NOTE: HIGH COURT ORDER IN [2014] NZHC 550 PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF DEFENDANTS IN [2014] NZHC 550 AND [2014] NZHC 1848 REMAINS IN FORCE.

NOTE: DISTRICT COURT ORDER IN [2018] NZDC 15368 PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF T, C, H, B AND M REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 83/2019
[2020] NZSC 74

BETWEEN	DERMOT GREGORY NOTTINGHAM Appellant
AND	THE QUEEN Respondent

Hearing:	28 May 2020
Further submissions:	6 July 2020
Court:	William Young, Glazebrook, O'Regan, Ellen France and Williams JJ
Counsel:	Appellant in person C A Brook for Respondent
Judgment:	31 July 2020

JUDGMENT OF THE COURT

A **The appeal against sentence is allowed. The sentence of 12 months' home detention imposed by the Court of Appeal is varied by replacing that sentence with a sentence of eight and a half months' home detention with a start date of 30 July 2019.**

B **Having served more than 12 months' home detention, Mr Nottingham has served that part of his sentence. The standard and special post-detention conditions imposed by**

the Court of Appeal remain in place for the remainder of the 12-month and six-month post-detention periods respectively.

C The remaining period of community work to be served by Mr Nottingham is remitted.

REASONS
(Given by Ellen France J)

Table of Contents

Introduction

[1] Mr Nottingham was convicted after a jury trial of two charges of publishing information in breach of suppression orders[1] and five charges of criminal harassment.[2] He was sentenced by the trial Judge, Judge Down, to a term of 12 months' home detention and 100 hours of community work.[3] Mr Nottingham appealed against conviction and sentence to the Court of Appeal. The Solicitor-General appealed against sentence.

[2] By the time the appeal to the Court of Appeal was heard, Mr Nottingham had served three and a half months of his sentence of home detention.[4] His appeal was unsuccessful but the Court of Appeal allowed the Solicitor-General's appeal against sentence.[5] The Court quashed the part served sentence of home detention and imposed a sentence of 12 months' home detention together with 100 hours of community work.

---

1 Criminal Procedure Act 2011, s 211(1).
2 Harassment Act 1997, s 8(1).
3 *R v Nottingham* [2018] NZDC 15373 [Sentencing remarks]. The sentence of community work was applied to the breach of name suppression which occurred first in time.
4 The Court of Appeal granted Mr Nottingham bail and his home detention was suspended on 9 November 2018, pending determination of his appeal to that Court.
5 *Nottingham v R* [2019] NZCA 344 (Wild, Thomas and Muir JJ) [CA judgment].

[3] The issue on appeal is whether the Court erred in imposing a term of home detention on Mr Nottingham which would mean that, in total, he would serve 15 and a half months' home detention. The issue arises because s 80A(3) of the Sentencing Act 2002 provides that while a sentence of home detention "may be for such period as the court thinks fit", the period "must not be for less than 14 days or more than 12 months". The effect of the upper limit of 12 months raises two initial questions in this case. The first question is whether the Court of Appeal had jurisdiction to impose a sentence of 12 months' home detention given Mr Nottingham had already served some time on home detention. The second question is whether, if the Court had jurisdiction, it was nonetheless contrary to policy to impose a sentence that had the practical effect that Mr Nottingham would serve more than 12 months' home detention. If the Court of Appeal's sentence was beyond jurisdiction or was contrary to policy, there arises a third question about what steps this Court should now take.

Background

[4] The charges relating to the suppression orders concerned orders for permanent name suppression made in relation to the two young men charged with assaulting Stephen Dudley.[6] Mr Dudley subsequently died. The Crown case at trial was that Mr Nottingham published, or had published, an article on the blog known as Lauda Finem (LF) which included photographs and names of the two young men. The criminal harassment charges also concerned publications on the LF blog. The publications related to five complainants, T, C, H, B and M, each of whom had crossed paths with Mr Nottingham in some way.

[5] In sentencing Mr Nottingham, the trial Judge proceeded on the basis of the following factual findings in relation to the charges:[7]

> (a) Mr Nottingham either was LF (in other words the leading mind of that blog) or he was so intimately related to it that it was proper to conclude that he provided information and draft articles to that blog knowing and intending that they would be published.

---

6 *R v M* [2014] NZHC 1848; and *R v Q* [2014] NZHC 550.
7 Summary taken from the CA judgment, above n 5, at [81].

(b) Publication and other intimidating and harassing conduct was either carried out by Mr Nottingham himself or at his direction and he knew his conduct was likely to cause the individuals involved to fear for their safety or that of family members.

(c) Although Mr Nottingham may, at least initially, have reasonably believed he had legitimate grievances in respect of the complainants, he elected to pursue these, not by lawful and reasonable means, but by personal attacks on an "anything goes" basis.

[6] The Court of Appeal accepted those findings were consistent with the jury's verdicts.

[7] Turning then to the respective approaches to sentencing, as will be seen, the key difference between the approach taken by the trial Judge and that in the Court of Appeal was that the Court of Appeal considered the starting point should have been approached on the basis that cumulative rather than concurrent sentences were appropriate for the lead offences of criminal harassment.[8]

[8] In determining the appropriate starting point on the criminal harassment charges, the trial Judge saw the offending in relation to C and T as the most serious, justifying a starting point of 12 months' imprisonment for one of those charges. The other four charges individually were seen as possibly justifying a starting point of somewhere between six and 12 months' imprisonment. Adopting concurrent sentences for each of these four charges with uplifts of three months each brought the overall starting point for the harassment charges to 24 months' imprisonment.[9]

[9] The breaches of suppression orders were treated as "blatant [and] contemptuous".[10] Nonetheless, the Judge considered they were not the most serious examples of this type of offending and adopted a starting point of three months for the first breach, uplifted by a further month to reflect the second breach.[11]

---

8 The Judge considered that cumulative sentences for each of the seven charges would result in a sentence which was disproportionate with the gravity of the offending and with Mr Nottingham's personal circumstances.

9 The maximum penalty for these offences is 24 months' imprisonment: Harassment Act, s 8(2).

10 Sentencing remarks, above n 3, at [50].

11 The maximum penalty for these offences is six months' imprisonment: Criminal Procedure Act, s 211(4)(a).

[10] A four-month discount from the combined total starting point of 28 months' imprisonment was given to reflect Mr Nottingham's various health problems.[12] The Judge considered his health issues meant that a sentence of imprisonment would be much harder for him than for his average counterpart. The discount of four months brought the Judge to a final figure of 24 months' imprisonment which meant that the sentence of home detention was available. The Judge considered home detention was appropriate and sufficient to meet the justice of the case, noting that it also provided opportunities for rehabilitation because of the option to impose restrictive conditions. The sentence of 12 months' home detention and 100 hours of community work was imposed.

[11] The Court of Appeal considered that the Judge's approach ultimately resulted in allowing an excessive adjustment to reflect totality. While various approaches were available, the Court considered the better approach was:[13]

> … to have started with a series of cumulative sentences properly reflecting the severity of the individual harassment charges, with a further cumulative sentence for the breach of suppression charges (treated concurrently as between themselves), subject to an overall totality adjustment and then with a deduction for ill health (if allowed).

[12] The Court accepted the submission from the Solicitor-General that the offending against C and T each justified a 12-month starting point, and that cumulative sentences of six months in relation to the offending against B, five months in relation to the offending against H, and five months in relation to the offending against M were appropriate.

[13] The Court agreed with the Judge that the breach of suppression offences "were sufficiently interconnected and similar in kind" so as to attract concurrent sentences.[14] On a concurrent basis, a starting point of five months' imprisonment for this offending before any totality adjustment was seen as appropriate. When the five months' imprisonment was added to the starting point adopted for the criminal harassment offending, this led to a total figure for all of the offending in the order of 45 months' imprisonment. From that figure, the Court considered a discount of 10 months was

---

12 The Judge also noted that this would have been Mr Nottingham's first sentence of imprisonment.
13 CA judgment, above n 5, at [99].
14 At [101].

appropriate to reflect the totality of the offending along with a discount of four months for Mr Nottingham's ill health. That would have led to a sentence of 31 months' imprisonment.

[14] However, the Court said that in resentencing Mr Nottingham it was necessary to take into account the three and a half months of home detention he had served. Providing a seven-month discount for this factor brought Mr Nottingham's sentence to 24 months' imprisonment, which as the Court said, was "a level where the Court [was] obliged to consider home detention".[15] The Court decided home detention was an appropriate sentence, particularly having regard to the following factors:[16]

> (a) Mr Nottingham's physical and mental health, which we consider would make the consequences of imprisonment disproportionately severe;
>
> (b) the opportunity [for] direct participation in rehabilitative programmes, as recognised by the Judge; and
>
> (c) the ability to protect the interests of the complainants and the community by the imposition of restrictive conditions of internet access, again as recognised and directed by the Judge.

[15] As to the final structure of the new sentence, the Court considered that s 85(3) of the Sentencing Act directing consideration of totality was applicable "because the imposition of a series of short cumulative home detention sentences would fail to reflect the seriousness of each offence".[17] Concurrent sentences were accordingly imposed.

[16] The Court did not see any reason to depart from the 100 hours of community work that the Judge had imposed on the first breach of suppression charge. That sentence was confirmed. As a result, the existing (part served) sentence of home detention was quashed. What the Court described as a "new" sentence of 12 months' home detention (with identified concurrent home detention sentences) plus 100 hours of community work was imposed, subject to the same (special and standard) conditions as imposed by the District Court.[18]

---

15 At [112].
16 At [112].
17 At [113].
18 At [120].

The case on appeal

[17] The difference in the position of the parties is stark and can be simply stated.

[18] Mr Nottingham says that he could not lawfully be required to serve more than 12 months' home detention. That period is the maximum term. He has served that term and should be released.[19] Alternatively, if the Court of Appeal was able to impose a term of 12 months' home detention, it should not have done so because of the statutory direction to impose the least restrictive sentence that is appropriate in the circumstances.[20] Mr Nottingham emphasised in his submissions that the pre-sentence report writer said that community detention would be sufficient punishment and that community work was not suitable given Mr Nottingham's health issues.

[19] The respondent's position is that there was no lawful bar to the approach taken by the Court of Appeal and nor was that approach inconsistent with policy. In developing this case, the respondent says, first, that the maximum of 12 months' home detention is not the maximum penalty for the offence. In any event, it is said that Mr Nottingham was never subject to a sentence of more than 12 months' home detention at any one point in time. Because the Court of Appeal quashed the previous term and imposed a new term, the fresh sentence which started on the date it was imposed is within jurisdiction and the old sentence ceased to exist. Mr Nottingham has not, as matters have transpired, served the home detention in one unbroken period. In this respect, the respondent submits that if the Court of Appeal could not impose a fresh term of 12 months' home detention, the only option was to impose a term of imprisonment. That result would not fit the principle of imposing the least restrictive outcome, which suggests that the respondent's position that a sentence of 12 months' home detention was within the Court's jurisdiction is correct.

[20] Further, the respondent says that the approach adopted by the Court of Appeal was the only way to take into account the time Mr Nottingham had served on home

---

19 On Mr Nottingham's calculations, the 12 months expired on 9 April 2020. This Court granted Mr Nottingham bail pending the hearing of this appeal on 24 April 2020: *Nottingham v R* [2020] NZSC 39. Mr Nottingham says he has completed about 60 hours of community work and he seeks remittal of the remaining 40 hours and the six-month special post-detention conditions as a credit for the period beyond 12 months which he has served on home detention.

20 Sentencing Act 2002, s 8(g).

detention. Any other approach would either result in time served not being taken into account or in double counting.[21] The respondent draws a comparison with a sentence of imprisonment where time served in custody prior to sentence is taken into account by the Department of Corrections.[22] Because time spent serving a sentence of home detention is not "pre-sentence detention" as defined in s 91 of the Parole Act 2002, the Department of Corrections may not take it into account.

[21] Finally, the respondent submits that if Mr Nottingham had not served time on home detention prior to the Court of Appeal hearing, the appropriate sentence was 31 months' imprisonment and that would have been the sentence imposed. Leave has not been granted to challenge that part of the Court of Appeal's judgment.[23]

[22] We assess these competing contentions after summarising the statutory scheme.

The statutory scheme

[23] To put matters in context, it is helpful to note first the evolution of the sentence of home detention. Originally, the Parole Board could grant home detention to persons sentenced to imprisonment for 24 months or less so long as the court granted leave to apply.[24] Under that regime home detention was not a sentence in itself, but rather a way of serving a sentence of imprisonment. However, from 2007, home detention has been a standalone sentence in its own right.[25]

[24] The second contextual matter to note is that the 2007 amendments demonstrated what has been described as a "discernible legislative policy of keeping offenders within the community wherever appropriate".[26] As we have noted, under s 8(g) of the Sentencing Act, the court must impose "the least restrictive outcome that

---

21 The respondent's submission about the risk of double counting is explained further at [37] below.

22 Parole Act 2002, ss 90 and 91. See *Booth v R* [2016] NZSC 127, [2017] 1 NZLR 223.

23 Leave to appeal was granted on the question of "whether the Court of Appeal was correct to impose the maximum period of home detention in circumstances where the offender had already served a period of home detention in relation to the offending": *Nottingham v R* [2020] NZSC 23 at [3]. The Court originally declined leave to appeal but that decision was recalled and leave was granted.

24 The change is discussed by the Court of Appeal in *R v Hill* [2008] NZCA 41, [2008] 2 NZLR 381 at [19]–[20]. See also Criminal Justice Reform Bill 2006 (93-1) (explanatory note) at 5.

25 Sentencing Amendment Act 2007, s 44.

26 *R v Rawiri* [2011] NZCA 244, (2011) 25 CRNZ 254 at [17].

is appropriate in the circumstances", reflecting the hierarchy of sentences and orders as set out in s 10A.

[25] The hierarchy in s 10A "reflects the relative level of supervision and monitoring of, and restrictions imposed on, an offender under each sentence or order".[27] From the least restrictive to the most restrictive, the relevant hierarchy is as follows:[28]

> (a) discharge or order to come up for sentence if called on:
>
> …
>
> (e) sentence of home detention:
>
> (f) sentence of imprisonment.

[26] If the court is lawfully entitled to impose a sentence of home detention, it may only do so if the conditions specified in s 15A(1) of the Sentencing Act are met. Relevantly, the sentence is only available where the court would otherwise sentence the offender to a term of 24 months' imprisonment or less. The conditions in s 15A(1) are as follows:

> (a) the court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by any less restrictive sentence or combination of sentences; and
>
> (b) the court would otherwise sentence the offender to a short-term sentence of imprisonment.

[27] A "short-term sentence" has the same meaning as in s 4(1) of the Parole Act.[29] Under that section, a short-term sentence is relevantly defined as a sentence of imprisonment that is:

> (a) a determinate sentence of 24 months or less imposed on or after the commencement date; or
>
> (b) a notional single sentence of 24 months or less; or
>
> …

---

27 Sentencing Act, s 10A(1).
28 Section 10A(2).
29 Sentencing Act, s 4(1) definition of "short-term sentence".

[28] The Sentencing Act also prescribes the permitted combinations of sentences.[30]

[29] The key section for present purposes is s 80A. Under that section, a court may sentence an offender to a sentence of home detention if:[31]

> (a) the offender is convicted of an offence punishable by imprisonment; or
>
> (b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction.

[30] Section 80A(2) sets out a number of preconditions for the imposition of a sentence of home detention which include a suitable home detention residence. In addition, before imposing a sentence of home detention, a court is obliged to consider the pre-sentence report prepared by a probation officer.[32]

[31] We set out s 80A(3) in full. That section provides that:

> A sentence of home detention may be for such period as the court thinks fit, but must not be for less than 14 days or more than 12 months.

[32] Section 80A is subject to s 80B.[33] Section 80B deals with concurrent and cumulative sentences of home detention. Under s 80B(1), where a court imposes home detention on an offender who is already subject to a sentence of home detention, "the sentences must be served concurrently unless the court directs that they are to be served cumulatively". Where a court imposes cumulative sentences of home detention or imposes one or more sentences of home detention on someone "who is already serving a sentence of home detention, the total term of the sentences of home detention must not be more than 12 months".[34]

[33] Finally, the Sentencing Act makes provision for the commencement and the termination of a sentence of home detention. Under s 80X(1), a sentence of home detention begins on the day it is imposed except where the start date is deferred under

---

30 Section 19. See also s 20 which provides guidance about certain sentence combinations.
31 Section 80A(1).
32 Section 80A(2A).
33 Section 80A(6).
34 Section 80B(2).

ss 20A(2)(b) (dealing with the imposition of a second sentence) or 80W (the ability of the court to defer the start date for up to two months on humanitarian grounds or where deferral is in the interests of justice). Under s 80Z(1), a sentence of home detention ends when either "(a) the offender reaches his or her detention end date; or (b) a court cancels the sentence". The "detention end date" means the date on which an offender subject to home detention is no longer subject to detention conditions.[35]

Our assessment

[34] The wording of s 80A(3) is clear that the maximum term of a sentence of home detention is 12 months.[36] On its face, this is the maximum that can be imposed in relation to an offence whether or not the sentence is served in a continuous period.

[35] That this is the correct interpretation is supported by s 80B dealing with the imposition of concurrent and cumulative sentences.[37] As the respondent accepts, that section is consistent with the notion that an offender should not be serving prolonged periods of home detention.[38]

[36] This approach in our view is also supported by the rationale for reference to a maximum of 12 months. As we have noted, a court will only be able to impose home detention if the court considers that a sentence of 24 months' imprisonment or less is available. If that is the position, the maximum that the offender would serve is 12 months' imprisonment because the Parole Act currently provides for release after serving half of a short-term sentence.[39] On the respondent's approach, an offender could nonetheless serve more than 12 months' home detention. That outcome is inconsistent with the correlation between the two periods. Accordingly, we do not agree with the respondent that the rationale for the 12-month limit is consistent with

---

35 Section 4(1) definition of "detention end date".

36 The effect of the wording does not appear to have received much consideration in the authorities. In *Hill*, above n 24, it appears the Court saw the term as imposing a maximum: at [19]. See also *Tialata v New Zealand Police* [2017] NZHC 3096 at [39]; and *Box v Police* [2018] NZHC 286 at [36].

37 As the respondent notes, s 80B is not engaged in this case.

38 There is a similar idea apparent in s 80K(5) dealing with the cancellation of a sentence of imprisonment and substitution of a sentence of home detention.

39 Parole Act, s 86(1). This is the position unless the sentence is imposed for a stage-2 offence other than murder for which an order under s 86C(4)(b) of the Sentencing Act has been made: see s 86(1A) of the Parole Act.

the respondent's position. Further, while it is true that 12 months' home detention is not the maximum penalty for the present offending, that is not the point given the clear wording in s 80A(3).

[37] The respondent argues that if the reference to 12 months' home detention is treated as imposing a maximum there is a risk of double counting. That is because the Court of Appeal had already taken into account the time served on home detention in getting to the point where home detention was available. If that assessment leads, as here, to a term of 12 months there would be no other way of reducing that term without again taking into account the time served. Alternatively, as we have noted above, the respondent says that in cases like the present, imprisonment would have to be imposed and this would have the effect that the court is not imposing the least restrictive sentence.

[38] Neither of these possible outcomes means that the clear words of the section mean something else. Obviously, time served on home detention will have to be taken into account by the court on a sentence appeal if the sentence is altered. But if, in the present case, a term of imprisonment had been imposed that would only be because the Court of Appeal considered that imprisonment was, in fact, the appropriate sentence.[40]

[39] This issue is only, in any event, going to arise on a successful Solicitor-General appeal. In that situation, the court does have some discretion and courts are cautious before imposing a term of imprisonment on an offender who has been serving a non-custodial sentence. That fact is illustrated by *R v Cossey*, a decision of the Court of Appeal referred to by the respondent.[41] In that case the Court declined to impose a term of imprisonment on Mr Cossey on a Solicitor-General appeal, although the Court

---

[40] See Sentencing Act, s 16(2) which provides that the court must not impose a sentence of imprisonment unless it is satisfied that the relevant purposes and principles of sentencing cannot be achieved by any other sentence.

[41] *R v Cossey* [2019] NZCA 104.

agreed with the Solicitor-General that the sentence of home detention imposed by the sentencing Judge was manifestly inadequate.[42]

[40] Accordingly, on our approach, the Court of Appeal did not have jurisdiction to impose more than a further eight and a half months' home detention on Mr Nottingham so as to make a total time served of 12 months' home detention. On this basis, we do not need to address the second issue regarding policy.[43]

[41] The only remaining question is what steps the Court should now take.

[42] On this question, the respondent submits that if we reach the view that the imposed sentence of 12 months' home detention was unavailable, the matter should be remitted to the Court of Appeal to consider the impact of its error and reconsider its decision on the Solicitor-General's appeal. It is submitted that this would best preserve the parties' positions. Alternatively, this Court could invite further submissions as to disposition following the release of this judgment.

[43] Mr Nottingham opposes remittal back. He submits that this Court may consider no detention was necessary and that health issues at the time ruled out community work. Alternatively, he submits, this Court could conclude that community work was the proper sentence and that the period of home detention served is sufficient to fulfil any order for community work.

[44] The further delays that would result from remittal back are not in our view palatable. Mr Nottingham was originally sentenced on 26 July 2018. Two courts have concluded home detention was appropriate. Mr Nottingham has served just over 12 months on home detention and has completed, as we understand it, about 60 hours of the 100 hours of community work imposed. In those circumstances, regardless of

---

42 The Court said that the term of imprisonment imposed would be in the range of 24 to 27 months once the Court took into account the period of almost one year that Mr Cossey spent on home detention. Nevertheless, the Court declined to impose a term of imprisonment for a variety of reasons, including the fact that the probation officer had reported relatively positively on Mr Cossey's progress and the passage of time since the offending. See similarly *R v Johnson* [2010] NZCA 168 at [31]–[34].

43 See above at [3].

the underlying merits, it would not now be appropriate to impose a term of imprisonment.[44] There is no point in further submissions from the parties.

[45] Having reached the view that it would not now be appropriate to impose a term of imprisonment, we need to take steps to get to the position where Mr Nottingham's sentence of home detention does not exceed the maximum term. The fact a sentence of home detention starts on the date it is imposed poses something of a conundrum for the Court in determining what steps we now take.[45] With this prospect in mind, the parties provided further submissions on the scope of the power of the Court on a second appeal to vary a sentence or any part of a sentence.

[46] The relevant provisions are ss 250, 251, 256 and 257 of the Criminal Procedure Act 2011. Under s 250(2), the first appeal court must allow an appeal, if satisfied that:

> (a) for any reason, there is an error in the sentence imposed on conviction; and
>
> (b) a different sentence should be imposed.

[47] Where an appeal is allowed by the first appeal court, s 251(2) provides that:

> (2) The first appeal court must, within the limits allowed by law,—
>
> > (a) set aside the sentence and impose another sentence (whether more or less severe) that it considers appropriate; or
> >
> > (b) vary the sentence, vary any part of the sentence, or vary any condition of the sentence; or
> >
> > (c) remit the sentence to the court that imposed it and direct that court to take any action of a kind described in paragraph (a) or (b) as specified by the first appeal court.

[48] Section 256(2) provides that a second appeal court must allow a second appeal, if satisfied that:

> (a) for any reason, there is an error in the sentence imposed on conviction; and
>
> (b) a different sentence should be imposed.

---

44 As noted above at [21] and n 23, leave to appeal was granted only in respect of the question as to the jurisdiction to impose a term of home detention longer than 12 months.

45 Sentencing Act, s 80X, discussed above at [33].

[49] The effect of s 257(2) is that this Court, as a second appeal court that is allowing a second appeal, can exercise the powers of the first appeal court including the powers under s 251.

[50] The main point of the respondent's further submissions is that there is a difference between imposing a substantively different sentence, either of a different length or type, and changing the conditions under which the sentence will be served. The former is encompassed within the words "impose another sentence" and the latter comes within the words "vary the sentence, vary any part".

[51] We envisage that distinction will generally reflect the approach to s 251 but not invariably so. In particular, given the sentence of 12 months' home detention was outside the Court of Appeal's jurisdiction, we see no reason why the power to vary cannot apply to enable this Court to vary the sentence imposed to bring it to that which was within the power of the Court of Appeal. We do so by varying the length of the sentence and backdating the sentence start date to 30 July 2019. The standard and special post-detention conditions will need to remain in place for the remainder of the 12-month and six-month post-detention periods respectively.[46] We accept Mr Nottingham's submission that the remaining community work should be remitted. We do so because he has now served a period of home detention which is longer than the statutory maximum.

Result

[52] For these reasons, the appeal against sentence is allowed. The sentence of 12 months' home detention imposed by the Court of Appeal is varied by replacing that sentence with a sentence of eight and a half months' home detention with a start date of 30 July 2019. Having served more than 12 months' home detention, Mr Nottingham has served that part of his sentence. The standard and special post-detention conditions imposed by the Court of Appeal remain in place for the

[46] If Mr Nottingham wishes to apply for a variation of his post-detention conditions, he will have to do so in accordance with the procedure set out in s 80R of the Sentencing Act.

remainder of the 12-month and six-month post-detention periods respectively. The remaining period of community work to be served by Mr Nottingham is remitted.

Solicitors:
Crown Law Office, Wellington for Respondent