IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA362/2024
[2025] NZCA 158

BETWEEN	VAUGHAN ELLIOT SUBRITZKY Appellant
AND	THE KING Respondent

Hearing: 27 March 2025

Court: Woolford, Muir and Isac JJ

Counsel: J Y Yi and H Kim for Appellant
J G Fenton for Respondent

Judgment: 9 May 2025 at 2 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

B In respect of the wounding with intent to cause grievous bodily harm charge, the sentence of seven years' imprisonment is set aside and substituted with a sentence of six years and three months' imprisonment.

C The District Court sentence is otherwise confirmed.

REASONS OF THE COURT

(Given by Muir J)

Introduction

[1] In what was an unprovoked attack, Mr Subritzky stabbed a police officer in the head with such force that the blade of the knife detached from the handle. He was charged with wounding with intent to cause grievous bodily harm (GBH) and pleaded

guilty shortly before commencement of trial in February 2024. He was sentenced to seven years' imprisonment with concurrent sentences of three months' imprisonment on each of two earlier charges of driving in a dangerous manner and driving with excess blood alcohol.[1]

[2] He appeals his sentence on the basis that he should have been granted a discount of at least 12 per cent for his guilty plea and a further discount of 10 per cent on account of his mental health difficulties.

Background

[3] On 23 July 2022, Mr Subritzky was driving on the Kaipara Coast Highway near Glorit. He crossed the centre line and collided head on with an oncoming vehicle. Subsequent analysis identified that his blood alcohol level was 167 milligrams per 100 millilitres of blood. Psychiatric reports prepared under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) indicate that he likely acted intentionally in crossing the centre line.

[4] On 5 November 2022 at approximately 12.50 am, Mr Subritzky was on Queen Street, Auckland in the vicinity of the Wakefield Street intersection. He was, at the time, on bail for the offending described above. He was carrying a 22 cm knife, with a 10.5 cm handle and an 11.5 cm blade. As police officers on a routine patrol in a marked police van travelled towards him, he gave them "the finger". The police pulled alongside Mr Subritzky. Constable Atkin exited the front passenger seat, approached Mr Subritzky and asked to speak to him. Mr Subritzky said that he did not wish to do so. Then, without warning or provocation, he swung his right arm and stabbed Constable Atkin in the parietal region of his scalp causing two lacerations, one of 3 cm and a second of 0.5 cm. Both required stitches. When spoken to by the police he said "I don't want to be here so if it takes me to stab a cop to get killed then I'll do it."

---

1 *R v Subritzky* [2024] NZDC 11775 [Sentencing Notes].

District Court sentence

[5] The Judge adopted a starting point of seven years' imprisonment for the lead offending of wounding with intent to cause GBH.[2]

[6] The Judge considered that Mr Subritzky pleaded guilty at "the very latest possible moment", so any discount could only be "very low" and was offset by Mr Subritzky being on bail at the time of the offending.[3] The Judge declined to reduce the sentence on account of Mr Subritzky's background and mental impairment as these factors did not have a sufficiently causative nexus to the offending in question.[4]

[7] As indicted above, on each of the two driving offences, Mr Subritzky was sentenced to three months' imprisonment with each sentence to be served concurrently. As such, the starting point remained unchanged with a final sentence of seven years' imprisonment.

The wounding with intent to cause GBH charge

Was a discount for a guilty plea appropriate?

[8] Mr Subritzky was charged with wounding with intent to cause GBH on 5 November 2022. As indicated, his guilty plea came approximately 15 months later, three days before the trial was scheduled to commence.

[9] By way of background, previous counsel withdrew and new counsel was assigned on 23 November 2023. Shortly afterwards, on 29 November 2023, replacement counsel received the two psychiatric reports commissioned under the CPMIP Act.

[10] On 31 January 2024 counsel informed the prosecution that the appellant was likely to plead guilty to the charge. That advice was confirmed on 2 February 2024. On 5 February 2024 the case was called and guilty pleas were entered.

---

2 At [9], citing *R v Taueki* [2005] 3 NZLR 372 (CA); *R v Potaka-Alexander* [2012] NZHC 2788; and *R v N* HC Hamilton CRI-2010-019-3426, 12 April 2011.

3 Sentencing notes, above n 1, at [10]–[11].

4 At [12].

[11] As this Court observed in *Moses v R*, the rationale for a guilty plea discount rests principally on savings to the State, relief for victims and witnesses from the burden of giving evidence and the victim's experience of atonement following the offender's contrition.[5] Where there is little prospect of a defendant avoiding responsibility, that factor can be considered but is of secondary importance.[6] Absent a defence of insanity, for which the CPMIP Act reports provided little support, the Crown case was undoubtedly strong. However, we do not see this as precluding a discount.

[12] In terms of timing, we accept that the plea was late. The second of the CPMIP Act reports was received on 29 July 2023 and the trajectory of the case was relatively clear from that point on. However, there was a change of counsel and firm indications over a week before trial that a change of plea was likely. That position was confirmed shortly afterwards. Many of the systemic and social rationales identified as justifying a guilty plea discount in *Moses* remained in play. We consider a discount in the range of 10–15 per cent would have appropriately met the benefits the plea brought in terms of the administration of justice. We adopt 12.5 per cent (10.5 months of the seven year starting point).

[13] The Judge considered that any guilty plea discount was offset by the fact that the wounding with intent to cause GBH offending occurred while on bail for the driving offences. At the level of the guilty plea discount we have identified, the two cannot be netted off. Given the disparate nature of the two sets of offending we would confine the uplift to one and a half months, making the total discount to this point nine months.

Was a discount for mental health problems appropriate?

[14] We accept based on the CPMIP Act reports that Mr Subritzky's has been diagnosed as suffering from post-traumatic stress disorder (PTSD), chronic dysthymia (low level but long-lasting depression) and substance abuse (which has in the past been sufficiently severe to induce psychosis). The reports agree none of these

---

5 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [17].
6 *Jeffreies-Smith v R* [2020] NZCA 315 at [45]; and *Millar v R* [2019] NZCA 570 at [36].

conditions are clinically in the category of "major mental illnesses". Dr Renfree's report notes that the attack on the police officer "may have been influenced to a degree by [the appellant's] post-traumatic stress disorder in the moment, in that [the appellant] described a hand being placed on his arm, reminding him of past traumatic events" before he stabbed Constable Atkin.[7] However, she also notes that "intoxication, impulsive self-destructiveness, and a longstanding resentment of police also likely contributed".

[15] The degree of discount available for mental health conditions depends on the severity of the condition and the strength of the causative link between the condition and the offending.[8] We accept that the link need not necessarily be "operative or proximate".[9] Nevertheless, there needs at a minimum to have been a causative contribution and, as the Supreme Court observed in *Berkland v R*, where offending is particularly serious, principles such as deterrence, denunciation and community protection will be more powerfully engaged.[10] As the Court further observed, background factors will be most meaningful where the potential sentence is at the margin of imprisonment and a community-based sentence.[11]

[16] In this case, the highest that it is put is that Mr Subritzky's PTSD "may" have been a contributing factor to his attack on Constable Atkin. Just as in *Herlund v R* we regard such conclusion as speculative.[12]

[17] Likewise, we find Mr Subritzky's comment when arrested that he was attempting something akin to suicide by police difficult to reconcile with his advice to Dr Renfree that he was, at the time, walking to Auckland Hospital to have his "stomach pumped" on account of ingesting a large number of ibuprofen tablets, having decided he did not wish to die after all.

---

7 Noting however that this was not a fact identified in the statement of facts to which Mr Subritzky pleaded.

8 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [153], citing *Edri v R* [2013] NZCA 264 at [17]; and *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [71]–[83].

9 Adopting the approach of the Supreme Court in *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109]–[110].

10 At [94].

11 At [112].

12 *Herlund v R* [2021] NZCA 71 at [52].

[18] We see the offending as far more causatively connected with Mr Subritzky's longstanding antipathy for the police, said to have its origins in earlier police engagement around his use of highly modified cars. Such was his antipathy that he observed to Dr Renfree that he was not sure, even many months after the offending, that what he had done was wrong "after what [the police] have done to [him]".

[19] We are not, in the context of this serious offending, persuaded that Mr Subritzky's mental health challenges contributed in a sufficiently causative way to justify any discount.

[20] This means that we confine available discounts to nine months only. Nevertheless, at approximately 10 per cent of the sentence imposed, the test for appellate intervention is, in our view, met.

The dangerous driving and excess blood alcohol charges

[21] As indicated, these sentences are on a concurrent basis. The offending predated the attack on Constable Atkin by three months and was unrelated. Both charges potentially attracted maximum penalties of three months' imprisonment and as a matter of principle should have been sentenced on a cumulative basis. However, we are not persuaded that, on a totality basis, the starting point prior to personal discounts should have been any more than seven years.

Result

[22] The appeal is allowed.

[23] In respect of the wounding with intent to cause grievous bodily harm charge, the sentence of seven years' imprisonment is set aside and substituted with a sentence of six years and three months' imprisonment.

[24] The District Court sentence is otherwise confirmed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent