

CITATION: *Kirkby v Aryan* [2026] NTSC 47

PARTIES: KIRKBY, Paul Michael

v

ARYAN, Aryan

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT
exercising Territory jurisdiction

FILE NO: LCA 16 of 2025 (22414034)

DELIVERED: 5 June 2026

HEARING DATE: 13 October 2025

JUDGMENT OF: Huntingford J

CATCHWORDS:

CRIME – Appeals – Appeal against sentence – By Crown asserting specific error – By Crown against adequacy.

Whether sentence is manifestly inadequate – Review of sentences for offending with similar features – Assessment of objective seriousness relative to other cases – Whether sentencing Judge erred in assessing objective seriousness of offence by referring to the absence of aggravating features – Whether sentencing Judge erred in finding that injury to three persons did not increase the offenders moral culpability – Whether an intensive community correction ordered may be imposed in part where the remainder of the sentence is to be suspended – Whether residual discretion warrants dismissal of appeal – Consideration of sentencing standards – Appeal dismissed in exercise of residual discretion.

Criminal Code, ss 174F, 174FA
Correctional Services Act 2014 (NT) s 11
Local Court (Criminal Procedure) Act 1928 (NT), ss 177(4), 177(2)(f)
Sentencing Act (NT) ss 40, 44, 45, 46, 51, 62

Bartusevics v Fisher (1973) 8 SASR 601; *CMB v Attorney-General for NSW* [2015] HCA 9; *Cumberland v The Queen* [2020] HCA 21; *Harvey v Bofilios* [2017] NTSC 68; *House v The King* (1936) 55 CLR 499;
Jambajimba v Dredge (1985) 33 NTR 19; *Lester v Western Australia* [2025] WASCA 96; *Namundja v Bott* [2025] NTSC 48; *Pearce v The Queen* (1998) 156 ALR 684 *R v Auton* (unreported, NTSC, 21 December 2016) *R v Alexander* (unreported, NTSC, 21 September 2015); *R v Allpass* (1993) 72 A Crim R 561; *R v Alice* (unreported, NTSC, 20 November 2015); *R v Bennett* [2021] NTCCA 2; *R v Booth* (unreported, NTSC, 20 September 2013); *R v Brook* (unreported, NTSC, 12 January 2010); *R v Calica* [2021] NTSCFC 2; *R v Campbell* (unreported, NTSC, 20 February 2020); *R v Christodoulou* (unreported, NTSC, 11 November 2014); *R v Danby* [2026] NTCCA 2; *R v Davey* (1980) 50 FLR 57; *R v Deutscher* (unreported, NTSC, 30 April 2010); *R v Dickenson* (unreported, NTSC, 21 March 2019); *R v Hayes* (unreported, NTSC, 21 May 2015). *R v Hyde* (unreported, NTSC, 26 June 2016); *R v Kahu-Leedie* [2022] NTCCA 4; *R v Kantawa* (unreported, NTSC, 30 March 2022); *R v Mamarika*, [2024] NTCCA 5; *R v Mangaraka* (unreported, NTSC, 3 August 2026); *R v Maxwell* (unreported, NTSC, 28 July 2022); *R v Mu* (unreported, NTSC, 5 November 2018); *R v Raggett* (unreported, NTSC, 8 September 2022); *R v Richards* (unreported, NTSC, 5 January 2016); *R v Rodwell* (unreported, NTSC, 8 July 2024); *R v Singar* [2025] NTCC 1; *R v Spain* (unreported, NTSC, 10 November 2022); *R v Spittles* (unreported, NTSC, 16 July 2024); *R v Stevenson* (unreported, NTSC, 3 July 2018); *R v Sultan* (unreported, NTSC, 6 December 2017); *R v Syrch and Burns* [2006] NTCCA 20; *R v Yusoff* (unreported, NTSC, 14 August 2013); *R v West* (unreported, NTSC, 15 December 2020); *Simpson v The Queen* [2019] NSWCCA 137, referred to.

REPRESENTATION:

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Respondent:

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Appellant:

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Respondent:

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Kirkby v Aryan [2026] NTSC 47
No. LCA 16 of 2025 (22414034)

BETWEEN:

PAUL MICHAEL KIRKBY
Appellant

AND:

ARYAN ARYAN
Respondent

CORAM: HUNTINGFORD J

REASONS FOR JUDGMENT

(Delivered 5 June 2026)

[1] This is a Crown appeal against a sentence imposed by the Local Court on 24 July 2025. The respondent entered pleas of guilty to three offences, contrary to s 174FA of the *Criminal Code 1983* (NT) as follows:

- (a) Count 1: Being the driver of a vehicle involved in an accident which resulted in serious harm being caused to BL, he failed to stop the vehicle at the scene and give such assistance to the person as was reasonable in the circumstances;
- (b) Count 2: Being the driver of a vehicle involved in an accident which resulted in the death of MW he failed to stop the vehicle at

the scene and give such assistance to the person as was reasonable in the circumstances; and

- (c) Count 3: Being the driver of a vehicle involved in an accident which resulted in serious harm being caused to JM, he failed to stop the vehicle at the scene and give such assistance to the person as was reasonable in the circumstances.

[2] All offences were committed as part of the same incident on 19 April 2024. The maximum penalty for counts 1 and 3 was imprisonment for seven years and for Count 2 it was ten years.

[3] The Local Court sentences were as follows:

(a) On Count 2 the respondent was sentenced to imprisonment for four months, commencing on 24 July 2025, the sentence to be served in the community pursuant to an Intensive Community Correction Order (ICCO). The ICCO was subject to various conditions, including home detention.

(b) On Count 1 the respondent was sentenced to imprisonment for four months commencing on 24 November 2025;

(c) On Count 3 the respondent was sentenced to imprisonment for three months commencing on 24 March 2026.

(d) The terms of imprisonment on Counts 1 and 3 were wholly suspended for an operative period of 18 months from 24 November 2024. There

were no conditions attached to the order suspending the sentence except the statutory condition that the respondent not commit any offence punishable by imprisonment during the operative period.

[4] Each of the notices of appeal sets out the following grounds:

Ground 1: The learned sentencing Judge erred in assessing the objective seriousness of the offending by

- (a) taking into account the absence of features which, if present, would have made the offending more serious and/or would have amounted to separate criminal offending; and
- (b) finding that the fact that there were three victims did not increase the respondent's moral or criminal culpability in circumstances where there was only a single accidental collision.

Ground 2: The learned sentencing Judge erred in imposing a sentence that was manifestly inadequate in all the circumstances.

[5] As the Court of Criminal Appeal stated in *The King v Danby*¹ it is important to keep in mind the offences with which the respondent is charged. The respondent was charged under s 174FA of the *Criminal Code* (NT) for being involved in an incident where someone died, and two people suffered

¹ *The King v Danby* [2026] NTCCA 2, [3] per Grant CJ.

serious harm, and then failing to stop, render assistance and notify police as soon as reasonably possible. The respondent is not legally responsible for causing the death of MW or the serious harm suffered by BL or JM.

Criminal liability for dangerous driving causing death or serious harm is dealt with by a different offence under s 174F of the *Criminal Code*. The respondent was not charged with that offence.

The agreed facts

- [6] At around 2 am on Friday 19 April 2024, the respondent was conducting his duties as a newspaper delivery driver using a Toyota Hiace truck. He drove into a cul-de-sac that forms part Trower Road in Brinkin to deliver a newspaper.
- [7] The three injured persons were lying asleep on the road surface of the cul-de-sac in an unlit area. As he entered the cul-de-sac, driving in an anticlockwise direction, the respondent did not see the people sleeping on the road and drove over them. Immediately realising that he had run over something, he reversed the truck to see what he had struck and in doing so ran over the injured persons again.
- [8] As the respondent reversed, the vehicle headlights illuminated the people lying in the road. The respondent then realised what had occurred. He drove away from the scene. He failed to stop or render assistance to the injured persons and failed to contact police. The respondent continued his delivery route before returning to his employer's business address at Berrimah. On

arrival there he told his co-worker, G, about what he had done. He also spoke to his father on the telephone.

- [9] After speaking to G and his father, the respondent maintained that he did not want to report the matter because he did not want to go to gaol or have his student visa cancelled. G told the respondent that he needed to return to the scene and at least provide assistance, which he then agreed to do.
- [10] At approximately 3am, the respondent returned to the scene with G and found the injured persons in pain and screaming for help. MW was bleeding from both of her legs at the knees and ankles. G and the respondent could not understand what MW, who was very upset, was trying to say to them. BL was seen to be bleeding from the head, he was initially sitting up but then lay down in pain. JM was lying face down on the road with scratches and blood on the top of his backbone. He said “big truck, big truck”, “see my back, see my back, pain” and “my body is sick”.
- [11] The respondent then contacted ‘000’ and spoke to the call operator. He claimed that he and G were simply driving past the area when they heard the three injured people screaming out for help. The call operator asked the respondent a number of times how the people came to be injured and he said that he did not know. He did not tell the call operator that the injured persons had been hit by a vehicle, or that he had been the driver that hit them. At the end of the phone call, the respondent asked the call operator whether he needed to remain at the scene. The call operator said he did.

Police and ambulance arrived 10-15 minutes later, and the injured persons were taken to hospital.

[12] The respondent remained at the scene and was spoken to by police. He did not identify himself as the driver involved in the accident. After a period of time he left and returned home.

[13] At 10am on the same day, the respondent's employer, Mr S, saw a post on the Northern Territory Police and Fire and Emergency Services Facebook page which provided details of the hit and run. Shortly afterwards, Mr S sought information regarding where his drivers had been at the time of the incident and was told by his human resources manager that the respondent had been involved in the incident.

[14] Mr S told his manager to tell the respondent that he had to report to a police station because police would be looking for him. Mr S then contacted police and reported the respondent's involvement in the matter. He also told police that the respondent was aware that he needed to attend the police station and tell them what had happened. Mr S agreed to surrender the vehicle for testing.

[15] At about lunchtime on 20 April 2024, the respondent presented to the police station and made admissions to the offending. He was subsequently charged and granted bail.

- [16] The injured person MW sustained serious injuries which included multiple fractures to her ribs and spine as well as fractures to her pelvis and leg. She also suffered a bleed on the brain, severe pulmonary hypertension, inflammation and congestion within the tissues supporting the intestines and a liver laceration which resulted in liver failure. MW underwent extensive treatment at Royal Adelaide Hospital, including multiple surgeries, but died on 25 May 2024. The injuries sustained in the accident were the substantial cause of her death.
- [17] The injured person BL suffered serious harm. His injuries included multiple spinal and rib fractures, fractures to the pelvis, scapula (both sides) and clavicle (right side), right sided pneumothorax and hemopneumothorax, small colonic perforation, septic shock and bleeding under the surface of the eyes. He also underwent extensive treatment at the Royal Adelaide Hospital including multiple surgeries. He spent three months in hospital, most of it in the Intensive Care Unit. BL died in hospital on 15 July 2024. His death was contributed to by the injuries sustained during accident but was also caused by underlying health conditions.
- [18] The injured person JM also suffered serious harm as a result of the accident. His injuries included a spleen laceration without active bleeding, right pubic bone fractures and psoas hematoma. He was transferred to the Royal Adelaide Hospital and received extensive treatment, including multiple surgeries to insert metal pins to repair the pubic bone fractures.

Respondent's circumstances and submissions to the Local Court

- [19] The respondent was 21 years old at the time of the offending. He had come to Australia from India on a student visa in 2023 and was studying engineering at university. His student visa allowed him to work for 20 hours per week, and it was in the course of his employment that the offending occurred. He has no criminal record in the Northern Territory or elsewhere.
- [20] There was no suggestion that the respondent had committed other offences which contributed to his decision to leave the scene. He was not speeding, nor was he under the influence of alcohol or any other drug. The vehicle was registered and roadworthy and he held the appropriate licence to drive.
- [21] The respondent came before the Court as a young man of good character. Several references were received in support of his character and community ties which established that he is held in high regard by those who know him including that he has worked as a volunteer for organisations associated with the Darwin Sikh and Punjabi communities. Referees stated that they considered that the offending was out of character for the respondent. It was appropriate to conclude, as the sentencing Judge did, that the offender was a person of positive good character.

Ground 2: Manifest inadequacy

- [22] A Crown appeal against sentence is governed by the principles set out in *House v The King*.² If the sentencing Judge has made an error in exercising their discretion such as applying the wrong legal principle, taking irrelevant matters into account, misunderstanding the facts, or failing to consider something important, then the appeal court may set the sentence aside and impose its own sentence. Even if no specific mistake can be identified, the appeal court may still intervene if the sentence is unreasonable or plainly unjust. In that situation, the Court can infer that the sentencing discretion has miscarried, even without pinpointing an exact error.³
- [23] However, a finding that the sentencing discretion has miscarried is not enough on its own. It must be shown that the sentence is clearly and obviously inadequate, not just arguably too low. An appeal court will not interfere simply because the sentence is different from sentences imposed in other cases. It must be demonstrated that the sentence is so disproportionate to the seriousness of the offending that it reveals an error in principle.⁴
- [24] Where a sentence is found to be manifestly inadequate, the appeal court still has a further choice about whether to allow the appeal and resentence the offender. The Court is not required to intervene automatically. When deciding whether to allow the appeal, and whether to resentence the

² (1936) 55 CLR 499.

³ Ibid.

⁴ *The Queen v Kahu-Leedie* [2022] NTCCA 4, [21].

offender, the Court must not consider “double jeopardy”.⁵ That means it must not give any weight to the fact that the offender may face additional distress and anxiety because he faces the prospect of a more severe sentence when sentenced again.⁶

Principles relevant to the offence of “hit and run”

[25] The decided cases set out a number of principles which are relevant in relation to this appeal including:

(a) The purposes of the offence are:

- (i) to ensure that drivers remain at the scene in order that their culpability for the accident, including testing for alcohol or drugs, may be investigated by police;
- (ii) to ensure that drivers gives such assistance as is possible to the injured person; and
- (iii) to ensure that drivers contact police, provide relevant information, and follow any police direction.⁷

(b) The offence is an offence of omission and will be made out if the offender fails to carry out any of the physical elements described in s 174FA(1)(b).⁸

⁵ *Local Court (Criminal Procedure) Act 1928* (NT), s 77(4).

⁶ *The King v Tamsley* [2026] NTCCA 3, [87].

⁷ *The King v Danby* [2026] NTCCA, [47].

- (c) Section 174FA of the *Criminal Code* does not create an offence against the person but involves a related matter. It prescribes rules of conduct in a particular set of circumstances which are the result of prior conduct.⁹
- (d) There are two parts to the fault element of the offence; first that the offender knew or was reckless as to the circumstance that his vehicle was involved in an incident, and secondly that the offender knew or was reckless as to the circumstance that the incident resulted in the death of or serious harm to a person.¹⁰
- (e) Whether the outcome for an injured person was made worse as a result of a delay in seeking assistance can be relevant to the seriousness of the failure to assist.¹¹
- (f) When sentencing for this offence, the principle of deterrence is to be emphasised.¹²
- (g) Condign and proportionate punishment is appropriate, which may often involve imposition of a heavy prison sentence.¹³

8 *The Queen v Youseff* [2013] NTSC 43, [11].

9 *Ibid* [23].

10 *Mason v The King* [2024] NTCCA 13, [68]. See also *R v Brook* (NTSC unreported 12 January 2010,) per Mildren ACJ.

11 *R v Maxwell* (unreported, NTSC 28 July 2022) per Burns J.

12 *The King v Danby* [2026] NTCCA 2, [45].

13 *Ibid*, [49] – [52] referring to a number of cases including *R v Brook* (unreported NTSC, 12 January 2010), per Mildren ACJ; and *R v West* (unreported NTSC, 15 December 2020) per Grant CJ.

[26] Because failure to take any of the required actions can make out the offence, the view has been taken that failure to give reasonable assistance to each person who is seriously injured forms the basis for a separate charge. Hence the three offences charged in this matter.¹⁴

Sentences for Hit and Run offences

[27] The Court of Criminal Appeal has recently considered sentences imposed for s 174FA offences in two cases. In *Mason v The King*,¹⁵ the offender had pleaded guilty to three offences and received a total effective sentence of six years imprisonment with a non-parole period of three years and six months. He successfully appealed on the ground that the sentences were manifestly excessive. The Court of Criminal Appeal conducted a review of a table of 22 sentences for offending contrary to s 174FA of the *Criminal* provided by the appellant. The Court noted that the sentences of imprisonment imposed ranged from 12 months to five years and four months, before discount.¹⁶

[28] In *Mason*, the original sentence of three years' imprisonment was reduced to imprisonment for one year, after a 25% discount. The starting point for the re-sentence was therefore 16 months. The Court of Criminal Appeal characterised the offending in *Mason* as towards the lower end of the range of seriousness for offences against s 174FA involving the death of a

¹⁴ *The Queen v Youseff* [2013] NTSC 43, [11]. The opinion of Mildren ACJ in *R v Brook* (supra) was to the contrary; however, his Honour's view cannot stand to the extent that it is inconsistent with the decision of the Full Court in *Youseff*. Defence took no objection to the three charges, either here or below.

¹⁵ [2024] NTCCA 13.

¹⁶ *Mason v The King* [2024] NTCCA 13, [86].

person.¹⁷ However, the unusual facts of that case mean that it has limited utility as a comparator. In the subsequent case of *The King v Danby*¹⁸ the Court of Criminal Appeal described the facts in *Mason* as novel and noted that the gravamen of the overall offending in that case was reflected in the resentence to a total of three years imprisonment, suspended after the offender had served just over 18 months, two years of which was attributable to the offence of attempting to pervert the course of justice by moving and concealing the body of the deceased.

[29] In *The King v Danby*,¹⁹ the offender was driving in Darwin at about 4 pm on 13 June 2024 when he struck and killed a pedestrian who had run into his path. He was travelling at approximately 79 km/h in a 60 km/h zone and did not brake before impact. Although speeding, he was not criminally responsible for the collision. Knowing he had struck a person, the offender failed to stop, render assistance, or contact police. The deceased was taken to hospital by ambulance but died three days later. A second pedestrian was injured, but did not suffer serious harm.

[30] The offender's failure to report the incident was motivated by a desire to avoid drug testing and loss of licence. He contacted police about 20 hours after the accident, and then surrendered. The delay prevented testing for drugs or alcohol, depriving the investigation and the deceased's family of

¹⁷ *Mason v The King* [2024] NTCCA 13, [70]-[71].

¹⁸ *The King v Danby* [2026] NTCCA 2, [43] per Blokland and Huntingford JJ.

¹⁹ [2026] NTCCA 2, [15]-[17].

that information. Post-offence text messages revealed a callous and racist attitude held by the offender towards the victims. This was relevant to his moral culpability for failing to render assistance, his lack of immediate remorse, and his rehabilitation prospects.

- [31] Mr Danby was 23 years old and had no prior criminal record. He had experienced a traumatic upbringing involving parental alcohol abuse and violence, and his mother had died shortly before the offence. He had used methamphetamine since age 15 and was a regular user at the time of the offence. A pre-sentence report assessed him as presenting a low to moderate criminogenic risk and requiring ongoing psychosocial support.
- [32] The Court of Criminal Appeal said that the offending in *Danby* was a serious example of this sort of offending but that it also had features in common with many other “hit and run” cases. It was acknowledged that this is a category of offence in relation to which a range of sentences had been imposed and that, although significant sentences of imprisonment were generally imposed, it was not the case that, even in serious matter, an offender would necessarily serve a term of actual imprisonment. The Court noted that whether time was served in a correctional facility or in the community would depend in part upon an offender’s personal circumstances. Prior offences, particularly prior driving offences were regarded as particularly important in that regard.²⁰

20 *The King v Danby* [2026] NTCCA 2, [35] per Blokland and Huntingford JJ.

- [33] Having considered the objective seriousness of the offending and the offender's subjective case, the Court of Criminal Appeal found that the sentence of imprisonment for 12 months, to be served as an ICCO which included a home detention condition, was manifestly inadequate. The plea discount of 25% determined by the sentencing Judge was not disturbed. There was also evidence that in the period since the original sentence had been imposed the offender had made genuine efforts at rehabilitation such that he now had strong prospects. The offender was resentenced to a term of imprisonment for two years, after discount, to be served as an ICCO with conditions which included a home detention condition for the entire period of the order. The starting point on the resentence was therefore two years and eight months.
- [34] The appellant in this case provided a comparative sentencing chart detailing 24 sentences of the Supreme Court for an offence against s 174FA of the *Criminal Code* imposed between January 2010 and July 2024. All cases involved an accident which resulted in the death of a person. In thirteen of those matters the offender was sentenced for a single offence contrary to

s 174FA.²¹ In three cases, the only other charges were solely or predominantly traffic matters related to the same incident.²²

[35] In the balance of the cases referred to by the appellant involved the offender was also charged with other serious offences. In seven matters the offender was also charged with dangerous driving causing death.²³ In one case the offender was charged with driving dangerously during a police pursuit.²⁴ The matters which also involved other serious charges, in particular dangerous driving causing death, are of little assistance in determining a range of applicable sentences. As was noted in *Danby*, in that situation the sentences imposed are generally far longer.²⁵

[36] Of the sixteen matters where the sole or most serious charge was “hit and run” the shortest sentence was three weeks and the longest was four years and six months. The shortest sentence was imposed on an offender who immediately but unsuccessfully sought help from passers-by then left the

21 *R v Spittles* (unreported, NTSC, 16 July 2024); *R v Rodwell* (unreported, NTSC, 8 July 2024); *R v Maxwell* (unreported, NTSC, 28 July 2022); *R v Mu* (unreported, NTSC, 5 November 2018); *R v Rodwell* (unreported, NTSC, 5 November 2018); *R v Stevenson* (unreported, NTSC, 3 July 2018); *R v Rodwell* (unreported, NTSC, 3 July 2018); *R v Richards* (unreported, NTSC, 5 January 2016); *R v Alice* (unreported, NTSC, 20 November 2015); *R v Alexander* (unreported, NTSC, 21 September 2015); *R v Christodoulou* (unreported, NTSC, 11 November 2014); *R v Booth* (unreported, NTSC, 20 September 2013); *R v Yusoff* (unreported, NTSC, 14 August 2013); *R v Deutscher* (unreported, NTSC, 30 April 2010); *R v Brook* (unreported, NTSC, 12 January 2010).

22 *R v West* (unreported, NTSC, 15 December 2020); *R v Dickenson* (unreported, NTSC, 21 March 2019); *R v Mangaraka* (unreported, NTSC, 3 August 2026).

23 Contrary to s 174F of the *Criminal Code*; *R v Spain* (unreported, NTSC, 10 November 2022); *R v Raggett* (unreported, NTSC, 8 September 2022); *R v Kantawa* (unreported, NTSC, 30 March 2022); *R v Campbell* (unreported, NTSC, 20 February 2020); *R v Auton* (unreported, NTSC, 21 December 2016); *R v Hyde* (unreported, NTSC, 26 June 2016); *R v Hayes* (unreported, NTSC, 21 May 2015). In *The King v Danby* [2026] NTCCA 2, Grant CJ said at [4] that although the penalty is the same, the offence in s 174F is objectively more serious than that in s 174FA.

24 *R v Sultan* (unreported, NTSC, 6 December 2017).

25 *The King v Danby* [2026] NTCCA at [52] per Blokland and Huntingford JJ, quoting with approval *R v West* (unreported, NTSC, 15 December 2020) per Grant CJ.

scene to get assistance from family, returning within a short time. She made spontaneous admissions to police who were already in attendance when she came back. The sentencing Judge said it was an example of the offence “very close to the lower end of the range”, although the offender was under the influence of alcohol at the time, having a blood alcohol reading of .09.²⁶ That case is unusual and of little assistance as a comparator in this matter.

[37] The longest sentence was imposed in *R v Alice*.²⁷ The offender had been drinking and driving for most of the day and, at about 8.00 pm, ran over a person who was lying or sitting on a poorly lit road, wearing dark clothing and intoxicated. After stopping and unsuccessfully searching, the offender drove off despite passengers telling him that the victim was still under the car. The victim was dragged approximately 30 metres. The offender then concealed himself at a relative’s house, abandoned the car at a reserve (where police found it the next day), and fled to Belyuen. When located, he initially falsely blamed another driver but then admitted, when questioned at the police station, that he knew he had run over the victim when he drove off.

[38] The sentencing Judge described that offending as “towards the more serious end of the scale”. The offender, aged 38, also had a very poor subjective case including: chronic alcohol abuse, a lengthy criminal history including driving offences, had committed the offence while unlicensed and subject to

26 *R v Mangaraka* (unreported, NTSC, 3 August 2016), Southwood J.

27 *R v Alice* (unreported, NTSC, 20 November 2015), Kelly J.

a suspended sentence for violence. Strong emphasis was placed on deterrence and community protection. Noting that a 25% discount was afforded, the starting point was imprisonment for six years. That matter has features generally representative of cases in the more serious category of offending for this type of offence.

[39] Of the remaining 14 cases, eight involved sentences of two years or below and six sentences were between two years two months and four years, after discount. The starting point for those matters, removing discount of 25% where the matters proceeded on a plea, therefore ranged from approximately 12 months to five years.

[40] The cases involving sentences of over two years had features which aggravated the seriousness of the offending such as alcohol consumption, conduct which caused or contributed to the accident (falling short of dangerous driving), knowledge (as opposed to recklessness) that a person had been seriously harmed or killed, injury to more than one person, flagrant disregard of the duty to assist and attempts to conceal involvement. In addition, many of those offenders had a poor subjective case, involving factors such as older age, significant criminal history and poor rehabilitation prospects.

[41] Leaving aside the unusual case of *Mangaraka*, described above, and including the case of *Danby*, there were seven cases involving sentences with a starting point between 12 months and two years and eight months.

[42] Of the cases relied upon by the Crown where a term of imprisonment of two years or less was imposed, the sentence was wholly, or almost wholly,²⁸ suspended in six cases. In four of those cases,²⁹ the offender was sentenced on the basis that he had knowledge of the fact that the vehicle was involved in an accident involving a person. In none of the sentencing remarks where a sentence was wholly suspended was there an express finding that the offender knew that a person had been killed or suffered serious harm, although in some cases there was a reference to an offender's knowledge that that was very likely to have occurred. In three matters, the offender was expressly sentenced on the basis that he was reckless both as to being involved in the accident and that a person had died or suffered serious harm as a result.³⁰

[43] In those cases where there was found to be knowledge of the accident and recklessness as to the death or serious harm resulting, but sentences were nonetheless fully suspended, other factors also operated to moderate the objective seriousness of the offending. Those included that the offending was reported by the offender a relatively short time after leaving the scene and that admissions were made to police within a relatively short time. In some of those cases, the offender's subjective case included factors such as health concerns, extra-curial punishment, positive good character, and

28 In three cases the offender had spent two days in custody, which was taken into account, see *R v Yusoff* (unreported, NTSC, 14 August 2013); *R v Rodwell* (unreported, NTSC, 8 July 2024); *R v Richards* (unreported, NTSC, 5 January 2016).

29 *R v Maxwell* (unreported, NTSC, 28 July 2022); *R v Richards* (unreported, NTSC, 5 January 2016); *R v Christodoulou* (unreported, NTSC, 11 November 2014); *The King v Danby* [2026] NTCCA 2.

30 *R v Spittles* (unreported, NTSC, 16 July 2024), *Rodwell* (unreported, NTSC, 8 July 2024), *R v Yusoff*.

extraordinary hardship to family members. In two cases a home detention order was imposed,³¹ and in *Danby* an ICCO.

- [44] Senior counsel for the respondent submitted that the total effective sentence of 11 months imposed by the Local Court was within range when taking into account the overall criminality of the offender's conduct. Mr Tippet emphasised that there was one course of conduct comprising one accident, one act of leaving the scene and one act of failing to report to police. He further argued that the four months served as an ICCO including a home detention condition involved a custodial sentence, albeit one which was served in the community. The respondents counsel also submitted that the comparatives generally supported the type of sentence imposed on the respondent because seven involved suspended custodial sentences, and the aggravating factors present in the remaining cases were said to be absent in the respondent's offending.

Assessment of objective seriousness

- [45] Having run over something he did not see, the respondent reversed and learnt that he had run over three people who were sleeping on the road. Knowing that he had run over three people twice, he then failed to stop, render assistance or call the police. Instead, he callously decided to continue his paper delivery route.

31 Both prior to the introduction of ICCO which also include abolition of HDO as an option.

- [46] Despite a discussion with his colleague and housemate G, and separately with his father, the respondent initially continued to maintain the position that he would not disclose his involvement because he was concerned about his visa or going to gaol, thereby continuing to act with complete disregard for the injured persons.
- [47] However, once convinced by G that he needed to act, the respondent did return to the scene and contact emergency services. This occurred at about 3 am, within approximately 40 minutes to an hour of the accident. Although he waited at the scene for emergency services, he did not disclose his involvement to the call operator, or to the police when they spoke with him.
- [48] Generally speaking, cases where an offender initially panics, but then thinks better of it, returns and tries to assist are less serious than those where no effort to comply is made, even belatedly. Similarly, the fact that a person voluntarily surrenders, rather than being located later by police, may also be a factor in mitigation.
- [49] The reasons why an offender may leave the scene can also be relevant to the seriousness of the offending. Deliberate avoidance of detection of other wrongdoing, or potential wrongdoing, for example culpable driving or alcohol or drug consumption can be relevant. In this case the reason appears to have been solely panic, due to perceived, rather than likely, possible consequences.

[50] The number of people injured is relevant to the objective seriousness of the offending. As Mildren ACJ said in *R v Brook*,³² a sentencing Judge may take into account as an aggravating factor that more than one person was left injured and without assistance as a result of an offender's conduct.

However, that factor cannot operate to aggravate the offending where the offender is also charged separately in relation to each person who was injured as a result of the accident.

[51] The manner of a person's driving can be relevant to the assessment of objective seriousness.³³ Where relevant that factor may overlap with the offender's moral culpability. In *R v Brook*, there was evidence that the offender was responsible for the accident, although in circumstances which apparently did not give rise to criminal liability for dangerous driving. Where an offender is largely responsible for the accident, that circumstance may increase the objective seriousness of the offending because the offender is likely to have a further motivation for leaving the scene and failing to report the accident, namely to avoid an investigation leading to other, and potentially more serious, charges.

[52] In this case the argument as to relevance of the manner of driving as an aggravating feature arose because the respondent reversed to see what he had hit, and in doing so ran over the people a second time. That action was, objectively, completely unnecessary. However, it appears that the

32 (Unreported NTSC 12/1/2010).

33 *The King v Danby* [2026] NTCCA 2,[42] per Blokland and Huntingford JJ.

respondent was completely unaware of the risk that people may have been sleeping on the road, noting that he was relatively new to Darwin. There was no evidence that he knew or expected that he had hit people at the time that he reversed or that he was aware of the possibility that he would run over people again.

[53] A significant factor in assessment of objective seriousness for an offence of this type is whether the offender had knowledge or was reckless as to each section of the two-part fault element. In this case the respondent had actual knowledge that he had been involved in an incident in which people had been injured. He must have known that they were likely to have been killed or suffered serious harm as a result. He could not however have had actual knowledge that the incident resulted in the death of MW, because she did not die until a month later. There is no doubt that the respondent was highly reckless as to the likelihood of the accident having resulted in death or serious harm to each of the injured persons.

[54] It is not strictly necessary to place the offending in a category of objective seriousness for the purposes of sentencing. However, in my view this is offending which, compared to other offences of its type, is somewhere around the lower part of mid-range.

Conclusion on Manifest Inadequacy

[55] I note, without repeating them, the principles referred to by the Court of Criminal Appeal in *AB v The King*³⁴ relating to comparison with other sentences imposed for similar offending. Applying those principles to this case, and noting my assessment of objective seriousness, I am of the view that the sentences imposed for counts 1, 2 and 3 by the Local Court are well below other sentences imposed for the offence. Sentences of imprisonment of four months for leaving the scene of an accident which resulted in someone's death, and four and three months where serious harm was caused were plainly and obviously inadequate. Further, even when accumulated, the total effective sentence of 11 months in respect of the three offences was also plainly and obviously inadequate.

Ground 1: Error in assessing the objective seriousness of the offending.

[56] In view of my conclusion in relation to ground two, it is not necessary to consider ground one. However, in deference to the parties' arguments, and because there is considerable overlap, I will as a matter of completeness make the following comments.

[57] As to the Crown's complaint that the sentencing Judge erred in assessing objective seriousness by taking into account the absence of features which if present would have aggravated the offending, I am not convinced that the sentencing Judge proceeded in that way.

34 [2023] NTCCA 8, [99] – [102].

[58] It was submitted that the sentencing Judge erred in assessing the seriousness of the offending by reference to the absence of specific aggravating features which hypothetically could exist, but did not exist in this case. These features were:

- a. That the respondent's failure to assist immediately did not impact on the health outcomes of the injured persons;
- b. That the respondent's failure to stop was not motivated by a fear of detection of driving whilst under the influence of alcohol;
- c. That the respondent did not attempt to cover up his involvement in the offence by washing, repairing or hiding his vehicle; and
- d. That the respondent's manner of driving was not criminal or negligent.

[59] The sentence was imposed by a Local Court Judge conducting a busy list who heard submissions and proceeded immediately to sentence the respondent. Sentencing remarks must be read with that in mind. Further, an appeal court is entitled to assume that a Local Court Judge has considered all matters which are necessarily implicit in any conclusions reached.³⁵

[60] As the Court of Criminal Appeal said in *The King v Fred*³⁶ the proposition that an aggravating feature which would elevate the seriousness of the offending is not mitigating is uncontroversial. However, as that Court went

³⁵ *Namundja v Bott* [2025] NTSC 48, [17] citing *Jambajimba v Dredge* (1985) 33 NTR 19, 22 per Muirhead CJ and *Bartusevics v Fisher* (1973) 8 SASR 601.

³⁶ [2026] NTCCA 3, [65].

on to explain, it is not impermissible to assess where an offence lies on the range of criminality by reference to factors which are present, and those which are absent.³⁷ That statement assumes that a Judge does not assess objective seriousness by treating the absence of aggravating features as mitigating, failing to have regard to features which are present, adopting a mechanistic approach, and/or failing to appreciate when the objective seriousness of an offence is unaffected by the absence of a particular factor.³⁸ In my view the sentencing Judge's reference to the absence of various factors was directed to siting the offending within a range and not to specific mitigation.

[61] The appellant argued that the duty the respondent owed individually and separately to each of the people seriously or fatally injured dictates that such offending is more serious than situations involving injury to a single person and the Local Court Judge erred in finding that the offending was not more serious because three people were injured. I have already referred to this argument in relation to the question of manifest inadequacy. However, what his Honour said was that "it was accidental and there is no greater culpability for three people being injured give all of the circumstances of this particular case". The reference to "moral or criminal culpability" preceding that paragraph, makes it unclear whether the sentencing Judge was

37 Ibid, [67], referring to *Simpson v R* [2019] NSWCCA 137 at [27] (per Davies J, Leeming JA and Button J agreeing).

38 Ibid, [68].

referring primarily to moral culpability or to objective seriousness in that passage.

[62] As I have said, the number of persons injured can increase the objective seriousness of this type of offending. That was the opinion of Mildren ACJ in *Brook* where his Honour took into account the failure to offer assistance to any of the persons who suffered death or serious harm, and those who were less seriously injured, as an aggravating circumstance.³⁹ However, in that case, the offender was charged with only one offence.

[63] In this case, whether the sentencing Judge's comments related primarily to moral culpability or objective seriousness, to the extent that they can be separated, does not matter. Having chosen to bring a separate charge in relation to each person who was killed or suffered serious harm as a result of the incident, the Crown cannot also claim that each sentence should be aggravated by that circumstance. To do so would be to overlook the fact that all of the offences were committed at the same time as one course of conduct and that there is a high, almost complete, factual overlap between the elements of the offences. While all circumstances must be considered, to place any weight in sentencing for one offence upon the fact that others were also injured where there are separate charges relating to that

39 Referring to *R v Syrch and Burns* [2006] NTCCA 20.

circumstance for which the respondent is also to be sentenced would run the risk that the offender is punished twice.⁴⁰

[64] While it may be accepted that an offender's criminality is often greater by reason that they have committed more offences, the impact upon the sentences imposed will depend upon the circumstances. In this case the appropriate way to give effect to the principle that the sentence must reflect the overall criminality involved in the offending was by ordering a degree of cumulation between the sentences or imposing an aggregate sentence. The sentencing Judge was aware of that and, in fact, fully accumulated the sentences he imposed.

[65] I would not allow the appeal on ground one.

Sentence Structure

[66] In the course of argument in this matter, I raised concerns as to the way in which the sentencing Judge structured the sentence. The sentence imposed a term of imprisonment on Count 2 of four months imprisonment to be served as an ICCO, followed by two further terms of imprisonment on Counts 1 and 3, which were accumulated and wholly suspended from the date on which they commenced. Effectively, the sentence was for 11 months, with the first four months subject to an ICCO and the balance of seven months fully suspended for an operative period of 18 months, although that is not exactly how it was expressed.

⁴⁰ *Pearce v The Queen* (1998) 156 ALR 684, 693 [40], per McHugh, Hayne and Callinan JJ. See also *Lester v Western Australia* [202] WASCA 96, [15] per Quinlan CJ.

[67] As Grant CJ explained in *Danby*, an ICCO is not an order suspending a sentence. It is a type of order which permits a sentencing court to direct that a term of imprisonment be served in the community instead of in a correctional facility. The term of imprisonment subject to the ICCO is not suspended, it is served, but in the community.⁴¹

[68] My concerns as to the sentence structure were related to whether it is possible to order an ICCO for part of a sentence, with the balance of the sentence suspended on completion of the ICCO portion, notwithstanding the restrictions in s 45 of the *Sentencing Act*. In this case, two separate orders were extracted by the Local Court, one for the sentence on Count 2, incorporating the ICCO, and one for the suspended sentence on counts 1 and 3, including the suspension order. While that is not conclusive, if the sentencing Judge purported to impose a separate wholly suspended sentence from a future date in relation that may also have raised issues as to compliance with the Act.

[69] In *The Queen v Bennett*⁴² the Court of Criminal Appeal found that it was possible to order that an offender's sentence be suspended upon entry into a home detention order upon release from custody under a partly suspended sentence. However, that decision was made in relation to the repealed s 44 of the *Sentencing Act*, which expressly provided that a sentence could be suspended upon the offender "entering into" a home detention order. The

41 *The King v Danby* [2026] NTCCA 2 [6] per Grant CJ.

42 [2021] NTCCA 2.

provisions of the current regime in relation to an ICCO are significantly different and have no reference to suspension.

[70] However, there was no ground of appeal relating to the structure of the sentence and the issue was not fully argued. Therefore I do not express any view on the topic.

The residual discretion

[71] The respondent argued that, even if error in the Court below were identified and the sentence found inadequate, the appeal should be dismissed on the basis that the Court should exercise the residual discretion.

[72] As the Court of Criminal Appeal explained in *The Queen v Roe*,⁴³ the purpose of a Crown appeal is to establish matters of principle and to lay down principles for the guidance of sentencing Judges. Even where error is found, the Court retains a residual discretion as to whether to allow the appeal and resentence the respondent. Where error is demonstrated on a Crown appeal it is incumbent upon the appellant to show why the residual discretion should not be exercised.⁴⁴

[73] Although the primary purpose of a Crown appeal against sentence is to give guidance to sentencing judges, the sentence actually imposed remains important. The need for general deterrence in a particular case can be relevant to the exercise of the residual discretion to ensure that sentences

⁴³ [2017] NTCCA 7, [11]-[20].

⁴⁴ *CMB v Attorney-General for NSW* [2015] HCA 9, [54]-[55] per Kiefel, Bell and Keane JJ.

accord with legitimate community expectations and maintain public confidence in the administration of justice.⁴⁵

[74] An appeal court is not permitted to take into account rarity, the distress that an offender may experience as a result of facing the prospect of a more serious sentence, or the frequency of Crown appeals in the exercise of the residual discretion. Although the categories of factors relevant to the exercise of the residual discretion are not closed, a range of relevant matters were set out by the Court of Criminal Appeal in *The King v Singar*.⁴⁶ Factors which are potentially relevant in this case are: whether the Crown conducted the case on a different basis on appeal than at first instance; delay in resolution of the appeal;⁴⁷ the fact that a non-custodial sentence was imposed at first instance; the fact that the respondent has served a term of imprisonment pursuant to an ICCO; the length of the operative period imposed by the Local Court in relation to the suspended sentences; and the effect of resentencing upon the respondent's rehabilitation.

[75] Noting that the onus is on the Crown to show that the residual discretion should not be exercised, it was argued for the respondent that in so far as the sentencing Judge had relied upon the matters referred to in the sentencing remarks of the Chief Justice in the matter of *R v Spittles*,⁴⁸ it was the appellant who had relied upon that case in the Court below, and was

⁴⁵ *The King v Mamarika* [2024] NTCCA 5, [47].

⁴⁶ *The King v Singar* [2025] NTCC 1, [68].

⁴⁷ See also, *Cumberland v The Queen* [2020] HCA 21, [33].

⁴⁸ (Unreported, NTSC, 6 July 2024).

therefore precluded from taking a different approach on this appeal. That submission must be rejected for two reasons.

[76] First, it is not the case that the appellant relied upon the case before the sentencing Judge in the way suggested by the respondent. The appellant's written submissions in the Local Court extracted a part of the Chief Justice's remarks in *Spittles* to the effect that the interests of justice in matters of this sort almost invariably result in a prison sentence. That reference was followed immediately by the prosecution's submission that a sentence of imprisonment which was not wholly suspended was appropriate in this case. There was also a mention of *Spittles* in the section of the prosecution written submissions dealing with comparatives. Fairly read, that reference was part of the prosecution argument that the case was an example of offending which was less serious than the present matter.

[77] Secondly, the respondent relied in support of his argument upon the statement of principles set out in *The Queen v Allpass*⁴⁹ where the Court of Criminal Appeal in New South Wales declined, in the exercise of the residual discretion, to allow a Crown appeal because although the sentence was unduly lenient the Crown had "acquiesced" in the imposition of a non-custodial sentence at first instance. That was not the case here. Additionally,

⁴⁹ *The Queen v Allpass* (1993) 72 A Crim R 561. The Respondent also referred in argument to *The Queen v Davey* (1980) 50 FLR 57, 62 – 63 per Muirhead J to the same effect.

the Court in *Allpass* said that considerations of double jeopardy were of particular importance in the circumstances of that case.⁵⁰

[78] The respondent also argued, with reference to *The Queen v Davey*⁵¹ that the Court should be alive to the particular advantages of a sentencing Judge in assessing matters such as rehabilitation prospects, likelihood of re-offending and suitability for supervision. Senior counsel referred to the judgement of Muirhead J and in particular a passage where his Honour referred to “the factors of ‘double jeopardy’”, a point emphasised later in the decision when his Honour referred to the negative consequences of sending a person on parole back to prison after a successful appeal. With the exception of the consideration of double jeopardy,⁵² Muirhead J’s remarks in *Davey* as to the purposes of sentencing, respect for the advantages of a trial judge and the possible effect upon an offender’s rehabilitation of resentencing remain relevant and are reflected in many more recent decisions. However, the advantages of a sentencing Judge are much more apparent when there has been a trial, or where an offender gave evidence on the plea, neither of which occurred here.

[79] Through no fault of the appellant, or the respondent, a significant period has now elapsed between the date of the offending and the resolution of this appeal. The offending took place on 19 April 2024 and the Information for

50 Ibid, 566.

51 (1980) 50 FLR 57, 64 per Muirhead J.

52 Ibid, 64.

Indictable Offence is dated 26 April 2024. The respondent was sentenced by the Local Court on 24 July 2025. This appeal was heard in October 2025. By that time the ICCO imposed by the Local Court was close to expiry.

However, the suspended sentence of, effectively, seven months, which was ordered to commence on 24 November 2025, has an operative period of 18 months, and will not expire until May 2027.

[80] As I have said, the sentences imposed were manifestly inadequate, individually and in total. A longer sentence of imprisonment was required to reflect the seriousness of the offending and the principle sentencing principles of denunciation and general deterrence. The respondent had actual knowledge that his vehicle was involved in an incident in which people were likely to have been killed or seriously injured, and he was highly reckless as to that circumstance when he left the scene. His moral culpability for the offending is high. He behaved in an extremely callous way in continuing his paper round once he was aware that there were three injured people on the road.

[81] On the other hand, he did disclose what had occurred to his co-worker immediately on return to his workplace and then returned to the scene to help and to notify emergency services within 40-60 minutes of the accident. Although he did not disclose his involvement to police on the scene, he also handed himself in to police and made full admissions about 12 hours later.

[82] The respondent was to be sentenced for three offences which all occurred as part of one course of conduct. There was one incident and one act of leaving the scene and failing to report. There was, as discussed above, a failure to render assistance to three separate persons which is reflected in three separate charges. In the circumstances, this was an appropriate case for the imposition of an aggregate term of imprisonment.

[83] In my view an appropriate sentence would be an aggregate sentence of 18 months imprisonment in relation to all three offences, after discount of 25%, to reflect the need for denunciation and general deterrence and taking into account the respondent's subjective case, to which I have already referred. The indicative sentences would be Count 1, imprisonment for 12 months; Count 2, imprisonment for 16 months; and Count 3, imprisonment for 12 months.

[84] I have already mentioned the delay in finalising this matter. In that time the respondent has completed four months of home detention, and close supervision, pursuant to an ICCO. An ICCO is a term of imprisonment. The fact that that order, and sentence, has now expired is a relevant factor.⁵³ The respondent has no known criminogenic risk factors which would indicate that further supervision or access to treatment is required. He does not pose an ongoing risk to the community.

⁵⁷ *The King v Fred* [2026] NTCCA 3; [88].

[85] I do not consider that it is necessary or appropriate for the respondent to now serve actual time in prison. There is no suggestion that anything has happened since he was dealt with by the Local Court that would warrant him being removed from his study and work and sent to gaol. The compliance report from Community Corrections states that he has complied with all conditions of the ICCO and suspended sentence. The respondent is subject to a suspended sentence of imprisonment of seven months, with an operative period which does not expire until May 2027. That operative period is appropriate and serves as an ongoing deterrent.

[86] For those reasons, this is an appropriate case for the exercise of the residual discretion. Therefore, although the sentences were manifestly inadequate, the appeal is dismissed.
