

CITATION: *Brown v Abbott* [2026] NTSC 46

PARTIES: BROWN, Lily

v

ABBOTT, Hakeam Kevin

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT
exercising Territory jurisdiction

FILE NO: LCA 9 of 2025 (22528171)

DELIVERED: 5 June 2026

HEARING DATE: 4 March 2026

JUDGMENT OF: Huntingford J

CATCHWORDS:

Crown appeal against sentence – sentence of imprisonment for eight months suspended after 181 days for two serious offences

Whether sentence manifestly inadequate – appeal allowed – respondent resented to imprisonment for 2 years with a non-parole period

Criminal Code 1983 (NT) s 241, s 174D, s 174G

Local Court (Criminal Procedure) Act 1928 (NT), s 177(4)

Sentencing Act 1995 (NT), s 122

AB v The King [2023] NTCCA 8; *Bugmy v The Queen* (2013) 302 ALR 192; *CMB v Attorney-General (NSW)* (2015) 256 CLR 346; *Craft v The Queen* [2021] VSCA 66; *Cumberland v The Queen* (2020) 94 ALJR 656; *DPP v Karazisis* (2010) 31 VR 634; *House v The King* (1936) 55 CLR 499; *Marsh v Parkanyi* [2026] NTSC 26; *The Queen v EG* [2022] NTCCA 10; *R v Hernando* (2002) 136 A Crim R 451; *Taylor v Bamber* [2011] NTSC 36; *The King v Singar* [2025] NTCCA 1; *The Queen v Kahu-Leedie* [2022] NTCCA

4; *The Queen v Skeen* [2018] NTSC 28; *TM v The Queen* (2017) 40 NTLR 58; *Veness v The Queen* (2020) 285 A Crim R 198, referred to.

REPRESENTATION:

Counsel:

Appellant:	T McKinney
Respondent:	H Stiller-Wojkowski

Solicitors:

Appellant:	Office of the Director of Public Prosecutions
Respondent:	Legal Aid NT

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Brown v Abbott [2026] NTSC 46
No. LCA 9 of 2025 (22528171)

BETWEEN:

LILY BROWN
Appellant

AND:

HAKEAM KEVIN ABBOTT
Respondent

CORAM: HUNTINGFORD J

REASONS FOR JUDGMENT

(Delivered 5 June 2026)

- [1] On 29 October 2025, the respondent entered pleas of guilty in the Local Court to the following offences: intentionally or recklessly damaging property, contrary to s 241 of the *Criminal Code 1983* (NT) (Count 2) and recklessly endangering serious harm contrary to s 174D of the *Criminal Code*, with the circumstances of aggravation that the offence was committed using an offensive weapon contrary to s 174G (Count 4). The maximum penalty for each offence is imprisonment for 10 years.
- [2] At the sentencing hearing, agreed facts, photographs of the victim's injuries, a victim impact statement and the respondent's criminal history were tendered. The sentencing judge heard submissions and sentenced the respondent to three months' imprisonment on Count 2 (criminal damage)

and eight months' imprisonment on Count 4 (recklessly endangering serious harm). The sentences of imprisonment were ordered to be served concurrently, commencing on 1 May 2025, the day the respondent was arrested, and suspended from 29 October 2025 for an operative period of 12 months. The conditions of the order suspending the sentence were that the respondent commit no further offences punishable by imprisonment and that he have no contact with the victim.

- [3] By notices of appeal filed on 20 November 2025, the Crown appeals against each sentence on the following grounds:

Ground 1: The learned sentencing judge erred in imposing a sentence for which was manifestly inadequate; and

Ground 2: The learned sentencing judge erred in imposing a total effective sentence across file 22528171 that was manifestly inadequate.

Facts of the offending

- [4] The victim, KK, is a 41-year-old man who was previously in a relationship with a woman, SRQ, who is a relative of the respondent. KK and SRQ share one child together.
- [5] On the evening of 26 April 2025, SRQ drove to the victim's residence in Alice Springs with the respondent. The victim was inside his unit with two other men. Upon arrival, SRQ confronted the victim and accused him of not caring for their child.

- [6] In order to avoid confrontation, the victim took his keys and got into the driver's seat of his car which was parked outside. The respondent approached the vehicle and struck the driver's window multiple times with a tomahawk axe, causing the window to shatter. Those are the facts of Count 2.
- [7] The respondent then opened the driver's side door of the vehicle and swung the axe at the victim's head. The victim remained seated in the vehicle and shielded himself by wrapping his arms over his head. The respondent struck the victim to the right forearm with the axe as a result, the respondent continued to wield the axe while standing over the victim who used his feet and legs to block the respondent's strikes.
- [8] The respondent swung the axe at the victim approximately between 10 and 30 times, while the victim continued to attempt to block the axe with his feet. The victim then stood up and grabbed the respondent who was restrained with the assistance of the two men from inside the unit, who had witnessed the incident. Those are the facts of Count 4.
- [9] The victim was taken to hospital for treatment and found to have a 15cm laceration to his proximal forearm through to the posterior muscle layer and a distal laceration over the medial aspects of his wrist down to the distal head of the ulna, which had an indentation from the axe. The wounds were explored and surgically repaired under general anaesthetic.

- [10] The respondent was arrested on 1 May 2025 at a location in Alice Springs. Under caution he said to the arresting officer that he did not know the victim and that he “wasn’t there”.

The sentencing hearing

- [11] At the sentencing hearing the respondent’s counsel acknowledged that this was a serious example of this kind of offending because the injuries were severe and it was a prolonged and heightened example of violent behaviour.
- [12] Defence tendered two witness statements at the sentencing hearing, one from SRQ and one from Ms L. Defence said that the statement of SRQ proved that she was the person who brought the “short axe with a black and red handle” in the car and that she gave the weapon to the respondent when they got out of the car at the victim’s residence because she was scared that the victim would hurt her. Defence counsel also submitted that the victim was swearing and speaking badly to SRQ, heightening the respondent’s emotions, and that it was SRQ who asked the respondent to start smashing the car up. In my opinion, none of those things took the matter very far in relation to mitigation. There is no suggestion that the respondent acted under pressure or duress.
- [13] The respondent’s submissions in the Local Court focused mainly upon the respondent’s subjective case. The thrust of the argument was that the respondent had suffered significant childhood deprivation which reduced his

moral culpability, in accordance with the principles in *Bugmy v The Queen*¹ (*'Bugmy'*) and that as a result the emphasis upon general and specific deterrence in the sentence should be moderated.

Manifest inadequacy

[14] The appellant contends that the sentence imposed on Count 4, and the total effective sentence, are manifestly inadequate.

[15] A Crown appeal against sentence is governed by the principles enunciated in *House v The King*.² In the event that some error has been made in the exercise of the discretion, such as acting on a wrong principle, taking irrelevant matters into account, acting on a mistaken understanding of the facts or failing to take into account some material consideration, the appellate court may exercise its own discretion in substitution. In circumstances where no specific error is evident, but the sentence imposed is unreasonable or plainly unjust, the appellate court may infer that the sentencing discretion has miscarried even in the absence of discernible error. However, in such a case it must be shown that the sentence was clearly and obviously, and not just arguably, inadequate. Appellate intervention on the ground that the sentence is manifestly inadequate is not justified simply because the result arrived at is markedly different from other sentences that have been imposed in other cases. It must be shown that

¹ (2013) 302 ALR 192 at [43]-[44].

² (1936) 55 CLR 499.

the sentence is so disproportionate to the seriousness of the offending as to demonstrate error in principle.³

[16] The assessment of the adequacy of sentence requires consideration of all the matters that are relevant to fixing the sentence, including the circumstances of the offending and the personal circumstances of the offender. The benchmark for manifest inadequacy is a ‘stringent one, difficult to make good’ and an appellate court will ‘be astute to enforce the stringency of these tests’.⁴ That is because of the need to preserve the broad discretion of sentencing judges in recognition of the difficulty of having to balance ‘incommensurable factors bearing on the exercise of the sentencing discretion, [with] those factors ... pulling in different, conflicting and contradictory directions’.⁵

[17] Even where manifest inadequacy is found, the appellate court retains a residual discretion as to whether the appeal should be allowed and the respondent resentenced. In the exercise of the residual discretion, the Court must not take into account any element of double jeopardy in making the decision whether to allow the appeal or impose another sentence.⁶

³ *The Queen v Kahu-Leedie* [2022] NTCCA 4 at [21].

⁴ *DPP v Karazisis* (2010) 31 VR 634 at [127]-[128].

⁵ *Craft v The Queen* [2021] VSCA 66 at [25].

⁶ *Local Court (Criminal Procedure) Act 1928* (NT), s 177(4).

Objective seriousness

- [18] Although the damage to property in Count 2 consisted of breaking the driver's side window, and therefore caused relatively limited monetary loss, it occurred as a result of multiple strikes with the tomahawk axe while the victim was sitting in the driver's seat of the car. The surrounding circumstances including that the property offending involved the threat of violence is an aggravating circumstance. Notwithstanding that, I consider Count 2 to be within the low range of seriousness for offences of that type.
- [19] Count 4 is a relatively serious example of that offence. It consisted of the respondent opening the car door and swinging the tomahawk axe, a significant weapon, at the victim's head while the respondent was standing and the victim was seated in the car. I note that the circumstance of use of a weapon is reflected in the increased penalty for the charge because this was the aggravated form of the offence pursuant to s 174G(a) of the *Criminal Code*.
- [20] The exact number of times which the respondent swung the axe at the victim is unknown, but it was "approximately between 10 and 30" at the time when the victim was defending himself with his legs, according to the agreed facts. On any view, this was a significant and somewhat prolonged attack. The victim used his feet and legs to block the respondent's strikes. Nonetheless, he received two significant injuries to his arm which required surgical repair under general anaesthetic. That was a significant physical impact upon the victim. He also suffered some psychological impact. As the

victim impact statement states, at the time of the attack he thought that he was going to be killed.

[21] The gravamen of the offence in Count 4 is the danger of serious harm which may have resulted from the respondent's conduct. Although the actual harm caused is relevant, both to the assessment of the level of danger and to the impact upon the victim, the risk of serious harm represented by the respondent's conduct is the key consideration. In this case that risk was real, repeatedly swinging a tomahawk axe at someone, particularly at their head (which is a vulnerable part of the body), poses a high risk that they will suffer serious harm. The injuries which were suffered are further evidence of the level of danger.

[22] The mental element of the offence is recklessness. In this case the conduct of the respondent in repeatedly swinging the axe at him when he was in a seated position, and aiming for his head, was highly reckless.

[23] Although it was suggested by the appellant that there was a minimal amount of planning, as the respondent approached the car, I do not consider that there was any substantial planning involved in the offending. The respondent was driven to the victim's home by his relative SRQ, the ex-partner of the victim. There was evidence that it was she who took along the tomahawk axe, due to her fear of the victim, and she who gave it to the respondent when they arrived at the victim's home. So far as the respondent was concerned, there is no evidence of any planning.

[24] In all of the circumstances, Count 4 is a mid-range example of that offence.

The respondent's subjective circumstances

[25] The respondent was just short of three weeks past his 18th birthday when he committed these offences. Although he had not previously been sentenced as an adult, he had a relevant and concerning history of youth offending. That history included three findings of guilt for unlawfully damaging property. Those offences were committed on 10 and 26 March 2023 and 14 February 2025.

[26] In addition, he was found guilty in this Court on 20 December 2022 of two offences of recklessly endangering serious harm, both committed on 27 May 2021. The respondent was aged only 14 at the time. The sentencing remarks record that there were other offenders involved in those matters which proceeded on a common purpose basis, however the respondent's actual involvement included striking one of the victims to the head with a tyre iron and stabbing him in the thigh with a knife. That victim suffered serious injuries. The respondent was sentenced to 18 months' detention for that offence, backdated to take into account 27 days spent in detention, and suspended forthwith for an operative period of 18 months. On the other offence, in which he was less involved, he received a good behaviour bond for 12 months.

[27] The respondent's history also included two findings of guilt for aggravated assault, one for engaging in violent conduct and one for going armed in

public. There were also breaches of court orders, including the suspended sentence imposed by this Court, which was breached by reoffending, and breaches of bail.

[28] As is commonly the case when a youth is sentenced, all of the matters for which the respondent had previously been sentenced were dealt with without imposing convictions.

[29] The respondent had a deprived childhood, characterised by severe poverty, a transient lifestyle involving functional homelessness (moving between Darwin, central Australia and Queensland living in the houses of relatives and friends), parental drug use and domestic violence perpetrated against his mother by her partners at various times. He had no male role model. Unsurprisingly, he had very little by way of guidance or supervision in his formative years. Child protection authorities were notified that he was neglected on multiple occasions, but no formal orders were made.

[30] The respondent completed year 11 at school but has never been employed.

[31] As to drug use, it was submitted that the respondent first saw someone using methamphetamine when he was aged around 11. Family members including his mother, brothers and older cousins were regular users. At the time of the offending, the respondent was addicted to methamphetamine and was under the influence of that drug.

[32] The respondent was held on remand for 181 days at the Alice Springs Correctional Centre. His counsel submitted that his time in custody was particularly onerous due to overcrowding and generally poor conditions. There were 18 people in the dormitory cell and insufficient beds for all prisoners. For a considerable period of his remand, he was sleeping on the floor of the cell on a mat. There was no air-conditioning and during the summer, prisoners kept cool by taking cold showers during the night. The only positive outcome of his time on remand was that he said that he did not use methamphetamine during that period.

Sentencing principles

[33] Given the respondent's dysfunctional and disadvantaged upbringing, the principles in *Bugmy* apply to lessen his moral culpability for the offending. However, this is counterbalanced by an increased need for community protection as is shown by his very concerning criminal history which demonstrates regular violent offending over a period of some years, commencing at a very early age.

[34] The respondent is a very young man. The principles that relate to sentencing for young offenders are applicable and due weight must be given to rehabilitation. However, it is also clear from his criminal history that the respondent has been unwilling or unable to take the opportunities for reform which have been made available to him by the courts on numerous occasions over the last few years.

[35] The defence submitted that all hope of rehabilitation is not lost. That may be so and, given his age, I would like to believe that is the case. However, on the present state of the evidence, his prospects cannot reasonably be described as good, particularly if he does not address his drug addiction.

[36] The respondent entered a plea of guilty at an early time. There was, however, no evidence of remorse, and the sentencing judge made no findings in that regard. The sentencing judge did not specify how the plea was taken into account and no discount was specified.

Comparative sentences

[37] The respondent conceded that the sentence imposed on Count 4 was very lenient but argued that it was nonetheless within range.

[38] The appellant presented a table of comparative sentences for each of the relevant offences. The respondent argued that the sentences set out in those tables did not disclose a range because they did not include all of the sentences imposed by the Supreme Court for the relevant offences and did not include any sentences imposed by the Local Court. Defence counsel also argued that, in any event, the particular cases were distinguishable. Additionally, the respondent argued that it was inappropriate to consider Supreme Court sentences for the purpose of determining a range because the sentence was imposed by the Local Court.

[39] Dealing with the last point first, the respondent argued that an offender sentenced in the Local Court could expect to receive a lower sentence than

one sentenced in the Supreme Court for the same offence. Counsel relied upon a statement of Barr J in the case of *Taylor v Bamber*⁷ to the effect that when a prosecutor accepts that the maximum penalty that can be imposed is a penalty which is very often considerably less than the maximum penalty applicable if the matter were dealt with by the Supreme Court.

[40] The respondent's submission misunderstands what his Honour was saying in that case. The comments of Barr J were made in the context of a decision about whether the then Court of Summary Jurisdiction should be compelled to dismiss certain charges under the provisions of s 77(4) of the *Mental Health and Related Services Act 1998* (NT). That decision involved consideration of the nature of the charges, with reference to s 121A of the then *Justices Act* (NT).⁸ The case had nothing to do with sentencing. His Honour's comment was, in context, merely a reference to the jurisdictional limit of the lower court and does not support the respondent's argument.

[41] When sentencing an offender, the Local Court must have regard to the same factors which would inform sentencing in the Supreme Court, including the maximum penalty. However, the jurisdictional limit will operate to prevent a sentence of more than five years being imposed for an offence.⁹ Further, although it is true that statistics for sentences imposed in the Local Court are not collected, that is not a factor which is relevant where a range for a

7 [2011] NTSC 36 at [22].

8 Now the *Local Court (Criminal Procedure) Act 1928* (NT).

9 *Sentencing Act 1995* (NT), s 122.

particular offence can be discerned from appropriate Supreme Court sentences. While that means that for offences which are only, or usually, dealt with in the Local Court, sufficient data may not be available for useful comparisons to be made, that was not the case in this matter.

[42] The table of sentences relied upon by the Crown in relation to Count 2, the offence against s 241 of the *Criminal Code*, contained four sentences to imprisonment which ranged from four months to two years and four months, before discount. The table is of very limited utility due to the low number of comparators and therefore does not disclose a range. The offence is one which can be committed in a very wide range of circumstances. In addition, two of the four sentences relied upon appear to relate to matters which were objectively more serious.

[43] The table relied upon by the Crown in relation to Count 4, sentences for the aggravated form of the offence in s 174D of the *Criminal Code*, contained 15 sentences imposed by the Supreme Court in the period February 2019 to December 2024. The sentences of imprisonment ranged from 18 months to three years and four months, after discount. Assuming a discount of 25%, the starting point for those sentences would range from approximately two years up to four years and five months.

[44] The offence of recklessly endangering serious harm, including the aggravated form, is also an offence which can be committed in a very wide range of circumstances. In *The Queen v Skeen*,¹⁰ Grant CJ said:

There is no tariff for this type of offence. It comprehends a broad range of conduct. As is inevitable in such exercises, the circumstances of the offender and the offending vary widely between cases. That variance is seen in matters such as the facts of the offending in question, the age of the offender, the nature and extent of the offender's prior criminal history, the seriousness of the resulting injuries, and the impact of the offending on the victim. The comparative head sentences imposed by this Court for contraventions of s 174D of the *Criminal Code*, including matters involving a circumstance of aggravation, ordinarily range from starting points of imprisonment for 12 months through to imprisonment for four years.¹¹

[45] In *Marsh v Parkanyi*,¹² Brownhill J considered an appeal from the Local Court. Error was conceded and her Honour and was required to re-sentence the offender for two offences: recklessly endangering serious harm, and aggravated assault. The former was not the aggravated form of the offence. Her Honour had found that the offence in that case was below the mid-range of seriousness. The decision refers to seven comparative sentences which were relied upon by the respondent in that case.¹³ The sentences of imprisonment imposed had starting points ranging from three years and four months to six years. All appear to have been more serious than the case subject to this appeal. Brownhill J found that those comparators did not lead

10 [2018] NTSC 28.

11 Ibid at [52].

12 [2026] NTSC 26.

13 Ibid at [77]-[86].

to the conclusion that the imposition of a non-parole period was inevitable in the case she was considering.¹⁴

[46] In resentencing the offender in *Marsh v Parkanyi*, Brownhill J adopted a starting point for the offence of recklessly endangering serious harm, without aggravation, of two years.¹⁵ The appellant in that matter was 22 years old at the date of the offending and had a history of using illicit drugs. The offences were committed in breach of bail for drug charges he was facing in the Supreme Court at the time. However, he had no history of violent offending, or of breaching court orders, reasonable prospects of rehabilitation and had spent time in onerous conditions in custody, including in a watch house.¹⁶

[47] It seems to me that there is a range for this offending which is somewhere in the realm of 12 months through to six years. I note the principles set out by the Court of Criminal Appeal in *AB v The King*¹⁷ in particular that although the range of sentences is relevant in assisting consistency in sentencing, it does not mean that the range fixes boundaries in relation to future sentences. It is axiomatic that each case turns on its own facts and circumstances.

14 Ibid at [87].

15 Ibid at [96].

16 Ibid at [62], [73], [75].

17 [2023] NTCCA 8 at [99]-[102].

Conclusion

- [48] Given all of these factors, the total effective sentence of imprisonment of eight months on Count 4, to be suspended after 181 days without conditions addressing rehabilitation is in my view not just arguably, but manifestly, inadequate. That remains the case, even if a “full discount” of 25% were allowed, giving a starting point of 10 – 11 months, notwithstanding that no discount was mentioned by the sentencing judge. I note in that regard that sentences imposed by the Local Court generally occur in the context of a busy list and the fact that a matter was not mentioned does not necessarily mean that it was not considered.
- [49] As to the sentence for Count 2, it was lenient, but not completely outside the range of available sentences, particularly if a 25% discount was allowed which would give a starting point of four months. The sentences for Count 2 and Count 4 were ordered to be served concurrently. This was not inappropriate in view of the fact that the two offences were committed as one course of conduct involving the same victim. The appeal in relation to the sentence on Count 2 will be dismissed. That sentence has been served.
- [50] An overall sentence of eight months suspended after 181 days did not reflect the overall criminality of the offender’s conduct. Taking into account the respondent’s subjective circumstances, including giving full weight to his background of deprivation, the sentence imposed was so disproportionate to the seriousness of the offending as to demonstrate error in principle.

[51] The order suspending the sentence was also manifestly inadequate in view of the respondent's criminal history, poor record of compliance with orders of the Youth Justice Court, regular offending and poor prospects of rehabilitation. The only submission made in relation to his prospects of rehabilitation was that he had spent 181 days in custody during which he was not using methamphetamine. In my view that is not a rehabilitation plan. This is a matter where supervision by the Parole Board on a structured and supervised sentence will be the best way of facilitating rehabilitation and community protection.

The residual discretion

[52] The respondent submits that even if manifest inadequacy is established, the Court should dismiss the appeal in the exercise of the residual discretion. That involves two questions, whether the appeal should be dismissed notwithstanding that the sentence was manifestly inadequate and, if the appeal is allowed, to what extent the sentence should be varied. In making that determination, the Court may look at facts available at the time of hearing of the appeal, including events that have occurred after the original sentencing.¹⁸

[53] The Crown bears the burden of making out both the grounds of appeal and the case for the residual discretion not to be exercised.¹⁹ However, in some

18 *The King v Singar* [2025] NTCCA 1 at [67] ('Singar').

19 *CMB v Attorney General (NSW)* (2015) 256 CLR 346 at [33]-[34] (French CJ and Gageler J), see also at [56] (Kiefel, Bell and Keane JJ). See also *R v Hernando* (2002) 136 A Crim R 451 at [12] (Heydon JA); *Cumberland v The Queen* (2020) 94 ALJR 656 at [33] (the Court); *The Queen v EG* [2022] NTCCA 10 at [139].

cases the respondent may also bear an evidential burden.²⁰ The factors which bear upon the residual discretion are not closed, however the Court of Criminal Appeal summarised some of the commonly found considerations in *Singar*.²¹

[54] The respondent argued that the appeal should be dismissed in the exercise of the residual discretion because the Crown had conducted its case in this appeal on a different basis than at first instance, in particular it had sought to rely upon matters which it said aggravated the offending which were not put in submissions to the sentencing judge. Those factors were: premeditation; that the respondent did not cease until he was restrained; that it was unknown why the respondent damaged the car; and that the victim was defenceless because he was seated.

[55] In *Veness v The Queen*,²² the Court of Criminal Appeal said that an appellate court will be cautious in its approach to asserted errors which arise from contentions or materials that could have been, but were not, advanced in the court below because error must be found to justify appellate intervention. A sentencing appeal is a review of a discretionary judgement, not a re-hearing of the plea in mitigation. The appeal is not an occasion for the reformulation of the appellant's case at first instance.

[56] In *CMB v Attorney-General (NSW)*, the majority in the High Court said:

²⁰ *Singar* at [63].

²¹ *Ibid*.

²² (2020) 285 A Crim R 198 at [33].

[T]he prosecutor is under a duty to assist the court to avoid appealable error. Where the sentencing judge indicates the form of proposed sentencing order and the prosecutor considers that such a penalty would be manifestly inadequate, the prosecutor discharges his or her duty to the court by so submitting. The failure to do so is a material consideration in the exercise by the Court of Criminal Appeal of the residual discretion. The weight of that consideration will depend upon all of the circumstances. A prosecution concession that a non-custodial sentence is an available disposition is a powerful consideration weighing against intervening to impose a sentence of imprisonment on appeal.²³

[57] This was not a case where the sentencing judge indicated the form of the order before proceeding to sentence. The sentencing remarks are very brief and there was no indication during counsel's submissions as to what the sentence might be. Counsel for the respondent conceded before the sentencing judge that this was "a serious example of this kind of offending" and concluded his submissions by saying that the respondent "might be entitled to either some period of suspension or non-parole period". In other words, that either of those dispositions was in range. That submission cannot be held against the respondent on appeal and, in any event, did no more than state the obvious.

[58] The prosecutor did not directly address the court as to whether a suspended sentence should be imposed. She did, however, submit that the respondent had shown a propensity for violence, based upon his criminal record, which should be "of concern" and that a "significant term of imprisonment" was within range. However, it cannot be said that a disposition involving a non-parole period was conceded as unavailable by the prosecution in the context

23 *CMB v Attorney-General (NSW)* (2015) 256 CLR 346 at [64] per Kiefel, Bell and Keane JJ. Citations omitted.

of the sentencing hearing. The silence of the prosecutor on the topic cannot be said in the circumstances to amount to an agreement by the Crown to the approach indicated by the sentencing judge, nor a factor which led him into error.

[59] As to the reliance upon factors said to aggravate the offending, the issue of premeditation may be quickly disposed of. It was not put by the prosecutor in the court below, however I have already found that it was not open on the evidence. The sentencing judge did not find that it was an aggravating factor, and neither do I.

[60] With respect to the submission that it was unknown as to why the car was damaged, that is not a matter which was specifically put to the sentencing judge, but the issue was of importance only in relation to Count 2. I have found that the sentence on that count, on its own, was not manifestly inadequate. Further, the sentencing judge referred to SRQ having “issues” with the victim, which indicated that he was alive to the issue. That circumstance is not a relevant matter in the consideration of manifest inadequacy.

[61] The fact that the victim was seated during the attack and that the respondent did not cease the attack until he was restrained were not specifically referred to by the prosecutor during her brief submissions, but they were matters which were obvious from the facts. The sentencing judge referred to the respondent swinging the axe 10 to 30 times, and the victim blocking the

blows with his feet. He was clearly aware of how the events unfolded and took those facts into account. The mention of those facts on this appeal adds nothing new to the prosecution case.

Other factors

[62] There has not been any undue delay in the lodging or resolution of the appeal.

[63] It is relevant that the respondent was initially released on a suspended sentence. The respondent is currently in custody on remand in relation to other, unrelated, matters. It is important to note that he has not been found guilty in relation to those matters. His current circumstance is relevant for the very limited purpose that this is not a case where it is said that returning the respondent to jail would derail his rehabilitation.

[64] There is no co-offender and so resentencing would not create any disparity. It is not contended that there is any other factor, such as ill health, which would militate against a term of imprisonment. This kind of violent offending is all too prevalent in the Territory. It is a type of case which occurs frequently and therefore consistency in sentencing is a relevant consideration.

[65] In my view, an increase in sentence will not amount to “tinkering” given that the sentence imposed is so far below what a sentence that would be appropriate for the objective seriousness of the offending.

[66] The appeal will be allowed on both grounds in relation to Count 4. The sentence imposed by the Local Court will be set aside. I propose resentencing the respondent in relation to Count 4.

Resentence

[67] My assessment of the objective seriousness of the offending and the personal circumstances of the respondent are set out above. The dominant principles on the resentence are punishment, deterrence and community protection.

[68] The respondent is as I have said a young man and rehabilitation remains relevant. There are well known principles applicable to sentencing young offenders, which emphasise the need to consider rehabilitation as a primary sentencing principle. However, in *TM v The Queen*²⁴ the Court of Criminal Appeal said:

Rehabilitation may carry far less weight in respect of a repeat offender who has previously been afforded a number of opportunities to modify his or her behaviours through the imposition of non-custodial dispositions, but has failed to do so and has committed a very serious criminal offence. In such cases the prospects of rehabilitation may be considered diminished, and the weight properly attributed to rehabilitative purpose in the sentencing process lessened as a result.²⁵

[69] The respondent's previous criminal history is set out above. He does not come before the court as a person of good character so far as offending generally, or these specific offences, is concerned. He has had the benefit of

²⁴ (2017) 40 NTLR 58.

²⁵ Ibid at [26].

suspended terms of imprisonment and good behaviour bonds in the past.

Despite his youth, in view of his history and in the absence of any plan, I can only conclude that his rehabilitation prospects are poor at this time.

[70] The respondent entered his plea at an early time and he is entitled to a discount for its utilitarian value. There is no evidence of remorse beyond the plea itself. I allow a discount of 20% to reflect the value of the respondent's plea.

[71] In my view the appropriate sentence on Count 4 was imprisonment for two years with a non-parole period of 12 months, to be served concurrently with the sentence on Count 2.

[72] As set out above, the respondent has already served 181 days in custody in relation to this offending. Three months of that time were served as the sentence on Count 2, which will not be disturbed. As I have said, full concurrency between the sentences on Counts 2 and 4 was appropriate. That sentence structure is no longer possible.

[73] It was submitted on behalf of the respondent that I could take into account the time which the respondent has been on remand in relation to the charges which he now faces, including because he was remanded by the Local Court on the original Local Court file in relation to this offending, presumably on the basis that the new offending potentially breached that sentence.

However, there was no evidence that a breach had been proven at this stage. In my view, during his most recent time in gaol, the respondent has not been

in custody on account of this offence within the meaning of s 63(5) of the *Sentencing Act* and therefore that time cannot be into account on the re-sentencing.

[74] In order to reflect the time already served for this offending I therefore reduce the sentence and the non-parole period I would otherwise have imposed and resentence the respondent to imprisonment for 18 months on Count 4 with a non-parole period of six months.

Orders

[75] I make the following orders:

- (a) The appeal in relation to the sentence on Count 2 is dismissed.
- (b) The appeal in relation to Count 4 is allowed and the sentence of the Local Court is set aside.
- (c) On Count 4, the respondent is convicted and sentenced to a term of imprisonment for 18 months from today.
- (d) I fix a non-parole period of six months from today.
