent contrary to s 188(1) of the Crimes Act 1961 and in which the complainant was partnered (either at the time of the offending or formerly) to the defendant. A table of those decisions is included as an Appendix to this judgment. We review only some of those decisions here.

[19] We have dealt already with *Muliipu v R*.[22]

[20] In *Rikihana v R* the complainant had driven the appellant's car to a party.[23] The car was stolen while the complainant was at the party. She returned to the defendant's home in the early hours of the morning. Upon learning his car had

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21 Crimes Act, s 188(1).
22 See above at [15] of this judgment.
23 *Rikihana v R* [2010] NZCA 405.

been stolen, the appellant became enraged. He assaulted the complainant's head with a lump of wood and axe handle, kicked and punched her, eventually leaving her unconscious in a pool of her own blood on the floor. The appellant then called an ambulance and accompanied her to the hospital. The complainant was in a coma on arrival at the hospital and suffered extensive injuries including a fractured leg and major brain trauma. This Court dismissed an appeal against sentence and upheld a starting point of 12 years' imprisonment. The factors aggravating the offending were the extreme violence, use of weapons, attacking the head and the seriousness of the injuries inflicted, which were undoubtedly grave.[24]

[21] In *Savelio v R* the appellant and female complainant had separated.[25] In the early hours one morning he was in her neighbourhood. Her new partner was at the household too. The appellant woke her up and eventually forced his way inside the house, went to the kitchen to arm himself with knives, and confronted the female complainant's new partner. The appellant attacked him. He suffered numerous lacerations. He then turned to the female complainant who was holding their one-year-old son. He struck her several times, she began losing consciousness, and the appellant stomped on her head. This Court dismissed an appeal against sentence for which the starting point was 10 years and six months' imprisonment. The aggravating features were numerous: use of lethal weapons; extreme violence; unlawful entry into a house; vulnerable complainants; and premeditated offending. Nothing mitigated the offending. The 10-year starting point was not modified on appeal.[26]

[22] We regard the offending in each of these three cases to be more serious than the present offending. In both *Rikihana v R* and *Muliipu v R* the resulting injuries were more serious. In *Rikihana v R* the sentencing Judge observed the complainant would have died but for the defendant's decision to seek medical assistance. In *Muliipu v R* the violence was more protracted and led to the removal of one of the complainant's eyes.

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24 At [13].
25 *Savelio v R* [2007] NZCA 333.
26 At [40].

[23] The remaining cases involve offending we regard as less serious than the present. In *Griffiths v R* the offender committed six serious violent assaults against his then partner.[27] The worst involved the offender forcing the complainant to put a sponge in her mouth to keep her quiet, then deliberately splashing boiling water over her abdomen and legs. The Court dismissed an appeal against sentence and upheld the sentencing judge's starting point of eight years.[28]

[24] The last case to which we will refer here is *Kauwhata v R*.[29] There the appellant had been in a relationship with the complainant, but they were separated at the time of the offending. The complainant visited the appellant to collect some items. He invited her inside. She hesitantly accepted. He put the kettle on. Without warning, he grabbed her hair from behind, pulled her head back and struck her face. She fell to the floor. The appellant, then wielding a knife, stabbed her in the chest and attempted to stab her throat. Only by good luck were the blows to her ineffective, one deflected by a necklace worn by the complainant. This Court allowed an appeal against sentence, and identified the appropriate starting point as seven years' imprisonment, within band 1 in terms of *R v Taueki*. The offending was premeditated and involved the use of a weapon.[30] But no serious or lasting injury resulted.[31]

[25] While we regard Mr Hutchison's offending as less serious than those first three cases, it is in our view more serious than both *Griffiths v R* and *Kauwhata v R*. While callous and causing long-term injuries, the offending in *Griffiths v R* was not as sustained as that in the instant case nor, we think, the injuries inflicted as serious. Similarly, in *Kauwhata v R* no long-term or serious injuries were inflicted — albeit only owing to the defendant's inability, it seems, to secure the injuries intended.

[26] Before turning further to the present offending, we wish to deal briefly with how this Court dealt with the significance of a domestic setting to sentencing in *R v Taueki*. The Court recognised that "offending [involving] the invasion of the sanctity of the home" is a particular factor aggravating the seriousness of the

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27 *Griffiths v R* [2011] NZCA 102.
28 At [18].
29 *Kauwhata v R* [2010] NZCA 451.
30 At [22].
31 At [23].

offending.[32] The Court noted that is reflected in s 9(1)(b) of the Sentencing Act 2002 and that courts "have repeatedly emphasised the importance of recognising the sanctity of the home and insisted that violence occurring in a person's house is to be treated as an aggravating factor calling for a higher sentence".[33] The Court went on to discuss the significance to attach to the seriousness of the offending where it occurs in a "domestic situation". It noted that while offending in such a setting was "sometimes said to reduce the seriousness of conduct", it should no longer be so viewed.[34] That was so in the light of the ubiquity of domestic violence, its secretive nature and that such offending frequently involves a vulnerable victim.[35]

[27] Family violence has become one of the scourges of New Zealand society. The family home is a place where an occupant is entitled to feel, and be, safe. The courts have repeatedly emphasised the importance of respect for the sanctity of the home. As we noted almost 20 years ago, "Conduct of this kind affects the sense of security of the whole community."[36] Violence occurring in the complainant's home will normally be an aggravating factor for sentencing purposes. That may be because of home invasion, but it does not depend on external intrusion of that kind. Breach of an intangible trust may be just as significant as the breach of a physical boundary. Co-occupation as a family unit involves a social contract of mutual care and nurture. Necessarily it also involves inherent vulnerability to opportunistic breach of that social contract when physical violence is employed. One cannot realistically or effectively lock the door against a co-occupant. Where the victim is a family member, dependent on the offender for emotional and physical support, the alternative aggravating factor of vulnerability almost inevitably will be triggered. It would be a rare case of family violence where that was not so.

[28] With that in mind, we turn now to the particular aggravating features of the offending as identified in *R v Taueki*, taking as the lead offence the third incident which gave rise to the charge of wounding with intent to cause grievous bodily harm. First, the violent frenzied attack inflicted against the complainant involved extreme

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32 *R v Taueki*, above n 18, at [31(j)].
33 At [31(j)].
34 At [33].
35 At [33(a)].
36 *R v McLean* [1999] 2 NZLR 263 (CA) at 266.

violence. Secondly, serious injury was inflicted. The attacks have had, and will continue to have, long-term physical and psychological effects on the complainant. Thirdly, the offending involved the use of a weapon. However improvised and impulsive the use of the metal-legged bar stool might have been, it seriously aggravates the offending, reflected in the injuries sustained by the complainant. Fourthly, we regard the commission of the offending in the domestic home as aggravating for the reasons just articulated. The complainant ought to have been able to regard the home in which the offending was committed as a refuge and not a place where she was susceptible to the physical violence she suffered. The complainant was rendered even more vulnerable by reason of the effects of the second incident, itself serious offending, just two days earlier.

[29] We have identified four aggravating features of the offending. This Court in *R v Taueki* indicated that offending with three or more aggravating features would fall within band 3 with a starting point of nine–14 years.[37] However we adopt a starting point of nine years' imprisonment placing the offending at the boundary between bands 2 and 3. This is for two reasons. The first is that the Ms Grau accepts the third incident fell at "the very top end of band two or possibly into band 3". For the reasons set out above at [11] of this judgment we do not adopt a higher starting point, even though one may have been available to the sentencing judge. Secondly, the number of aggravating factors should not, at least in the present case, mechanically determine the appropriate sentencing band. As this Court recently noted in *Setu v R* in relation to the *R v Taueki* sentencing bands:[38]

> Guideline judgments are just that — guidelines in the exercise of a discretion. As this Court made clear in *Taueki* itself, the suggested bands and starting points are to be used flexibly. Sentencing judges need to exercise judgment in assessing not only the aggravating factors but also their gravity. The placing of any particular case within a band is also very much an evaluative exercise, there being significant overlap.

In the light of that, the starting point we have adopted of nine years' imprisonment for the third incident places the seriousness of that offending roughly between *Savelio v R*

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37 At [34] and [40].
38 *Setu v R* [2018] NZCA 127 at [10] (footnote omitted).

and *Griffiths v R*. We regard that as appropriately reflecting the comparative seriousness of the offending in those cases and this.

[30] In all the circumstances we consider an uplift of two years to that starting point for the second incident is appropriate. As for the first incident, that caused less serious injury and involved a less serious physical assault. Some physical injuries were caused by it, but it is in a different category of offending to the third incident. Bearing in mind the sentences imposed already, we would apply a six-month uplift for that offending. In summary, we apply an uplift of two years and six months' imprisonment for the first and second incidents.

*Conclusion*

[31] That results, therefore, in an appropriate overall starting point of 11 years and six months' imprisonment. It follows that the starting point adopted by the Judge in final sentencing, of ten years' imprisonment, was out of range and manifestly inadequate.

**Adjustments to starting point**

[32] As we note above at [12] of this judgment, the second step of the sentencing exercise is to adjust the starting point to take account of aggravating and mitigating factors relevant to the offender personally. In this case, there is no argument that further uplifts must apply for the fact that the offending occurred while Mr Hutchison was serving an extant sentence of home detention, and for the fact that he has prior convictions, in particular for violence against other women. The Crown did not submit the six-month adjustment covering both was inadequate. That can only be regarded as lenient in the circumstances, but we adopt it for the same reason noted above at [11] of this judgment. That takes the sentence to 12 years' imprisonment.

[33] We turn now to mitigating factors: remorse, rehabilitation, psychological considerations and the guilty pleas.

[34] Ms Grau submits that the 10-month discount allowed in the sentencing indication for rehabilitative steps, developing remorse and psychological explanation

of the offending was permissible. There was no justification for increasing that to 18 months at the final sentencing, however. No additional rehabilitative steps had been taken. The pre-sentence report was insufficiently considered by the Judge: it was "scathing" and sounded a note of caution in relation to Mr Hutchison's manipulative behaviour. Psychological reports, including from Dr Justin Barry-Walsh, also expressed caution, while noting the appearance of improvement and some self-awareness and motivation for change. No psychiatric or psychological disorder was diagnosed such as would justify a discount in terms of *R v Clarke* and *R v Taueki*.[39] The reports did not demonstrate a causal nexus between mental illness and offending; rather there was personality dysfunction involving impulsive rage, made worse by substance abuse. As Ms Grau put it:

> What is most apparent is that Mr Hutchison presents a great risk to females with whom he enters into a relationship.

[35] As to the full 25-per-cent discount for guilty pleas, Ms Grau submits that was unduly generous. They were entered some five months after the sentencing indication took place, which was rejected. A discount of 10–15 per cent would have been appropriate.

[36] Mr Bamford supported the approach taken by the Judge on sentencing. Other than the guilty plea discount, it represented a discount of 14 per cent of the 10-year-six-month starting point. Mr Bamford submits that was within range given the combination of Mr Hutchison's underlying psychological issues, rehabilitative efforts whilst in custody and expressions of remorse that the Judge considered genuine. He had undertaken the intermediate alcohol and drug course, anger management course, and other education programmes over a period of four months since remanded in custody. The impulsive violent offending was potentially attributable to foetal exposure to alcohol, head injuries suffered in an accident and sexual abuse experienced as a child. Dr Martin Kelly, a psychologist, assessed Mr Hutchison. He found problems with self-regulation of emotion and considered they met the criteria for post-traumatic stress disorder. As to remorse, the letter Mr Hutchison read in court

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[39] *R v Clarke* CA225/98, 3 September 1998 at 7–8; and *R v Taueki*, above n 18, at [45].

was genuine, showed insight into his behaviour, and was, he believed, read in the presence of the complainant.[40]

[37] Turning to the guilty pleas, Mr Bamford submits the full discount was appropriate. The trial had been adjourned, and they were not last-minute pleas. They reflected realisation of responsibility, remorse and spared the complainant from having to give evidence.

*Analysis*

[38] Ms Grau accepts that an allowance of 10 months for rehabilitation and remorse was permissible, and that must be the minimum allowance. We would accept that the early steps taken by Mr Hutchison towards rehabilitation deserve an allowance of approximately five per cent (seven months) from the adjusted starting point.

[39] We do not consider a discrete sentence discount for remorse is deserved. There is little tangible evidence of remorse in the pre-sentence report or the experts' reports. The most illuminating document is the letter read by Mr Hutchison in Court, apparently in the belief that the complainant was present. Yet she is barely mentioned in it. Rather, the letter focuses on Mr Hutchison's own predicament. As an expression of remorse it rings hollow. More tangible evidence than that is required to justify a discrete discount for remorse beyond that given for entering a guilty plea.

[40] We are unable to treat Mr Hutchison's psychological circumstances as deserving sentence discount by way of mitigation. They proved difficult for the experts to put a clear finger on. It cannot be said with confidence on the evidence before us that he has either foetal alcohol syndrome or attention deficit hyperactivity disorder. Nor does he suffer from an intellectual disability. The tentative assessment of post-traumatic stress disorder by Dr Kelly was not made by Dr Barry-Walsh or Dr McLeavey, another psychiatrist who earlier assessed Mr Hutchison. Rather we take the view that this is a case in which the observations of this Court in *R v Taueki* are relevant:[41]

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[40] It may be that that understanding was incorrect.

[41] *R v Taueki*, above n 18, at [45] (citation omitted).

> While mental illness or disorder of an offender may be a mitigating factor, this will not always be so: as this Court noted in *R v Clarke* …, it is proper to treat any suggestion of diminished responsibility by reason of psychiatric or behavioural disorder with caution. Obsessiveness on the part of a former spouse or partner who assaults and badly injures his or her former spouse or partner may in some cases be attributable to a mental illness or disorder. Whether that is the case will be a matter for expert evidence. If it is not, it cannot be a mitigating factor. Even if it is, it should not necessarily be seen as a mitigating factor. Indeed, an obsessive disorder manifesting in violence may require a deterrent and protective, rather than a mitigated, response.

Mr Hutchison has difficulty with emotional regulation and a tendency to blame others for his problems. He has a history of being unable to sustain engagement with rehabilitative measures, and of manipulative behaviour in that context. Fundamentally, he is an angry, obsessive man who is a danger to those women he enters into a relationship with. That attitudinal deficit does not call for a sentencing discount.

[41] Ms Grau accepts that a 10-month discount for rehabilitation and remorse would be available. We see no reason why any greater allowance should be made. That reduces the sentence to 11 years and two months' imprisonment.

[42] As to the discount for guilty pleas, we accept Ms Grau's contention that a full discount at the late stage of which the guilty plea was entered was inappropriate. It came close to the scheduled trial date and after the forensic evidence was disclosed. A discount of no more than 15 per cent could have been within range in the circumstances.

*Conclusion*

[43] The net effect of these adjustments is a final sentence of nine years and six months' imprisonment on the lead charge of injuring with intent to cause grievous bodily harm. We therefore find that the sentence imposed, six years and nine months' imprisonment, was manifestly inadequate, and requires correction. Ms Grau accepts that the original sentence indication of eight years and six months' imprisonment would have been within range. For the reasons given above at [11] of this judgment, that is the sentence we will impose.

[44] There was no argument in this case that a minimum period of imprisonment should not have been imposed. It should be in the same proportion, 50 per cent, provided by the original sentence, that is, a minimum period of imprisonment of four years and three months.

[45] It is unnecessary for us to alter the sentences imposed on the remaining charges.

**Result**

[46] The Crown's appeal against sentence is allowed.

[47] The sentence imposed in respect of the charge of wounding with intent to cause grievous bodily harm is quashed. A sentence of eight years and six months' imprisonment with a minimum period of imprisonment of four years and three months' imprisonment is substituted.

Solicitors:
Crown Law Office, Wellington for Appellant
Bamford Law, Nelson for Respondent

**Appendix**[42]

| Case | Starting point for the offending | | | Factors personal to offender | | Final sentence |
|---|---|---|---|---|---|---|
| | **Aggravating** | **Mitigating** | **SP** | **Aggravating** | **Mitigating** | |
| *Rikihana v R*:[43] C took D's car to a party without D's knowledge. The car was stolen while C was at the party. When C returned home, D became angry and hit C on the head with a lump of wood and an axe handle. D kicked and punched C. She was rendered unconscious in a pool of blood on the floor. Long-term serious injuries resulted. | Extreme violence; use of weapons; attacking the head; serious injuries inflicted. | None. | 12 years. | Prior offences; D on parole at time of offending. | D sought medical assistance. | 12 years and 6 months (MPI of 40 per cent). |
| *Muliipu v R*:[44] C and D were in a relationship. Several incidents. Most significant involved D dragging C out from Women's Refuge, taking her to Hastings, locking her in a wardrobe, beating her for several hours, driving a knife down through her left eyebrow penetrating the eyeball then beating her for some hours (eye ultimately removed). | Serious prolonged and unprovoked violence; very serious injury; attack to the head; use of a weapon; domestic setting. | None. | 11 years. | Previous convictions. | None. | 13 years (MPI of 7 years). |

[42] "C" is shorthand for "complainant" and "D" "defendant". The various aggravating and mitigating factors are those identified by this Court.
[43] *Rikihana v R* [2010] NZCA 405.
[44] *Muliipu v R* [2013] NZCA 257.

| Case | Starting point for the offending | | | Factors personal to offender | | Final sentence |
|---|---|---|---|---|---|---|
| | **Aggravating** | **Mitigating** | **SP** | **Aggravating** | **Mitigating** | |
| *Savelio v R*:[45] C1 and D had been in a relationship. They separated and C1 became involved with C2. At 2.30 am D, drunk, went to C1's home. C2 was there also. D, after attempting to force his way inside, attacked both C1 and C2 with knives. D punched, kicked and stomped on C1. | Use of lethal weapons (knives); extreme violence; unlawful entry into dwelling at night; vulnerability of complainants; premeditation. | None. | 10 years and 6 months. | D on bail at time of offending; offending in breach of protection order. | Early guilty pleas; remorse; strong family support; previous good character. | 8 years (MPI of 50 per cent). |
| *Kaio v R*:[46] C and D had separated. C went to D's house to collect some items. C stayed the night. D found a message on C's phone that angered him. He confronted C, dragged her by her hair, punched her in the side of the head (she became unconscious). D dragged C to the lounge and wrapped a phone cord around her throat. C was hospitalised. | Vulnerable complainant; prolonged violence; serious injuries inflicted. | Mental condition at time of offending. | 9 years. | None. | Guilty plea; genuine remorse; mental condition. | 6 years. |

[45] *Savelio v R* [2007] NZCA 333.
[46] *Kaio v R* [2012] NZCA 168.

| Case | Starting point for the offending | | | Factors personal to offender | | Final sentence |
|---|---|---|---|---|---|---|
| | **Aggravating** | **Mitigating** | **SP** | **Aggravating** | **Mitigating** | |
| *Griffiths v R*:[47] C and D were in a relationship. Of the numerous incidents, the most serious involved D forcing C to put a kitchen sponge in her mouth to stop her making noise and deliberately splashed boiling water over her abdomen and legs. | Sustained and callous offending; serious injury with ongoing consequences; and failure to obtain medical assistance for some time. | None. | 8 years. | Previous convictions (6-month uplift). | Guilty plea; remorse. | 7 years and 6 months (MPI of 50 per cent). |
| *Kauwhata v R*:[48] C left D five weeks earlier. C went to D's house to borrow some items. D invited C inside. Without warning D grabbed C's hair from behind, pulled her head back and punched her in the face. C fell to the floor. D had a knife (12 inches long). Said he would slit C's throat. D stabbed C in the chest and attempted to stab her in the neck. | Premeditated; use of a weapon. | None. | 7 years. | Not dealt with on appeal (trial judge apparently noted breach of protection order as aggravating the offence). | Guilty plea. | 4 years and 8 months. |

47 *Griffiths v R* [2011] NZCA 102.
48 *Kauwhata v R* [2010] NZCA 451.

| Case | Starting point for the offending | | | Factors personal to offender | | Final sentence |
|---|---|---|---|---|---|---|
| | **Aggravating** | **Mitigating** | **SP** | **Aggravating** | **Mitigating** | |
| *Rautahi v R*:[49] C and D, previously married, had separated. There were two incidents, the more serious involved D going to C's home. C answered the door. D was agitated and angry. D grabbed C and urged her into the master bedroom. There was an argument between D and his son. D sent his son away from the house. D remained in the house with C, punched her head using both fists, struck her with a piece of firewood, and threatened to kill her. | Premeditation; use of a weapon; serious wounds; serious violence; attacking the head. | None. | 5 years and 6 months. | Previous convictions. | None. | 6 years. |

[49] *Rautahi v R* [2011] NZCA 351.