

**NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF
COMPLAINANT PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE
ACT 1985.**

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA557/2012
[2013] NZCA 73**

BETWEEN GEORGE TUPOU TAHIRI
 Appellant

AND THE QUEEN
 Respondent

Hearing: 6 March 2013

Court: White, MacKenzie and Mallon JJ

Counsel: M A Stevens for Appellant
 H W Ebersohn for Respondent

Judgment: 20 March 2013 at 3.30 pm

JUDGMENT OF THE COURT

A The appeal is dismissed.

REASONS OF THE COURT

(Given by Mallon J)

Table of Contents

	Para No
Introduction	[1]
Issue 1: Starting point for rape offending	[4]
<i>The circumstances of the offending</i>	[4]
<i>The Judge's starting point</i>	[7]
<i>Breach of trust?</i>	[8]
<i>Vulnerability?</i>	[11]

<i>Double counting?</i>	[13]
<i>Starting point overall</i>	[14]
Issue 2: The uplift for the other offending	[16]
<i>The circumstances of the other offending</i>	[16]
<i>The Judge's assessment of the other offending</i>	[20]
<i>Submissions</i>	[21]
<i>Our assessment</i>	[22]
Issue 3: Discount for youth	[23]
Result	[39]

Introduction

[1] Mr Tahiri raped a heavily sedated woman in her own bed. He also stole her car and other property, and committed other offences in the ensuing months. The woman (the complainant) was the mother of a friend of Mr Tahiri's and she had known Mr Tahiri since he was a little boy. He was six days short of his 18th birthday at the time of his offending. The complainant was aged 43 or 44. Mr Tahiri was only present in the complainant's house because she had offered him her couch when he had been unable to get into his girlfriend's house. This was after they, together with others, had spent the evening socialising and drinking.

[2] Mr Tahiri was convicted of the rape at trial. He had earlier entered guilty pleas in respect of the other offending. He was sentenced to seven and half years' imprisonment for all the offending.¹ He appeals against that sentence, contending it was manifestly excessive because:

- (a) the sentencing Judge erred in his assessment of the aggravating features and therefore adopted too high a starting point;
- (b) the uplift on that starting point for the other offending was too high; and
- (c) the discount given for youth was inadequate in light of Mr Tahiri's remorse and his rehabilitative prospects.

¹ *R v Tahiri* DC Dunedin CRI-2011-012-3742, 28 August 2012 at [33].

[3] We consider that the sentence was not manifestly excessive. The starting point was within range. The uplift for the other offending was appropriate. The discount applied was not outside the available range. Our reasons are set out below.

Issue 1: Starting point for rape offending

The circumstances of the offending

[4] In the afternoon and evening of 12 August 2011 Mr Tahiri, the complainant and others had been socialising and drinking together. In the course of that evening, there was a disorderly incident which led to Mr Tahiri being asked to leave a hotel. Some of the group decided to go to another hotel. Mr Tahiri and the complainant split from the group and headed towards the home of Mr Tahiri's girlfriend. The complainant headed towards that address because that was where her car was parked.

[5] When they got to Mr Tahiri's girlfriend's house, the house was locked. The complainant said to Mr Tahiri that he could sleep on the couch or in one of the free bedrooms (as her children were away) at her house. When they got to the complainant's house, the complainant logged Mr Tahiri onto her computer, then took her prescribed medication and went to bed. The combination of the alcohol she had consumed during the course of the day and evening and her medication put the complainant in an advanced state of sedation. Mr Tahiri remained in the house after the complainant had gone to bed.

[6] After the complainant had gone to sleep Mr Tahiri went into her bedroom and raped her. The expert evidence at trial was consistent with penetration and that Mr Tahiri had ejaculated inside the complainant (and had not worn protection). Mr Tahiri's defence at trial, which was not accepted by the jury, was that the sexual intercourse was consensual. The sentencing Judge accepted on the evidence at trial from the medical experts and the complainant that she did not know at the time that intercourse was taking place.

The Judge's starting point

[7] The Judge considered that the appropriate starting point for the sexual violation by rape was eight years' imprisonment. He considered that the vulnerability of the complainant and the breach of trust involved in the offending put this into band two in terms of the guidelines in *R v AM*.² The Judge saw the complainant's vulnerability as arising from her sedated state. He saw the breach of trust as arising from the complainant having invited Mr Tahiri into her house. He accepted that the complainant did not trust Mr Tahiri with her property (she had put some items under her pillow because she knew Mr Tahiri was "light fingered"). But he said that it was implicit in her invitation that she trusted Mr Tahiri not to sexually violate her after she had gone to sleep.

Breach of trust?

[8] The submission for Mr Tahiri is that there was no breach of trust of the kind contemplated by s 9(1)(f) of the Sentencing Act 2002 nor as illustrated by the examples in *R v AM*.³ It is said that the words "position of trust or authority" in s 9(1)(f) convey a mutually understood role and responsibility. Consistent with that, the examples given in *R v AM* are of familial relationships and positions of trust. It is said that Mr Tahiri was not someone who would be trusted, particularly because he was affected by alcohol. It is said that the complainant distrusted Mr Tahiri to such a degree that she put her keys and phone under her pillow. Counsel for Mr Tahiri highlights that the complainant knew that both of them were affected by alcohol, it was the middle of the night, the complainant's partner and children were away, and she took medication which sedated her.

[9] We consider there was no error by the Judge in this regard. The Judge was clear about the nature of the breach of trust here. He considered it relevant to the culpability of the offending that the complainant invited Mr Tahiri into her home, implicitly trusting him not to take advantage of the hospitality extended to him by raping her. We agree with that view, whether the breach of trust is regarded as

² *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750 at [98].

³ At [50].

falling within s 9(1)(f) of the Sentencing Act, or it is “any other aggravating ... factor that the court thinks fit” under s 9(4)(a) of that Act.

[10] It was one thing for the complainant not to trust Mr Tahiri with her property. But it does not follow that the complainant distrusted Mr Tahiri in respect of sexual offending. He was a friend of her son’s, she and Mr Tahiri had been socialising together, and he had been unable to stay at his girlfriend’s house. In those circumstances she offered Mr Tahiri the couch or a spare bed at her house. Some might view the other factors (the alcohol, night time, no-one else in the house, and the medication) as suggesting that the complainant acted unwisely in inviting Mr Tahiri into her house, but implicit in that invitation is an element of trust by the complainant in Mr Tahiri. That trust was breached when he took advantage of the hospitality she had extended to him.

Vulnerability?

[11] The submission for Mr Tahiri is that self-induced vulnerability may not be what is meant by “vulnerability” as discussed in *R v AM*.⁴ It is said that, even if self-induced vulnerability is relevant, that factor does not necessarily exclude the case from band one in *R v AM*.

[12] In *R v AM* it is said that band one is not appropriate where “a victim who by reason of factors such as age (children or elderly persons) or mental or physical impairment is vulnerable”.⁵ Although this does not refer to self-induced vulnerability, we agree with the Crown’s submission that there is no conceptual reason why self-induced vulnerability should be excluded as an aggravating factor. As the Crown submits, this is no more an invitation than any other kind of vulnerability. A person in an unconscious state as a result of alcohol or drugs is “helpless and defenceless” to the offending to which they are subjected.⁶ As the Crown also submits, it says something about the culpability of a person who abuses such situations.

⁴ At [93].

⁵ At [93].

⁶ *R v Donaldson* (1997) 14 CRNZ 537 (CA) at 544.

Double counting?

[13] It is submitted for Mr Tahiri that there is an element of double counting because the complainant's vulnerability encapsulates not just her drugged state, but also that she was in bed and in her home. We do not agree. The vulnerability arises because of her heavily sedated state which meant that she was in no position to consent to intercourse or resist it. That vulnerability was abused by Mr Tahiri taking advantage of that. The nature of the breach of trust relied on by the Judge, however, was different. It was concerned with the abuse of the complainant's trust in inviting Mr Tahiri into her home.

Starting point overall

[14] Counsel for Mr Tahiri submits that the factors identified by the Judge would place the offending in band one rather than band two. However, as the sentencing Judge recognised, to some extent the bands overlap. Band one has starting points of six to eight years' imprisonment. Band two has starting points of seven to 13 years' imprisonment. The Judge considered that the offending was not at the lower end of band one because of the breach of trust and the victim's vulnerability. He also noted the guidance in *R v AM* that band one was not appropriate if the victim was vulnerable. He concluded that the appropriate starting point was near the bottom of band two, leading to his conclusion that eight years' imprisonment was appropriate.

[15] The guidance from *R v AM* is that band one is appropriate where the aggravating features are either not present or present to a limited extent.⁷ The guidance is also that band two is appropriate for "offending involving a vulnerable victim, or an offender acting in concert with others or some additional violence."⁸ The breach of trust involved here was not of the more serious kind (as with offending within familial relationships or by a person who has assumed some responsibility in relation to the victim). That would not by itself put the offending into the top of band one or the bottom of band two. What puts the offending in that category is the complainant's vulnerability. Because the vulnerability is of a

⁷ *R v AM*, above n 2, at [93].

⁸ At [98].

different kind than where the victim is very young or old or is mentally impaired or disabled, we consider that the eight year starting point was toward the top of the available range.⁹ It was, however, a starting point available to the Judge.

Issue 2: The uplift for the other offending

The circumstances of the other offending

[16] Some of the other charges arose from the theft of the items from the complainant after he had raped her. Mr Tahiri took the complainant's wallet, mobile phone, tobacco pouch and car keys from under her pillow. He drove off in her car. The car was recovered five days later in the possession of two members of the Mongrel Mob. The tobacco pouch was located on Mr Tahiri when he was spoken to by the police on 13 August 2011. The other items have not been recovered. These facts gave rise to charges of unlawful taking of a motor vehicle and theft.

[17] A few days later, on 17 August 2011, Mr Tahiri walked past a car which he noticed was unsecured.¹⁰ He took a SIM card from a wallet which was in the car. He used the SIM card to make calls and send text messages resulting in charges to the owner of the SIM card in the amount of \$473.24. These facts gave rise to charges of obtaining by deception and theft.

[18] There was further offending in the early hours of 28 September 2011. Mr Tahiri was on bail at this time. He was driving a car when he was disqualified from doing so. A police car activated its lights and siren, signalling to Mr Tahiri to pull over. Mr Tahiri continued driving. While trying to evade the police, he drove well above the speed limit, at times on the opposite side of the road and over a raised concrete island in the middle of the road, turning his lights on and off, and failing to stop on two occasions for red traffic lights. The driving only ended when Mr Tahiri

⁹ As is said in *M (CA844/11) v R* [2012] NZCA 352 at [2] and [18], cases in which victims are incapacitated by gross intoxication do not provide a useful analogy to the nature and extent of the victim's vulnerability in that case (who was "profoundly disabled" and had "for many years been bedridden and totally dependent on others for her day-to-day care") and in respect of which a starting point of 11 and a half years' imprisonment was regarded as appropriate.

¹⁰ The summary of facts for this offending says that this occurred on 17 August 2012, but the conviction history for Mr Tahiri indicates that this is an error.

lost control of the car and crashed into a bridge. By this time Mr Tahiri had travelled 21 kilometres. He was charged with driving while disqualified (third or subsequent), failing to stop and driving dangerously.

[19] On 29 September 2011 Mr Tahiri failed to report to community probation. This was a breach of the conditions of his release from a sentence of imprisonment on driving and other offending. He was charged for that breach.

The Judge's assessment of the other offending

[20] The Judge did not discuss the above offending in any detail. He considered the appropriate starting point for this offending was 15 months' imprisonment on a cumulative basis.¹¹ He noted that he could uplift the sentence to take into account Mr Tahiri's previous convictions and appearances in the Youth Court. He decided not to do so because of the totality principle and the requirement to impose the least restrictive sentence on Mr Tahiri.¹² He reduced the cumulative term by three months to take into account Mr Tahiri's guilty plea on these charges. He said he was imposing 12 months' imprisonment on the driving while disqualified charge cumulative on the sentence for the sexual violation charge, and lesser concurrent sentences for the other offending.¹³

Submissions

[21] It is accepted on Mr Tahiri's behalf that some uplift to the starting point was appropriate for the other offending. It is said that no explanation was given by the Judge for deciding upon an uplift of 15 months, prior to the discount for the guilty plea. It is said that the discount for the guilty plea was too small because it was less than 25 per cent. It is said that the uplift should have been in the order of nine to 10 months taking into account a discount for the guilty pleas.

¹¹ *R v Tahiri*, above n 1, at [27].

¹² At [28].

¹³ At [27]. As discussed later, the 12 months' imprisonment for the driving while disqualified charge ended up being an uplift to the sexual violation charge, and a concurrent term was instead imposed on the driving while disqualified charge.

Our assessment

[22] The driving offending on 28 September 2011 was serious for offending of this kind. It was Mr Tahiri's third or subsequent offence for driving while disqualified, the driving was highly dangerous and it involved fleeing the police. In addition, there is the other offending which included taking property from a person he had just raped. That could have been regarded as aggravating that offending and warranting a small increase on the starting point of eight years for the rape. We consider that the starting point of 15 months for the uplift for all the other offending was well open to the Judge. That is especially so in light of Mr Tahiri's previous offending (which is extensive and involves a number of driving and dishonesty offences). We also consider that the 20 per cent discount for the guilty pleas was adequate, there being no automatic entitlement to a 25 per cent discount for early guilty pleas. The key issue on appeal is whether the final total sentence was available and within range.¹⁴ We are satisfied that the overall uplift of 12 months for the additional offending was well within the Judge's discretion, however it was derived.

Issue 3: Discount for youth

[23] Having reached an overall sentence of nine years' imprisonment for all the offending the Judge turned to consider the issue of Mr Tahiri's youth. The Judge noted that a number of decisions had been referred to him discussing whether and why there should be a reduction in sentence for youth. He referred in particular to *Churchward v R* as identifying the reasons for the discount as being: neurological differences between adults and youths; the effect of a sentence of imprisonment on a youth; and that a youth can have greater capacity for rehabilitation.¹⁵

[24] He then said this:¹⁶

[31] I think in your case, it is difficult to assess whether you will be amenable to rehabilitation. Generally, youths are. What will happen when

¹⁴ *Dellaway v R* [2010] NZCA 100 at [22].

¹⁵ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

¹⁶ *R v Tahiri*, above n 1, at [31] and [32].

you are released from prison only time will tell. A sentence of nine years' imprisonment is significant. You were 17, just under 18, at the time. You have just turned 19. There are, and it is generally accepted, neurological or brain differences between adults and youths. The latest research that I have seen indicates that often a brain in a youth does not fully mature until the age of about 25 or 26. I think that a lot of your offending is, as I have said, impulsive and it shows no respect or regard for either victims or your offending or yourself. That is an issue which goes to your culpability. I think you are young. I think you are immature and I think that you are naïve for those reasons that I have mentioned.

[32] I intend to reduce the sentence of nine years' imprisonment that I have imposed to take into account your youth. That is, as I have said, a matter which affects your culpability and as I have said you have given little or no thought to any of your victims in either this offending or previous offending. I hope that you do what you can, Mr Tahiri, while you are in prison, to do whatever courses or programmes that might be necessary and to be able to leave prison without embarking down the pathway of further offending. If you do not do that and you continue to offend, and if you do not mature and grow up and think about the effects and consequences of your offending on both your victims and yourself, then it is going to be a very sad state of affairs for both the community and you.

[25] The Judge decided that the appropriate reduction was 18 months on the sentence of nine months' imprisonment. The position is confusing because at this part of his sentencing decision the Judge referred to a sentence of nine years' imprisonment on the "sexual violation count" which would bring the sentence "on the sexual violation charge [to] one of seven and a half years' imprisonment". Earlier in his remarks the Judge had said that the sentence for the sexual violation was eight years, to which he said a cumulative sentence of 12 months would be imposed on the driving offending. However, it is clear that the Judge intended to reduce the overall term of nine years' imprisonment to seven and a half years. On that basis counsel have proceeded on the basis that this was a discount of 16.6 per cent for youth.

[26] Counsel for Mr Tahiri submits that the discount given is well below discounts in other cases where the offender is 17 years of age. One of the cases she relies on to support this submission is *Rarere v New Zealand Police* where the offender was aged 18.¹⁷ On charges of burglary, unlawfully taking a motorcycle and dangerous driving a discount of six months' imprisonment was applied to a two years nine months starting point (equating to a discount of approximately 18 per cent). Counsel also

¹⁷ *Rarere v New Zealand Police* [2012] NZHC 779.

refers to *Churchward* in which a 17 year old offender, who was convicted of murder, was given a discount of six years on a minimum period of imprisonment of 19 years (equating to a discount of 31.5 per cent). The other cases included in the authorities provided by Mr Tahiri's counsel involved younger offenders.

[27] We consider that *Rarere* and *Churchward* are simply illustrations of the exercise of the discretion on the particular facts before the Court. As this Court said in *Pouwhare v R*, "the fact that an offender is a young person can sometimes be given radical effect on sentence, unconstrained by any normative percentage, even where offending is serious" whereas "in other cases that is not possible".¹⁸ One of the relevant factors is the objective seriousness of the offending. Therefore potentially better illustrations of the discount that might be appropriate are cases involving sexual violation where an offender is aged between 17 and 18 years.

[28] One such example is *R v Takiari*.¹⁹ In that case the offender was aged 17 years and 10 months. He pleaded guilty to two charges of sexual violation, one of sexual violation by rape and one of indecent assault, all charges relating to the one incident. The sentencing Judge imposed a term of three and a half years' imprisonment for this offending. The Solicitor-General appealed the sentence on the grounds that it was manifestly inadequate. This Court agreed. It considered that the aggravating features of the offending warranted a starting point of 10 years' imprisonment.²⁰ From that starting point a discount was appropriate for the offender's guilty pleas (described as not being late but also not made at the first reasonable opportunity) and a further discount for the offender's youth, his apology and associated remorse.²¹ The Court concluded that the maximum discount for these factors was 45 per cent, accepting the Crown's submission that it was relevant that the offender was nearly 18 at the time and was both "streetwise" and "sexually experienced".²² Although the discount for the guilty plea was not identified, on the

¹⁸ *Pouwhare v R* [2010] NZCA 268, (2010) 24 CRNZ 868 at [96].

¹⁹ *R v Takiari* [2007] NZCA 273.

²⁰ At [17].

²¹ At [18].

²² At [19].

basis that it was around 20 to 25 per cent,²³ that indicates the discount for youth was around 20 to 25 per cent.

[29] A further illustration is provided by *R v Rongonui*.²⁴ In that case the offender was 17 and a half years old at the time of the offending. On his convictions for sexual violation by unlawful sexual connection and assault with intent to commit rape the sentencing Judge imposed a term of four years' imprisonment. The Solicitor-General appealed on the ground that the sentence was manifestly inadequate. This Court agreed. It had no difficulty with the Judge's starting point of six years.²⁵ The Judge uplifted the starting point by six months for offending while on bail, made no uplift for previous convictions, and then applied a discount of 18 months for age and a further 12 months (in her words) "to reflect the fact that if I had my way I would release you today but I cannot". The Court disagreed with this approach. It considered that a significant uplift was justified for the prior offending and because the offending occurred while Mr Rongonui was on bail for another offence.²⁶ It noted that there was no guilty plea and no remorse shown which meant that the only mitigating factor of significance was Mr Rongonui's age.²⁷ It viewed these factors as cancelling each other out, leaving the appropriate sentence at six years' imprisonment.²⁸

[30] It is difficult to compare the discount for the offender's age with the present case, because it is not clear what Mr Rongonui's prior offending involved. It is therefore not clear what uplift would have been made for that factor and that the offending occurred while Mr Rongonui was on bail. Our broad assessment is that perhaps an uplift of one year might have been considered appropriate for those factors. That would mean that the discount for age would then also be one year, or approximately 14 per cent on a sentence of seven years' imprisonment.

²³ This case pre-dates *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 and so was decided at a time when discounts of 33 per cent were frequently given for early guilty pleas.

²⁴ *R v Rongonui* [2009] NZCA 279, [2010] 1 NZLR 742.

²⁵ At [91].

²⁶ At [93].

²⁷ At [94].

²⁸ At [95].

[31] So far as comparisons can be made, the discount applied here was between these two illustrations. Arguably the better comparison is *Rongonui* because it appears that the offender's previous convictions in that case may have been broadly similar to Mr Tahiri's. We have not endeavoured to find every case where the offender is of a similar age as here. There may well be cases where discounts for youth where the offender is nearly 18 years of age and the offending involves sexual violation are greater or less than the nearly 17 per cent applied in this case. What can be said in general terms is that an offender who is aged nearly 18 is unlikely to receive a discount of the size that very young offenders might receive.²⁹

[32] The question here is whether on the facts before the Judge the discount for youth was too small such that it led to a manifestly excessive end sentence. Relevant to that question is whether, as counsel for Mr Tahiri says, the Judge failed to give adequate recognition to Mr Tahiri's remorse and prospects of rehabilitation. She says that, despite Mr Tahiri's background (a lack of good role models and his poor upbringing), this was his first sexual or other serious violent offence. She submits that Mr Tahiri's poor choices are largely explained by his youth and his psychological and emotional influences. She submits that Mr Tahiri's remorse is illustrated by a letter of apology which he wrote to the victim. She submits that the pre-sentence report indicates there are prospects of rehabilitation. She submits that a discount in the order of 30 per cent should have been imposed.

[33] The Crown submits that the discount was well within the Court's discretion. The Crown submits that the pre-sentence report does not support the prospect of rehabilitation and that Mr Tahiri's history of regular offending is a reason to view his rehabilitative prospects sceptically. The Crown submits that the trial Judge was best placed to assess Mr Tahiri's rehabilitative prospects and remorse. The Crown says that the Judge expressed hope that Mr Tahiri could be rehabilitated but did not find that there was a real prospect of that.

²⁹ By way of example for sexual offending where the offender is younger: *M (CA844/11) v R*, above n 9, (14 year old offender, 34 per cent); *V (CA400/12) v R* [2012] NZCA 465 (14-17 year old offender, 30 per cent including remorse and rehabilitation); *Lennon v R* [2012] NZCA 551 (14-15 year old offender, 33 per cent); *Overton v R* [2011] NZCA 648 (15-16 year old offender, 22 per cent), and where the offender is older: *Day v R* [2010] NZCA 172 (19 years old, 12 per cent discount including lack of relevant previous convictions).

[34] The Crown submits that Mr Tahiri's video interview with the police indicated a lack of remorse. In that interview he denied that anything had happened and at one stage asked "So what is she trying to say[, I raped her[?]" To this the police officer replied "Well she's not saying anything like that cos she doesn't know". Mr Tahiri's response is said to be a "chuckle". This is said not to be the response of a person that feels any, even slight, remorse. Counsel for Mr Tahiri describes Mr Tahiri's response as not really a "chuckle" (in the sense of laughing), but a typical reaction of a youth in an awkward situation and that it would be wrong to read more into this. We agree with her that no weight should be placed on this. We note that the transcript of the Police video interview describes Mr Tahiri responses to a number of questions as "chuckles". For example, when the police officer tells Mr Tahiri that he can talk to someone before he decides to answer any questions, Mr Tahiri's response is recorded as being "chuckles". The transcript also records in some places that the interviewing officer "chuckles".

[35] We also agree with the submissions for Mr Tahiri that the pre-sentence report was not entirely negative. The pre-sentence report writer described Mr Tahiri as being "open to discussion around the circumstances and his perception of the victim". He was "able to comprehend the vulnerability of the victim and his abuse of it". As to the negative effects upon the victim Mr Tahiri "specifically referred to her distress, embarrassment and recognised her sense of loss".

[36] In relation to Mr Tahiri's alcohol use, Mr Tahiri reported a pattern of weekly binge drinking. He agreed he made "dumb choices" which had been a factor in all of his offences to date. He agreed that he had a poor knowledge of the effects of alcohol and limited awareness of his motivation to drink to excess. In relation to the reason for his offending he is reported to have demonstrated a good ability to engage. He was not angry or frustrated and his "sense of entitlement", that is when he "saw something he wanted he would do anything to get it", appeared to be the primary factor in his offending. He was assessed as motivated to undertake psychological counselling to address his violence and thinking.

[37] The pre-sentence report writer assessed Mr Tahiri's likelihood of reoffending as high. However this view is not specific to his risk of further sexual or other

serious violent offending. That is apparent from the writer's reasons for that assessment, which included Mr Tahiri's offending history and that he had driven the victim's vehicle while intoxicated. We agree that his offending history indicates that he has a high risk of re-offending on driving related matters. But the more important issue is whether he is at a high risk of re-offending in a serious way. As to that, it is relevant that Mr Tahiri's offending history did not include any offending like the sexual violation on this occasion or any other serious violent offence, that he has showed some insight into the causes of his offending and he is motivated to undertake counselling.

[38] All of this material was, however, before the Judge. So too was Mr Tahiri's conviction and Youth Court history, which was extensive. Mr Tahiri's expressions of remorse came only after he was found guilty at trial. His remorse and rehabilitative prospects might have been given greater weight if he had accepted responsibility from the outset. The Judge was in a better position than we are to assess the appropriate discount, having seen Mr Tahiri give evidence at the trial. In the end, although other Judges might have allowed a slightly greater discount for youth, we are not satisfied that the discount applied here resulted in a manifestly excessive sentence.

Result

[39] The appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent