IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA648/2022
[2024] NZCA 121

BETWEEN	ANTHONY PAPAROA MOSES Appellant
AND	THE KING Respondent

CA4/2023

BETWEEN	SEAN CONRAD THOMPSON Appellant
AND	THE KING Respondent

CA246/2023

BETWEEN	ALAN TUTERE COOPER Appellant
AND	THE KING Respondent

Hearing:	13 March 2024
Court:	French, Palmer and Cooke JJ
Counsel:	G A Walsh for Appellant in CA648/2022 M J James for Appellant in CA4/2023 J D Bell for Appellant in CA246/2023 C P Howard for Respondent
Judgment:	19 April 2024 at 2.15 pm

JUDGMENT OF THE COURT

A Mr Cooper's application for leave to appeal his sentence out of time is granted.

B Mr Cooper's appeal against sentence is dismissed.

C Mr Moses' appeal against sentence is dismissed.

D Mr Thompson's appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by French J)

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Introduction

[1] On the afternoon of 20 November 2020, numerous members and associates of the Killer Beez gang including the three appellants carried out a concerted plan to take retaliatory action against the Tribesmen gang.

[2] The plan involved the group driving in convoys to certain suburban streets in South Auckland and shooting from their vehicles at houses believed to be occupied by members of the Tribesmen. Three houses were targeted, one on Otara Road, another

on Pearl Baker Drive and a third on Capstick Road. At a fourth house on Blampied Road, two armed men got out of their vehicle, unlawfully entered the house and accosted an occupant demanding to know where his son was.

[3] Fortunately, no one suffered any serious physical injuries but those in the targeted houses and surrounding neighbourhoods, including young children, were understandably frightened. There was also some damage to property in the form of broken windows and bullet holes.

[4] Each of the appellants was charged with three counts of being a party to intentional damage to property knowing that danger to life was likely to result,[1] one count of being a party to aggravated burglary[2] and one count of participating in an organised criminal group.[3]

[5] The three appellants entered pleas of not guilty to all charges and were tried together in a judge alone trial before Lang J. During the trial, Mr Thompson abandoned his defence and pleaded guilty to a representative charge of intentional damage to property knowing that danger to life may result, and the charges of aggravated burglary and participating in an organised criminal group. The trial of Messrs Moses and Cooper continued to verdict. The Judge found them guilty of the three charges of intentional damage and the charge of participating in an organised group but acquitted them of aggravated burglary.[4]

[6] All three were sentenced by Lang J. The Judge sentenced Mr Cooper to a term of imprisonment of five years and two months.[5] Messrs Moses and Thompson each received sentences of five years' imprisonment.[6]

[7] All three now appeal their respective sentences on the grounds that the starting points adopted by Lang J were too high and that insufficient discounts were given for

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1 Crimes Act 1961, ss 66 and 269(1).
2 Sections 66 and 232(1)(a).
3 Section 98A. They were also charged with a fourth charge of intentionally damaging property but were discharged of that charge at the end of the Crown case.
4 *R v Moses* [2022] NZHC 2627 [verdict judgment].
5 *R v Moses* [2022] NZHC 3089 [Moses and Cooper sentencing remarks] at [50].
6 At [49]; and *R v Thompson* [2022] NZHC 3091 [Thompson sentencing remarks] at [28].

personal mitigating factors.[7] A key issue in the appeal is whether the starting points were comparable with the sentences imposed on other offenders who had taken part in the plan but who had pleaded guilty and been sentenced earlier by different judges.

[8] Messrs Cooper and Thompson both filed their respective appeals out of time. Mr Thompson was granted an extension of time prior to the appeal hearing. Although Mr Cooper's delay in filing an appeal was significant,[8] he has filed an affidavit explaining that it was due to health issues. The Crown does not oppose Mr Cooper being granted an extension of time and we accordingly so order.

The facts of the offending

Messrs Moses and Cooper

[9] Both men resided in Hamilton. They each drove vehicles transporting other Hamilton based Killer Beez gang members and associates to Auckland. There, after linking up with other gang vehicles, they drove their respective cars in the second of four convoys to Otara Road where multiple shots were fired at a residential address. The convoy then moved to Pearl Baker Road where an occupant of Mr Cooper's car fired shots from the car at a house.

[10] There was no evidence the occupants of Mr Moses' car fired shots at either address as they drove past. However, Mr Moses was personally in possession of a firearm at the time of both shootings.

Mr Thompson

[11] Mr Thompson was a patched member of the Killer Beez gang. He too lived in Hamilton and had some involvement in organising the travel from Hamilton to Auckland. A Facebook Messenger group chat had been established on 18 November 2020 as a means by which members and associates of the Killer Beez could communicate with each other. Messages sent to the group chat indicated something major was about to happen on 20 November. Mr Thompson was involved in the

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7 Mr Thompson originally also filed an appeal against conviction but that has been abandoned.
8 The delay was approximately 80 working days.

messaging and on the morning of 20 November he sent a message saying "Ao killers we on route to the destination..AAOO KBZDUP".

[12] Mr Thompson then drove his vehicle along with others from Hamilton to Auckland where they met up with the rest of the convoy. Mr Thompson's vehicle was filmed in the vicinity of Blampied Road where it will be recalled persons from another car entered an address carrying firearms. Mr Thompson's vehicle was then filmed turning into Pearl Baker Drive where shots were fired shortly thereafter by another car in the convoy.

The sentencing

[13] The three men were sentenced by Lang J on the same day. Messrs Moses and Cooper were sentenced together in the morning and Mr Thompson later in the day.

[14] The Judge identified the aggravating features of the offending in each case as being that the offending:[9]

(a) amounted to a form of vigilante justice meted out by a gang that considered it needed to exact retribution on another gang for some real or imagined slight;

(b) was plainly premeditated and for a considerable period before the offending;

(c) was well orchestrated, as demonstrated by the number of vehicles involved;

(d) involved the use of firearms on multiple occasions; and

(e) involved firearms being discharged in broad daylight in built-up suburban areas where innocent victims could easily have been injured or killed.

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9 Moses and Cooper sentencing remarks, above n 5, at [16]; and Thompson sentencing remarks, above n 6, at [8].

[15] The Judge went on to say that in setting the starting points, he had gained the greatest assistance from the sentences that had been imposed on other offenders within the group.[10] Having regard to those sentences, the Judge considered that in relation to Messrs Moses and Cooper, the appropriate starting point was six and a half years' imprisonment.[11] In the case of Mr Thompson, the Judge accepted that unlike the cases of Messrs Moses and Cooper, there was no evidence of shots being fired from his car or that any person in his car was carrying weapons.[12] On the other hand, Mr Moses and Mr Cooper had not been convicted of aggravated burglary whereas Mr Thompson had been.[13] The Judge ultimately settled on a starting point for Mr Thompson of six years and nine months.[14]

[16] As regards personal aggravating factors, the Judge uplifted Mr Thompson's starting point by six months on account of a 2014 conviction for aggravated robbery which had resulted in a prison sentence of eight years and three months.[15] Although Messrs Moses and Cooper also had previous convictions, the Judge did not consider the convictions were relevant to the index offending and therefore did not apply any uplift.[16]

[17] In relation to mitigating factors, each of the appellants had provided a report tendered under s 27 of the Sentencing Act 2002. As a result of matters raised in those reports, the Judge allowed a discount of one year and two months for Mr Thompson,[17] and discounts of ten months each for Mr Moses and Mr Cooper.[18]

[18] Messrs Moses and Cooper also sought a discount for the fact they had cooperated in shortening the trial. The Judge gave each a discount of three months to reflect this.[19]

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10 Moses and Cooper sentencing remarks, above n 5, at [19]; and Thompson sentencing remarks, above n 6, at [9].
11 Moses and Cooper sentencing remarks, above n 5, at [26].
12 Thompson sentencing remarks, above n 6, at [17].
13 At [12].
14 At [17].
15 At [18]; and *R v Paparoa* DC Auckland CRI-2011-044-6244, 6 June 2014. Mr Thompson appealed his sentence to this Court. His appeal was dismissed, see *Thompson v R* [2015] NZCA 234.
16 Moses and Cooper sentencing remarks, above n 5, at [27].
17 Thompson sentencing remarks, above n 6, at [24].
18 Moses and Cooper sentencing remarks, above n 5, at [32] and [44].
19 At [35] and [47].

[19] In addition to the s 27 discount, Mr Thompson obtained a discount of 13 months for his guilty plea.[20]

[20] Messrs Moses and Cooper obtained discounts of five and three months respectively for time spent on Electronically Monitored (EM) bail and bail.[21]

[21] Applying these various adjustments to the respective starting points resulted in the following end sentences: a prison term of five years for Mr Moses,[22] five years and two months for Mr Cooper,[23] and five years for Mr Thompson.[24]

Were the starting points too high?

[22] All three appellants submit that their respective starting points were too high when compared with other co-offenders in the group and similar cases.

[23] As regards the alleged disparity between co-offenders, the following table sets out the respective starting points. It should be noted that with the exception of Messrs Moses and Cooper, all the other co-offenders shown in the table were convicted of aggravated burglary as well as intentional damage and participating in an organised group.

Offender	**Conduct/Role**	**Starting point**
Mr Crawford	Acknowledged leader of group and directly involved in the planning and execution of the drive-by shootings.	Ten years[25]
Mr Cassidy	Led the Hamilton convoy, involved in some aspects of organisation.	Eight years[26]
Mr Nelson-Bell	Member of group chat, drove one of the cars in which shotgun shells were found. Greater contact with Mr Crawford than others.	Eight years[27]

20 Thompson sentencing remarks, above n 6, at [26].
21 Moses and Cooper sentencing remarks, above n 5, at [34] and [46].
22 At [36] and [49].
23 At [48] and [50].
24 Thompson sentencing remarks, above n 6, at [27]–[28].
25 *R v Crawford* [2022] NZHC 1588. The ten-year starting point included an additional intentional damage charge arising from an incident that occurred on 16 November which also involved a convoy and an exchange of shots between the two gangs. Mr Crawford also received an additional six-month uplift for charges relating to possession of firearms and ammunition/explosives.
26 *R v Cassidy* [2022] NZHC 2918.
27 *R v Nelson-Bell* [2022] NZHC 2796.

Offender	Conduct/Role	Starting point
Mr Awhi	A passenger in the car driven by Mr Moses. Joined the group later than the others. Described as a foot soldier who played a minimal role by his presence. No involvement in planning or reconnaissance.	Four years, six months[28]
Mr Williams	Member of group chat, conducted surveillance on the target properties and reported to Mr Crawford. Did not directly take part in drive-bys.	Six years adjusted for parity to five years[29]
Mr Moses	Transported members and associates from Hamilton to Auckland to participate in the offending. Drove a car in the convoy past two of the targeted properties while in possession of a firearm.	Six years, six months
Mr Cooper	Transported members and associates from Hamilton to Auckland to participate in the offending. Drove a car in the convoy past two of the targeted properties with shots being fired from the car he was driving.	Six years, six months
Mr Thompson	Involved in organising others to travel to Auckland from Hamilton and drove his vehicle in the convoy to Blampied Road. Also in the convoy at Pearl Baker Drive that arrived immediately before another convoy which contained the shooters. No evidence of any shots being fired from his car.	Six years, nine months

Messrs Moses and Cooper

[24] In the submissions made on appeal by their respective counsel, particular reliance was placed on the starting point given by Venning J to Mr Awhi.

[25] As well as pointing out that unlike Mr Awhi, Mr Moses and Mr Cooper were not convicted of aggravated burglary, their counsel also stressed they did not have a key role in the offending. Neither was a directing mind and neither had any significant input into any planning or preparation. They therefore fell, it was submitted, into the same foot soldier category as Mr Awhi.

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28 *R v Awhi* [2022] NZHC 2711.
29 *R v Williams* [2022] NZHC 3298.

[26] Reliance was also placed on the comparator cases of *R v Tamati* and *R v Jolley*.[30]

[27] *Tamati* concerned a gun fight between Mongrel Mob members at the gang's Wairoa pad, arising from a longstanding leadership dispute. At least 25 shots were fired causing injuries to two gang members inside the pad.[31]

[28] The sentencing Judge considered responsibility for the event primarily rested with the person who had organised the attack in order to exact revenge for an earlier fracas in which his patch had been removed. As the directing mind, he was given a starting point of six and a half years.[32] Another offender who had organised gang members to travel from Napier to Wairoa and was directly involved in the shooting received a starting point of five and a half years,[33] while two others who made up the numbers were described as foot soldiers and given starting points of three and a half years.[34]

[29] Counsel also relied on *Jolley* which concerned a territorial dispute between two gangs. Twenty to thirty members of one gang armed with firearms and other weapons descended on an address connected to the other gang. The group started hitting the property's steel fence with their weapons and calling out abusive threats. A shotgun was fired causing serious injury to a gang member inside the property.[35]

[30] Those sentenced included an attacker armed with a hockey stick, another with a steel baseball bat and a third who grabbed a gun and fired a shot towards the other side but did not hit anyone. The sentencing judge categorised all three as "essentially foot soldiers" and imposed a starting point of three and a half years' imprisonment on all three.[36]

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30 *R v Tamati* [2012] NZHC 221; and *R v Jolley* [2018] NZHC 93.
31 *Tamati*, above n 30, at [1]–[2] and [5].
32 At [19].
33 At [27]–[28].
34 At [40] and [44].
35 *Jolley*, above n 30, at [2]–[10].
36 At [29]–[30]

[31] Having regard to these cases and all the circumstances of the index offending, counsel submitted that the starting point for Messrs Moses and Cooper should have been four years' imprisonment, not six and a half years.

[32] A third case, cited to us by the Crown, was *R v Waihape*.[37] This concerned the sentencing of two Mongrel Mob members on the other side of the fight at issue in *Tamati*. They appeared for sentence on a charge of participating in an organised criminal group and three charges of unlawful possession of a firearm. The sentencing Judge found that both offenders knew a violent confrontation was likely and had prepared and armed themselves for it. Although neither was the leader, they had participated actively in the preparations and during the gunfight.[38] The Judge adopted a starting point of six years' imprisonment.[39]

Our view

[33] We are not persuaded that either Mr Moses or Mr Cooper can fairly be described as foot soldiers. While they were not senior leaders or directing minds, they both had a greater role than Mr Awhi who was young, became involved in the plan later than others and was simply an occupant in the car being driven by Mr Moses. We note too that at the time of the *Awhi* sentencing, there was no evidence of there being a gun in Mr Moses' vehicle.

[34] The roles of Messrs Moses and Cooper and the scale of their offending also in our view warranted a significantly higher starting point than the offenders labelled as foot soldiers in *Jolley*. Their culpability was closer to the offenders in *Waihape*. Further, unlike any of the comparator cases, in this case innocent members of the public, including vulnerable children, were put in serious danger. That, in our view, is a significant aggravating feature.

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37 *R v Waihape* [2012] NZHC 198.
38 At [12]–[13] and [21].
39 At [22].

Mr Thompson

[35] On appeal, his counsel argued that compared with the role of the co-offender Mr Williams, Mr Thompson's role was relatively unsophisticated and that while his role might be considered broadly comparable to that of Mr Cassidy, a distinguishing feature was that Mr Cassidy had two vehicles involved in the plan and had led one of the convoys. Further, there was no evidence of anyone in the Thompson vehicle having a gun or firing shots.

[36] In counsel's submission, having regard to the starting points imposed on Messrs Williams (five years), Cassidy (eight years) and Crawford the leader (ten years), the appropriate starting point for Mr Thompson was five years, not the six years and nine months adopted by Lang J.

[37] We do not accept that submission.

[38] On the evidence, Mr Thompson had a significant role in ensuring there was sufficient strength of numbers. Evidence about his messaging to gang members and evidence that he was instrumental in changing the date of the shooting suggests he had greater seniority and influence than Mr Williams. Further, unlike Mr Williams, Mr Thompson actively participated in the convoy. As regards a comparison with Mr Cassidy, notwithstanding the fact of Mr Cassidy having two cars in the convoy, it might be argued that if anything Mr Thompson's starting point at six years and nine months compared with Mr Cassidy at eight years was generous.

[39] We conclude that all the starting points were within range in terms of the comparator cases of *Tamati*, *Jolley* and *Waihape*.

[40] Turning to disparity as between co-offenders. We acknowledge that disparity may in principle result in a sentence being quashed that was otherwise within range. To warrant appellate intervention however, the disparity in question must be so gross and unjustified as to lead a reasonably minded observer to believe something has gone

wrong with the administration of justice.[40] A lenient sentence extended to one offender cannot create an expectation that other offenders will receive the same indulgence.

[41] Applying that test to the disparities in this case, we are satisfied that any argument based on disparity must fail. The differences in starting points are not significant and are readily justifiable. We note too that of all the sentencing judges, Lang J was in the best position to assess culpability having heard detailed evidence of the incident over an eight day trial.

Were the discounts given for personal mitigating factors inadequate?

Mr Thompson[41]

Guilty plea

[42] Counsel for Mr Thompson noted that although the guilty pleas were entered during the trial, that happened because it was only at that late stage that CCTV footage placing Mr Thompson's vehicle at or near the scenes of the offending came to light. The CCTV footage, which the Crown says was extensive, had previously been disclosed but Mr Thompson's vehicle had not been identified. Those being the circumstances, counsel contended that Mr Thompson should have received a 20 per cent discount for his guilty plea rather than the 15 per cent granted by Lang J.[42]

[43] We disagree. The guilty plea was very late. Two of the key considerations in determining the amount of a guilty plea discount are the extent of the acceptance of responsibility and the saving of costs.[43] A defendant is not generally entitled to the credit for an early guilty plea when a late plea follows newly discovered evidence of

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40 *R v Rameka* [1973] 2 NZLR 592 (CA) at 593–594; *R v Lawson* [1982] 2 NZLR 219 (CA) at 222–223; and *Macfarlane v R* [2012] NZCA 317 at [24].

41 Mr Thompson does not challenge the uplift of six months for his previous conviction.

42 Thompson sentencing remarks, above n 6, at [26]. We note here that it seems the discount may not have been calculated in accordance with *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583. As noted in *Mo'unga v R* [2023] NZHC 1967 at [28]–[36], when discounts for personal mitigating factors are calculated as a percentage the percentage is to be taken from the adjusted starting point. However, the adjusted starting point does not include uplifts for personal aggravating factors. In this case the 15 per cent should have been taken from the starting point of six years and nine months, not seven years and three months (the starting point plus the uplift for a prior conviction, a personal aggravating feature). In any event the wording the Judge used was "an allowance of 13 months, or approximately 15 per cent" and the difference is minimal.

43 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [45]; and *Moses v R*, above n 42, at [23].

guilt. Mr Thompson always knew his car was there. In our assessment, a discount of 15 per cent was generous.

Section 27 report

[44] The s 27 report disclosed that Mr Thompson's mother was only 15 when he was born. He never knew his father and grew up disconnected from his cultural identity. He was raised by his maternal grandfather until he tragically died, leaving Mr Thompson at age seven without a parental figure. He then moved from home to home until finally settling with his mother and stepfather. It was an impoverished household where he was both the target of and a witness to physical violence and abuse, and where acquisitive crime was viewed as a necessary means of survival. Further, his stepfather was a patched gang member and other members of his wider family also had close associations with gangs. This, as Lang J put it, inevitably led Mr Thompson down a path of gang membership, offending and prison.[44]

[45] The s 27 report also stated that Mr Thompson was remorseful, determined to turn his life around and had taken steps to rehabilitate himself while in prison.

[46] Lang J accepted that Mr Thompson's involvement in the index offending was likely to have been influenced by his deprived upbringing and gang connections. The Judge also considered there were indications in the report that Mr Thompson was capable of and intent on rehabilitation and reintegration into society. To reflect these factors, the Judge allowed a discount of one year and two months, which equated to approximately 17 per cent of the starting point.

[47] On appeal, counsel contends this was insufficient and that a discount of 20 per cent was warranted.

[48] As noted in *Whittaker v R* and *Carr v R*, the assessment of an appropriate allowance for matters raised in a s 27 report is very much a fact-specific exercise in each case.[45] In our view, having regard to the serious nature of Mr Thompson's

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44 Thompson sentencing remarks, above n 6, at [21].
45 *Whittaker v R* [2020] NZCA 241 at [51]; and *Carr v R* [2020] NZCA 357 at [63].

offending and recent decisions such as *Davidson v R*,[46] *Waho v R*,[47] and *Carr*,[48] where discounts of around 15 per cent have been upheld for offenders who have suffered similar deprivation, an approximately 17 per cent discount was clearly within range. We note too that Mr Thompson's expressions of remorse were not reflected in the pre-sentence report where he denied the offending and spoke of the gang as being family.

Mr Cooper

Efforts to shorten the trial

[49] Mr Cooper does not take issue with the discounts given for his s 27 report nor the discount for time spent on bail. He does however dispute the adequacy of the discount for concessions made to shorten the trial.

[50] Section 9(2)(fa) of the Sentencing Act provides that in sentencing an offender a court must take into account "that the offender has taken steps during the proceeding (other than steps to comply with procedural requirements) to shorten the proceedings or reduce their cost".

[51] The trial was scheduled in 2021 to occur in 2022 and to last six weeks before a jury with the Crown intending to call over 120 witnesses. A week or so before the trial was due to commence on 26 September 2022, the appellants withdrew their election for a trial by jury and consented to an order for a judge alone trial. On 22 September 2022, Lang J issued a minute asking counsel to confer to see if the evidence of a significant number of witnesses could be agreed. On 27 September 2022, after the trial had started, all counsel agreed that the evidence of 27 Crown witnesses could be admitted by consent. In the end, as mentioned, the trial lasted only eight days.

[52] At sentencing, Lang J said he accepted there was "some validity" in the submission that defence co-operation in efforts to reduce the length of the trial had

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46 *Davidson v R* [2020] NZCA 230 at [30] and [34].
47 *Waho v R* [2020] NZCA 526 at [24]–[27] and [33].
48 *Carr*, above n 45, at [63] and [71].

allowed the Crown to present its case in an efficient manner thereby saving a considerable amount of time. Although the Judge suspected that the Crown's approach may have been driven largely by his intervention at the beginning of the trial, he was nevertheless prepared to allow Mr Cooper (and Mr Moses) a discount of three months to reflect their co-operation in the process.[49]

[53] On appeal, Mr Cooper contends that given the significant reduction in the length of the trial a discount of 20 per cent ought to have been given.

[54] We disagree. As was pointed out by this Court in *Mehrok v R*, whether a discount is given for shortening the trial is a matter for evaluation by the sentencing judge.[50] The Court also stated that admitting evidence by consent on matters that are not in dispute will not usually attract a discrete discount.[51]

[55] In this case, the evidence admitted by consent was not contentious and to the extent it involved numerous civilian witnesses giving evidence about the shootings in their neighbourhoods, there was an obvious element of self-interest on the part of the defence in not having those people testify. Likewise, the decision to be tried by judge alone. A further point is that only three of the original nine defendants proceeded to trial which must also have contributed to the reduction in the length of the trial.

[56] Lang J was obviously well placed to assess the contribution to shortening the trial made as a result of the appellants' co-operation and there has been nothing put before us that suggests the Judge got it wrong.

Mr Moses

Efforts to shorten the trial

[57] For the same reasons detailed above we reject the submissions made on Mr Moses' behalf regarding the adequacy of the discount for shortening the trial.

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49 Moses and Cooper sentencing remarks, above n 5, at [35] and [47].

50 *Mehrok v R* [2021] NZCA 370 at [49]–[50]. An application for leave to appeal to the Supreme was dismissed, see *Mehrok v R* [2021] NZSC 155.

51 At [51].

Credit for time spent on electronically monitored bail

[58] Mr Moses also challenges the five month discount afforded him for time spent on EM bail.[52] He spent 17 months on EM bail with a 24 hour curfew. During those 17 months, he breached his bail conditions on two separate occasions but was readmitted to bail both times.

[59] On appeal, Mr Moses contends that the five month discount was inadequate and that it should have been in the order of a 15 per cent deduction.[53] We do not accept that submission. The level of discount for EM bail varies depending on the level of restrictions imposed and the degree of compliance by the offender. In our view given the fact of the two breaches, five months, which equates to approximately 30 per cent of the time Mr Moses spent on EM bail, was appropriate.

Section 27 report

[60] As regards Mr Moses' s 27 report, that revealed he had been subjected to abuse as a child and when aged only seven suffered a serious head injury in a road traffic accident. The injury left him with lifelong effects including a shortened attention span, problem solving deficits, issues with judgment and an inability to understand abstract concepts. After a disrupted and troubled schooling, he engaged in substance abuse at an early age. He was evicted from the family home and ended up living on the streets and getting involved in criminal activity. He initially joined the Killer Beez gang while in prison as a way of staying safe.

[61] The report also told the Judge that Mr Moses has a supportive partner and was committed to rehabilitating himself and learning how best to cope with his cognitive issues.

[62] Lang J said he was satisfied there was "some nexus" between the index offending and the matters revealed in the s 27 report. He also accepted that the issues

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52 Moses and Cooper sentencing remarks, above n 5, at [34].
53 This would be 11.7 months, almost 70 per cent of the time he spent on EM bail.

identified in the report suggested Mr Moses was likely to find it more difficult than others in prison. The Judge granted a credit of ten months to reflect these factors.[54]

[63] On appeal, counsel for Mr Moses argued that ten months was inadequate and advocated for a discount in the order of 20 per cent. As a percentage of the starting point, rounding up, that would amount to a 16 month reduction.

[64] In our view, Lang J's discount does not warrant appellate intervention. It appropriately recognised the contribution made by Mr Moses' personal circumstances to his offending, in the context of serious criminal activity involving firearms where considerations of denunciation and community protection are significant. It is broadly consistent with the case law we have cited in relation to Mr Thompson's case.[55]

Conclusion

[65] We are satisfied there was no error in any of the three sentences. The starting points were consistent with the case law and comparable to those imposed on the co-offenders. Any differences between co-offenders can be justified and do not warrant any reduction. The discounts for mitigating factors were orthodox and in some aspects arguably generous. Most importantly of all, the end sentences were within range.

[66] The three appeals are accordingly all dismissed.

Outcome

[67] Mr Cooper's application for leave to appeal his sentence out of time is granted.

[68] Mr Cooper's appeal against sentence is dismissed.

[69] Mr Moses' appeal against sentence is dismissed.

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54 Moses and Cooper sentencing remarks, above n 5, at [32].
55 See [48].

[70] Mr Thompson's appeal against sentence is dismissed.

Solicitors:
Crown Solicitor, Manukau for Respondent