

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

**I TE KŌTI MATUA O AOTEAROA  
WAIHŌPAI ROHE**

**CRI-2018-425-000010  
[2018] NZHC 3239**

**THE QUEEN**

v

**BRAYDEN MARK WHITING-ROFF  
CHRISTOPHER JAMES BROWN  
LAURA ELIZABETH JOY SCHEEPERS**

Hearing: 10 December 2018

Appearances: R W Donnelly for Crown  
P J Shamy and K H Cook for Defendant Mr Whiting-Roff  
F E Guy Kidd QC and L C Preston for Defendant Mr Brown  
P B Redpath and K M Barker for Defendant Ms Scheepers

Judgment: 10 December 2018

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**SENTENCING NOTES OF DUNNINGHAM J**

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**Introduction**

[1] Brayden Whiting-Roff, Christopher Brown, Laura Scheepers you are all here for sentence today in relation to the death of Jack McAllister.

[2] Mr Whiting-Roff you pleaded guilty to murder before the trial. Mr Brown you were found guilty of murder as a party by the jury at trial, and Ms Scheepers you were found guilty of manslaughter by the jury at trial.

[3] Mr Whiting-Roff you are also here for sentence on another assault.<sup>1</sup>

**Brayden Whiting-Roff**

[4] I will deal first with the charge against you Mr Whiting-Roff.

[5] As you know, the charge of murder arose out of the events which occurred on 7 June 2017. You knew the victim, Jack McAllister, or Jade Fearn as his birth family knew him, as did all the other defendants who were charged in this matter.

[6] Over the preceding months there had been ongoing issues between Mr McAllister and some of the defendants, including you. Indeed, there was an incident which occurred exactly a month earlier, where you presented a knife to Jack McAllister and were convicted in relation to that. These issues came to a head on 7 June last year. You had heard that Mr McAllister had interfered with a child relative of Mr Brown and had engaged in other sexually inappropriate behaviour, and you and various other defendants expressed strong views about that on social media and in discussions which took place in the later part of that day. That evening, your co-defendant Chris Brown put a post on Facebook, saying that he wanted to find Mr McAllister. Negative comments followed that posting about Jack McAllister and you added “Jack’s a gonna” [sic – goner]. There was also evidence at trial that you were actively driving around, looking for Mr McAllister, that day.

[7] At approximately 8.00 pm, Ms Scheepers, Mr Brown and Ms Dickey, three of your co-defendants, met at Subway in Wachner Place. There they discussed Mr McAllister and their intention to have him assaulted and plans began to firm up to achieve this. While you were not at that meeting, you and the other defendants, with the exception of Ms Scheepers, met at around 10.00 pm, at 114 Ettrick Street, where Mr Brown and some of the other defendants lived. It was there that the plan to lure Mr McAllister to a location where he could be assaulted, firmed up.

[8] When you and the others were in the bedroom together at Ettrick Street, you brandished a Bear Grylls style hunting knife that you had stolen from an associate

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<sup>1</sup> Under s 196 Crimes Act 1960.

earlier that day. You told the others present that you intended to use it and that you were going to kill the victim.

[9] Around the same time, Ms Scheepers contacted the victim in order to lure him to a location where the attack could take place. She then sent a text to him inviting him to the Stadium Southland carpark on the pre-text of having sex. The victim and his friend, Braydon McKay, drove to the stadium and waited for Ms Scheepers. When she arrived, she met up with Mr McAllister and they went and sat in the grandstand of the athletics field. She continued to communicate with your group by texts.

[10] You, Mr Brown, Ms Dickey, Mr Sparrow, and two others took a car from Ettrick Street and arrived at the Isabella Street entry to the Stadium Southland carpark at around 11.00 pm. When Ms Scheepers signalled by text that it was time to come in, your group then split, with some of the group walking into the carpark area through the Isabella Street entrance and the remainder driving around into the Yarrow Street entrance and entering the carpark from that location, that covered off both exits available to the victim. When his friend alerted him to you and two others running towards them in the carpark, they both attempted to run back to their motor vehicle. However, they were confronted by you and Mr Brown. Although the victim got into the motor vehicle, he was dragged out and assaulted by you and Ms Dickey. You then produced the hunting knife and began attacking the victim with a combination of punches and stabs to various parts of the body.

[11] When he attempted to escape to the grassed area beside the running track, you followed him. You continued to stab him while he was being punched by Ms Dickey. He eventually managed to stagger back to his motor vehicle, but he was pursued by you and Ms Dickey. She continued to punch him while you stabbed him. In total, he was stabbed 14 times. The attack only stopped when the victim's friend managed to start the vehicle and drive off with him in it.

[12] You and the other defendants got back into the vehicle and disposed of the knife in an area near Queens Park.

[13] The victim was driven to a family member's address where he collapsed on the footpath and an ambulance was called. He was taken to hospital but unfortunately he died of his injuries a short time later.

[14] Police were called and you were located. When you first spoke to police you told them that you had stabbed Jack McAllister because he was a "kiddy fucker". You stated "I stabbed Jack heaps of times in the kidney area, stomach, shoulder and around the neck, and may be even the leg as well as punching and kicking him". When you were asked why you had stabbed Jack McAllister you replied "fucken put him under" and you explained "I'm being 100 per cent honest I wanted to kill him".

### **Victim impact statements**

[15] I have read the victim impact statements from Mr McAllister's birth parents, Cyril Fearn and Vicky Crosswell, and from his foster parents Bridget and Grant McAllister and from his younger sister, Mikayla, whom they also foster. They have all been deeply affected by Mr McAllister's death. His birth parents have both been on medication for depression since his death and, for Mr Fearn, there is the added trauma of having Jack turn up on the night in a critical condition and not being able to save him. They have also had to help their own families, including their other children, cope with what has happened.

[16] The victim impact statements from Jack's foster parents, Bridget and Grant McAllister, are particularly poignant. They gave so much to help Jack experience a happy loving family despite his background and the problems he had. They loved him and they were proud of him and they are devastated that this boy who, as they say, was naïve, and easily led, ended up dying this way. They are now simply trying to put all their energy into staying strong for his sister Mikayla and they continue to provide support and love to her. As I said at the earlier sentencing of Ms Dickey, I am enormously impressed with the love and energy they put into trying to give Jack a good life and I believe they did everything they could to help this young man.

[17] I think it is important to say at this point that Jack McAllister obviously had severe behavioural and cognitive issues. They were every bit as debilitating as the

various issues which have been raised today on behalf of you and the other two defendants. I think it is ironic that he never got the chance to account for his behaviour in a place such as this Court, where the penalty he would receive for any wrong he did could take those factors into account, not the penalty that you meted out to him that night.

[18] As your lawyer will have explained to you, the usual sentence for murder is life imprisonment. Neither the Crown nor your lawyer suggest there are circumstances which would warrant a finite sentence being imposed.<sup>2</sup> The main issue in this hearing is what minimum period of imprisonment should be imposed, when the law says it must be at least 10 years.<sup>3</sup>

[19] The starting point for the MPI has to be established having regard to the aggravating and the mitigating features of your offending, and then that can be uplifted up or discounted having regard to aggravating and mitigating features that relate to you.

[20] In terms of the starting point, the Crown notes that the seriousness of the offence is aggravated by having multiple attackers and by the use of the weapon.<sup>4</sup> Furthermore, you planned to kill Mr McAllister and that plan evolved over a number of hours. That premeditation is also an aggravating feature.

[21] The Crown notes that Ms Dickey received a starting MPI of 15 years and that parity with her sentence is important. It says that your role in the offending was greater than Ms Dickey's and the starting MPI needs to reflect that. It submits that a starting MPI of 15 years and six months would be appropriate.

[22] In terms of uplifts or discounts, the Crown says that you have prior violence convictions, including for possession of a knife in a public place which involved you threatening Mr McAllister, and this warrants a modest uplift of two months. The Crown also accepts that you should receive a discount for your diagnosis of foetal

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<sup>2</sup> Sentencing Act 2002, s102.

<sup>3</sup> Section 103.

<sup>4</sup> I do not consider the loss of life can be considered an aggravating feature of the charge of murder as the Crown suggest.

alcohol spectrum disorder (FASD). However, it submits that the medical reports do not clearly link your disability as causative of this offending, and they also put it at the lower end of the spectrum. For this reason, the Crown distinguishes your case from that in *Pomare v R*, where the defendant was 16 years old and a discount of four years was given for his youth and for his FASD.<sup>5</sup> The Crown submits that a discount of one year would be appropriate.

[23] The Crown also acknowledges that you are entitled to some discount for your guilty plea, but it says it should be modest having regard to the strength of the Crown case and the lateness of the plea. It suggests a further discount of six months would be ample. The Crown submitted that your MPI should be 14 years and 2 months.

[24] As I said, your lawyer accepts that a life sentence must be imposed, but submits that the MPI proposed by the Crown is too high. Your lawyer says, instead, it should be between 14 years and 14 years and six months. Mr Shamy also submits there should be no uplift for previous offending against Mr McAllister because it was not severe and because a sentence of life imprisonment is already bordering on crushing for someone with your mental impairments.

[25] Your lawyer has fully explained to the Court the role FASD plays in your life generally, and in this offending. Your background circumstances, are all, in his submission, explained by this diagnosis. As a result of this impairment, he says you are less in control of your cognitive faculties and you are less able to exercise emotional restraint. That means when you heard the accusations of sexual assault on young women and children which were made against the victim, you lacked the forethought and the cognitive ability to stop, think and analyse. He also says your anger was bolstered by your own experiences of being bullied as a child. He says I should not make too much of the suggestion your offending was premeditated in this case. In his view, you did not create the plan to harm the deceased, but you were caught up in the plan that was set in motion by the others, and for these reasons, Mr Shamy submits that your culpability is lower than someone who does not suffer such an impairment.

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<sup>5</sup> *Pomare v R* [2017] NZCA 155.

[26] He also says that FASD will make a lengthy prison sentence disproportionately difficult. In addition, he says that deterrence is less important when I am sentencing you given your mental impairment.

[27] Finally, while Mr Shamy acknowledges that your guilty plea came shortly before trial, he says that it was timely given all the circumstances. He needed to test the admissibility of the statements you made to police, particularly after a psychiatrist questioned their reliability. He also needed to take the steps of engaging a clinical psychologist when he was advising you on the consequences of that plea. These processes all took time. However, he says you pleaded guilty almost immediately after the Court ruled your statements admissible and in those circumstances, he says the discount for your guilty plea should be significantly more than the Crown suggests.

[28] Now, in addition to his submissions, I have a pre-sentence report prepared by the Department of Corrections, I have an assessment by a consultant clinical psychologist, Amanda McFadden, and I have letters from your mother, sister, and grandparents, and a letter from you. They paint a picture of someone who can be kind but is quick to violence, and is unable to control his emotions. It is clear to me that your family loves you deeply and have done their level best to support you and deal with your behaviour. However, they have struggled to deal with your behavioural issues and they have felt there has been lack of support for them and for families in similar situations. Your diagnosis of FASD has been recent and your family is still trying to get to grips with that.

[29] At the time of your offending you were living in an unstructured and transient lifestyle. You were more or less homeless, you could not hold down work, you associated with anti-social peers and you struggled with substance abuse. It seems that since you have been in prison, you have been much more stable. You work full time in the kitchen, and your family visits you every week. You are more settled and happy, and your mental health issues are better regulated. This information indicates to me that you have potential, in a structured environment, to lead a constructive life, but you are vulnerable, particularly given your desire to fit in with others, to going back to that offending behaviour.

[30] So with that information in mind, I now turn to how you should be sentenced. Clearly it is a sentence of life imprisonment. I accept the Crown submission that the starting MPI should be set at 15 years and six months, particularly because parity with Ms Dickey's sentence is important. Your involvement was greater than Ms Dickey's. You were the principal offender as you wielded the knife and inflicted the wounds that caused the victim's death. In my view, the assault, overall, was at least as serious as that in the case of *Uhrle*, where three men armed with knives set upon the victim after a few minutes of discussion. They received starting points of 15 years.<sup>6</sup> The attack in this case was frenzied, with you punching and stabbing the victim 14 times, and from the CCTV footage, we know that that attack lasted for several minutes. So, the degree of premeditation was considerably greater, in my view, than in *Uhrle*. You had presented a knife to Mr McAllister a month before, and that day, you stole the knife you intended to use in the attack. You had also told the others beforehand that you intended to kill Mr McAllister.

[31] However, I would not uplift for your previous offending as it is relatively minor, and I consider it is recognised in the weight I have given to premeditation as an aggravating factor.

[32] Your diagnosis of FASD, while not at the most serious end of the spectrum, clearly had a significant impact on your life. Ms McFadden says in her report that:

[You have] consistently demonstrated poor capacity to learn from [your] past mistakes and from punishment; and [your] capacity to anticipate the consequences of [your] actions also appears to have been historically poor. These are all factors that have placed [you] at heightened risk of offending... It is therefore [her] opinion that there is a nexus between the various ways that [your] FASD has manifested in [your] offending.

[33] I accept that, as was stated in the decision of *E (CA689/10) v R*, impaired mental functioning is relevant to sentencing.<sup>7</sup> These include: reducing what we call the "moral culpability of the offending", affecting whether the sentence needs to be imposed for deterrence, and affecting whether the sentence will be more burdensome

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<sup>6</sup> *Uhrle v R* [2015] NZCA 412.

<sup>7</sup> *E(CA689/10) v R* [2010] NZCA 13, (2011) 25 CRNZ 411 at [70].

to the offender. In my view, a discount of two years on the MPI should be given to recognise the combination of your relative youth and your, then undiagnosed, FASD.

[34] I also accept Mr Shamy's explanations for the timing of your guilty plea. However, as the Crown says, the case against you was strong in any event. In my view, your guilty plea should attract a further discount of one year.

[35] Those discounts would take your final sentence for murder to life imprisonment with an MPI of 12 years and six months.

[36] You are also here for sentence on an assault charge because, on 10 September 2017, you were involved in an assault on another inmate at Invercargill Prison. You had pleaded guilty to that assault and need to be sentenced on this charge. The Crown only seeks a concurrent sentence in the region of two months. I accept that that is appropriate and that is what I will impose.

### **Christopher Brown**

[37] I turn now to the sentencing of you Christopher Brown. In terms of the facts of your offending I refer to the general account of what occurred that night which I have just outlined.

[38] In your case, the jury found you guilty of murder, as a party, most likely, as your lawyer says, on the basis that you formed a common intention with others to assault Mr McAllister knowing that a killing with a murderous intent could well happen. The jury was obviously satisfied that you did not signal your withdrawal from that offending in a timely way.

[39] Before the assault you were at the Etrick Street address with all the other offenders, except for Ms Scheepers, but you were in text message contact with her. You brandished your own knife in the presence of the others at the house and you pulled on a balaclava as part of the build up to the assault.

[40] You then went to the stadium with the others. You took a knife with you but I accept that you left it in the car as there is no evidence you presented it at any point in

the assault. You were wearing a balaclava on arrival but you did remove it at some point during the assault. At one point during the assault Mr McAllister, the victim, ran towards you and you kicked him. While your explanation is that you thought Mr McAllister was running to tackle you, and you were simply protecting yourself, I consider that explanation is implausible and you were, at that stage, still assisting Ms Dickey and Mr Whiting-Roff. I accept though that you tried to call Mr Whiting-Roff off towards the very end of the attack, as did Georgia Dickey, but by then, I consider it was too late to undo what you had been encouraging to that point.

[41] In your evidential video interview, you spoke about restraining “Brayden”, and it was unclear whether you were referring to Mr Whiting-Roff, or Mr McAllister’s friend who also had that first name. I am therefore ignoring that allegation in sentencing you. Overall, I accept that you played a supporting rather than an active role in the physical assault on Mr McAllister, and your primary role was in actively participating in the planning of the assault. I think your actions at Ettrick Street emboldened the others and helped “amp up” the pack mentality which was clearly building between those who were present at the house.

[42] Again, I point out that there is a presumption in favour of life imprisonment for murder whether as a principal or a party unless that would be manifestly unjust and if a life sentence is imposed, I must impose a minimum period of imprisonment of 10 years.

[43] The Crown says yours is not a case where there are circumstances warranting a finite sentence and life imprisonment should be imposed. In determining the appropriate minimum period of imprisonment, the Crown says that the aggravating features are that you brought your own knife to the stadium, and you wore a balaclava, you were actively involved in the assault and your actions were premeditated. Overall, this points to a similar level of culpability in the offending as Ms Dickey and a starting point of life imprisonment with a 15 year MPI is appropriate.

[44] In terms of your personal circumstances, while you have prior convictions, they are low level and the Crown does not seek an uplift. The Crown does accept that you were 19 years at the time, and you are eligible for a discount for your youth. It

submits an 18 month discount would be appropriate and would be in line with the discounts given in the case of *Uhrle*. As such, the Crown submits you should have a MPI of 13 years and six months imposed.

[45] Your lawyer, Mrs Guy Kidd QC, submits that imposition of a life sentence would be manifestly unjust and I should impose a finite sentence. She submits that your culpability is significantly less than Mr Whiting-Roff and Ms Dickey. She points out that you were not involved in the physical attack, and there was evidence that you told Mr Whiting-Roff to put the knife down. While the jury rejected this as being sufficient to justify a defence of withdrawal, it is still possible that it occurred. She also reiterates that you left your knife in the car and you removed your balaclava at some point and those factors should not be understated.

[46] In terms of your personal circumstances, Mrs Guy Kidd refers me to reports she has obtained from the clinical psychologist, Erin Eggleston and from the consultant forensic psychiatrist, Justin Barry-Walsh. While you do not have an intellectual disability, there is evidence of intellectual impairment. Your IQ of 76 puts you in the borderline range. Ms Eggleston says you present with a “relative weakness in reasoning”. The psychiatrist, though, describes you as having “profound problems” with your mental health. It seems you had a difficult childhood, your birth mother had borderline personality disorder and bipolar disorder, and you and your siblings were removed from her care when you were still young. Over the next three years you went through dozens of foster homes where you reported experiencing sexual abuse before being placed with your long-term foster parents at age six. You suffered from dyslexia and were bullied at school, you have gone on to report frequent suicidal thoughts and ongoing anger and mental health issues.

[47] In your letter to the Court you make a link between the abuse you suffered as a child and the anger you felt towards Mr McAllister. You said in it “I don’t like it when I hear [something] like what happened to me is done to some other child, I may tend to get angry and do [stupid] things”.

[48] Your lawyer submits that these psychological difficulties contributed to your actions during the offending, and they mitigate your culpability. They also mean that

prison will be harder for you and she submits a significant discount is warranted for those reasons.

[49] She also submits that discounts should be available for your co-operation with the police in the days after the offending and for the remorse you have shown. This is evident in your letters to the Court and to the families of the victim. She says you have been regularly seeing a mental health clinician in prison and express hope and determination to address the issues you are facing. For all these reasons, she submits to me that a life sentence would be manifestly unjust, but if I do not accept that, she says that a MPI of 10 years is all that should be imposed.

### *Analysis*

[50] So, I start with whether a finite sentence is appropriate. The standard for refusing a life sentence is very high.<sup>8</sup> Only a small range of cases have reached that threshold.<sup>9</sup> While the category of cases in which that threshold is reached is not closed, the test should take into account the presumption in the Sentencing Act that the taking of life should attract the most serious sentence.<sup>10</sup>

[51] In this case, while I accept that you were only involved peripherally in the physical attack, you played a significant part in organising all the parties to be present. You were also well aware that Mr Whiting-Roff had a hunting knife and you heard him say he was going to stab Mr McAllister and “take him out”, and I consider you actively encouraged him in that course. In my view, your cognitive impairments are not sufficient to justify from departing from the presumption in the Sentencing Act that a life sentence should be imposed. I also distinguish the case of *R v Madams*<sup>11</sup> that I was referred to, where a finite sentence was imposed, because that was to achieve parity and because of the low risk of reoffending.<sup>12</sup> So, in this case, I do not consider the threshold for imposing a finite sentence is reached.

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<sup>8</sup> *R v Rapira* [2013] 3 NZLR 794.

<sup>9</sup> As was anticipated by the report of the Justice and Electoral Committee on the Sentencing and Parole Reform Bill, which was subsequently enacted as the Sentencing Act 2002.

<sup>10</sup> *Cunnard v R* [2014] NZCA 138 at [15] and [16].

<sup>11</sup> *R v Madams* [2017] NZHC 81.

<sup>12</sup> The Judge observed “I consider the disparity between your sentence [and that of your co-defendant] is just too great on the facts and it makes your case an exceptional one”. She also noted he was not ordinarily violent.

[52] I accept, however, that the starting point for the MPI should not be the same level as that for Mr Whiting-Roff or Ms Dickey. Although you encouraged what occurred you had a limited role in the actual assault. I would impose a starting point of 13 years. I would then discount that by three years for your youth, your remorse, your psychological difficulties and your cognitive impairment and that would take the minimum period of imprisonment to the statutory minimum of 10 years.

### **Laura Scheepers**

[53] I now turn to Ms Scheepers. Again, the background facts of your role in the offending have largely been covered. You were 18 years old at the time of the offending. On the evening of 7 June, you met up with Christopher Brown and Georgia Dickey, at Subway in Wachner Place, where the plan to locate and assault Mr McAllister started to take shape. I consider you knew what Chris and his associates were capable of as, in one of the phone calls with Chris Brown, you told him that you did not want there to be knives involved and in one of your texts to him, you said “Jack will come if I tell him to but I don’t want to be involved if your planning on him not coming out of the hospital”.

[54] I accept that your motive for participating in the plan to assault Mr McAllister was because he had sexually assaulted you and had refused to apologise when you gave him the opportunity to do so. I also accept that you did not know the other offenders well, apart from Mr Brown, and importantly, you did not know Mr Whiting-Roff. You were also not present at Ettrick Street where knives were presented and where Mr Whiting-Roff’s intentions were spelled out plainly. While, as I have already explained, you were pivotal in luring Mr McAllister to the stadium with your text messages and then telling the others when the time was right to leave the car and enter the stadium, you were not involved at all in the physical attack on Mr McAllister.

[55] The jury found you guilty of manslaughter as a party as the jury found that you were part of a shared agreement to carry out a serious assault on Mr McAllister, and when you knew there was a real risk that the assault would be likely to cause serious harm.

[56] The maximum sentence for manslaughter is life imprisonment.<sup>13</sup> As you will likely have been told, there is no guideline sentence for manslaughter, it encompasses such a broad range of situations.<sup>14</sup> The question ultimately turns on your level of culpability and I need to look at the aspects of your conduct which were intentional and which created the risk of Mr McAllister dying.<sup>15</sup>

[57] The Crown refers to two cases which it submits are comparable. One is *R v Lucas*, where Miss Lucas arranged with three co-offenders to lure a victim to a secluded area, where he would be “dealt with” for disparaging Miss Lucas, and methamphetamine stolen.<sup>16</sup> While Miss Lucas met up with the victim, she was also texting her co-offenders about when the right time for them to arrive would be. When they did arrive, one punched the victim in the face while holding a machete. The victim ran away and hid in a flood protection basin, and the offenders could not find him and he drowned overnight. The starting point for Miss Lucas was four years’ imprisonment.

[58] The other case is *Pokai v R*. Ms Pokai lured a man who had expressed sexual interest in her to her home on the pretence of sex.<sup>17</sup> She and a co-offender travelled to the beach with the victim, where they seriously assaulted him and dragged him to some bushes where they left. He was later found dead. The starting point for the sentence of manslaughter imposed there was eight years.

[59] Now the Crown says that your actions were similar to that in *Lucas*, but the offending was more serious because there were more offenders and you foresaw the prospect of a knife being used. While the Crown accepts that you were not involved in the physical attack as the offender was in *Pokai*, it says that it involved a greater number of offenders and a knife. You knew there would be a number of offenders because you were told that the plan was to have “carloads”. The Crown, therefore, submits that a starting point of seven year’s imprisonment is appropriate.

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<sup>13</sup> Crimes Act 1961, s 177.

<sup>14</sup> *R v Leuta* [2002] 1 NZLR 215 (CA).

<sup>15</sup> At [63].

<sup>16</sup> *R v Lucas* [2017] NZHC 651.

<sup>17</sup> *Pokai v R* [2014] NZCA 356.

[60] The Crown accepts that you are entitled to a discount for your prior good character, your youth, and your clinically-assessed “major depressive episode with significant anxiety” at the time of the offending. It submits that a total discount of 35 per cent would be appropriate.

[61] The Crown also submits that an MPI of 50 per cent of that sentence was warranted to hold you accountable, to denounce your conduct, and to deter others. For these reasons, the Crown says you should be sentenced to four years and a half years imprisonment, with a MPI of two years and three months’ imprisonment.

#### *Defence submissions*

[62] However, your lawyer highlights the context of your involvement. You had been sexually assaulted by Mr McAllister and you “wanted him to hurt the way he hurt [you]”. Mr Redpath says you made your involvement in the assault conditional on the fact that there would be no knives and that Mr McAllister should make it out of hospital. He says you did not intend for him to die. You were also not even sure if Mr Brown would show up, let alone how many people would accompany him. While the assault was occurring, you offered no encouragement and indeed you were crying. In finding you guilty of manslaughter rather than murder, it appears the jury accepted that.

[63] Your lawyer submits that the appropriate starting point is four years’ imprisonment. He says the case of *Lucas* is different because Ms Lucas was the ringleader, while you were being used by others to gain access to Mr McAllister. For that reason, he says, the other factors which increase the seriousness of this case are cancelled out and a four year starting point remains appropriate. He also says *Pokai* is different as it involved a sustained attack committed by a principal offender, and that, of course, is not relevant to your situation. Your lawyer also says that as you did not have knowledge of the weapon, this significantly mitigates your culpability.

[64] In terms of the mitigating factors that are personal to you, your lawyer notes that you are remorseful and your remorse was immediate and consistent. He says you

have expressed this to him, to the pre-sentence report writer, to the consultant psychiatrist and numerous others.

[65] He says you did not plead guilty to murder because you never accepted that you were guilty of that charge, and you did not have the opportunity to plead guilty to the offence of which you were eventually convicted. However, he points out you have always accepted the facts of your offending and he submits a discount in the region of 20 per cent would be appropriate to reflect your remorse and your willingness to accept responsibility for your role in what happened.

[66] He also says you are entitled to a discount for youth, your good character and your mental health issues at the time of offending. Because of these factors he says a prison sentence would be particularly crushing for you. Importantly, he points out that you have excellent prospects of rehabilitation. These are highlighted by the numerous character reference letters which are being provided to the Court. He particularly stresses the passage from Dr Monasterio's report which says that the offending appears to be uncharacteristic for you and seemingly strongly influenced by symptoms of mood and anxiety disturbance against a background of alleged sexual trauma. He says you were particularly naïve and inexperienced as you had been home schooled and sheltered by your family, at the time of the index offence. It also appears that you were keen to impress the co-accused by arranging a meeting with the victim, without seemingly appreciating the risk.

[67] For all these reasons, Mr Redpath submits that a global discount of around 45 per cent would be appropriate, and furthermore, your flawless bail record for almost 18 months, justifies a further discount of around five per cent. In short, the Court should reach an end sentence of under two years imprisonment and that should be converted to a sentence of home detention.

### *Analysis*

[68] I am satisfied that a starting point of four years' imprisonment is appropriate. I consider your overall culpability is in line with the offender in *Lucas*. You played a

significant role in enabling the offence to unfold, but your actual participation was minimal, and you did not intend death to result.

[69] In terms of mitigating features, I consider your youth, your previous good character, and your mental health issues are all clearly interlinked. You rebelled from your stable and sheltered family life, and you were then sexually assaulted on more than one occasion, triggering those mental health difficulties. That, in turn, led you to become involved in the events which led to Mr McAllister's death. I accept that, had you been a mentally healthy adult, it is hard to see how you would have ended up in this situation. A combined credit for these factors of 30 per cent, is justified.

[70] I also accept that you have been consistent of your acceptance in your role in the offending and you have expressed remorse clearly ever since Mr McAllister's death occurred. Your demonstrated remorse, and the fact that you were prepared to acknowledge an involvement that was short of murder, should be recognised. In my view, it warrants a further 20 per cent discount from the starting point.<sup>18</sup>

[71] That takes your final sentence to two years' imprisonment. As such it is open to this Court to convert that into a sentence of home detention.

[72] While the matter is finely balanced, I must acknowledge that home detention is a punitive and restrictive sentence in its own right. However, it is also the sentence that I think will best provide for your rehabilitation and reintegration. I hope that at the end of it you will have sufficient maturity that you can re-enter the wider world with better judgment, greater confidence and more resilience. Thus, in my view, the sentence should be converted to one of 12 months' home detention.

[73] I will now ask each of you to come forward to have sentence passed on you.

### **Brayden Whiting-Roff**

[74] Brayden Mark Whiting-Roff, on the charge of murder you are sentenced to life imprisonment with a minimum period of imprisonment of 12 years and six months.

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<sup>18</sup> As was recognised in *R v Edmonds*.

On the charge of assault, you are sentenced to two months' imprisonment to be served concurrently.

**Christopher Brown**

[75] Christopher James Brown, on the charge of murder you are sentenced to life imprisonment with a minimum period of imprisonment of 10 years.

**Laura Scheepers**

[76] Laura Elizabeth Joy Scheepers, on the charge of manslaughter you are sentenced to 12 months' home detention on the conditions proposed in the pre-sentence report.

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