IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2013-404-000312
[2014] NZHC 1811

IN THE MATTER OF	an appeal against conviction and sentence
BETWEEN	SONIA PARDEEP KAUR KLAIR Appellant
AND	COMMERCE COMMISSION Respondent

Hearing: 28 July 2014

Counsel: R M Mansfield for the Appellant
A M McClintock and J B Hamlin for the Respondent

Judgment: 1 August 2014

JUDGMENT OF DUFFY J

This judgment was delivered by Justice Duffy
on 1 August 2014 at 4.00 pm, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: R M Mansfield, Auckland

Solicitors: Meredith Connell, Auckland

Copy To: "The New Zealand Herald" (H Fletcher), Auckland

[1] The appellant, Ms Klair, pleaded guilty in the District Court and was convicted of 17 charges of causing a document to be made that was a reproduction of another document with intent to obtain a pecuniary advantage, and 47 charges of dishonestly using a document with intent to obtain a pecuniary advantage. She received a sentence of 10 months' home detention. She now appeals against that sentence on the ground that it is manifestly excessive. The appeal is opposed.

Facts

Background facts

[2] The appellant is 35 years of age. She is a first offender.

[3] In 2005, NBO NZ Ltd ("NBO") was incorporated with the appellant's former husband as the sole director. The appellant was employed as the office manager. NBO provided an online directory for businesses, similar to the Yellow Pages.

[4] In 2008, the appellant and her husband separated, and the appellant incorporated NZ Look Ltd ("NZ Look"). As part of a matrimonial settlement, her former husband transferred 20,000 business listings from NBO's online directory to NZ Look's online directory. The clients were not notified regarding this transfer.

[5] Later, the Commerce Commission received 53 complaints or enquiries regarding the conduct of NZ Look. The majority of the complaints asserted that NZ Look had created business listings without authority, and then sent an invoice to those businesses seeking payment for unauthorised use of the online directory service.

Facts relevant to s 228(b), Crimes Act 1961 offending

[6] Between 2008 and August 2010, the appellant sent or engineered the sending of "special offer" documents to various businesses, followed by an invoice seeking payment for outstanding listing fees. The "special offer" documents invited recipients to "renew" their listings with NZ Look. If the invoice was not paid, a "final notice" was sent, which demanded payment for the purported outstanding

amount and threatened referral to a collection agency if the account was not settled within seven days. This document was sent to the recipients in an effort to secure payments to which the recipients had not agreed to pay. The appellant and NZ Look adopted this practice in the hope that the recipients would not query whether or not they had previously agreed to list with NZ Look. This conduct gave rise to the 47 charges of dishonestly using a document.

Facts relevant to s 258(1)(b), Crimes Act 1961 offending

[7] The second category of offending occurred in early 2010. The same pro forma invoicing scheme occurred, but with one additional factor. The appellant forged offer documents in an attempt to convince recipients that they had previously agreed to acquire NZ Look services, when they had not.

[8] The appellant had commissioned an India-based company to make forged documents by transferring customer signatures from NBO documents to NZ Look documents. This conduct gave rise to the 17 charges under this section.

[9] Twenty-eight victims were directly affected. The loss caused as a result of the appellant's offending was $1,747.63.

District Court decision

[10] On 12 September 2013, the appellant was sentenced by Judge C J Field in respect of all charges. The offending under s 258(1)(b) of the Crimes Act has a maximum penalty of 10 years' imprisonment. The offending under s 228(b) and s 66(1) of the Crimes Act has a maximum penalty of seven years' imprisonment. For the offending under s 228(b), the appellant was charged as a party to offending by NZ Look.

[11] Judge Field canvassed the background facts. He described the offending as sophisticated offending which occurred over a substantial period of time. He referred to NZ Look having a turnover of over $700,000 between July 2008 and 31 August 2010.

[12] The Judge noted the significant aggravating features of the offending. Over 20,000 listings were transferred from NBO to NZ Look, and approximately 9,800 invoices were found as a result of search warrants. There was planning and preparation involved in the offending and a significant number of victims. The Judge considered the true motivation for the offending to be driven by pure greed and that the true extent of the offending and the losses would never be adequately known. He considered that the losses of approximately $1,700 could "in no way adequately reflect the magnitude of [the] offending": [10]. The Judge noted the long duration of the offending and the annoyance and inconvenience it would have caused to a "large number of people": [10].

[13] The Judge adopted a starting point of two and a half years' imprisonment. The Judge could not see any mitigating features of the offending to warrant a lower starting point. The Judge noted that the appellant was a first time offender and was entitled to some credit for her previous good record. He found however that this must be offset against the fact that the offending was repeated over a considerable period of time. Two months was deducted from the starting point for the previous good record and remorse. The Judge doubted whether the remorse was genuine or situational.

[14] A full 25 per cent guilty plea discount was awarded, resulting in an end sentence of 21 months' imprisonment. The Judge considered the need to impose the least restrictive sentence and, ultimately, a sentence of 10 months' home detention was imposed. Reparation for the sum of $1,747.63 was ordered.

Ground(s) of appeal

[15] In the notice of appeal, the appellant appeals her sentence on the ground that it was manifestly excessive as:

(a) The starting point of two years and six months was excessive and outside the available range for this type of offending; and

(b) The Judge was wrong not to apply a greater reduction for the appellant's personal mitigating factors, including her previous good character, remorse and medical health issues.

Appellant's submissions

[16] The appellant submits that the starting point was outside the available range for the offending. The appellant relies upon three cases in submitting that the starting point was excessive, given the nature of the offending and the established loss being only $1,747.63: *Police v Coughlan* DC Wellington CRI-2009-085-006365, 28 January 2011; *Francis v R* [2011] NZCA 253; and *Maa v Ministry of Social Development* [2013] NZHC 1846.

[17] The appellant submits that the Judge incorrectly assessed the nature of the offending having regard to the number of victims and the established losses. The appellant says that the turnover figure is not an accurate identifier of loss and cannot be used as a basis for the starting point. The appellant submits that in the three cases above, starting points were adopted that were either less than, or equal to the starting point in this case. Yet the established loss was far less in this case. The appellant accepts that the true extent of the offending and the losses cannot be accurately known, but submits that it would be improper to speculate as to what those losses might be. Thus, they should not be taken into account.

[18] The appellant submits that the fact that NZ Look's database may not have been regularly updated does not mean that the entire turnover resulted from pro forma invoicing. The appellant says the poorly maintained database resulted from the inadequate supervision of her employees.

[19] Further, the appellant says that whilst the cutting and pasting of signatures onto NZ Look's special offer documents required a degree of planning, the act was "crude and basic". Some recipients identified that their signatures had been transferred from NBO documents and contacted the appellant directly. Therefore, the transfer of signatures could not have been correctly described as sophisticated.

[20] The appellant submits that the Judge erred by determining that the offending was motivated by greed. The appellant's statement to the Commerce Commission supports the view that she acted out of a misplaced sense of entitlement.

[21] For these reasons, the appellant submits that the correct starting point should have been no more than 12 months' imprisonment.

[22] The appellant submits that the Judge erred in applying only a reduction of two months for her previous good character and remorse. She has no previous convictions and has been assessed as having a low risk of reoffending and a low risk of harm to others. The Judge also failed to give sufficient weight to the appellant's health issues, in particular her lead poisoning. The appellant says that given the significance of the lead poisoning, the Judge should have applied a further reduction on the sentence.

[23] The appellant submits that the appropriate end sentence should have been community detention of no more than six months and reparation. This sentence would have been sufficient to meet the purposes of denunciation and deterrence in this case. In the pre-sentence report, the report writer expressly recommended against a sentence of home detention in favour of community detention and community work. Further, as the appellant has already served two months' home detention, this should be taken into account on appeal.

Respondent's submissions

[24] The respondent submits that the starting point and the end sentence were in the range available to the Judge for the appellant's conduct and was not manifestly excessive.

[25] The respondent submits that the offending in this case was persistent. In many cases, recipients had received multiple invoices. There were aggravating features such as the appellant's aggressive pursuit of the recipients when they did not pay the first pro forma invoices. The appellant also made final demands, and threatened them with debt collection. The respondent submits that as most recipients

were small businesses, they were conscious of their credit ratings and would not want that jeopardised by the initiation of debt collection processes. In this way, the appellant was said to have preyed on the trust and busy lives of the small business owners, who often simply assumed they must have engaged NZ Look's services. Further, significant financial gain resulted. The Commerce Commission could not find evidence that any of NZ Look's business was conducted legitimately. Nor was there evidence that the customers of NZ Look received anything of value by being listed on the NZ Look website. Rather, the evidence indicated that the website was a static database that was not maintained.

[26] The respondent submits further that NBO was also the subject of investigation for pro forma invoicing at the time when the appellant was still the office manager. Despite this, she nevertheless offended with NZ Look.

[27] The respondent contends that the Judge correctly dealt with all applicable factors in *R v Varjan* CA97/03, 26 June 2003, and that no error in the application of those factors occurred. The respondent argues that the Judge correctly looked to the turnover figure as a proxy for the scale and sophistication of the enterprise but did not use the turnover figure as a means of assessing loss. Further, that it is a mistake to compare this case to other cases based purely on the established loss.

[28] The respondent contends that there is no real distinction between offending motivated by greed and what the appellant describes as a "misplaced sense of entitlement".

[29] The respondent submits that the cases cited by the appellant are of little assistance to this case. The welfare fraud in *Maa* and the authorities cited therein are less serious examples of fraud than this case. In those cases, there was little or no sophistication in the offending (it hinged on an omission to inform WINZ of brief periods of employment while in receipt of a domestic purposes benefit), no forgery and only a single victim.

[30] The respondent relies upon a District Court decision, *Police v Coughlan*, which it says is the only comparable case that specifically involves pro forma

invoicing. There the sentencing Judge adopted a starting point of two years. The respondent submits that it was open to Judge Field to impose a higher starting point than in *Coughlan*, as the appellant's offending occurred over a longer period of time, the offending was fraudulent from the outset and the number of invoices involved was significantly greater.

[31] Regarding the discount for mitigating factors, the respondent submits that the modest recognition for good character and remorse was an appropriate response. The respondent says further that despite claims of remorse, the appellant took no responsibility for the offending at sentencing. She blamed her former husband for misinforming her. In addition, the appellant maintained an appeal against conviction for a period of eight months following her sentence. This is also difficult to reconcile with a claim of genuine remorse.

[32] The respondent submits that the appellant's medical health issue, namely that she had lead poisoning, was no longer an issue, as she had largely recovered at the time of sentencing. Further, the report writer noted that recovery might be inhibited by community work, but there was no suggestion that her recovery would be affected by home detention.

[33] Lastly, the respondent submits that a sentence of less than home detention would not adequately recognise the seriousness of the offending.

Appeal against sentence

Approach to appeal

[34] The Summary Proceedings Act 1957 applies in this case, as the charge was laid before the commencement date (1 July 2013) of the Criminal Procedure Act 2011. Under s 397 of the Criminal Procedure Act, a proceeding that is commenced before 1 July 2013 is dealt with under the law as it was before that date.

[35] An appeal against a sentence is a general appeal which shall be by way of rehearing. Section 121(3)(b) of the Summary Proceedings Act provides that the

High Court may quash or vary a sentence where it is "clearly excessive or inadequate or inappropriate", or if the Court is "satisfied that substantial facts relating to the offence or the offender's character or personal history were not before the Court imposing sentence".

[36] The approach to be taken to appeals under s 121(3) was set out in *Yorston v Police* HC Auckland CRI-2010-404-164, 14 September 2010, where the Court said at [13]:

> a) There must be an error vitiating the lower Court's original sentencing discretion: the appeal must proceed on an "error principle."
>
> b) To establish an error in sentencing it must be shown that the Judge in the lower Court made an error whether intrinsically or as a result of additional material submitted to the appeal Court.
>
> c) It is only if an error of that character is involved that the appeal Court should re-exercise the sentencing discretion.

[37] The High Court will not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles. Whether a sentence is manifestly excessive is to be examined in terms of the sentence given, rather than the process by which the sentence is reached.

Setting a starting point

[38] There is no tariff judgment for dishonesty offending. However, the Court of Appeal decision in *R v Varjan* identified several factors to guide the Court in assessing the culpability of an offender. The Court said:

> [21] … The circumstances of, and culpability in, offences of dishonesty vary widely. They must be assessed in light of the guidance to be found in previous decisions. …
>
> [22] Culpability is to be assessed by reference to the circumstances and such factors as the nature of the offending, its magnitude and sophistication; the type, circumstances and number of the victims; the motivation for the offending; the amounts involved; the losses; the period over which the offending occurred; the seriousness of breaches of trust involved; and the impact on victims.
>
> …

> [25] The authorities clearly indicate that in cases of major defalcations, misappropriations, schemes dishonestly to obtain money or property or where recidivism indicates the need to protect the community, imprisonment is appropriate.

[39] The appellant has emphasised the small amount of the established loss in this case. It should be noted that the degree of loss is only one factor in assessing culpability. I will assess each of the aggravating factors identified in *Varjan*.

Nature of the offending

[40] The offending was deliberate. It was designed to bluff or deceive a large number of customers. The forgery offending constituted a significant escalation of those efforts in 2010. The scheme adopted was aggressive, as recipients received final demands and were threatened to be referred to debt collection agencies.

Magnitude and sophistication

[41] The magnitude of the scheme may seem large in the sense that 20,000 listings were transferred to NZ Look and 9,800 invoices were found by the Commerce Commission. On the other hand, the charges to which the appellant pleaded guilty involved only 28 victims. They are not representative charges. Accordingly, the magnitude of the offending must be assessed in terms of the offending as outlined in the summary of facts on which the guilty pleas were entered.

[42] Contrary to what the appellant submits, I consider that the scheme was sophisticated. It was carefully devised and included several stages, including telephone calls, invoices and final notices to the recipients. The use of a service provider in India to carry out the forged documents adds another layer of sophistication, particularly as the choice of the service provider was by tender. The appellant was careful to state that the copies should be indistinguishable from the originals. The forgery scheme has all the hallmarks of a carefully planned venture.

Victims

[43] The charges relate to a total of 28 victims. Most of them are small businesses that may not have had systems in place to detect this type of offending.

Motivation for offending

[44] I do not accept the appellant's argument that she acted out a misguided sense of entitlement. The appellant was clearly motivated by pecuniary gain. She said as much in her interviews with the respondent's investigating officers.

Amounts involved and losses

[45] The appellant submits that the turnover value cannot be used as the basis for setting the starting point. On the other hand, the appellant accepts that the true extent of the offending and the losses cannot be accurately calculated. The respondent considers the turnover amount to be a more accurate indicator of the financial profits of this offending. However, there is no evidence before the Court to assess the proportion of the company's turnover that can be attributed to pro forma invoicing. I consider that the Court is confined to viewing the loss to be $1,747.63. Anything else would be speculative.

Period of offending

[46] The forgery scheme operated from approximately January 2010 to April 2010. But the pro forma invoicing scheme operated for a longer period of time, between April 2008 and August 2010.

Breach of trust

[47] There is no obvious breach of trust in this case.

Case law

[48] The appellant relies upon three cases.

[49] In *Francis v R*, the appellant unsuccessfully appealed against a sentence of 20 months' imprisonment for 15 counts of dishonesty offending. The appellant was the accounts manager of a veterinary practice and directed cheques and debit payments, intended for the company, into her personal accounts. She also purchased items for herself using firm funds, concealed cash by falsifying the firm's banking records and falsely obtained free services for herself and a family member. The total amount that the dishonesty obtained was $63,723.81. The impact of the offending on the victims was significant. The business was set back by several years.

[50] The sentencing Judge took into account as aggravating factors: the number of offences, the extent of loss, the gross breach of trust, the motivation of greed, and the premeditation involved. The Judge acknowledged that the appellant had no prior convictions but as multiple offences were committed over a period of a year or more, "it was not really apt to describe her as a first time offender": [6]. A starting point of two and a half years' imprisonment was adopted, with a reduction of nine months as a guilty plea discount. A further one month was deducted to recognise the $5,000 reparation. An end sentence of 20 months' imprisonment was imposed. Home detention was declined. This sentence was upheld on appeal.

[51] In *Maa v Ministry of Social Development*, the appellant successfully appealed against a sentence of seven months' home detention and 100 hours' community work for two charges of deception and seven charges of dishonestly using a document. The appellant had received a domestic purposes benefit for 11 years and failed to inform the authorities about two periods of employment during this period. As a result, she received $34,946.23 in payments that she was not entitled to.

[52] The sentencing Judge adopted a starting point of two years' imprisonment. The appellant appealed on the grounds that a sentence of home detention would mean she would lose her job and would not be able to support her children. The High Court held that the starting point was too high and adopted 18 months' imprisonment as a starting point. After appropriate discounts, Collins J came to eight months' imprisonment, which was converted to four months' home detention. The Court considered the concern that the appellant might lose her job and

substituted the sentence of home detention with one of community detention, community work and reparation.

[53] In *Coughlan*, the offender's dishonesty in operating pro forma invoicing fraud was said to have led to victims losing $129,000. As with the present case, the scheme involved a business directory. The Judge adopted a starting point of two years' imprisonment. Mr Coughlan received a sentence of 11 months' home detention and was ordered to pay reparation of $7,529.50. His co-offender was sentenced to 10 months' home detention and ordered to pay reparation in the same amount as Mr Coughlan. *Coughlan* presents some difficulties because the low reparation figure and the low actual losses relating to identified victims described in the judgment come nowhere near the loss of $129,000 to which the sentencing Judge referred to as representing the total loss. I am not, therefore, sure of the foundation for the overall loss. But putting that to the side, if I take the reparation sums of $7,529.50 as indicative of the loss, those sums are considerably higher than the established losses in the present case. This leads me to conclude that *Coughlan* is not such a helpful case for the respondent.

[54] I agree with the respondent that the starting point cannot be determined solely by looking at the amount of loss or personal pecuniary gain. All of the relevant factors in *Varjan* must be considered in the round in determining an appropriate starting point.

[55] Whilst the established loss in *Francis* was much greater, there was only one victim involved and fewer charges. Further, the scheme developed by the appellant can be said to more sophisticated and deceptive than in *Francis*.

[56] In *Maa*, there was only one victim involved. Further, the dishonesty was limited to the completion of Ministry of Social Development forms. There was no false reproduction of documents or the utilisation of outside services, like in the present case. Whilst the financial loss was greater in *Maa*, the other culpability facts in this case, namely the magnitude of the dishonesty, the sophistication of the scheme, and the sheer number of charges in this case, are arguably greater.

[57] In *Coughlan*, the lower starting point and the higher actual losses than in the present case support the view that a lower starting point was warranted here.

[58] In *Winterstein v Housing New Zealand Corporation* [2012] NZHC 723, the appellant successfully appealed against a sentence of 12 months' imprisonment for nine charges of using a document with intent to obtain a pecuniary advantage. The appellant was a tenant of a Housing New Zealand property. Between 2001 and 2010, the appellant signed applications for income-related rent and deliberately failed to declare that her husband was residing with her. Benefits of $85,437 were obtained that she was not entitled to. A starting point of two years' imprisonment was adopted by the sentencing Judge. On appeal, the starting point was not criticised. Instead, the Judge was seen to have erred in failing to take into account mitigating features in deciding whether a sentence of home detention would be sufficient. The sentence of imprisonment was quashed and replaced with a sentence of eight months' home detention. As the appellant had already spent three months in prison, a final sentence of four months' home detention, plus community work was imposed. In *Winterstein*, the loss was far greater and the duration of the offending was longer, but the other culpability factors were less serious than the present case. Nonetheless, when the present offending is compared with that in *Winsterstein*, I am left with the view that the starting point in the present case was set too high.

[59] In the present case, the nature of the offending, the magnitude and sophistication of the fraudulent scheme, the number of victims, the motivation and the duration of the offending all call for a stern sentence. Deliberate, well planned and greedy dishonesty such as what occurred here that impacts on 28 persons, calls for a sentence based upon denunciation and deterrence. On the other hand, the actual losses that this conduct caused were small. Were it not for this last factor, I would consider that the Judge adopted an appropriate starting point. However, a starting point of two years, six months' imprisonment for losses that amount to $1,747.63 cannot be justified. I consider that to have arrived at this starting point, the Judge must have been influenced to some degree by the turnover figure of $700,000. However, to what extent, if at all, this figure may be seen to represent the fruits of this fraud is speculative. When the other cases are considered, with adjustment made for the greater magnitude and sophistication of the present fraud, the starting points

adopted in those cases lead me to conclude that something lower than two years, six months' imprisonment was required here. I consider that 12 to 18 months' imprisonment would have been an appropriate starting point.

Adjusting the starting point

[60] The Judge gave a discount of two months to take into account the appellant being a first time offender and her remorse. I consider that some discount for those factors was appropriate in the circumstances.

[61] Judge Field took the view that repeated offending offsets the credit that one would otherwise receive for previous good character. The Court of Appeal in *R v Zhang* (2004) 20 CRNZ 915 (CA) also endorsed this point:

> [26] … This was not the more common case of a first offender being sentenced for a single offence. Any concession to be gained by reason of a previously unblemished record should have been and was dispelled by the prolonged and premeditated nature of the offending in this case.

[62] The Judge did not consider the appellant's health issues in assessing the discount for mitigating factors, but rather under whether a community-based sentence was suitable. I consider that an additional discount was unnecessary in this regard, as the pre-sentence report stated that the appellant had "largely recovered from the symptoms of lead poisoning". This was confirmed at the hearing of the appeal.

[63] The Judge used a discount of two months to represent the appellant being a first offender and for remorse. In principle, discounts for mitigating factors are better made in percentage terms. This ensures that the mitigating factors are dealt with consistently and fits better with the general rule that discounts for guilty pleas are expressed in percentages: see *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

[64] I think that the Judge's recognition of remorse was generous in the circumstances. The appellant's statement to the Commerce Commission points

against there being "genuine remorse" of the kind that *Hessell* (at [64]) would see as warranting a higher discount. She stated:

> I thought I worked so hard at NBO, I got nothing out of it. This way I could make some money.

[65] Nonetheless, I do not propose to interfere with the mitigating factors personal to the appellant. But, whilst I will not interfere with the Judge's recognition of good character and some remorse as mitigating factors, I consider that those factors are better represented by a five per cent discount than the two months reduction in sentence that he applied.

[66] In *R v Clifford* [2011] NZCA 360, [2012] 1 NZLR 23 at [60], the Court of Appeal mandated a three-stage approach to sentencing. First, the appropriate starting point is chosen. Secondly, allowance is made for personal aggravating and mitigating factors; and finally a discount for a guilty plea is given.

[67] I consider that a starting point of 15 months' imprisonment falls well within the acceptable range of starting points. Like the Judge, I do not consider that there are aggravating factors relating to the appellant. So from the starting point of 15 months' imprisonment, I would allow a discount of five per cent for personal mitigating factors. This brings the sentence to one of 14.25 months.

[68] I see no reason to interfere with the discount of 25 per cent for the guilty plea, even though it was entered quite late. When allowance is made for this discount, the sentence is reduced to 10.7 months' imprisonment. This in turn would lead to a sentence of home detention of 5.35 months. When this is compared to the sentence that the Judge reached, his sentence can be seen to be manifestly excessive.

[69] The total discount that I have applied for mitigating factors comes to 30 per cent. Ordinarily, being a first offender, coupled with remorse and a full 25 per cent discount for a guilty plea can take a total mitigating discount up to 33.3 per cent. However, here the repetitive nature and length of the offending counterbalances the impact of being a first offender; similarly, the questionable

remorse reduces the impact of the allowance that might otherwise be given where there is genuine, substantial remorse.

[70] I propose to round the sentence of 5.35 months' home detention down to five months' home detention. I see no need to make allowance for the additional time that a strictly arithmetical calculation would require.

[71] The appellant has attempted to persuade me that something less than home detention would be sufficient to penalise her offending. I reject that argument. In the circumstances, a sentence that is less restrictive than home detention would not satisfy the applicable purposes of sentencing under s 7 of the Sentencing Act 2002, namely to hold the offender accountable, to promote in the offender a sense of responsibility, to denounce the conduct and to deter the offender. Even when the actual losses are small, deliberate and sophisticated dishonesty over a lengthy period of time calls for a stern penalty. The offender and other like-minded persons in the community should be put on notice that the penalties for such conduct will bite.

[72] There was no argument raised by the appellant regarding the reparation she was ordered to pay.

Result

[73] The appeal against sentence is successful to the extent that the sentence of home detention is reduced to one of five months' home detention. In all other respects, it remains the same. As the appellant has served some of the original sentence of home detention, this will need to be taken into account when calculating the end of her sentence.

[74] The appellant is currently on bail. Her terms of bail have allowed her to travel to Australia. She appeared at the hearing of the appeal and was remanded to next appear in this Court in the callover list at 9.00 am on 13 August 2014. On that occasion, the necessary directions can be made regarding the resumption of the sentence of home detention by the Judge presiding at the callover. Alternatively, if

the appellant returns to New Zealand earlier, her counsel should approach the case officer to have the matter listed before me.

Duffy J