

since been paid) and finally a three-month deduction for being on electronically-monitored bail was allowed. No issue is taken with the appropriateness of the deductions. Mr Tozer challenges the starting point and the fact that home detention was not considered.

Background

[2] The facts upon which Mr Tozer pleaded guilty are in summary as follows. In early 2007 Mr Tozer was living in a de facto relationship with Ms W on a farm property. In July 2007, Ms W told Mr Tozer that she wanted to end the relationship. He did not take the news well. Shortly afterwards Ms W began a sexual relationship with the male complainant who was known to Mr Tozer.

[3] On 21 July 2007 Ms W and the complainant went away for the weekend to stay at another farm property. Mr Tozer made enquiries throughout the day to try to locate the couple. Eventually he found out where they were, drove to the farm and parked his car a couple of hundred metres away. Just after 5.00 pm Mr Tozer burst through the front door of the cottage where the couple were staying. As he came through the door he picked up a wooden batten and began striking the complainant about the head. The complainant had no time to react as he had his back to the door. The blows causing the complainant to stumble sideways. Mr Tozer continued to beat the complainant with the batten in one hand while holding him with the other. The complainant held his hand above his head for protection but was struck several times on the left hand. Eventually Mr Tozer stopped striking the complainant who was by then bleeding profusely from his head wounds.

[4] In the meantime Ms W had escaped from the cottage and fled to a nearby unoccupied farmhouse where she called the police. Mr Tozer told the complainant that they were going to find Ms W together. He also told the complainant that he had hired two gunmen who were outside and, should the complainant make a run for it, he would be shot. Mr Tozer went outside and made hand gestures as if communicating with people in the tree line outside. Mr Tozer also spoke as if speaking on a covert radio saying "Cover round past the woolshed, I'm bringing him out". He also ordered the complainant to hand over car keys and cell phones

belonging to the complainant and Ms W. This, combined with the hand gestures, led the complainant to believe that there were other people present and that there was no means of communicating with the outside world.

[5] Mr Tozer ordered the complainant out of the cottage and escorted him around the outer building. The complainant complied because he was fearful that Mr Tozer or one of his associates would kill him. The police arrived as Mr Tozer was leading the complainant down the driveway. On observing a car down the driveway, Mr Tozer required the complainant to get into the front passenger seat of the complainant's car. Mr Tozer then drove the vehicle from the scene with the complainant in the vehicle. Eventually the police pulled the car over, which Mr Tozer was driving erratically. Mr Tozer told the complainant not to say anything to the police and to hide his injuries. He said that if the complainant complied with this direction there would be no further repercussions and Mr Tozer would leave the couple alone. The police, however, separated the complainant from Mr Tozer.

[6] The complainant's injuries included a suspected dislocated finger, a large laceration to the head requiring five staples, multiple splits to the head, cuts, lacerations and bruising to the left hand and bruising and swelling to the left eye and the left side of the head. The complainant, in his victim impact statement, stated that his physical injuries had healed well but that the emotional harm had been long lasting. He had developed post traumatic stress, leading at one point to his admission to a psychiatric hospital.

Discussion

[7] Although in his written submissions Mr Shamy, on behalf of Mr Tozer, took issue with the sentencing Judge taking the kidnapping charge as the lead charge, he accepted in oral submissions that the real issue was whether the end sentence was manifestly excessive. Given the serious nature of the offending, including what Mr Shamy accepted was a real threat that was operative on the victim in the course of the kidnapping, the level of violence of involved, the unprovoked nature of that violence, the effect on the victim, the use of a weapon and the fact that the offending

ended through police intervention, the sentence was well within the range available to the Judge.

[8] Mr Shamy's next submission was that, as the offences occurred during the transitional period under s 57 of the Sentencing Amendment Act 2007 (before 1 October 2007), there was jurisdiction to impose home detention even though the length of the term of imprisonment exceeded two years. This was not appreciated by either counsel or the Judge at sentencing. Mr Shamy now asks this Court to consider the matter afresh and impose a sentence of home detention as the most appropriate outcome.

[9] We accept the Crown submission that the gravity of this offending militates against a sentence of home detention as a legitimate alternative to imprisonment. We also accept the Crown's submission that, while Mr Tozer has undertaken some rehabilitative efforts and now by virtue of the guilty plea accepts his culpability, Judge Crosbie was entitled to consider that this was too little too late. It certainly does not reach the exceptional circumstances that led to the imposition of a term of home detention in *R v Hill*.¹

Result

[10] The appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

¹ *R v Hill* [2008] NZCA 41, [2008] 2 NZLR 381.