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**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
CRI-2017-063-4548
[2018] NZHC 3134**

THE QUEEN

v

RICHARD TUWHAKAKORONGO TE ROROA TE KANI

Hearing: 29 November 2018
Appearances: D J McWilliam for Crown
A M M Schulze for Defendant
Sentence: 29 November 2018

SENTENCE OF PAUL DAVISON J

Solicitors:
Crown Solicitor, Rotorua

Introduction

[1] Richard Te Kani you appear for sentence today having pleaded guilty to two charges of manslaughter,¹ one charge of manufacturing methamphetamine,² two charges of being an accessory after the fact to murder,³ and four charges of neglect of a child.⁴ Mr Te Kani you also face two charges of threatening to kill,⁵ but the Crown has indicated that it offered no evidence on those charges and I propose to dismiss them at the conclusion of your sentencing.

[2] However, I commence by acknowledging the family and friends of the two victims, Raymond Fleet and James Fleet, who are present in Court today. Some of you have written victim impact statements in which you have described the profound sense of loss and your distress following the deaths of your much-loved family members and close friends. I have read all the victim impact statements written by members of the Fleet whānau and friends of Raymond and James, and I extend this Court's sincere sympathy to all of you for your loss. Ms Georgina Fleet's statement to the Court this morning was of course heart-wrenching, and reflects the thoughts and feelings of you all. The loss of loved ones in circumstances such as occurred in this case leaves family members and close friends with an ever present and enduring sense of loss as you daily confront your lives without the love and affection and presence of your beloved family members.

[3] This sentencing today is to hold you Mr Te Kani legally accountable for your role in the events that led to the deaths of Raymond and James, but of course the pain, inconsolable sadness and loss that you feel will endure beyond this sentencing today, and the Court recognises that to be so. While I have read and taken account of all of the victim impact statements, I particularly acknowledge the brave and powerful accounts of grief in the victim impact statements of Raymond's mother Georgina, who is also of course James's grandmother, and of James's mother. To ensure that what

¹ Crimes Act 1961, ss 160, 171 and 177.

² Misuse of Drugs Act 1975, s 6(1)(b).

³ Crimes Act, s 176.

⁴ Crimes Act, s 195.

⁵ Crimes Act, s 306(1)(a).

has been so bravely and clearly explained and described by the victims' family in their statements is known and understood by you Mr Te Kani, I shall direct the Registrar to provide further copies of all the victim impact statements to your counsel, and direct that your counsel provide them to you for your close and careful reading.

[4] In sentencing you Mr Te Kani, I necessarily need to recount the facts of your offending and for the family I appreciate that this will be difficult and distressing, but in our system of justice I am required to refer to relevant parts of the summary of facts in open Court.

[5] The sentencing shall proceed as follows. After summarising the facts and referring to the victim impact statements, I shall discuss your personal circumstances. Next I will summarise the submissions of both the Crown and defence, before going on to set out the purposes and principles of sentencing. Finally, I will determine the appropriate starting point for your offending, and then make any adjustments required to take account of your personal circumstances, and to reflect the totality of the offending.

The offending

Neglect of a child

[6] I shall begin by summarising the facts relating to the four charges of neglecting a child, which relate to events which occurred between May and August 2017.

[7] You and your partner, Ms Gibson, reside in Mamaku in the Bay of Plenty. In July 2015 you were appointed the legal guardians of four children, who were aged between three and six years old at the time of the offending in 2017.

[8] The offending came to light when police executed a search warrant at the defendants' Mamaku address in May and again in August 2017. On both occasions, you Mr Te Kani, Ms Gibson and three of the children were at home, the eldest child being away at school. There were a number of dogs at the property – on the first occasion it is said that there were three adult dogs and six to eight puppies. The summary of facts states that on entering the address, the police were confronted with

an overpowering stench from a combination of rubbish and dog faeces. The dog faeces were present in every room of the house, in various stages of decomposition. The dog faeces had been walked into the floor and carpet, and was on the furniture and upon the children's toys. The three children were wandering about the house, treading in dog faeces, and were covered in grime.

[9] You Mr Te Kani were charged with, and have pleaded guilty to, four representative charges of neglecting a child. Ms Gibson was also charged, and on 8 November 2018 she was sentenced to three months' community detention and 12 months' supervision on the charges she faced.⁶

The remaining charges

[10] I turn now to the remaining charges, which all arose out of a plan to manufacture methamphetamine at a Mamaku address.

[11] Mr Te Kani you are a member of the Rotorua Black Power Mangu Kaha chapter. On 2 August 2017, you and other members of Mangu Kaha made arrangements with the victim, Raymond Fleet, to manufacture methamphetamine. The manufacturing was to take place at an address in Tarena Street, Mamaku. The upper level of that property was rented by Mr Fleet's son, Darius Fleet, who agreed to move out while the manufacturing took place. The property owner and landlord lived on the lower level of the property.

[12] You and your brother and co-offender Martin Hone, who is a fellow member of Mangu Kaha, were inexperienced in the manufacture of methamphetamine and so you enlisted the help of an associate of Mr Hone, Mr Sheene Holloway, who was a known methamphetamine cook.

[13] The methamphetamine manufacturing then took place over the next few days. It was somewhat disorganised, as various ingredients and necessary items of equipment had to be purchased from stores during the manufacturing process. The first batch did not yield as much methamphetamine as had been expected, and caused

⁶ *Police v Gibson* [2018] NZDC 23925.

you Mr Te Kani and Mr Hone to suspect that either Mr Holloway or Raymond or Darius Fleet were surreptitiously stealing methamphetamine during the manufacturing process.

[14] Following an incident in which the landlord visited the upper level of the property at Tarena Street, causing you and the others to fear the police would be called, the methamphetamine laboratory was relocated to Raymond Fleet's address at Mamaku on 5 August 2017.

[15] As the manufacturing continued, you Mr Te Kani and your co-offenders Mr Hone, Mr Pulemoana and Mr Hura became increasingly suspicious about the suspected theft of methamphetamine. Your group became aggressive towards Raymond Fleet and Mr Holloway, and at one point Mr Hone struck Mr Holloway with a hammer.

[16] The manufacturing process finished on 6 August 2017. The following day, you Mr Te Kani and Mr Pulemoana conducted several searches of the Tarena Street property in an attempt to locate the methamphetamine you both believed to be missing. Nothing was located.

[17] At around 3.30pm that same day, you Mr Te Kani and Mr Hone drove to the Tarena Street address and took both Raymond and Darius Fleet to a location on Cecil Road, approximately four kilometres outside the Mamaku township. This area borders farmland and bush, and at some point along Cecil Road it becomes almost impassable and accessible only by four-wheel drive vehicles. There, you Mr Te Kani and Mr Hone demanded that Raymond Fleet tell them where the stolen product was. Mr Hone threatened to kill both Raymond and Darius Fleet. When Mr Pulemoana and Mr Hura arrived in another vehicle they joined in demanding to be told where the stolen methamphetamine was. After some time the situation calmed down, however, and the Fleets were driven back to Tarena Street.

[18] Later that same day, at around 6.00pm, you Mr Te Kani together with your associates returned to the Tarena Street address in two vehicles. Seeing the group arrive, Raymond Fleet went outside to talk with them. After a short conversation with

you, he handed you his cell phone and got into his own vehicle. The group then left in a convoy of three vehicles and drove to Raymond Fleet's Mamaku address. There Raymond Fleet left his own vehicle and got into a Mazda MPV vehicle with you and Mr Pulemoana. The three of you then drove to another address, where Mr Pulemoana asked to speak to James Fleet, Raymond Fleet's nephew. James Fleet went outside and then left the address with the three of you in the Mazda MPV. Raymond and James Fleet were then driven to the same area on Cecil Road where Raymond and Darius Fleet had been taken earlier that day.

[19] Mr Hone and Mr Hura were already in the vicinity. They had driven there earlier in an Isuzu Bighorn vehicle in order to bury the components of the clandestine laboratory that had been used to manufacture methamphetamine. Having attended to that task, they then joined the rest of the group. Over approximately the next hour, a series of assaults took place in an effort by you, Mr Hone, Mr Hura and Mr Pulemoana to locate the methamphetamine the group suspected to have been taken.

[20] During this time, Raymond and James Fleet were driven in the Isuzu Bighorn some 300 metres further along Cecil Road into the bush area, where the assaults continued. A particularly violent assault was inflicted on James Fleet while he was seated in the back seat of the Isuzu Bighorn vehicle.

[21] As there was not enough room for you, you did not go with the others in the Isuzu vehicle. The road was unsuitable for the Mazda MPV, and you therefore stayed behind with the Mazda, remaining there for a short period of time before returning to Mamaku. At that time, you appreciated that further assaults might occur to facilitate the return of methamphetamine the group believed to have been taken.

[22] While you were absent, both Raymond and James Fleet were killed as a result of violent assaults to their heads with a spade. James Fleet was killed because he had witnessed his uncle's death, and the group decided that they could not risk taking him back to Mamaku. Raymond and James Fleet were left lying on the ground, and the group returned to Mamaku. You dropped Mr Hone off at Ngongotaha, and then you initially continued on towards Rotorua.

[23] However, having heard what had happened, you contacted Mr Pulemoana and Mr Hura and told them that they had to return to Cecil Road to move the bodies. You then drove back to Cecil Road and met up there with Mr Hura and Mr Pulemoana, and the three of you moved James Fleet's body several metres off the road into the blackberry bushes and covered his body in an attempt to conceal it. The three of you then dragged Raymond Fleet's body some 25 metres further along the road, and about 15 metres into the bush area. There you attempted to conceal his body by hiding it in blackberry bushes and under a small amount of foliage and debris. You all then left the scene.

[24] You Mr Te Kani returned to your home in Mamaku, while Mr Pulemoana and Mr Hura drove the Isuzu Bighorn to Rotorua and arranged for it to be sold. It was later stripped down and an attempt made to clean it.

[25] Ten days later, on 17 August 2017, the Police located the bodies of Raymond and James Fleet. Post mortem examination of his body by a pathologist established that Raymond Fleet had suffered massive blunt force trauma to the head from multiple blows, consistent with the use of an instrument such as a spade. Raymond Fleet's head was massively deformed. He had also suffered multiple rib fractures and had a substantial amount of blood in his lungs, indicating that he had received a violent beating whilst still alive.

[26] James Fleet also suffered massive blunt force trauma to the head. He had been struck approximately six times. One of his injuries was a long linear cut to the back of the head consistent with the use of an object having a well-defined and sharp edge – such as a spade. He also suffered fractures to both cheek bones, bruising to the base of his neck and one fractured rib.

Victim impact statements

[27] As I have already mentioned, members of Raymond and James's whānau have prepared and provided victim impact statements to the Court, in which they express profound grief and distress at the loss of their beloved family members. They are heartbroken by the deaths and particularly by the brutal manner in which their family members were killed.

[28] It is abundantly clear from these victim impact statements that both Raymond and James not only had close family connections but also close connections with a wider group of friends and wider whānau and that they were dearly loved. Both had their lives cut abruptly short. Raymond's children are deprived of their father and the paternal supervision and support that he would give them throughout their lives. James was only 25 years old. His family says that he was rebuilding his life at the time of his death and working hard at his job. His family's lives will never be the same again, and their enormous grief and loss will cause enduring pain.

Mr Te Kani's personal circumstances

[29] You are now 30 years old. You have a history of relatively minor criminal offending, including convictions for breaching community work, driving-related offending, disorderly behaviour and fighting in a public place. Your criminal offending discloses a pattern of minor drug-related offences, including possession and cultivation of cannabis, and possession of methamphetamine. You have not however previously been convicted of any serious violent offending or any serious drug offending such as manufacture of a Class A drug. Nor have you been sentenced to imprisonment before, having previously received community-based sentences.

[30] I have read both a pre-sentence report and a comprehensive Specialist Māori Cultural Assessment report provided pursuant to s 27 of the Sentencing Act.⁷ The cultural assessment report was prepared following meetings with you Mr Te Kani at Waikeria Prison prior to the preparation of that report. The author of the report describes your upbringing in Hastings and Rotorua, noting that you identify as Māori and are affiliated to Te Arawa. However, you have limited understanding and knowledge of te reo or tikanga Māori, although you say that you are proud of your heritage and are eager to learn more. The report explains that whānau has always been important for you, and that you have been particularly influenced by your brothers who have provided the most consistent relationships for you since your mother's death. Unfortunately, they have role modelled anti-social behaviours such as gang

⁷ The Specialist Māori Cultural Assessment (SMCA) report was prepared by WERA Consultants Ltd. SMCA is a cultural assessment service that engages with and assesses offenders within and outside of prison with the aim of identifying their cultural background and needs required to support the offender away from criminal activities, environments, and associates.

involvement, crime, and drug and alcohol abuse. The report indicates, Mr Te Kani, that you have feelings of remorse for your offending and that you are open to some reconciliation with the families of your victims. The report further notes that you wish to leave behind the negative environment and influences you have experienced in Mamaku and move away to the South Island to live there with a cousin, and undertake a fishing course and begin to undertake a te reo Māori course.

[31] The pre-sentence report presents a distinctly less positive picture. It says that your drug use, propensity for violence and involvement with offending-supportive associates are the primary contributors to your offending. The report writer also expressed concern at your anti-authoritarian attitude, your sense of entitlement, and denial of the present offending. In the interview for the pre-sentence report, you blamed the death of the two victims on your co-offenders and said that you were trying to protect the victims from the assaults. However, you also said that you felt a sense of hurt for the families of the two victims, stating that what happened “went too far” and “wasn’t supposed to go that far”.

[32] A number of letters of support for you have been filed with the Court. I have read them all. They include a letter from your partner, Ms Gibson, and other immediate family members as well as a number of close friends. They describe you as big-hearted, kind, forgiving, loyal to your family and friends, and a family-oriented person. Unfortunately, none of those qualities were evident on the occasion of these events.

Crown submissions

[33] Mr McWilliam for the Crown adopts the manslaughter charges as the lead offences and says that for those offenders present at the time Raymond and James Fleet were killed, a starting point for sentencing of 12 to 13 years’ imprisonment would be appropriate. He acknowledges, however, that you were not present at the time, although you had an appreciation, he says, that further violence would occur. In light of that factor, Mr McWilliam submits that a starting point of 10 to 11 years would be appropriate for you Mr Te Kani in respect of the death of Raymond Fleet. Furthermore, to recognise that there were two deaths which resulted from a closely

connected series of events, the Crown submits that an uplift of two to three years is appropriate so as to reflect the death of James Fleet.

[34] On the charge of manufacturing methamphetamine, the Crown refers to the sentences imposed on co-offenders Mr Hone and Mr Holloway, and submits that a starting point of seven years should be adopted, cumulative on the starting point for the two manslaughter charges.

[35] On the two charges of accessory after the fact to murder, the Crown submits that an uplift of two and a half years is warranted on each charge to take into account the callous treatment of the two victims.

[36] On the four neglect of children charges, the Crown notes that your co-offender, your partner Ms Gibson, received a community-based sentence. Accepting that the two of you are equally culpable, and that parity of sentence would be appropriate if you were not also to be sentenced on more serious offending, the Crown seeks an uplift of one month's imprisonment on those charges.

[37] Adding those starting points together on a cumulative basis, the Crown therefore reaches an end starting point of between 21.5 to 23.5 years' imprisonment before considering totality and personal factors. Taking into account totality principles, the Crown accepts that a sentence of between 21.5 to 23.5 years would be wholly out of proportion to the totality of your offending Mr Te Kani. The Crown therefore submits that an end starting point of between 16 and 17 years would appropriately reflect your culpability.

[38] Turning then to personal factors, the Crown does not seek any uplift in relation to or in recognition of your previous criminal convictions. The Crown submits that the only mitigating factor is the guilty pleas that you entered and notes that they were entered some four days prior to the scheduled commencement of your trial. Mr McWilliam says that any discount awarded for those pleas should be nominal to reflect their late entry.

Defence submissions

[39] Mr Schulze submits that the Court should adopt nominal starting points for each charge as a guide to setting a global starting point to reflect the totality of the offending. Concurrent sentences can then be imposed.

[40] Beginning with the manslaughter charges, Mr Schulze emphasises that you were not present at the time of the fatal assaults, were not aware of the weapon that was to be used, and he submits that you Mr Te Kani were in fact attempting to protect the victims throughout. He further submits that a starting point in the range of four to six years' imprisonment is appropriate on the manslaughter charges.

[41] On the accessory after the fact charges, Mr Schulze submits that you Mr Te Kani felt compelled to act after learning of the deaths. He says that a starting point of two years' imprisonment is appropriate on those charges.

[42] On the manufacturing of methamphetamine charge, Mr Schulze refers to the sentencing of your co-offenders and agrees with the Crown that a starting point of seven years' imprisonment is warranted.

[43] On the neglect of children charges, Mr Schulze notes that they involved an omission to act, rather than any discrete action, and that the children did not suffer any actual injury or adverse health effects. He submits that absent the Crown charges, they would not have justified a period of imprisonment. He accordingly seeks a concurrent sentence with no uplift to the starting point.

[44] With regard to the totality principle, Mr Schulze submits that a starting point of 10 to 13 years' imprisonment appropriately reflects your culpability on all charges.

[45] Mr Schulze then seeks a discount of 10 per cent to reflect your guilty pleas, noting that timing is but one factor to be considered when determining the discount for plea.

Purposes and principles of sentencing

[46] The purposes which are relevant to sentencing you Mr Te Kani today are to hold you accountable for the harm you have done to the victims and to the community and to promote in you a sense of responsibility for, and an acknowledgement of, that harm.⁸ I also consider it necessary to clearly denounce the conduct in which you were involved, and to deter you and others from acting in a similar manner.⁹

[47] In sentencing you Mr Te Kani I bear in mind that I must take account of the gravity of the offending in this particular case, including your degree of culpability as an individual offender, and the general desirability of consistency with sentencing levels in cases involving similar offences and facts.¹⁰

Approach to multiple charges

[48] When sentencing on multiple charges, the Court has a choice between imposing cumulative and concurrent sentences. In the present case, I propose to impose concurrent sentences on the manslaughter and accessory charges, as I consider that they are similar in nature and form a connected series of offences.¹¹ I will impose cumulative sentences on the charge of manufacturing methamphetamine and the four neglect charges, which I consider to be different in kind from the other offending.¹²

Starting point

[49] I will now determine the appropriate starting point on each of the charges. This involves an assessment of the factors relevant to the offending only, leaving aside consideration of personal factors.

Manslaughter and accessory charges

[50] I begin with the two manslaughter charges, which I consider to be the most serious charges that you face. Manslaughter carries a maximum sentence of life

⁸ Sentencing Act 2002, ss 7(1)(a) and 7(1)(b).

⁹ Sentencing Act 2002, ss 7(1)(e) and 7(1)(f).

¹⁰ Sentencing Act 2002, ss 8(a) and 8(e).

¹¹ Sentencing Act 2002, s 84(2).

¹² Sentencing Act, s 84(1).

imprisonment.¹³ There is no tariff sentencing case for manslaughter, as the circumstances in which the offence may be committed vary widely. In the present case I do not find *R v Taueki* to be particularly useful as a guideline, given that you were not present at the time the fatal assaults occurred.¹⁴ Instead, I will have regard to the aggravating and mitigating features of the offending and comparable manslaughter cases.¹⁵

[51] Mr Schulze submits that your criminality is based upon you creating an opportunity for the two deceased to be assaulted, but without an appreciation of the extreme nature and extent of the fatal assaults. It is important to clearly understand that you are being sentenced for the offence of manslaughter today, and not the offence of murder, which reflects the fact that you did not have the intention to kill the victims, or to cause them harm that you knew would be likely to cause their death. The assaults on the victim went much further than you intended.

[52] However, the summary of facts indicates that you Mr Kani played more than a peripheral role in the overall incident: like the others, you were angry at the suspected theft of methamphetamine, and wanted Mr Raymond Fleet to account for the methamphetamine that you believed to be missing. For that reason you went with Mr Hone, your brother, when he threatened to kill Raymond and Darius Fleet earlier that day, and you took the two victims to the location at Cecil Road prior to the fatal assaults. Despite what is said in the cultural report, in my view there is nothing in the summary of facts to suggest that you were under the influence of your co-offenders, let alone subject to any form of pressure or duress. Mr Te Kani you yourself took part in the initial assaults on the victims and at the point when you left them, you were aware that further assaults would take place in an effort to locate the methamphetamine the group believed to have been stolen. The victims were plainly vulnerable in that they were outnumbered four to two and had been taken to an isolated location in which there was no possibility of them calling for help.

¹³ Crimes Act 1961, s 177(1).

¹⁴ *R v Taueki* [2005] 3 NZLR 372 (CA).

¹⁵ Accepted as an alternative approach in *R v Tai* [2010] NZCA 598 at [12].

[53] The only mitigating factor of the offending is that you Mr Te Kani were not yourself present at the time of the fatal assaults, which meant you were convicted as a party to the crime rather than as a principal offender. I also accept that you did not know the offenders would use a spade to attack and assault the victims, as it is not clear on the summary of facts whether you were aware the group had a weapon with them.

[54] However, I place little weight on Mr Schulze's submission to the effect that you were actively trying to protect the victims throughout, and that you intervened on occasion to stop further assaults from taking place. Mr Schulze relies on and refers to the formal witness statements taken by the Police and your own comments in the pre-sentence report to support this submission, but I principally sentence you Mr Te Kani based upon the agreed summary of facts to which you pleaded guilty.

[55] I have also had regard to the case law cited by counsel, and I note that a range of starting points between four to eight years have been adopted in cases involving parties to manslaughter where the defendant did not take part in the final, fatal assault on the victim.¹⁶ In my view the present case falls toward the upper end of that range, given your active participation in the early assaults, your anticipation that further assaults would take place, and your key role in isolating the victims. Accordingly, I adopt a starting point of eight years' imprisonment on the first manslaughter charge, uplifting that starting point by three years to reflect the second manslaughter charge.

Accessory after the fact to murder

[56] I turn now to the appropriate uplift for the charges of accessory after the fact to murder, which each carry a maximum penalty of seven years' imprisonment.¹⁷ Again, there is no tariff sentencing case for this charge.

[57] I have had regard to a number of cases where the accessory assisted in disposing of the body,¹⁸ and I note that a starting point of two years and six months'

¹⁶ See *R v Madams* [2017] NZHC 81; *R v Brider* 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; *R v Parker* [2012] NZHC 2458.

¹⁷ Crimes Act, s 176.

¹⁸ *R v Wilkie-Morris* [2016] NZHC 259; *R v Crook* [2016] NZHC 215; *R v Vaux-Phillips* [2012]

imprisonment has been adopted in cases where the body was subjected to indignities or treated in a particularly callous way, for example the cutting off of body parts or disposing of them separately.¹⁹ A sentence of three years was imposed where bodies were disposed of at sea, such that they were not able to be recovered.²⁰

[58] In the present case I note that the attempt at concealment of the bodies of the deceased victims by dragging them into the blackberry bushes and covering them was relatively unsophisticated, although I note that it was a remote bush area and they were not discovered for some 10 days. On my reading of the summary of facts you Mr Te Kani were the instigator of the decision to move and conceal the bodies; you were by no means compelled to do so as has been suggested.²¹ I consider a starting point of two years' imprisonment to be appropriate on each accessory charge.

[59] To reflect the two accessory charges, an uplift of 18 months will be applied to the manslaughter starting point.

Manufacture of methamphetamine

[60] Manufacturing methamphetamine carries a maximum sentence of life imprisonment.²² The tariff sentencing case for the manufacture of methamphetamine is *R v Fatu*.²³ It prescribes sentencing bands depending on the quantum of methamphetamine manufactured.

[61] Mr Schulze submits that in the present case the quantum and quality of methamphetamine that was manufactured is unknown. Those matters were not included in the Crown summary of facts. However, Mr Hone and Mr Holloway were both sentenced on the basis that the total yield of the operation was around 120 grams of methamphetamine. That placed their offending within band two of *R v Fatu* (four years to 11 years' imprisonment). A starting point of eight years was adopted in Mr

NZHC 1119; *R v Raroa* [1987] 2 NZLR 486 (CA); *R v Leach* HC Wellington CRI 2006-085-4461, 27 October 2006; and *R v Cullen* HC Tauranga CRI-2008-070-2188, 23 April 2008.

¹⁹ *R v Leach* HC Wellington CRI 2006-085-4461, 27 October 2006; see also *R v Wilkie-Morris* [2016] NZHC 259 where the body was pushed off a cliff.

²⁰ See *R v Raroa* [1987] 2 NZLR 486 (CA).

²¹ Compare *R v Cullen* HC Tauranga CRI-2008-070-2188 where there was an element of compulsion to the assistance.

²² Misuse of Drugs Act, s 6(2)(a).

²³ *R v Fatu* [2006] 2 NZLR 72 (CA).

Holloway's case, and a sentence of seven years was imposed on the manufacturing charge for Mr Hone.

[62] It appears from the summary of facts that you Mr Te Kani were an organiser of the manufacture and an active participant in the process itself. You arranged with Raymond Fleet to use the property at Tarena Street, and together with Mr Hone you collected Mr Holloway from Auckland to assist in the manufacture. In my view your culpability is equal to that of Mr Hone. A starting point of seven years' imprisonment is appropriate.

Neglect of a child

[63] I turn next to the neglect of children charges, which involve a failure to clean up dog faeces such that the house in which four young children were living was in a highly unsanitary condition. It is notable that the police officers described the stench on entering the property as being so overpowering that it caused several of them to dry retch. As Mr Schulze points out, the neglect charges involve an omission to act rather than any specific action, but that cannot be a mitigating factor given that the basis for a neglect charge will typically be an omission to act.

[64] The sentencing notes for your partner have been made available and I note that she was sentenced to three months' community detention and 12 months' supervision. You are equally culpable on these charges, and for reasons of parity I therefore consider that a community-based sentence would have been appropriate were it not for the additional charges you face. I consider it appropriate to impose a sentence of one month's imprisonment on each of the neglect charges, to be served concurrently with one another.

Summary

[65] To summarise the position so far, I have adopted a starting point of 11 years on the two manslaughter charges, with an uplift of 18 months to reflect the two accessory charges, reaching 12 years and six months in total.

[66] I add a cumulative sentence of seven years' imprisonment on the manufacturing charge, and one month's imprisonment to reflect the four neglect charges.

[67] I therefore reach an end starting point of 19 years and seven months' imprisonment.

Adjusting the starting point

[68] The Crown does not seek any uplifts for previous convictions and I agree that no uplift is warranted.

[69] Mr Schulze does not seek any discounts for personal mitigating factors beyond the guilty pleas, although he has submitted the letters of support and the s 27 cultural report for the Court's consideration. I have read those letters of support and although they describe your positive qualities, Mr Te Kani, as I have said, those qualities were not present during the events of this offending and I am not prepared to give any discount for previous good character in light of your history of prior criminal offending.

[70] I have also given careful consideration to the Specialist Māori Cultural Assessment report, which records that you have been subject to gang influences and a culture of drug and alcohol consumption from a young age. Those influences no doubt contributed to your involvement with the others which led to the present offending, although I reiterate that there is nothing to indicate that you were subject to any compulsion or urging at any time in the course of these events. In my view there is nothing in the cultural report that would suggest your personal circumstances warrant a discount at sentencing.²⁴ However, the report is encouraging in that it sets out a detailed plan for you to move to the South Island upon release and to commence a new life away from your gang associates, with the support of your cousin.

²⁴ See *R v Jolley* [2018] NZHC 93 at [78]–[79], where Katz J referred to the deprivation the defendant had suffered, which had no doubt contributed to his adoption of a gang lifestyle and an associated life of crime. Justice Katz did not consider that a discount was warranted to reflect a general background of social and economic disadvantages.

[71] Mr Te Kani your guilty pleas were entered just four days before your trial, and as such they were not entered at the first reasonable opportunity.²⁵ Nonetheless, there is value in guilty pleas being entered even when shortly before trial, and this should generally be reflected at sentencing. Mr Schulze has pointed out that there were family overtones to this case and that following Mr Hone's plea, the situation for you may have been viewed somewhat differently. In any event, says Mr Schulze, your pleas of guilty, albeit late in the piece, should be reflected by a reduction of your sentence.

[72] I consider that allowing a discount slightly under 10 per cent is an appropriate recognition of your guilty pleas and the consequential saving of time and resources, and the avoidance of your trial that the entry of those pleas resulted in.²⁶

Totality

[73] Applying a discount of approximately 10 per cent to the end starting point total of 19 years and seven months, I reach an end sentence of 17 years and eight months' imprisonment. At this point, I must step back and consider whether that sentence appropriately reflects the totality of the offending. Where cumulative sentences are imposed, they must not result in a total period of imprisonment that is wholly out of proportion to the gravity of the overall offending.²⁷

[74] I take into account at this stage the sentence imposed on your co-offender, Mr Hone, as it is necessary to achieve consistency in sentencing co-offenders. Mr Hone was convicted of two charges of murder, two charges of threatening to kill and one charge of manufacturing methamphetamine. He was sentenced to life imprisonment with a minimum non-parole period of 20 years.²⁸ Mr Hone was significantly more culpable than you Mr Te Kani, as Mr Hone inflicted the fatal blows on the victims using a weapon with murderous intent. By comparison to the sentence imposed on Mr Hone, and by reference to the gravity of your overall offending, I consider that an end sentence of 17 years and eight months' imprisonment is too high. I accordingly

²⁵ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [75].

²⁶ See *Martel v R* [2018] NZCA 305 at [46]–[48], where a discount of 10 per cent was upheld as appropriate for a guilty plea entered on the first day of trial.

²⁷ Sentencing Act, s 85(2).

²⁸ *R v Hone* [2018] NZHC 2605.

reduce your end sentence to a total of 15 years' imprisonment, and I have adopted a combination of cumulative and concurrent sentences to produce that total sentence.

Result

[75] Mr Te Kani, please stand.

[76] On each charge of manslaughter, you are sentenced to eight years' imprisonment. Those sentences are to be served concurrently.

[77] On each charge of accessory after the fact to murder, you are sentenced to two years' imprisonment. Those sentences are to be served concurrently with one another and with the sentences imposed on the other charges.

[78] On the charge of manufacturing methamphetamine, you are sentenced to seven years' imprisonment. That sentence is to be served cumulatively on the sentences imposed on the other charges.

[79] On each charge of neglecting a child, you are sentenced to one month's imprisonment. Those sentences are to be served concurrently with one another and with the sentences imposed on the other charges.

[80] This results in an effective end sentence of 15 years' imprisonment.

[81] As the Crown has not offered any evidence on the two charges of threatening to kill, I dismiss those charges pursuant to s 147 of the Criminal Procedure Act 2011.

Paul Davison J