

**IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2017-063-3504
[2018] NZHC 3347**

THE QUEEN

v

**MIKAERE HURA
ZEN PULEMOANA**

Hearing: 17 December 2018

Counsel: DJ McWilliam, A Hill and CHR Harvey for Crown
HS Edward and T Braithwaite for M Hura
MA Simpkins and EL Reilly for Z Pulemoana

Sentenced: 17 December 2018

SENTENCING NOTES OF FITZGERALD J

Solicitors: Gordon Pilditch, Rotorua
Harry Edward Law, Rotorua
Lance Lawson, Rotorua

Introduction

[1] Mikaere Hura and Zen Pulemoana, you appear for sentencing for your roles in the deaths of Raymond and James Fleet.

[2] Before I sentence you, I do wish to acknowledge the victims' families and whanau. I have read all the victim impact statements, as I have said. Mrs Georgina Fleet has also read her statement here in Court today. That takes real guts.

[3] It must have been extremely difficult for you all to try to put into words how you feel. Your statements are clear that Raymond and James were loved members of a close-knit family who will dearly miss them. I am not the first Judge to say that the sentences I impose today could never be intended to replace or measure the lives of your loved ones. But I do hope you will find some measure of closure, at least in terms of the Court process, following today's sentencing. I also wanted to say that I am aware that many of you attended the trial every day. I observed you every day, and wish to commend your quiet dignity in what must have been a harrowing process.

[4] Mr Hura, you are to be sentenced today on two charges of manslaughter, one charge of possessing equipment capable of being used in the manufacture of methamphetamine and one charge of possessing materials capable of being used in such manufacture.

[5] Mr Pulemoana, you are to be sentenced today on one charge of murder and one charge of manslaughter.

Facts of the offending

[6] I will first start with a brief statement of the key facts involved in the offending. Those facts will be known to you, and to many people here in Court today, but it is important the broader public is aware of the basis upon which I am sentencing you today.

[7] These offences stem from your roles in the Mangu Kaha gang here in Rotorua. You were both prospects of that gang. I accept that places you low in the hierarchy. I

also accept that each of you no doubt now deeply regrets becoming involved in this terrible gang, and Mr Hura, it seems this might have been so in your case sometime before these dreadful events occurred. But you each nevertheless made a decision, and you made a choice, that you wanted to be in this gang, knowing what gangs stand for and what they do.

[8] In early August 2017, others more senior in the gang arranged to manufacture methamphetamine with Raymond Fleet. I accept from the evidence I heard that you were not directly involved in these events, but I am satisfied that you were well aware of what was going on. Each of you was also tasked with running around after the more senior members of the gang as the manufacture progressed.

[9] The manufacture was somewhat disorganised, and given difficulties arising during the process, the operation had to be moved from its original location to Raymond Fleet's garage. There was no suggestion his wife was aware of just what was going on; rather it seems Raymond tried to hide this from her.

[10] During this process, more senior members of the gang, and in particular, Martin Hone and Richard Te Kani, who are brothers, began to suspect methamphetamine was going missing. The Crown suggested at trial that in fact the persons involved in the manufacture were inexperienced with the equipment being used. As suspicions grew, you each became tasked with helping to search for the missing methamphetamine.

[11] By 7 August 2017, suspicion was directed to Raymond and potentially his nephew, Darrius Fleet. Mr Hone and Mr Te Kani drove Raymond and Darrius to a relatively-isolated area of bush on Cecil Road on the outskirts of Rotorua at around 3.30 pm that afternoon. You both joined them at that location sometime later, driving the vehicle referred to at trial as the Big Horn. Raymond and Darrius Fleet were, at the very least, threatened and interrogated by the senior members of the gang; though Darrius did not suggest there was any actual violence during this episode.

[12] Raymond and Darrius were eventually returned to Darrius' home in Rotorua. But by 6 pm Raymond had been picked up again. He got in his car. The two of you, along with Mr Te Kani and Mr Hone, drove in two vehicles (the MPV and the Big

Horn) with Raymond's car in tow, to Raymond's house. He left his car there and then he and his friend Mr Raroa, who had been at Raymond's house that day, went into the MPV with Mr Te Kani and you, Mr Pulemoana, to James Fleet's grandparents' house, where James was staying. Mr Hura, you were with Mr Hone in the Big Horn. Mr Pulemoana, you went to the door and collected James and he joined you and the others to travel in the MPV to Cecil Road. It remains unknown precisely why James was taken, which I have no doubt is a source of great anguish to his family.

[13] While that was happening, Mr Hura, you with Mr Hone, took the remainder of the materials and equipment that had been used in the manufacture of methamphetamine in the Big Horn and out into the bush at the back of Cecil Road. Under instruction, you went into the bush and buried them. Those actions resulted in the two methamphetamine-related offences on which you were convicted. Having listened to the evidence, I was satisfied you knew broadly what you were doing, including that you knew that at least some of the equipment and materials you were burying, including the par bomb, was associated with the meth cook and was being buried as it could be used again.

[14] You and Mr Hone then joined Mr Pulemoana, Mr Raroa, Mr Te Kani, and James and Raymond Fleet in Cecil Road at an area known as "the gate". At this stage, Raymond Fleet was violently assaulted by Mr Hone, who by all accounts, was in a violent and uncontrolled rage. He tried to drown Raymond by holding his head in a puddle, which was only prevented by another member of the group intervening. There were suggestions in the evidence that it might have been Mr Te Kani who intervened, but I consider it more likely to have been Mr Raroa.

[15] There were then instructions, which came from the senior members of the gang, to go further down into Cecil Road. This part of the road can only be accessed in an off-road-capable vehicle. The MPV was not suitable. While the two of you, Mr Hone and the Fleets went further into the bush in the Big Horn, Mr Te Kani and Mr Raroa stayed at the gate area.

[16] At a location further down Cecil Road, Raymond was interrogated and beaten by Mr Hone. Raymond was killed first. It seems he started to fight back against

Mr Hone which enraged him further, and Raymond was then hit several times in the head with a spade and subsequently run over by the Big Horn. The Crown was not able to say with certainty which of these two events killed him, nor who was driving the Big Horn at the time. I am not satisfied the evidence demonstrated that you were driving the Big Horn, Mr Hura, and as counsel will be aware, from a communication I arranged with the jury, they also did not consider the evidence demonstrated the scenario of you driving over Raymond Fleet's head believing him to still be alive.

[17] James was then killed when Mr Hone hit him in the head with the spade several times, one such blow causing the fatal injury. James was killed simply because he had been at the scene and witnessed Raymond's death.

[18] The jury's verdicts on your charges, Mr Hura, mean they were satisfied that through your presence at the scene, as a guard or by reinforcement in numbers, you intentionally assisted Mr Hone in *his* attacks on Raymond and James Fleet. But the jury also accepted that you did not intend either of their deaths; nor that you were aware of Mr Hone's intent in that regard.

[19] Mr Pulemoana, again, the jury's verdicts mean that they accepted that through your presence at the scene, you intentionally assisted Mr Hone in *his* attack on Raymond; but that you did not intend Raymond's death; nor were you aware of Mr Hone's intent in that regard. In relation to James' death, however, the jury's verdict means they must have been satisfied you intended to provide assistance in James's death, by your presence at the scene, and at that time, you knew Mr Hone intended to kill him. In other words, there is no suggestion you struck any blows to James with the shovel, but through your continued presence at the scene, you intentionally assisted in his murder.

[20] I accept that some of your actions, particularly in your case, Mr Hura, came about by fear: by your fear of Mr Hone as a senior member of the gang and what might happen to you if you stood up to him. As I told the jury at the time, however, if your *intentional* acts came about through fear, that was not relevant to the question of guilt or innocence on the charges. I do, however, consider your fear, and that it had some

impact on driving your behaviour, to be relevant to sentence and I will say more about this later.

[21] After both men had been killed, you left the scene with Mr Hone. The three of you returned to Mr Te Kani and Mr Raroa at the gate area. You all then returned into town. But not long afterwards, both of you were made to return later, with Mr Te Kani, and you attempted (poorly) to hide the bodies.

Overview of the sentencing process

[22] Mr Hura and Mr Pulemoana, to reach a sentence for each of you today I must first consider the appropriate starting point that reflects the nature and circumstances of the offending that I have just outlined. I will then consider your personal circumstances and whether the starting point should be adjusted for those. I will then ask you to stand for your sentence.

[23] Key purposes in sentencing you today are to hold you accountable for and to denounce your conduct.¹ An important principle in sentencing you is the desirability to maintain consistency with the sentences imposed on your co-offenders, Mr Hone and Mr Te Kani.²

[24] Mr Hone pleaded guilty to the murder of Raymond and James, along with charges for the manufacture of methamphetamine.³ On each count of murder he was sentenced to life imprisonment with a minimum non-parole period of 20 years. There is no doubt Mr Hone was the key and leading figure in this offending.

[25] Mr Te Kani pleaded guilty to manslaughter of Raymond and James, charges for being an accessory after the fact to murder, plus methamphetamine manufacture charges.⁴ He was also sentenced for additional unrelated charges. A starting point of eight years' imprisonment was adopted for Raymond's death, which was uplifted by a further three years for Mr Te Kani's role in James's death. Mr Te Kani was not present

¹ Sentencing Act 2002, s 7(a) and (e).

² Sentencing Act 2002, s 8(e).

³ *R v Hone* [2018] NZHC 2605.

⁴ *R v Te Kani* [2018] NZHC 3134.

at the actual time of the offending. He was, however, a senior member of the gang, and a central figure in all the events leading up to the killings. I am also satisfied he was central to the plan to intimidate and assault Raymond and James Fleet. There is no suggestion he had any fear of or was intimidated by his brother Mr Hone.

Sentence for Mr Hura

Starting point - submissions

[26] I begin with your sentence, Mr Hura. Relying on a case called *Taueki*,⁵ the Crown says the manslaughter of Raymond Fleet attracts a starting point of 11 to 12 years' imprisonment. It argues your offending is more serious than Mr Te Kani's because you were actually present at the time of the deaths. It seeks an uplift of two to three years for the manslaughter of James Fleet, and a further uplift of 18 months for the possession charges. Ultimately, the Crown suggests a starting point of between 14 and a half and 16 and a half years' imprisonment, with an end starting point, adjusted to reflect the totality of your offending, of around 14 to 16 years'. The Crown does not seek a minimum period of imprisonment.

[27] Your lawyers, Mr Edward and Mr Braithwaite, have emphasised that your active involvement in the offending was limited, and that the jury's verdicts mean they convicted you as a party to Mr Hone's offending and that you did not intend the death of either Raymond or James. Your lawyers have also put forward a report from Dr Erin Eggleston, a registered clinical psychologist and neuropsychologist, which addresses your mental capacity.

[28] Issues of mental health and mental capacity can affect the starting point of offending.⁶ There are a number of ways that may occur:⁷

⁵ *R v Taueki* [2005] 3 NZLR 372 (CA). Though not a manslaughter case, the judgment is nonetheless of "considerable assistance in fixing the penalty for manslaughter": *R v Jamieson* [2009] NZCA 555 at [34].

⁶ *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [45].

⁷ *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [70](a) to (d), citing *R v Verdins* (2007) 16 VR 269 (VCA) at [32].

- (a) Such issues may reduce the moral culpability of the offending as distinct from the defendant's legal responsibility. That renders principles of denunciation for the conduct,⁸ for example, less relevant.
- (b) They might have a bearing on the kind of sentence imposed and conditions attaching to it.
- (c) They may moderate or eliminate the principle of deterrence.

[29] Issues of mental capacity may also go to the part of the sentencing exercise that considers matters personal to the defendant.⁹ Matters of particular relevance at that stage include whether mental health or capacity concerns would mean the sentence will weigh more heavily on the defendant than it would on another person in normal health, or where there is a serious risk imprisonment could have a significant adverse effect on the defendant's mental health.¹⁰

[30] Dr Eggleston assessed your vocabulary, attention range, processing speed, verbal reasoning, fluency and working memory. His opinion is you have low cognitive functioning in a number of areas. He established that your general IQ places you in a very low percentile of the population. Ultimately, his opinion is that your borderline levels of functioning in certain areas, notably vocabulary and decision making, will present in difficulties across your entire life and will set you apart from the general population. It is clear from Dr Eggleston's report that he formed the view that these issues *could* have had an impact on your decision-making in your offending, though he says it is difficult to separate this out from another factor he identified, namely what he said is the clear factor of fear.

[31] Mr Edward and Mr Braithwaite have referred me to a number of other sentencing cases, and say from those, a starting point on the manslaughter charge in relation to Raymond Fleet could be in the region of four to six years. They have then

⁸ Sentencing Act 2002, s 7(e).

⁹ *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [48].

¹⁰ *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [70](e) and (f). That these are relevant to personal circumstances was emphasised by the Court of Appeal in *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [48].

proposed a global discount of 15 per cent from the starting point to reflect Dr Eggleston's findings. They also seek a further discount for factors such as remorse.

Analysis of starting point for Mr Hura

[32] In addition to the cases your lawyers have referred me to, Mr Hura, I have also considered six other cases where a party who does not participate directly in the offending is sentenced for manslaughter.¹¹ None of the cases is exactly same as this case, and they reflect that offending which leads to a conviction for manslaughter varies enormously. But they have *some* similarities to this case and I have therefore found them of some assistance in assessing a starting point.

[33] Those cases suggest a range in starting point from four to eight years'.¹² I also have regard to the fact Mr Te Kani, who was not present at the scene but as I have said, had a greater knowledge of the likely events and was a more senior member of the gang, received a starting point of eight years' imprisonment.

[34] I accept that at first blush, being present at the scene is perhaps more serious than Mr Te Kani's role in the offending. But this is mitigated by your low level of actual involvement in Raymond's death and the events which gave rise to it. Your secondary or limited part in his actual death reduces your culpability and hence the starting point.¹³ So too, in my view, do the factors identified by Dr Eggleston. I am also satisfied that while not relevant to conviction, your fear of the more senior members of the gang, which I accept was genuine and real, further reduces your personal culpability.

[35] Taking all these factors into account, together with the guidance drawn from the other cases which I have discussed, I adopt a starting point of **six and a half years'** imprisonment in your case. I then add to that a further three years to reflect your

¹¹ *R v Madams* [2017] NZHC 81; *R v Bridger* HC Wellington CRI-2004-241-116, 3 September 2009; *R v Innes* [2016] NZHC 1195; *R v Ahsin* [2015] NZHC 1884; *Rafiee v R* [2010] NZCA 180; and *R v Parker* [2012] NZHC 2458.

¹² *Madams* (seven years and four years for different offenders); *Bridger* (eight years); *Innes* (four and a half years); *Ahsin* (five years); *Rafiee* (six years); and *Parker* (eight years).

¹³ *Shailer v R* [2017] NZCA 38 at [46].

conviction for the manslaughter of James Fleet.¹⁴ That brings the starting point on your two manslaughter charges to **nine and a half years'** imprisonment.

[36] The drug offending for which you were convicted was comparably minor.¹⁵ You simply possessed some items related to the manufacture of methamphetamine for a short period when you drove them into the bush and were instructed to bury them. I found that you only had knowledge of a relatively small number of these items. I consider that if you had been sentenced on a stand-alone basis for these charges, a starting point of no more than around 18 months would have applied, and it is very doubtful, given your background, that a term of imprisonment would have resulted. Given this and considering the totality of your offending, I do not consider a further uplift to your starting point is warranted.

[37] This means the starting point for your offending is **nine and a half years' imprisonment.**

Personal circumstances of Mr Hura

[38] I turn now to whether there should be any increase or decrease to this to reflect matters personal to you Mr Hura.

[39] At the time of the offending you were 21. You are now 22. You whakapapa to Nga Puhī on your mother's side and Te Arawa on your father's side, and the author of a Department of Corrections report provided to me records that you grew up with a respect for tikanga Māori. You have been in a supportive and long-term relationship with your partner for seven years, with whom you have two children.

[40] The Department of Corrections report writer assesses that you are at a *low risk* of reoffending and at *low risk* of harm to others. Your lawyers have raised four additional factors that they submit are mitigating and warrant reductions to your sentence: your age, your mental capacity, remorse and the time you spent prior to trial on restrictive bail terms. I will address each of these in turn.

¹⁴ The same uplift imposed by Davison J for Mr Te Kani: *R v Te Kani* [2018] NZHC 3134.

¹⁵ Again, I have not had the benefit of any case law on the point.

[41] The law says I must take into account your age to the extent it is relevant.¹⁶ Reductions in sentence for youth reflect that the vulnerability of young people can mitigate the culpability of their offending; recognise that imprisonment for long sentences may be crushing on young people; and take into account that those who are younger have greater capacity for rehabilitation.¹⁷

[42] It is fair to say, Mr Hura, that your age of 21 years at the time of offending places you towards the upper limit of the range for which youth discounts are available.¹⁸ But having regard to the factors in favour of youth discounts, I consider a reduction is appropriate in your case. You were undoubtedly impressionable and susceptible to the instruction of the senior gang members at the time of the offending. And as the Department of Corrections report writer identified, you show good prospects of rehabilitation, given your assessment of being at low risk of reoffending.

[43] Next, I must assess whether there is any additional reduction required given the matters identified in Dr Eggleston's report. As I have explained, mental capacity or mental health issues may render the sentence imposed on an offender unduly heavy or may risk adversely affecting the offender's mental health. These issues, to the extent they exist, can be taken into account at this stage of sentencing.¹⁹ I consider these risks do arise in your case; more so the first. You have in the past presented as suicidal; Dr Eggleston described you as naïve and I accept that the difficulties identified by Dr Eggleston will make your sentence more difficult for you than a person without these issues. So, a further reduction is warranted.

[44] Third, remorse. You wrote a letter to the victims' families during the trial in which you explained in your own words how sorry you were for their losses. You said you regret that you did not stand up, or speak up, to prevent their deaths. I consider your remorse is genuine, rather than just feeling sorry for the situation in which you now find yourself. The Department of Corrections report writer was of the same view. You were willing to undertake a restorative justice process but the victims' family did

¹⁶ Sentencing Act 2002, s 9(2)(a).

¹⁷ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

¹⁸ *R v Wellington* [2014] NZHC 2993 at [37]; upheld in *Martin v R* [2016] NZCA 213 at [14].

¹⁹ *Shailer v R* [2017] NZCA 38 at [48].

not want to and, of course, they are fully entitled to take that stance, and their position is quite understandable.

[45] Finally, I must also take into account your time spent on EM bail.²⁰ The length of time on bail, whether there were any breaches, and the extent to which liberty was curtailed are among the factors relevant to consider.²¹

[46] Mr Hura, you spent five months on restrictive bail conditions pre-trial with a 24-hour curfew. Your lawyers have helpfully collected a number of cases and indicated the reduction that was given in each case for time spent on bail.²² With regard to that range of authorities and the two very minor breaches over that period, I consider a reduction of two months from the starting point is adequate.

[47] In summary, I reduce the starting point of nine years and six months by a little over 15 per cent for your youth, 10 per cent for the mental capacity factors and 10 per cent for remorse. I subtract a further two months to reflect the time spent pre-trial on EM bail.

[48] This results in a final sentence of **six years'** imprisonment. Given your low risks of reoffending and harm to others, there is no need to impose a minimum period of imprisonment.

[49] Mr Hura, if you will you just remain seated while I speak with Mr Pulemoana.

Sentence for Mr Pulemoana

[50] Mr Pulemoana, it goes without saying that the offending for which the jury found you guilty is more serious. The jury found you guilty of murdering James Fleet, albeit as a party and not the principal offender. As I said earlier, I am satisfied you played no direct part in causing the blows to James Fleet with the shovel. That was clearly Mr Hone.

²⁰ Sentencing Act 2002, s 9(2)(h).

²¹ See generally *Keown v R* [2010] NZCA 492.

²² *R v Faisandier* CA185/00, 12 October 2000; *R v Aram* [2007] NZCA 328; *R v Potoru* HC Auckland CRI-2006-092-3877, 14 September 2007; *Keown v R* [2010] NZCA 492; *R v Gray* [2008] NZCA 224; *R v Latifi* [2007] NZCA 372; and *R v Nichols* CA406/02, 16 June 2003.

[51] I will first consider the appropriate sentence on the most serious charge, the charge of murder in relation to James Fleet, and then consider what adjustments should be made to that for your conviction for the manslaughter of Raymond Fleet.

[52] In any conviction for murder, whether it is as a principal or as a party, the law says I must sentence you to life imprisonment unless it would be manifestly unjust to do so.²³ Your lawyers have quite properly accepted that life imprisonment must follow in a case such as this, and I will be imposing that sentence on you today.

[53] The issue I must decide is how long you must spend in prison before you are eligible for release. I emphasise the word *eligible*. There is no guarantee that you will be released after your minimum period has been served. That will be a decision for the Parole Board. A sentence of life imprisonment also means that you will be eligible for the rest of your life to go back to prison after you are released on parole, if you offend again or are otherwise posing a risk to the community.²⁴

[54] In the case of murder, you must spend a minimum of 10 years in prison before you can be eligible for release.²⁵ Before assessing the exact period, I am going to outline some of your personal circumstances that will assist me in deciding the appropriate length of sentence.

Personal circumstances of Mr Pulemoana

[55] Mr Pulemoana you are 27 years old. You are of Niuean and Māori descent and you told the Department of Corrections report writer that you wish to start connecting more to your Niuean background. You also have a stable and longstanding relationship, having been with your partner since you were teenagers, and you have three children together. I have read the various letters provided with your counsel's submissions, and you are clearly thought of as a good dad and family man. The report writer says you became visibly upset at the notion of not seeing your children grow up. I hope that will be a strong incentive for you to work hard to get your life back on track, and be a good role model to your children, and *not* a member of a gang.

²³ Sentencing Act 2002, s 102(1).

²⁴ Parole Act 2002, s 61.

²⁵ Sentencing Act 2002, s 103(2).

[56] Though you had a stable upbringing, it appears that the death of your father hit you hard, and resulted in you becoming involved in gangs. At the time of your offending, you were a prospect in the Mangu Kaha gang and had been in that role for longer than Mr Hura. You say that you no longer wish to associate with gangs. I really hope, that for your and your family's sake, that is genuine on your part.

[57] I find that you are remorseful. The Department of Corrections report writer says you became visibly upset when asked about the victims; particularly James Fleet, with whom you went to school. You also showed awareness and empathy towards the jury and what they had to see during the trial. That shows you have at least some insight into the effect your actions have had on the victims, families and the wider community. I am also aware that you offered to plead guilty to the manslaughter of both Raymond and James Fleet about a month prior to the trial. That also indicates an acknowledgement of your offending.

Does s 104 of the Sentencing Act 2002 apply?

[58] The Crown says that your minimum period of imprisonment should be 17 years. They say this because the law *requires* me to impose that minimum period of imprisonment for especially bad murders, unless it would be manifestly unjust to do so.²⁶

[59] The Crown says James Fleet's murder was especially bad because:

- (a) It "was committed in the course of another serious offence", namely the killing of Raymond Fleet;²⁷ and
- (b) It "was committed with a high level of brutality".²⁸

[60] This murder was indeed violent and senseless.²⁹ Again, your lawyers responsibly accept that the murder itself is of a type that would ordinarily attract the 17-year minimum period. But they also say that taking into account your more limited

²⁶ Section 104.

²⁷ Section 104(1)(d).

²⁸ Section 104(1)(e).

²⁹ See *R v Hone* [2018] NZHC 2605 at [41].

role than Mr Hone in the murder, and matters relating to you personally, it would be manifestly unjust to impose a 17-year minimum period of imprisonment in this case. They suggest a minimum period of imprisonment of around 15 years.

[61] I begin by assessing your degree of culpability in this case. If I conclude that a minimum period of imprisonment of *less* than 17 years is appropriate, I must then consider whether it would be manifestly unjust to nevertheless impose the 17-year period.³⁰

[62] I have had regard to two cases relied on by your lawyers.³¹ In each of those cases the defendant had been convicted as a party to murder, but had not been the one to actually inflict the fatal wounds. In the first case, the defendant was nevertheless considered by the Judge to be the “driving force” behind the offending. A minimum period of imprisonment of 16 years was adopted, and reduced to 11 years to reflect personal circumstances. In the second case, the defendant was convicted of murder as a party to the offending. She had taken the other defendants to the scene for the purpose of carrying out serious violence on the victim and knowing that murder might be a consequence. While present when the attack started, she was not present when the fatal blows were struck. A minimum period of imprisonment of 13 years was adopted.

[63] Your case bears some similarity to another case I have considered called *Marteley*.³² There a group of offenders had planned to steal some chemicals used in the manufacture of methamphetamine. Later, however, they suspected the victim in that case had double-crossed them and deprived them of some of the proceeds of that theft. The victim was therefore lured by two members of the group to an address where it was planned he would be attacked and his money and drugs taken. But when he arrived he was hit in the head with a cricket bat and a tomahawk. He died. Attempts were made to conceal the death by hiding his body. One member of the group received a manslaughter conviction. The other three were convicted of murder and sentenced to life imprisonment with minimum periods of 10, 12 and 14 years respectively.³³

³⁰ *R v Williams* CA 64/04, 20 December 2004 at [52]; *R v Harrison* [2016] NZCA 381 at [41]-[42].

³¹ *R v Lewis* [2018] NZHC 1877 and *Uhrle v R* [2015] NZCA 412.

³² *R v Marteley* HC Hamilton CRI-2009-019-9786, 5 November 2010.

³³ At [3] (offenders AJN and Mr Manukau) and [28] (Mr Marteley).

[64] Mr Pulemoana, you were convicted as a party and not the principal offender in this case. You were not involved directly in the fatal attack on James. I therefore accept your culpability was significantly less than Mr Hone's. I also accept that a degree of fear on your part also reduces your culpability. You are still relatively young. You are also remorseful. As noted, you also offered to plead guilty to manslaughter to both deaths before the trial, demonstrating an acknowledgement of your offending. Taking these factors into account, and against the context of the other cases I have discussed, I consider a minimum period of imprisonment of 14 years would have been appropriate.

[65] I must then consider whether it would be manifestly unjust in such circumstances to impose the minimum period of imprisonment of 17 years. In doing so, I must make an overall assessment, taking into account various criteria in the Sentencing Act.³⁴ Again, I take into account that you were convicted as a party and not the principal offender. You were not central to the offending. In other cases, the absence of direct involvement in the fatal wounds has been a factor telling against the imposition of a 17-year minimum period.³⁵

[66] I have reached the conclusion it would be manifestly unjust to make a leap from a 14 year to 17-year minimum period of imprisonment in your case. This is not a case of marginal differences in personal circumstances or degrees of participation between you and Mr Hone. In my view, the culpability of Mr Hone and you, as principal and party to the murder of James Fleet respectively, is markedly different. I therefore adopt the period I have discussed earlier, namely a minimum period of imprisonment of **14 years**.

Manslaughter of Raymond Fleet

[67] The lead offence in your case is the murder of James Fleet, which, as I have said, I must sentence you to life imprisonment, with a minimum period of imprisonment of 14 years. I can therefore be relatively brief in relation to your conviction for the manslaughter of Raymond Fleet. I should stress that this is not to

³⁴ Sentencing Act 2002, ss 7 to 9, together with the policy of s 104. *Malik v R* [2015] NZCA 597 at [32].

³⁵ *R v Slade* [2005] 2 NZLR 526 (CA) at [51] and [53] and *R v Nicholson* [2014] NZHC 334 at [52].

downplay in any way the senselessness of that killing: it was serious and extremely tragic. But given the life sentence to be imposed for the murder of James Fleet, it cannot effectively “add” to that. I therefore agree with the approach suggested by both the Crown and your lawyers that your sentence for the manslaughter of Raymond Fleet should be concurrent, or served “alongside”, your life sentence in relation to James.

[68] Many of the factors in relation to Raymond’s death that I have discussed in relation to Mr Hura apply equally to you. The jury’s findings mean they accepted that while your presence at the scene assisted Mr Hone, and you knew a serious assault would occur, you did not intend for Raymond to die. You were not personally involved in the fatal attack on him. In those circumstances, I adopt a starting point of **seven years’** imprisonment.

[69] As I have said, about a month before trial, you offered to plead guilty to the manslaughter of Raymond Fleet. The Court of Appeal has said that a willingness to plead guilty to a charge on which you are ultimately convicted justifies a reduction in sentence similar to that available if the conviction had been resolved by a guilty plea.³⁶ Taking these matters into account, I allow a discount of five per cent for what I consider to be genuine remorse, and around a further 10 per cent to reflect that offer to plead guilty. This takes the end sentence on the manslaughter of Raymond Fleet to **five years and eleven months’** imprisonment, to be served concurrently, or alongside, the sentence in relation to James Fleet.

Conclusion

[70] Mr Hura and Mr Pulemoana, would you please now stand.

[71] Mr Hura you are sentenced to **six years’** imprisonment. I impose that sentence concurrently on each of the manslaughter charges. I impose, concurrently, six months’ imprisonment for the two possession charges. That means your final overall sentence is **six years’** imprisonment. I do not impose a minimum period of imprisonment.

³⁶ *R v Jamieson* [2009] NZCA 555 at [39]–[44] and *Hessell v R* [2009] NZCA 450, [2010] 2 NZLR 298 at [40]–[44].

[72] Mr Pulemoana I sentence you to **five years and eleven months'** imprisonment for the manslaughter of Raymond Fleet. You are sentenced to **life imprisonment** for the murder of James Fleet, with a minimum period of imprisonment of **14 years**. Given the sentences are to be served concurrently, your final overall sentence is therefore life imprisonment, with a minimum period of imprisonment of **14 years**.

[73] You may both now stand down.

Fitzgerald J