**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF ANY COMPLAINANT UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS OR NAMED WITNESS UNDER 18 YEARS OF AGE PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011.**

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

**I TE KŌTI PĪRA O AOTEAROA**

**CA485/2017**
**[2018] NZCA 611**

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| BETWEEN | BROOKE CHRISTIE ROLLESTON<br>Appellant |
| AND | THE QUEEN<br>Respondent |

**CA486/2017**

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| BETWEEN | BRANDON JAMES ROCHE<br>Appellant |
| AND | THE QUEEN<br>Respondent |

| | |
|---|---|
| Hearing: | 14 November 2018 |
| Court: | Miller, Dobson and Mander JJ |
| Counsel: | E Huda for Appellants<br>S K Barr and K L Kensington for Respondent |
| Judgment: | 19 December 2018 at 11.00 am |

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**JUDGMENT OF THE COURT**

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**A Mr Rolleston's appeal against conviction is dismissed.**

**B Mr Rolleston's appeal against sentence is allowed. The sentence of 11 years and two months' imprisonment is quashed and substituted with a sentence of nine years and 11 months' imprisonment.**

**C Mr Roche's appeal against conviction is dismissed.**

**D Mr Roche's appeal against sentence is allowed. The sentence of 10 years and nine months' imprisonment is quashed and substituted with a sentence of nine years and seven months' imprisonment.**

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**REASONS OF THE COURT**

(Given by Mander J)

[1] The appellants, Brooke Rolleston and Brandon Roche, were convicted at trial of the rape and sexual violation by unlawful sexual connection of a 15-year-old girl. The trial Judge, Judge Garland, sentenced Mr Rolleston to 11 years and two months' imprisonment and Mr Roche to 10 years and nine months' imprisonment.[1] They appeal their convictions on the ground they did not receive a fair trial because of apparent juror bias. They also allege their sentences were manifestly excessive.

## Background

[2] The complainant became very drunk at an unsupervised party she held at her house. While heavily intoxicated, the complainant was observed dancing with and kissing the appellants. The complainant's boyfriend was concerned about her condition. He was not eased when Mr Rolleston asked him if he would like to "put her on a spit roast" for $20; a suggestion that one would have sexual intercourse with the complainant while she performed oral sex on the other male. The boyfriend declined, pointing out the age of the complainant.

[3] When the boyfriend's ride arrived to take him home, he attempted to encourage the complainant to leave with him. She would not go, and both Messrs Rolleston and Roche aggressively encouraged the boyfriend to leave. Before he did so, he asked a

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1 *R v Rolleston* [2017] NZDC 17046 [sentencing notes].

female friend to put the complainant to bed. After her boyfriend had left, the complainant went to her bedroom and got into bed, where two of her friends were already asleep.

[4] Later, Messrs Rolleston and Roche went into the bedroom. They took hold of the sleeping complainant, lifted her out of bed and carried her out of the room. She was observed as having to be supported in order to walk because she was so intoxicated.

[5] The two men took the complainant to an empty room. There, they removed the complainant's pants and underwear and placed her in a kneeling position. While one had sexual intercourse with the complainant from behind, the other placed his penis in her mouth. Both men continued to perform these sexual acts on the complainant, each swapping position with the other, for some 15 to 20 minutes.

[6] After the appellants left the room and joined associates in the kitchen, the complainant stumbled back into the hallway, naked from the waist down. Once back in her bedroom, she was observed in a clearly distressed state, crying and vomiting. In the morning, the complainant had no recollection of the sexual activity. She was unwell, had pain in her vagina and anal area, and a very sore throat.

[7] When interviewed by the police, both men admitted having simultaneously engaged in sexual acts with the complainant but maintained it was consensual.

**Appeal against conviction**

[8] Messrs Rolleston and Roche argue that they did not receive a fair trial because of the appearance of juror bias. In particular they contend a miscarriage of justice occurred because of apparent bias on the part of the foreperson of the jury (S) who had gone to school with Mr Rolleston's younger brother.[2]

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2 Criminal Procedure Act 2011, s 232(4)(b).

*Declined application to order juror interviews*

[9] As a preliminary step to their appeal, the appellants applied for orders directing an independent practitioner to interview the jurors from their trial. That application was declined.[3] Affidavit evidence was filed from Mr Rolleston, his brother Dante, and a teacher who had contact with the brother. That evidence, which is relied upon in support of the present appeal, is conveniently summarised in this Court's earlier judgment as follows:

> [20] Mr Brooke Rolleston, discussed the process of jury selection. He acknowledged his then lawyer took him through a list of names of potential jurors which he briefly perused. He said he did not recognise anybody from the list, nor did he recognise anybody actually selected as a juror. He explained he was scared and did not pay sufficient attention to the jurors, relying on his lawyer. At some stage during the Crown case, Mr Brooke Rolleston realised he knew S. He said he was a year behind him at high school. Mr Brooke Rolleston did not think to bring this to the attention of his lawyer or anyone else.
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> [21] Mr Dante Rolleston says he was in the same year at high school as S between the years of 2011 and 2014. He exhibited a copy of photographs taken from the school's yearbook in confirmation. Mr Dante Rolleston says he was a bully at school and abused other students verbally and physically. He says:
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> > "I had many aggressive exchanges with [S]. That is because he was weird in that he would stare at me intensely for minutes at a time. His staring led me to ask him why he was staring and whether he had a problem with me. When he did not respond, I verbally abused him in front of other students both, male and female. This was a regular occurrence."
>
> [22] Mr Dante Rolleston explains he attended the trial from either the second or third day, sitting in the public gallery. S caught his eye because he was staring at him intensely for minutes at a time. That made him think he knew S but he was not sure. After the trial had concluded, he went to his high school and looked at the 2012 yearbook which confirmed his suspicion.
>
> [23] The final affidavit is from a teacher at the high school. He knows the Rolleston family and confirms that Mr Dante Rolleston and Mr Brook Rolleston attended the school in 2011. He had several interactions with Mr Dante Rolleston, saying:
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> > "These interactions involved my disciplining and supporting him because of his bullying attitude toward other students at the school. Dante, as is common with bullies, had a habit of verbally and/or physically confronting students who could not or would not retaliate."

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3 *Rolleston v R* [2018] NZCA 356, [2018] NZAR 1560.

[10] In declining the application to interview the jurors, this Court noted that S was not a person who would necessarily be disqualified from sitting as a juror. While he could have been excused from jury service if the trial Judge had been satisfied he was personally concerned with the facts of the case or closely connected with one of the parties or witnesses, it was not clear the juror would have been discharged even had the juror recognised Mr Rolleston or his brother.[4]

[11] In a passage on which the appellants place some reliance, this Court observed that at its highest:[5]

> ... the application turns on the *possibility* that S recognised Mr Dante Rolleston, remembered being verbally bullied by him at school at least three years earlier, harboured a grudge as a result and visited the sins of Mr Dante Rolleston on both Mr Brooke Rolleston and Mr Roche. Further, that S told the rest of the jury about being bullied and that influenced their attitude towards both appellants and therefore their deliberations.
>
> (Emphasis added.)

[12] The juror was not "closely connected" with Mr Rolleston. They were not in the same class at school and there was no suggestion of any issue between the juror and Mr Rolleston, who was in the year above him. Mr Rolleston had not recognised S, neither when empanelled nor when selected as the foreperson. Despite the trial Judge having instructed the jury panel that any selected juror should inform him if they knew one of the defendants, the juror had not raised any concern during the trial and there was no indication that he recognised Mr Rolleston, either by name or by sight. The alternative was that the juror deliberately disregarded the Judge's instructions.[6]

[13] The link between Mr Rolleston and the juror via the brother, Dante, was described as even more tenuous. It relied upon the proposition that in a "packed" public gallery the juror had picked Dante out, remembered having been bullied by him at school, and made the connection between Dante and the defendant, Mr Rolleston.[7]

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4 At [27].
5 At [29].
6 At [30].
7 At [31].

[14] This Court concluded that the allegation of bias, "even at its highest", would not meet the test for a miscarriage of justice on the basis of an unfair trial.[8] There would need to be some evidence that the jury improperly judged Mr Rolleston because of what his brother had done when he was a schoolboy. That very tenuous linkage did not provide a sufficient evidential basis for alleging the juror was biased against either or both appellants.

[15] Because of that finding, the application to interview S and the other 11 jurors was declined. That ruling has not been appealed. It follows that there remains no evidential basis for the allegation that S was biased against Mr Rolleston or, by association, his fellow defendant, Mr Roche.

*Allegation of apparent bias*

[16] Notwithstanding the earlier findings of this Court, Messrs Rolleston and Roche seek to argue that they did not receive a fair trial because of the appearance of juror bias, calling on the maxim that "justice should not only be done, but should manifestly and undoubtedly be seen to be done".[9]

[17] The test for apparent bias is well-established. It turns on whether a fair-minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the question required to be decided.[10]

[18] The fair-minded lay observer "is presumed to be intelligent and to view matters objectively".[11] The person "is neither unduly sensitive or suspicious nor complacent" about what may influence the decision-maker's decision.[12] The fair-minded observer is to be viewed as reasonably informed about the workings of the judicial system, the nature of the issues in the case, and about the facts pertaining to the situation which is said to give rise to an appearance or apprehension of bias.[13] In order to succeed on

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8 At [33].
9 *R v Burney* [1989] 1 NZLR 732 (CA) at 734.
10 *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35 at [3].
11 At [5].
12 At [5].
13 At [5], [37]–[38] and [97].

this ground it is necessary to show there is a real possibility of the jury or juror being biased.[14]

[19] Mr Huda on behalf of the appellants emphasised the passage from this Court's earlier judgment, set out above at [11]. The allegation of bias was summarised "[a]t its highest" by reference to the possibility of S recognising Mr Rolleston's brother and visiting upon the appellants the grudge it is speculated he might harbour against the brother. The difficulty for Mr Huda's argument is that the contended for possibility is by itself incapable of providing a sufficient basis upon which to allege S was biased. Nor could those circumstances give rise to an appearance of bias on the part of S in the mind of a fair-minded and fully informed observer. It was for that reason that it was not considered worthy of further investigation.

[20] In the absence of any foundation for the allegation, the "fair-minded and informed member of the public" could not reasonably apprehend or suspect bias. There is no basis to conclude that S recognised Dante in the public gallery, remembered being bullied by that person, made the link, and notwithstanding the Judge's instructions continued in his role as a juror in order to visit the sins of Dante upon Mr Rolleston and his co-defendant, Mr Roche.

[21] Unfounded speculation of this type could not lead the reasonably informed and fair-minded observer to apprehend or suspect that S might not have discharged his duty as a juror in an impartial manner. In the absence of that being a real possibility, the test for apparent bias must fail.

**Appeal against sentence**

[22] The sentencing Judge identified a number of aggravating features which, taken collectively, he considered caused the offending to fall into the lower end of the third band of rape offending identified in *R v AM (CA27/2009)*.[15] Such offending attracts a range of imprisonment of 12 to 18 years:[16]

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14 At [4], [37] and [94].

15 Sentencing notes, above n 1, citing *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

16 *R v AM (CA27/2009)*, above n 15.

> [105] This band will encompass offending accompanied by aggravating features at a, relatively speaking, serious level. Rape band three is appropriate for offending which involves two or more of the factors increasing culpability to a high degree, such as a particularly vulnerable victim and serious additional violence, or more than three of those factors to a moderate degree. Particularly cruel, callous or violent single episodes of offending involving rape will fall into this band...

[23] The aggravating features are readily identifiable and were assessed by the sentencing Judge as follows:

(a) The moderate level of premeditation involved in the offending, with Mr Rolleston offering the complainant's boyfriend to "spit roast" the complainant earlier in the night, and both men aggressively getting the boyfriend to leave in order for them to pursue the complainant.[17]

(b) The vulnerability of the complainant, who was a grossly intoxicated 15-year-old, was assessed to be moderate to high. Both men were well aware of her condition.[18]

(c) The moderate to high degree of harm done to the complainant, who continues to be affected by the offending. In addition to the psychological harm, the complainant contracted chlamydia in both her mouth and anus as a result of the violations.[19]

(d) There was an element of breach of trust in the offending, in that both Messrs Rolleston and Roche were guests in the complainant's house and knew her parents were absent.[20]

(e) The degrading nature of the offending, which involved multiple offenders sexually violating the complainant at the same time.[21]

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17 Sentencing notes, above n 1, at [30].
18 At [31]–[32].
19 At [33].
20 At [34].
21 At [35].

(f) The scale of the offending was assessed as moderate with both men performing acts of rape and penile penetration of the complainant's mouth.[22]

[24] The Judge was satisfied that more than three aggravating features were present to a moderate degree and took a 12-year starting point.[23]

*Starting point*

[25] Mr Huda submitted, by reference to two other sentencing decisions, that the starting point was excessive.[24] He also challenged the trial Judge's finding of premeditation. Mr Huda argued that premeditation had to be judged from when the offenders had decided, regardless of her consent, to have sex with the victim. He submitted that because of their own levels of intoxication the appellants would only have appreciated the victim was not in a position to give informed consent when carrying her from the room.

[26] We reject the submission that the Judge was not entitled to find a moderate level of premeditation. The offending was highly predatory in nature. The intoxicated complainant was the subject of the appellants' focus at a much earlier stage in the night. Her intoxication would have been plain to both men at the time Mr Rolleston approached the boyfriend to "put her on the spit", and when they both aggressively saw him off the property at the time he was seeking to take steps to protect the highly intoxicated girl. Both men physically removed her from her own bed when she was sleeping and took her to an empty room specifically for the purpose of sexually violating her.

[27] Insofar as Mr Huda is able to point to some cases where relatively lower starting points were adopted, it is trite to observe that each case will turn on its individual circumstances. The categorisation of the offending as band three was not

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22 At [36].

23 At [39].

24 *Skipper v R* [2013] NZCA 104, where a starting point of 12 years' imprisonment was adopted by the trial Judge for the rape of an intoxicated 21-year-old girl by multiple offenders who had picked her up on the pretext of providing her with a lift; and *R v Mould* [2016] NZHC 154, where Gendall J adopted a starting point of 10 years' imprisonment in sentencing two offenders who each raped an intoxicated 16-year-old girl in a secluded area after attending a bonfire together.

of itself decisive. The second band provided by *R v AM (CA27/2009)*, which is appropriate for cases which involve the presence of two or three factors of a moderate degree, still justifies starting points up to a maximum of 13 years' imprisonment.[25] Because of the number and degree of the aggravating features present in this case, we consider the 12-year starting point for this serious offending to be within range.

*Discount for youth*

[28] An offender's age has been held relevant to an offender's sentencing because there are age-related neurological differences between young people and adults. These include that young people may be more impulsive than adults and more susceptible to negative influences and peer pressure. Long sentences can have a crushing effect on young people, who are recognised as having a greater capacity for rehabilitation.[26] There is a very real benefit to the community from achieving such an outcome in a person so young.

[29] Messrs Rolleston and Roche were aged 19 and 18 years respectively at the time of the offending. Both men were aged 20 years at the time of sentencing. From the 12-year starting point, a discount of 15 months (approximately 10 per cent) was afforded to Mr Roche for his youth and lack of previous convictions.[27] Mr Rolleston, who had some previous convictions for unrelated offending, received a 10-month (approximately seven percent) reduction in acknowledgment of his age.[28]

[30] Mr Huda argued that the age of the appellants should have been recognised by a greater discount. He emphasised the recognised developmental differences which distinguish young people from mature adults, and stressed the long-term consequences for these young offenders, including their registration on the Child Sex Offenders Register and the potential crushing effect of being subject to such a long sentence of imprisonment.

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25 *R v AM (CA27/2009)*, above n 15, at [98].

26 *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77]; *R v Taulapapa* [2018] NZCA 414 at [30]–[32]; and *R v Puna* [2018] NZHC 79 at [42] and [49]–[50].

27 Sentencing notes, above n 1, at [44].

28 At [45]. The sentencing Judge described this as a five percent discount.

[31] The approach to the mitigating factor of youth was summarised by this Court in *Pouwhare v R*:[29]

> [83] In the end, a judge sentencing a young person under the Sentencing Act must always weigh the young person's age and the reasons why he or she offended, against the seriousness of his or her offending and prospects of rehabilitation. Sometimes the young person's age will be a mitigating factor of high, perhaps decisive, significance not to be circumscribed by any fixed outer percentage. Equally, there can be no warrant for saying that youth, of itself, must always prevail as the paramount value on sentence, or that youth alone can justify radically reducing the sentence which would otherwise be proper.

Neither Mr Rolleston nor Mr Roche were young persons, as that term is defined in the Oranga Tamariki Act 1989, at the time of this offending.[30] However, these same considerations apply to offenders of their relative youth.

[32] In support of what the Crown acknowledged were modest discounts, Mr Barr emphasised that the offending was not, as is often the case with youth offending, impulsive, but predatory and persistent in its nature. Messrs Rolleston and Roche continue to deny their guilt and their level of insight into the effect of their offending on the victim appears limited.

[33] The Crown's review of youth discounts provided to offenders aged between 17 and 20 years for offending of this type showed an approximate range of between eight per cent to 18 per cent. However, it is difficult in individual cases to extract the discrete deduction for youth when combined with other personal mitigating factors such as mental health difficulties, intellectual functioning, and willingness to engage in rehabilitative treatment.[31]

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29 *Pouwhare v R* [2010] NZCA 268, (2010) 24 CRNZ 868.

30 For the purpose of the Youth Justice provisions of the Oranga Tamariki Act 1989, a young person is defined as a person over the age of 14 years but under the age of 17 years: s 2, definition of "young person", (b).

31 *B (CA231/2017) v R* [2018] NZCA 137; *Hart v R* [2017] NZCA 521; *W (CA378/2016) v R* [2017] NZCA 235; *Edri v R* [2013] NZCA 264; *Ross v R* [2013] NZCA 263; *Tahiri v R* [2013] NZCA 73; *Ringrose v R* [2011] NZCA 634; *Day v R* [2010] NZCA 172; *T (CA440/2018) v R* [2018] NZCA 416; *Pomare v R* [2015] NZCA 191; *O'Neill v R* [2014] NZCA 466; *Smith v R* [2015] NZCA 217; *Hart v R* [2017] NZCA 521; *Ross v R* [2013] NZCA 263; *Ashcroft v R* [2014] NZCA 551; *Solicitor-General v Harvey* [2016] NZHC 979; *R v John* [2018] NZHC 89; and *R v Mould*, above n 24.

[34] Our own research indicates that very significant deductions are often extended to very young offenders or to youthful offenders who present with a combination of personal mitigating factors in addition to their age. A sample of cases illustrate the approach that has been taken:

(a) In *Clarke v R* the appellant was sentenced on two charges of sexual violation that occurred some 25 years prior.[32] He received a combined discount of 35 per cent for his age at the time, being 18 to 19 years old, his lack of subsequent offending and the particular hardships that he would be caused because of the disruption to his family life and work in Australia.[33]

(b) In *Edri v R*, a 17-year-old committed rape and an indecent assault.[34] This Court upheld a 33 per cent discount for his youth and the fact he had a foetal alcohol spectrum disorder. The Court noted that of this 15–20 per cent was to be attributed to the defendant's mental disorder, thus leaving 13–18 per cent for youth.[35]

(c) In *Bryant v R,* the defendant pleaded guilty to one charge of rape.[36] He was 17 years old at the time and had mild cognitive disorders that would make prison difficult for him. This Court upheld the combined discount of 25 per cent for age and cognitive difficulties, but noted that it could have been higher.[37]

(d) *H (CA376/2017) v R* involved serious historic sexual offending by the defendant against his sisters.[38] He was aged 16–20 years during the period of offending. The trial Judge extended a discount of 20 per cent for the defendant's youth at the time and in recognition of his current

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32 *Clarke v R* [2016] NZCA 91.
33 At [45].
34 *Edri v R*, above n 29.
35 At [18] and [24].
36 *Bryant v R* [2014] NZCA 591.
37 At [14].
38 *H (CA376/2017) v R* [2018] NZCA 376.

advanced age, 78, and ill health. This Court upheld that approach but suggested that a greater youth discount could have been awarded.[39]

**(e)** A discount of 14 per cent was given for youth and a willingness to undertake rehabilitation in *W v R* to a 19-year-old defendant who was convicted of one charge of sexual violation.[40] While this Court upheld that sentence, it again commented that a larger discount could have been given for youth.[41]

(f) In *R v MT,* the defendant was found guilty of three charges of sexual violation on his younger sister when he was aged between 18 and 21 years.[42] There was evidence that the defendant was developmentally younger than his actual age at the time of the offending. The High Court provided a discount of 40 per cent for the defendant's youth and his stunted intellectual development, which might make prison more challenging, and his good rehabilitative prospects.[43]

[35] The *Pouwhare* approach applies to sentencing for offending of this type, meaning that youth can be a highly significant mitigating factor and there is no fixed outer percentage. Teenagers aged between 14–16 years who have committed serious sexual offences have sometimes been extended discounts of between 30 and 50 per cent.[44] In practice, there appears to be significant variation in the approach taken to this aspect of sentencing. This variability may recognise that, as the Court said in *Pouwhare*, youth alone cannot always radically reduce the otherwise appropriate sentence.[45]

[36] In the present case, while we accept the Crown's submission that this offending was particularly bad, we consider that was reflected in the sentence starting point and

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39 At [48].
40 *W (CA378/2016) v R*, above n 29.
41 At [46].
42 *R v MT* [2016] NZHC 2374.
43 At [24]–[25].
44 *Martin v R* [2015] NZCA 533; *Lennon v R* [2012] NZCA 551; *Johnson v R* [2014] NZCA 527; and *P (CA262/2013) v R* [2013] NZCA 543.
45 *Pouwhare v R*, above n 29, at [96]; and *R v Mako* [2000] 2 NZLR 170 (CA) at [65]–[66].

that the offenders' age should have attracted a greater reduction. The sentencing Judge placed considerable weight on the failure of either young man to take responsibility for their offending. We accept that feature, together with their regrettable attitude and lack of understanding of the impact of their offending on the victim, is indicative of a lack of contrition or remorse. However, it is equally indicative of their immaturity.

[37] Despite their continued denials, both Messrs Rolleston and Roche are assessed as presenting a low risk of reoffending. Mr Roche expressed some empathy towards his victim for the trauma she experienced and indicated a willingness to participate in restorative justice, although such a process seems unrealistic. He was not assessed as having any problematic pattern of alcohol or drug use and was noted to be a reliable worker.

[38] Mr Rolleston was employed as an apprentice plumber. He was not found to have a pattern of alcohol or substance use and, from his family, school and employment background, he, like Mr Roche, appears to have otherwise been leading a relatively constructive life at the time of his offending, notwithstanding some minor prior offending. Both young men were able to rely on letters and references provided to the sentencing court that attested to the offending being out of character.

[39] We accept that because of the serious nature of the offending there must be an emphasis both on denunciation and deterrence. However, Mr Rolleston and Mr Roche are young men who are not without prospects and are clearly capable of being contributing members of the community. Their past denials of guilt and lack of insight do not preclude their potential for rehabilitation.

[40] We are mindful that the Judge who presided over the 10-day trial was well placed to judge the maturity of the offenders and that a measure of deference is required to be afforded to the trial Judge in making that assessment. We can understand his concern at the young men's apparent lack of understanding of the seriousness of the offending and the impact on their victim.

[41] We also acknowledge that no minimum term of imprisonment was imposed. The sentencing Judge expressly chose not to do so because of the relative youth of the

two appellants and the need to provide for their successful rehabilitation and reintegration into society. Preservation of their eligibility for parole at the earliest statutory opportunity was a significant and appropriate concession. Such leniency has previously been afforded by sentencing courts on the basis of age and is an approach which this Court has endorsed.[46]

[42] However, we consider the reduction for the appellants' youth was too modest and that it has resulted in a manifestly excessive sentence. We would allow a discount of approximately 17 per cent because of the relatively young age of the appellants at the time of the offending and the need to calibrate the sentence in recognition of their prospects for rehabilitation and the limited risk of them reoffending in this serious way again. The Judge gave Mr Roche an additional discount to reflect that he had no prior convictions.[47] It was not suggested that discount should be altered.

**Result**

[43] Mr Rolleston's appeal against conviction is dismissed.

[44] Mr Rolleston's appeal against sentence is allowed. The sentence of 11 years and two months' imprisonment is quashed and substituted with a sentence of nine years and 11 months' imprisonment.

[45] Mr Roche's appeal against conviction is dismissed.

[46] Mr Roche's appeal against sentence is allowed. The sentence of 10 years and nine months' imprisonment is quashed and substituted with a sentence of nine years and seven months' imprisonment.

Solicitors:
Patient & Williams, Christchurch for Appellants
Crown Law Office, Wellington for Respondent

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46 *R v Harding* [2016] NZHC 2069 at [78]; *Papa v R* [2014] NZHC 2832 at [27]; *Huata v R* [2013] NZCA 470 at [37]; and *Edwardson v R* [2017] NZCA 618 at [140].

47 Sentencing notes, above n 1, at [44].