SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**McCurley v Stirling**
Citation:	**[2024] ACTSC 41**
Hearing Date:	12 February 2024
Decision Date:	26 February 2024
Before:	McWilliam J
Decision:	Appeal allowed; offender resentenced.
Catchwords:	**APPEAL –** CRIMINAL LAW – Judgment and Punishment – sentence – appeal from Magistrates Court – where further sentence imposed following offences committed while on parole – whether error in making sentence consecutive upon existing sentence – whether error in re-setting non-parole period to commence from the date when the offender's parole was cancelled as opposed to the date when the original sentence commenced – principles applying to resetting non-parole period discussed
Legislation Cited:	*Criminal Appeal Act 1912* (NSW) s 6(3) *Criminal Code 2002* (ACT) ss 318(2), 324(1) *Crimes (Sentencing) Act* 2005 (ACT) ss 7, 61(3)(a), 65, 66, 71, 72, 75, Ch 5 *Crimes (Sentence Administration) Act 2005* (ACT), ss 139(2), 140, 160(3), 161, Div 7.5A.3 *Magistrates Court Act 1930* (ACT) ss 207, 208, 214, 218 *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 7A(1) *Road Transport (Vehicle Registration) Act 1999* (ACT) s 22(1)
Cases Cited:	*Alexander v Bakes* [2023] ACTCA 49 *Bugmy v The Queen* [2013] HCA 37; 249 CLR 571 *Dinsdale v The Queen* [2000] HCA 54; 202 CLR 321 *Fox v Percy* [2003] HCA 22; 214 CLR 118 *Greenwood v Barlee* [2018] ACTSC 46 *Jovanovic v The Queen* [1999] FCA 1008; 92 FLR 580 *Kentwell v The Queen* [2014] HCA 37; 252 CLR 601 *Kristiansen v Callaghan* [2013] ACTSC 164 *Kristiansen v Yeats* [2022] ACTSC 351 *Leeson v Grech* [2023] ACTSC 355 *Lowndes v The Queen* [1999] HCA 29; 195 CLR 665 *Millard v The Queen* [2016] ACTCA 14; 19 ACTLR 270 *Morrison v Maher* [2021] ACTSC 312 *Ndlovu v The Queen* [2018] ACTCA 33 *Peverill v Crampton* [2010] ACTSC 79; 19 ACTLR 26 *Power v The Queen* (1974) 131 CLR 623 *Preston v Carnall* [2015] ACTSC 325; 300 FLR 302 *R v Flowers* [2014] ACTCA 13; 19 ACTLR 77 *R v Henry* [1999] NSWCCA 111 *R v MAK; R v MSK* [2006] NSWCCA 381; 167 A Crim R 159 *Sampson v De Haan* [2016] ACTSC 327

Slater v The Queen [2014] ACTCA 33
Smith v R [2023] ACTCA 23
Taylor v R [2014] ACTCA 9
The Queen v Ruwhiu [2023] ACTCA 18
Ward v Richardson [2021] ACTSC 130
Wickey v The Queen [2012] ACTCA 38

Parties:	Patrick McCurley (Appellant)	
	William Stirling (Respondent)	
Representation:	**Counsel**	
	J Tyler-Stott (Appellant)	
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	ACT Director of Public Prosecutions (Respondent)	
File Number:	SCA 39 of 2023	
Decision Under Appeal:	Court:	ACT Magistrates Court
	Before:	Chief Magistrate Walker
	Date of Decision:	14 June 2023
	Case Title:	Stirling v McCurley
	Charge Numbers:	CAN 2994 of 2023
		CAN 2995 of 2023
		CAN 2996 of 2023
		CAN 5173 of 2023

McWilliam J:

1. Sentencing a person who contravenes the laws of the Territory can be technical and difficult, depending on the circumstances of the offender before the court. At times it is like solving a Rubik's cube under pressure, but with much heavier consequences, with the sentencer attempting to align the statutory provisions on one side, with the facts, the sentencing objectives, the interests of the victim, the subjective circumstances and court sentencing practice on various sides of the cube.

2. The nature of the task means that in a busy Magistrates Court, when absorbing and applying the provisions of the *Crimes (Sentencing) Act* 2005 (ACT) (***Sentencing Act***) and the *Crimes (Sentence Administration) Act 2005* (ACT) (***CSA***), mistakes sometimes occur. Such errors are not always the fault of the judicial officer sentencing – sometimes the profession contributes to the errors by what they say or do not say at the hearing. That is unsurprising; those lawyers are also operating in the same pressure cooker environment as the judicial officer.

3. In this appeal, the appellant was sentenced on 14 June 2023 in the Magistrates Court for four offences, all of which occurred on 22 March 2023. The appellant alleges that there was an apparent misunderstanding as to whether the sentence for the further offending could only be imposed consecutively with an existing sentence he was already serving. He asserts the Court had a discretion to adjust the sentences so that part or all of the second sentence was to be served concurrently with the first.

4. The respondent (**Prosecution**) also raises what are said to be mistakes in the application of the *Sentencing Act* and the *CSA*, concerning the incorrect end date of an existing sentence of imprisonment (previously imposed for other offences), as well as the setting of a non-parole period by reference only to the remaining part of an existing sentence to be served, when it should have taken into account the original commencement date of the sentence.

5. I accept that those mistakes occurred in the sentence involving the appellant here. These reasons explain why, as well as how they may be fixed.

The primary sentence

6. The appellant was sentenced as follows:

Charge	**Offence**	**Sentence Imposed**

CAN 2994/2023	Ride/drive motor vehicle without consent contrary to s 318(2) of the *Criminal Code 2002* (ACT) (***Code***).	6 months' imprisonment (reduced from 8 months on account of the guilty plea).
CAN 2996/2023	Unlawful possession of stolen property, contrary to s 324(1) of the *Code*.	3 weeks' imprisonment (reduced from 4 weeks on account of the guilty plea).
CAN 5173/2023	Aggravated furious, reckless or dangerous driving, contrary to s 7A(1) of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT).	3 months' imprisonment (reduced from 4 months on account of the guilty plea), and an automatic license disqualification period of 12 months.
CAN 2995/2023	Drive with a number plate not properly issued, contrary to s 22(1)(a) of the *Road Transport (Vehicle Registration) Act 1999* (ACT).	No separate penalty imposed.

7. An aggregate sentence of eight months' imprisonment was imposed, being the "**primary sentence**". A non-parole period of 18 months was set to commence from 23 March 2023 to 22 September 2024.

Previous offending

8. At the time he committed the above offences, the appellant was under an "existing sentence" as defined in s 70(1)(a)(i) of the *Sentencing Act*. The appellant had previously been sentenced, on 13 March 2020, to a sentence of 6 years and 3 months' imprisonment.

9. That existing sentence was backdated to commence on 3 April 2019 and expire on 2 July 2025.

10. A non-parole period of 3 years and 4 months was set, commencing on 3 April 2019 and expiring on 2 August 2022.

11. A further sentence was imposed for a separate offence on 31 July 2020, for one month, to commence 3 April 2019. It has been served.

12. The appellant was eligible for parole from August 2022, which was subsequently granted to commence on 23 November 2022. Accordingly, when the appellant was released into

the community on parole, he had served 3 years, 7 months and 20 days of his existing sentence. That left the appellant with 2 years, 7 months and 10 days to serve on parole.

The cancellation of the offender's parole

13. As a result of the further offending, the offender was taken into custody on 22 March 2023. On 23 March 2023, the appellant's parole was cancelled.

14. Under s 140 of the *CSA*, an offender is taken to be under the sentence of imprisonment while on parole. If nothing happens to have the parole order cancelled, then the offender is taken to have served the term of imprisonment and to have been discharged from the imprisonment.

15. However, if the parole order is cancelled before the term expires, as it was here, the offender is taken not to have served any period of imprisonment for the sentence that remained to be served on the offender's parole release date: s 160(3) of the *CSA*. Other statutory provisions then apply, depending on the circumstances in which the order was cancelled.

Credit for time served in the community before further offences committed

16. One circumstance where there might be time attributed to the existing sentence is where the offender is taken into custody while on parole, but it depends upon the reason the offender is in custody. Here, the appellant was taken into custody for one day referable to the 22 March 2023 offending, before his parole order was cancelled under s 161 of the *CSA* (**Recommittal Order**). That one day in custody did not count against the existing sentence, because it was referable to the further offending: s 139(2) of the *CSA*. However, that day did warrant being taken into account in the sentence imposed by the Magistrate for the further offending, and it was.

17. A second circumstance operating on the parole cancellation is Division 7.5A.3 of the *CSA*, which concerns parole time credits. The Division provides for an offender's time on parole (that is, in the community) to be credited against the existing sentence, calculated by reference to a variety of circumstances. In this case, the Sentence Administration Board (**Board**) calculated that the appellant was entitled to a parole time credit of 70 days (**Parole Time Credit**), which was referable to the existing sentence.

18. The Board took this into account in concluding that the appellant's Parole Time Credit ended on 31 January 2023. That is, of the term of imprisonment for the existing sentence of 6 years and 3 months, the appellant was taken to have served 3 years, 9 months and 29 days.

19. Importantly for this appeal, this meant the appellant had 2 years, 5 months and 2 days of his existing sentence left to serve. He was liable to serve that amount of time from 23 March 2023 (being the date the parole order was cancelled). That created a new expiry date for the existing sentence of 24 August 2025.

20. Absent any appeal, the end date of an existing sentence could not be subsequently amended by a court. The orders of the parole board were not appealed.

Orders made in the court below

21. The court below ordered that the sentence for the further offending (the primary sentence) was to commence on 16 June 2025 and expire on 15 February 2026. The reason for such a commencement date was attributable to the court below purporting to reduce the term of the existing sentence to account for the Parole Time Credit, which the parties had (mistakenly) told the sentencing magistrate to take into account in respect of the existing sentence.

22. The effect of the orders was that the total sentence, taking into account what was left to serve of the existing sentence and the primary sentence set out above, was 2 years, 10 months and 24 days' imprisonment, with a non-parole period expiring on 22 September 2024.

Grounds of Appeal

23. The appellant raised what amounts to two issues:

    (a) Error in principle in imposing the primary sentence wholly consecutively upon the previous sentence (**Issue 1**); and

    (b) Error in failing to provide reasons for imposing the primary sentence consecutively (**Issue 2**).

24. The Prosecution has raised two separate errors, being:

    (a) That the court below was wrong (and had no power) to shorten the end date of the existing sentence from 24 August 2025 to 15 June 2025 (**Issue 3**); and

    (b) That the court below was wrong to set the non-parole period as starting from 23 March 2023. It should have commenced from the date that the existing sentence was first imposed, being 3 April 2019 (**Issue 4**).

25. As will be explained, error has been established in respect of Issue 1. As a result, Issue 2 falls away.

26. The errors identified in respect of Issues 3 and 4 also occurred. In *Smith v R* [2023] ACTCA 23 (***Smith***) at [7]-[8], the approach commended to practitioners in respect of such errors was to first approach the sentencing magistrate pursuant to s 61(3)(a) of the *Sentencing Act* and seek that the proceeding be reopened in order that the sentencing judge remake the relevant order in accordance with the law.

27. It appears that those matters were only belatedly identified when preparing for the appeal and were not formally the subject of a cross-appeal. However, because of the finding in respect of Issue 1, those matters can be fixed up in the orders ultimately made on appeal.

Court's powers on appeal and applicable principles

28. The Court's power to deal with this appeal is derived from ss 207, 208 and 218 of the *Magistrates Court Act 1930* (ACT) (***Magistrates Court Act***). The nature of this appeal is by way of a rehearing: *Alexander v Bakes* [2023] ACTCA 49 (***Alexander***) at [16]-[17].

29. It includes consideration of the evidence before the Magistrate and consideration of any new evidence permitted to be adduced in this Court (as is the case here): *Peverill v Crampton* [2010] ACTSC 79; 19 ACTLR 26 (***Peverill***) at [24], cited in *Preston v Carnall* [2015] ACTSC 325; 300 FLR 302 at [4]-[5], *Ward v Richardson* [2021] ACTSC 130 at [12] and *Greenwood v Barlee* [2018] ACTSC 46 at [2]-[4].

30. Those cases set out the principles upon which appeals such as the present appeal are to be conducted. The appellant must establish that the Magistrate made an error (whether legal, factual or discretionary): *Peverill* at [24]; *Alexander* at [16]-[18]. Among the principles there discussed, the Court is required on appeal to conduct a real and independent review of the evidence at the trial and the magistrate's reasons, including weighing conflicting evidence and drawing inferences itself from the primary facts found by the court below.

31. In doing so, it must take into account any advantage that the tribunal of fact had in the proceedings below: see *Peverill* at [24]; *Fox v Percy* [2003] HCA 22; 214 CLR 118 at [25], cited in *Alexander* at [20].

32. Further, this appeal is an appeal against a sentence. A claim of this type calls into question a quintessentially discretionary decision: *Lowndes v The Queen* [1999] HCA 29; 195 CLR 665 at [15]. An appellate court must therefore respect the wide discretion of the sentencing judge concerning an appropriate sentence and will not set aside the sentence imposed by the sentencing court simply because the court on appeal would have imposed a different sentence. The appellate court must resist "tinkering" with sentences: *Dinsdale v The Queen* [2000] HCA 54; 202 CLR 321 at [62].

If error is established

33. Historically in this jurisdiction, when considering similar appeals from the Magistrates Court, this Court has applied the principle articulated in *Kentwell v The Queen* [2014] HCA 37; 252 CLR 601 (***Kentwell***) at [43] which holds that when error is established, the appeal court must exercising the sentencing discretion afresh but is not required to resentence unless it is satisfied that a different sentence is "warranted in law". In *Morrison v Maher* [2021] ACTSC 312 (***Morrison***) at [40]-[48], Mossop J doubted the application of the *Kentwell* principle in circumstances where the powers of the Court under s 218 of the *Magistrates Court Act* are broader than those of the statutory provision that was the subject of interpretation in *Kentwell*.

34. The High Court in *Kentwell* was considering a statutory power, namely s 6(3) of the *Criminal Appeal Act 1912* (NSW), the terms of which are:

> On an appeal ... against a sentence, the court, if it is of opinion that some other sentence, whether more or less severe is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefor, and in any other case shall dismiss the appeal:

35. As Mossop J pointed out in *Morrison* at [37] and [48], in this jurisdiction, the Court may "confirm, reverse or vary" the sentence appealed from, with the generality of the language meaning that there are fewer constraints upon the Court in determining the approach that should be adopted once error is detected.

36. Here, the error that has been established is one of a mistaken understanding of what the statute required and the correction of that error means that the Court cannot "adjust" the sentence imposed. Accordingly, the Court will need to resentence the offender by the independent exercise of discretion. As with the case in *Morrison* and other cases such as *Kristiansen v Yeats* [2022] ACTSC 351 at [66]-[71], the ongoing debate about the applicability of *Kentwell* to a statute that uses different words is similarly to be left for another day.

The power of the Court to admit evidence on appeal

37. In the event that error was established, the appellant has sought leave to admit fresh or new evidence on appeal pursuant to s 214 of the *Magistrates Court Act.* That included an affidavit from the appellant's partner deposing to matters that had occurred since the sentence and the steps the appellant has taken to address his rehabilitation. The Prosecution accepted that the nature of the evidence was such that it would be admissible on resentence if error was established.

Issue 1: Did the court below err in imposing the primary sentence wholly consecutively upon the existing sentence?

38. The heart of the appellant's complaint was that the outcome or 'direction' of a primary sentence that was wholly consecutive upon the existing sentence was the product of a failure to engage with the question of concurrency at all.

39. The appellant had difficulty in articulating that point, parsing the issue differently in various iterations of appeal grounds. The error could be characterised in a number of ways. They include that the sentence was manifestly excessive because of a specific legal error, or that to the extent a direction under s 71(2) of the *Sentencing Act* was made, it was in error because it resulted from the sentencing magistrate impermissibly fettering her sentencing discretion. Alternatively, the complaint might have been simply that there was a failure to consider s 71(2), or a legal error in failing to appreciate the terms of the applicable statute. It does not matter how the error is characterised; it is the substance of the point that concerns this Court on appeal and that is addressed below.

The applicable legislation

40. To understand the complaint made of the court below, it is first important to understand s 71 of the *Sentencing Act* (emphasis added):

> **Concurrent and consecutive sentences—general rule**
>
> (1) In the absence of a direction under subsection (2), the primary sentence must be served concurrently with the existing sentence.
>
> (2) The court may direct that the primary sentence be served consecutively (or partly concurrently and partly consecutively) with the existing sentence.
>
> …

41. The section then goes on to name a number of provisions to which the general rule is subject, none of which are relevant to this appeal.

42. Section 71(1) has been described as a "default rule", from which a departure must be identified in the orders of the Court: *Ndlovu v The Queen* [2018] ACTCA 33 (***Ndlovu***) at [31]. That does not mean that there is a presumption of concurrency. The provision simply facilitates certainty if no start and end dates are identified as between the primary and existing sentence. But it can be seen through the language of s 71(2), set out above, that the Court has a discretion to direct otherwise.

43. This may be contrasted with s 72 of the *Sentencing Act*, which deals with the situation where the further offending is committed while the offender was in custody (among other circumstances relating to the offender's custodial status). In those circumstances, the default position is that the primary sentence must be served consecutively with the

existing sentence of imprisonment, unless the court directs otherwise: s 72(2). Again however, the court has a discretion as to concurrency: s 72(3).

The hearing before the sentencing magistrate

44. The focus of Issue 1 is on what the sentencing magistrate did and why, to consider whether there was any appreciation that the sentencing task involved a statutory default position of concurrency, as well as a discretion as to the degree of concurrency.

45. The thought processes of the sentencing magistrate are readily apparent from the engagement with counsel through the hearing. This is seen from the following extracts from transcript (emphasis added):

> Her Honour: …the existing sentence is the two years, five months and two days. **Anything further I impose today goes on top of that** - - -
>
> Mr Banwell: **That's so.**
>
> Her Honour: - - - and I set the non-parole period against that period.
>
> Ms Banwell: And it is that aggregate sentence in which you set the non-parole period, your Honour. …

46. This exchange occurred in the course of hearing submissions from counsel for the offender below. It helpfully reveals the sentencing magistrate's thinking. Regrettably, the counsel for the offender confirmed that starting point, rather than drawing the sentencing magistrate's attention to s 71 of the *Sentencing Act* or saying anything about the discretion to adjust the concurrency between the two sentences.

47. The sentencing magistrate later addressed the prosecution as to the task in sentencing for a further term of imprisonment when the offender was serving an existing sentence:

> Her Honour: And just to confirm my understanding of that, that is that the existing sentence which has been calculated by the Sentence Administration Board has taken into account parole time credit and **my role now is to effectively add any additional sentence** and calculate a non-parole period from 23 March of this year?

48. It is understandable (I interpolate) why the sentencing magistrate said this, particularly in the context of what her Honour went on to say, regarding calculating a non-parole period. The terms of s 66 of the *Sentencing Act* (set out below) provide that when setting the non-parole period, the Court applies sets a non-parole period "as if" the court had sentenced the person to imprisonment for a term equal to the total of the terms of the existing sentence and the primary sentence. The wording of that section is somewhat difficult to reconcile with totality considerations and the express power to adjust concurrency in s 71(2).

49. Returning to the hearing itself, the prosecutor in the court below (who was not the same as the legal representative on appeal) similarly did not raise s 71 as bearing on the question the sentencing magistrate asked. The prosecutor was more concerned about the parole time credit issue. She sought an adjournment to work out whether or not it needed to be taken into account. The parties then mistakenly informed the court below that an adjustment would need to be made (Issue 3 below). They did not separately return to the other part of the sentencing magistrate's question, which was whether she was to "effectively add" an additional sentence.

Reasons of the sentencing magistrate

50. When the sentencing magistrate then delivered the sentence following the adjournment, the reasons indicate that the question of concurrency was addressed only in relation to the four offences that made up the primary sentence. The sentencing magistrate stated:

> Her Honour: … For the offence of driving with a number plate not properly issued for the vehicle, whilst I've recorded a conviction, I impose no separate penalty; **therefore the new sentence is one of eight-months. The existing sentence was for the period from 23 March 2023 to 24 August 2025. Parole time credit is to be applied, that is I will deduct the 70 days that you are to be credited for clean street time. That period, therefore, is 23 March 2023 to 15 June 2025. I will add the eight months which I've now imposed.** The period therefore of the total sentence is 28 March 2023 to 15 February 2026. That is a total of two years 10-months and 24 days. I set a non-parole period at 18 months, that is for the period 23 March 2023 to 22 September 2024. What that means is your total sentence now expires on 15 February 2026 but you're eligible for parole from 22 September 2024.

The Prosecution's submissions

51. The Prosecution's detailed and helpful arguments may be reduced to two key submissions. The first submission was that s 71 of the *Sentencing Act* does not require a formal direction before the default rule in s 71 was displaced (relying on *Ndlovu*). The inclusion of the starting and finishing dates of each sentence was sufficient to constitute a direction.

52. The second submission was that there was no misunderstanding: the imposition of a primary sentence that was entirely consecutive upon the existing sentence reflected the sentencing magistrate's intention, which the parties below implicitly accepted was the right outcome, due to the unrelated nature of the offending for each sentence.

53. There was a third submission, which was that in any case, because of an error made in changing the end date of the existing sentence, the primary sentence was partially concurrent by 70 days. That submission is dealt with separately as Issue 3.

Consideration

54. Dealing with the first of those arguments requires consideration of the proposition for which *Ndlovu* stands. The salient reasons of the Court of Appeal are at [30]-[31] (emphasis added):

> 30. The appellant pointed out that the primary judge made no specific reference to s 71 and did not make any "direction" that any particular sentence be imposed other than concurrently. **The appellant recognised that by imposing specific commencement dates for different offences, periods of concurrency and accumulation were necessarily involved in the sentences that her Honour imposed**. However, the appellant submitted that her Honour erred in imposing partially cumulative sentences in the absence of complying with s 71.
>
> 31. This is a very narrow point. Does s 71 compel a formal direction to be made before the default rule in s 71 is displaced? Or is it sufficient to amount to a direction that the sentencing court specify start and end dates for sentences of imprisonment which necessarily involve some degree of accumulation? In our view, it is sufficient for the purposes of s 71(2) that the Court specify start and end dates which necessarily incorporate a degree of accumulation. **It is not necessary to articulate or identify, by way of a separate order, the extent to which any of the orders are cumulative when it is a necessary consequence of the start and end dates specified by the Court that they are so cumulative. The purpose of s 71 is to make clear a default rule from which a departure must be identified in the orders of the Court. It is sufficient to meet that purpose that the orders of the Court include start and end dates which necessarily involve a degree of accumulation.** Therefore, this ground of appeal is not made out.

55. In the sentence being considered in *Ndlovu*, the primary judge had imposed a primary sentence that included a degree of concurrency by 4 months with the existing sentence and a degree of accumulation. The words emphasised in the above passage highlight that in that case, it was clear the sentencer actively exercised the discretion whether to order that part or all of a sentence be served concurrently. It was just that no formal words had been stated by way of a "direction", nor any reference made to s 71. The Court of Appeal held that neither of those things were necessary.

56. However, *Ndlovu* says nothing about a decision maker who does not appreciate that there is a statutory default position, or that they may permissibly consider whether to make the sentences wholly or partially concurrent. The case proceeded on the basis that it was clear that such consideration had been given.

57. In the present case, the position is different. It is readily discernible from the reasons on sentence that the sentencing magistrate purported to make the primary sentence and the existing sentence entirely consecutive. I say "purported" because of the parole time credit mistake (being Issue 3). Had that been corrected, in fact the dates of the primary sentence were partially concurrent. However, the magistrate's clear intention, evident from the transcript above, was that there be no concurrency.

58. Critically, there is no reference in the actual reasons to s 71 of the *Sentencing Act*, and no advertence to the possibility of any degree of concurrency as between the existing and primary sentences. That is not to say that if s 71 had been mentioned there would have been no error, as a mere reference to a principle may be insufficient if an appellate court is satisfied that there is error in the application of the principle: *Wickey v The Queen* [2012] ACTCA 38 at [20]-[22].

59. The reverse is equally true, in that the lack of any reference during the hearing to s 71 of the *Sentencing Act* is not, of itself, an error. That much is confirmed by *Ndlovu* at [31] – the sentencer is not required to name the section in order that it be demonstrably understood and applied.

60. However, the lack of any reference to the section itself or the substance of it means that the Court must look to other indicators which might suggest that the sentencing magistrate at least appreciated the existence of a discretion to make the sentences concurrent, even if a different course were ultimately adopted.

61. Here, there is no other indicator. The Court cannot draw an inference that, notwithstanding there was no mention of s 71 considerations, the sentencing magistrate nevertheless appreciated that there was discretion as to concurrency, for two reasons:

    (a) The sentencing magistrate's express reference to the issue of concurrency for the four offences comprising the primary sentence demonstrates the presence of the intellectual engagement with the issue. Conversely, the absence of such reference vis-à-vis the interaction as between the primary and existing sentence demonstrates the absence of the same intellectual exercise.

    (b) While the discussion during the sentencing hearing may elucidate what became the reasons on sentence, it does not assist here, as seen from the transcript extracts above. All parties proceeded on the assumption that the primary sentence was to be "added on top".

62. When the proceeding is viewed overall, it is apparent that the court below mistakenly fettered its sentencing discretion in misunderstanding or misremembering the statute (as to the default position). Even with the latitude afforded to first instance, high volume courts, it is difficult to read statements that the primary sentence "goes on top of" the existing sentence in any other way. The reasons of the sentencing magistrate do not disclose any appreciation that there was even an issue as to whether to make the primary sentence concurrent or consecutive with the existing sentence.

63. Alternatively, even if it were assumed that a very considerably experienced sentencing magistrate did have such an appreciation, the problem still arises that the issue was not

dealt with at all as part of totality considerations: see *Slater v The Queen* [2014] ACTCA 33 (***Slater***) at [23].

64. This segues into the second key submission made by the Prosecution. The contention was that statements about effectively adding the sentence, or that the primary sentence "goes on top of that", were the sentencing magistrate indicating to the parties that it was her intention to make the sentences entirely consecutive. It was submitted this was appropriate given that the conduct occurred on entirely different dates and was otherwise unrelated.

65. There are two difficulties with that submission. First, it is not supported by the context in which the questions were asked. The exchange between the sentencing magistrate and counsel for the offender was in the context of working out what was meant by the "existing sentence" for the purpose of setting a non-parole period, and whether the original sentence was "the existing sentence" or whether it was only the "revised time to serve". The exchange with the Prosecution was equally about the process or the mechanics of the task.

66. The second difficulty with that submission is that in the reasons, the sentencing magistrate dealt only with questions of concurrency for the four offences that were the subject of the primary sentence. Her Honour did not turn her mind to whether there should be any concurrency between the primary and existing sentences, even as a matter of applying the principle of totality.

67. The transcript may well indicate that it was the sentencing magistrate's intention to impose the primary sentence wholly consecutively upon the existing sentence, but it does not indicate a consideration that she could do anything else.

68. As I have said, what occurred might be viewed as the sentencing magistrate impermissibly fettering her discretion, or misunderstanding what the statute said, or simply a failure to properly consider the principles of totality. Howsoever described, the sentence imposed is a product of an error of law affecting the instinctive synthesis in an overall aggregate sentence.

69. Issue 1 is thus established, and the error is of a kind that requires the Court to resentence.

Issue 2: Was there a failure to provide adequate reasons?

70. In light of the conclusion with respect to the first issue, the argument as to the failure to give reasons falls away.

Issue 3: Was there an error in adjusting the term of the existing sentence?

71. Issue 3 may also be addressed briefly. There is no doubt from the passages of the transcript set out above that the sentencing magistrate deducted 70 days by way of the Parole Time Credit for the existing sentence. That was done primarily because it was the joint position of the parties in the court below that it should be done.

72. It can be seen from the transcript extract at [47] above that the sentencing magistrate's initial understanding was correct. Her Honour was proceeding on the basis that the parole time credits had already been dealt with. Unfortunately, the parties then convinced her Honour otherwise, leading her into error.

73. The reason it was an error is essentially because the appellant had already been recommitted under s 161 of the *CSA Act* by the Board, not the Magistrates Court. As the Board was the "recommitting authority" (as defined) under Part 7.4 of the *CSA*, the question of parole time credits had already been decided by the Board. Thinking about it logically, when a recommittal order is made, an offender must be told how much of the sentence is left to serve. That information cannot be provided to the offender unless somebody has already worked out how much credit is to be given for time spent in the community on parole. It is not a matter that can be worked out after the formal order cancelling parole has been made.

74. What flows from that? As a matter of law, once the Recommittal Order was made, the Magistrates Court had no power to interfere with the order and adjust the term of the existing sentence (subject to express provisions such as s 74 of the *Sentencing Act*). The remaining term was as per the order: 2 years, 5 months and 2 days to commence on 23 March 2023 and expire on 24 August 2025. This is confirmed by what was said in *Leeson v Grech* [2023] ACTSC 355 (***Leeson***), where McCallum CJ was dealing with a slightly different situation, being an appeal where a magistrate had sought to suspend a sentence that had earlier been imposed. At [3] of the reasons for judgment, McCallum CJ stated (emphasis added):

> … As already explained, at the time of the Magistrate's decision, Mr Grech was serving the balance of his earlier sentences following the revocation of his parole. In sentencing Mr Grech for the further offences, **the Magistrate had no power to backdate or suspend the earlier sentences. The commencement dates for sentences were fixed by the judicial officers who imposed them.** Furthermore, any future release on parole for those sentences was properly a matter for the Sentence Administration Board.

75. McCallum CJ later repeated at [37] that a subsequent judicial officer has no power to reopen an existing sentence, citing *Jovanovic v The Queen* [1999] FCA 1008; 92 FLR 580 at [15] as authority, noting that there are statutory exceptions in Chapter 5 of the *Sentencing Act*, none of which applied in the circumstances of that case.

76. Similarly, as a matter of fact here, the Recommittal Order which was before the court below made it clear that the Parole Time Credit had been applied and ended on 31 January 2023. The parties either failed to give proper attention to the information contained on the order or misunderstood what the Board was recording.

77. The result is that the 70-day reduction in the end date (and therefore the term of the existing sentence) should not have been made. That will be corrected on resentence.

Issue 4: Was there an error in the commencement date of the non-parole period?

78. That leaves the question of the resetting of a non-parole period and whether it should have been by reference to the commencement of the original sentence (3 April 2019), or the date when the Recommittal Order was made (23 March 2023). Although on resentence, the Court will impose the non-parole period afresh, I have dealt with this ground because the reasoning informs that task on resentence.

79. Again, appreciating that those who appear in the Magistrates Court may at times be under-resourced, under-instructed and doing their best to get across volumes of material quickly, the sentencing magistrate was not assisted by those who appeared before her, and to be fair to all involved, by the somewhat opaque drafting of s 66 of the *Sentencing Act*.

80. Without setting out the relevant parts of the transcript, it suffices to summarise that the sentencing magistrate's original view was that the non-parole period should be set from the commencement date of the original sentence that became the 'existing sentence' for the purposes of s 66 of the *Sentencing Act*. However, counsel for the offender below convinced her Honour otherwise, and counsel for the Prosecution did not address the question whether the order should operate from the date of the recommittal order when it was put to her (see the transcript extract at [47] above) because she was distracted with the parole time credits issue.

The proper interpretation and application of s 66

81. Section 66 of the *Sentencing Act* provides:

> **Nonparole periods—setting if sentence currently being served**
>
> (1) This section applies if—
>
> (a) the offender is serving a sentence of imprisonment (the ***existing sentence***); and
>
> (b) the offender is sentenced to a further term of imprisonment (the ***primary sentence***).
>
> ***Note*** Pt 5.3 deals with whether the primary sentence is to be served concurrently or consecutively (or partly concurrently and partly consecutively) with the existing sentence.

(2) Section 65 (Nonparole periods—court to set) applies as if the court that imposes the primary sentence had sentenced the person to imprisonment for a term equal to the total of the terms of the existing sentence and the primary sentence.

(3) The imposition of the primary sentence automatically cancels any nonparole period set for the existing sentence.

(4) Any nonparole period set for the primary sentence must not make the offender eligible to be released on parole earlier than if the primary sentence had not been imposed.

82. Because s 66 requires the court to apply s 65 of the *Sentencing Act*, it is relevant to note the terms of s 65(3), namely that when the court sets the non-parole period, the court must state when the non-parole period starts and ends. It is therefore important to grapple with the commencement date of a non-parole period imposed pursuant to s 66.

The applicable authorities

83. The authorities deal with a number of questions:

(a) What is the "existing sentence"?

(b) What is the commencement date for the non-parole period when an offender has been on parole?

(c) How does the Court set the non-parole period when there have been periods when the offender has been in the community?

84. As to what constitutes "the existing sentence", contrary to what was submitted, and accepted, in the court below, it is the entirety of the original sentence that was imposed. it is not merely the proportion of the sentence that a person had to serve before parole was granted: *Leeson* at [34]; *Kristiansen v Callaghan* [2013] ACTSC 164 at [6].

85. As to the commencement date for the non-parole period when the new global non-parole period is set, it is backdated to commence at the beginning of the overall sentence: *Smith* at [5], citing *Millard v The Queen* [2016] ACTCA 14; 19 ACTLR 270 (***Millard***) at [84]. In *Sampson v De Haan* [2016] ACTSC 327 at [128], Refshauge J stated:

> In my view, a non parole period must commence at the start of the sentence. That is the only basis on which it can comply with the purpose as described in *Power v The Queen*, namely the period of incarceration that the offender must serve. The offender serves the period from the start of the sentence of imprisonment, not some later date, subject, perhaps, to a notional recognition of subsequent periods of non-custody, as in *Millard v The Queen* [2016] ACTCA 14 at [78].

86. As to re-setting the non-parole period, the authorities do not evince any single definitive approach that differs from the ordinary principles applying in setting a non-parole period. Such principles have been set out in cases such as *Millard* at [61]-[66]; *R v Flowers* [2014] ACTCA 13; 19 ACTLR 77 at [2]-[6], [54]-[55], [73]-[74]; *Taylor v R* [2014]

ACTCA 9 (***Taylor***) at [19] and *The Queen v Ruwhiu* [2023] ACTCA 18 (***Ruwhiu***) at [18] (and the cases there cited). They include:

(a) The setting of a non-parole period is a matter of wide discretion depending on all the circumstances of the case: *Millard* at [61].

(b) A non-parole period must be fixed having regard to all the sentencing purposes of s 7 of the *Sentencing Act*, the objective seriousness of the offence and the offender's subjective circumstances: *Taylor* at [19].

(c) It is the minimum period of imprisonment that justice requires to be served: *Power v The Queen* (1974) 131 CLR 623 at 629.

(d) An offender's prospects of rehabilitation are important to the fixing of the non-parole period. Generally, the perceived prospects of rehabilitation will make a significant difference to the non-parole period. Among other things, they will indicate what is required by way of protection of the community: *Taylor* at [19].

(e) The proportion of the sentence that is to be served by way of non-parole period is a matter for judicial discretion and cannot be reduced to a mathematical formula or fixed mechanically by a particular method. It is clearly not a case of looking simply at the mathematical relationship between the head sentence and the non-parole period: *Millard* at [65]; *Taylor* at [19].

(f) Ordinarily, the non-parole period will constitute a substantial part of the total sentence: *Taylor* at [19].

(g) It is helpful if a sentencing court articulates the reasons for setting a non-parole period or at least for setting an unusual non-parole period: *Millard* at [65].

(h) Where either general or specific deterrence is important, that objective should not be undermined by an unduly short non-parole period: *Millard* at [65].

87. In the specific circumstance enlivening s 66, as mentioned above, the totality principle applies in all cases where a court comes to sentence an offender who is currently serving a term of imprisonment: *Slater* at [23].

88. It is important to understand that s 66 sets out an artificial process, designed to give one effective overall sentence with one non-parole period. The fact that a non-parole period covers both sentences means that in some cases, the non-parole period will expire before the primary sentence commences. In *Leeson*, McCallum CJ stated at [13]:

> It may be noted that the new non-parole period set by Magistrate Campbell expired before the commencement of the sentence imposed by her Honour at the same time. While that may seem curious, the course her Honour took was entirely orthodox. Unlike the position in

> some other jurisdictions, the sentencing legislation in the Territory contemplates that an offender will always have a single non-parole period even if that person is serving more than one sentence of imprisonment. Presumably, the purpose of that approach is to provide clarity for the offender as to the date after which they will be eligible for parole and to simplify matters for Corrective Services and the Sentence Administration Board. …

89. Her Honour then went on to state at [16]:

> To illustrate the operation of s 66, if Mr X was later sentenced by Judge B for a different offence to a further term of imprisonment for two years, giving a total effective sentence of seven years, the imposition of that sentence would, by force of s 66(3), automatically cancel the previous non-parole period of three and a half years. Judge B would then be required in accordance with s 66(2) to fix a new non-parole period reckoned by reference to the new total effective sentence of seven years, including the previous sentence.

90. Her Honour then discussed the principles relevant to the exercise of the Court's broad discretion, citing *Taylor* at [19] and *Ruwhiu* [at [18], before stating at [18]-[19]:

> 18. The principles may be taken to be the same when the Court is required to set a new non-parole period after sentencing an offender serving an existing sentence to a further term of imprisonment. So far as the statute is concerned, the Court's discretion in that respect is constrained only by the prohibition imposed by s 66(4) that the new non-parole period must not make the offender eligible to be released on parole earlier than under the original non-parole period. That makes sense from a sentencing perspective because one would not expect an offender to be rewarded for committing further offences. Furthermore, the constraint in s 66(4) respects the status of the original sentence as an exercise of judicial power. To permit a judicial officer to reduce the non-parole period set as part of the sentencing exercise undertaken by a different judicial officer to be the minimum period the offender should spend in custody for the sentences imposed would be to permit a de facto review of the earlier exercise of the sentencing discretion.
>
> 19. Where, as here, Judge B is sentencing an offender whose non-parole period for earlier sentences has already expired, the structure of the sentence required to be imposed under s 66(2) might seem anomalous. In the case of Mr X, Judge B would be imposing a sentence of imprisonment for two years with a non-parole period of at least three and a half years that had already expired. However, the anomaly is resolved when it is understood that the object of the legislative scheme is for an offender to have a single non-parole period from time to time, regardless of the number of sentences of imprisonment being served or when they were imposed. To put the matter another way, in the Territory, the non-parole period attaches to the offender and must be re-set if new sentences are imposed. For that purpose, Judge B is required to set a non-parole period as if the sentences previously imposed by Judge A had formed part of the sentencing exercise undertaken by Judge B. However, if Judge B formed the view that the offender should remain eligible for parole, there would be no impediment to setting a new non-parole order that had already expired.

91. I respectfully adopt what has been stated above and consider it a helpful explanation of what is an inherently artificial process.

92. For completeness, in *Millard* the Court of Appeal provided (at [81]-[84]) "two acceptable approaches", in the circumstances before it, to setting a new non-parole period under s 66 for the sentence before it:

    (a) Set the new non-parole period for the total term of the two sentences, with the primary sentence entirely concurrent with the remainder of the term for the existing sentence.

    (b) Treat the total term being served as consisting of the primary sentence and the total term of the existing sentence. Then treat the total sentence as backdated by a period equal to the period already served on the existing sentence, producing a notional start date, from which to then set the non-parole period.

93. The Court stated at [84] that the sentence would then be "backdated to the beginning of the term" and that either approach was one that would produce "transparency in the relationship between the total term and the nonparole period."

94. I have had some difficulty in understanding the second of those approaches (because of the concept of backdating twice), and the first approach is obviously not appropriate in all cases. This is highlighted by the present facts, where total concurrency would not reflect the overall criminality of the offending. However, as made clear above, the discretion is wide and approaches may vary.

The approach that was taken in the present case

95. It will be evident from the principles set out above that the approach taken by the sentencing magistrate here was in error. The start date should have been at the commencement of the term of the original sentence. The error arose from a misunderstanding as to what was meant by the "existing sentence". The setting of the non-parole period from the date the appellant's parole was cancelled until 22 September 2024 produced a non-parole period of 18 months. That was contrary to s 66(4), set out above, which prevents a court from setting a non-parole period that is shorter than the one originally imposed (3 years, 4 months) and worked an injustice to the appellant in essentially disregarding the time spent previously in prison.

96. The Prosecution submitted that this was an error that could be corrected by simply backdating the start date of the non-parole period. As I explained at the hearing, that would potentially produce a non-parole period that was disproportionate. However, as the appellant must be resentenced for a different reason, it is unnecessary to deal further with how to fix what had previously occurred.

Resentence

97. The appellant did not contend that the individual sentences imposed for each of the offences were manifestly excessive and the considerations referred to by the sentencing magistrate as to objective seriousness, the subjective circumstances, and the appellant's criminal history remain equally relevant on appeal. Without repeating them, it is relevant to record that the sentencing magistrate applied the principles deriving from *Bugmy v The Queen* [2013] HCA 37; 249 CLR 571 concerning the social disadvantage experienced by the appellant which have flowed into mental health consequences. I interpolate that for an offender with such an unfortunate background, the application of the principle may operate differently when a non-parole period is set, with rehabilitation being a stronger priority: *Ruwhiu* at [111] per Baker J. The sentencing magistrate also referred to the "*Henry*" principles, deriving from *R v Henry* [1999] NSWCCA 111, concerning drug use at an early age. I respectfully adopt her Honour's comments.

98. There was similarly no complaint about the applicable discounts applied by the sentencing magistrate for pleas of guilty and as a matter of procedural fairness; they will also be replicated in the resentencing exercise.

99. The appellant's long-term girlfriend, and now partner after a reunion, has provided a character reference, discussing matters that she has observed in relation to the offender's steps towards rehabilitation. It was useful context for where the offender has been in previous periods of offending and where he is now. The appellant also provided an affidavit (that is, sworn evidence) as to what he has been doing while in prison, since the Recommittal Order was made. He acknowledges the "bad place" he was in while on parole. Two months before the appellant was released on parole, his parents passed away within 6 days of each other – his mum of kidney failure and his dad of complications from cancer. He did not have a place to live and did not have a job. It is unsurprising that he relapsed into drug addiction as soon as he was released from years in prison.

100. The affidavit discusses the appellant's completion of the Solaris program while incarcerated, the medication he now takes to control various health issues and the counselling he has undergone. The pro-social support of his partner is another positive factor in the appellant's rehabilitation and the prospects of being able to continue his sentence in the community without a repetition of what occurred the last time he was released. The contents of the affidavits give cause for optimism that this man's self-destructive past behaviour is properly in the past. Only time will tell, but at age 36, he appears to have gained the wisdom and educational skills that might see him finally be able to sustain meaningful employment. I have been persuaded that a focus on rehabilitation in the sentence and the non-parole period is justified.

101. I consider that a similar concurrency structure to that imposed by the sentencing magistrate in respect of the three offences remains appropriate. One of the sentences (unlawful possession of stolen property) was made wholly concurrent with the sentence for driving without consent. Given that it arose in the course of the same offending, it is appropriate to maintain that structure.

102. In respect of the existing sentence, while the Prosecution is correct in submitting that the two periods of offending were unrelated, that is only part of the consideration. It does not follow that the sentences must necessarily be entirely cumulative. Principles of totality operate. The offender's existing sentence is for a term of 6 years and 3 months' imprisonment.

103. The following passage from *R v MAK; R v MSK* [2006] NSWCCA 381; 167 A Crim R 159 at [16] is apt here:

> The severity of a sentence is not simply the product of a linear relationship. That is to say severity may increase at a greater rate than an increase in the length of a sentence. As Malcolm CJ said in *R v Clinch* (1994) 72 A Crim R 301 at 306:
>
> > ... the severity of a sentence increases at a greater rate than any increase in the length of the sentence. Thus, a sentence of five years is more than five times as severe as a sentence of one year. Similarly, while a sentence of seven years may be appropriate for one set of offences[, …] a sentence of eight years m[a]y be appropriate for another set of offences, each looked at in isolation. Where both sets were committed by the one offender a sentence of 15 years may be out of proportion to the degree of criminality involved because of the compounding effect on the severity of the total sentence of simply aggregating the two sets of sentences.

104. Here, recognising that a short period was not spent in custody, I nevertheless consider that a degree of concurrency between the existing and primary sentences by 4 months (pursuant to s 71(2) of the *Sentencing Act*) achieves an appropriate balance that comprehends the overall criminality of the further offences and reflects the discrete nature of the offending in a degree of accumulation, but also recognises the increasing burden of a lengthy sentence.

105. For the purpose of setting the non-parole period, I have found it helpful in the circumstances of this case to take an approach loosely similar to that discussed in *Leeson*.

106. One complicating factor arises where there has been a period on parole, as those periods are not to be treated as time served: s 160(3) of the *CSA*. During the hearing, I canvassed with the parties how that matter was to be addressed. On reflection, in this case that was addressed by the Board's decision as to the amount of time on parole that may be credited as time served. Attempting to revisit those periods of time in the

community as part of considering the length of a non-parole period would not be appropriate, at least in the circumstances of this case, for two reasons. First it would arguably undo the Board's decision as to how non-custodial time on parole was to be treated. Second, it may stray in the direction of attempting mathematical formulas regarding precise periods, for an exercise that takes into account many different objectives, as articulated in the authorities above.

107. Given the variety of approaches discussed above and the fact that it was the same exercise done quickly that caused the errors in the sentence imposed below, I have detailed my approach to the task for transparency, and in case it is of assistance for anyone else. It is as follows:

    (a) Start with the term of the existing sentence, being that of the original sentence: 6 years and 3 months.

    (b) Ascertain the aggregate term of the four offences of the primary sentence (in reality comprising only three individual sentences, as no penalty of imprisonment was imposed in respect of one): 8 months.

    (c) Treat the two sentences as if the Court were imposing the total of the terms of the existing sentence and the primary sentence: the total of the two terms is 6 years and 11 months.

    (d) Consider whether, as between those two terms, any adjustment is warranted by way of concurrency for totality purposes: concurrency as to 4 months in this case, which reduces the total term to 6 years and 7 months.

    (e) Notionally adjust the primary sentence by one day (that is, make the primary sentence concurrent by one more day) to take into account the day spent in custody solely referable to the further offending.

108. That brings a total effective term of imprisonment of 6 years, 6 months and 29 days.

109. The non-parole period is then set as a proportion of that total effective term. The previous non-parole period was 3 years and 4 months. The re-set non-parole period must not be less than that originally imposed and it is relevant that the appellant has previously offended while on parole. The reasons for that have been explained above, but it is clear that supervision and support are required for the appellant's reintegration into the community without re-offending. He did not cope when he was last released. Since being sentenced in the Magistrates Court, he has completed the Solaris program while in custody. The person applying for parole may well be in a different position from when he was sentenced previously, but I will leave it to the Board's discretion as to whether

any additional targeted intervention is required, such as a release into a residential rehabilitation program. It is one thing to cease taking drugs while incarcerated. It is quite another to continue that course in the community and as the appellant knows only too well, the risk of relapse requires careful management. Taking into account all of the sentencing considerations, a non-parole period of 4 years is an appropriate reflection of the minimum time that justice requires to be served.

110. Finally, the total sentence and the non-parole period start at the commencement date of the original sentence, being 3 April 2019. This means that, as was the position in *Leeson*, the non-parole period has now expired.

Conclusion

111. For the above reasons, the following orders are made:

(1) The appeal is allowed.

(2) The orders made in the Magistrates Court on 14 June 2023 are set aside.

(3) In lieu thereof, the following sentences are imposed (collectively, the **primary sentence**):

(a) For the offence of ride/drive motor vehicle without consent contrary to s 318(2) of the *Criminal Code 2002* (ACT) (***Code***) (CAN 2994/2023) the appellant is convicted and sentenced to a term of imprisonment for 6 months (reduced from 8 months on account of the guilty plea), commencing on 2 March 2025 and ending on 1 September 2025.

(b) For the offence of unlawful possession of stolen property, contrary to s 324(1) of the *Code* (CAN 2996/2023) the appellant is convicted and sentenced to a term of imprisonment for 21 days (reduced from 28 days on account of the guilty plea) commencing on 2 March 2025 and ending on 22 March 2025.

(c) For the offence of aggravated furious, reckless or dangerous driving, contrary to s 7A(1) of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) (CAN 5173/2023), the appellant is convicted and sentenced to a term of imprisonment for 3 months (reduced from 4 months on account of the guilty plea), and an automatic license disqualification period of 12 months, commencing on 1 August 2025 and ending on 31 October 2025.

(d) For the offence of drive with a number plate not properly issued, contrary to s 22(1)(a) of the *Road Transport (Vehicle Registration) Act 1999* (ACT) (CAN 2995/2023) the appellant is convicted only.

(4) Note, pursuant to s 75 of the *Crimes (Sentencing) Act 2005* (ACT) (***Sentencing Act***), that the appellant is subject to an existing sentence imposed on 13 March 2020 of a term of imprisonment for 6 years and 3 months, backdated to commence on 3 April 2019 and expire on 2 July 2025 (**Existing Sentence**).

(5) Further note, pursuant to s 66(3) of the *Sentencing Act*, the automatic cancellation of the non-parole period set in respect of the Existing Sentence.

(6) Pursuant to s 65(3) of the *Sentencing Act*, a non-parole period of 4 years is set, during which the offender is not eligible to be released on parole, commencing on 3 April 2019 and concluding on 2 April 2023.

I certify that the preceding one hundred and eleven paragraphs [111] numbered paragraphs are a true copy of the Reasons for Judgment of her Honour Justice McWilliam.

Associate:

Date: