

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

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

**CRI-2020-020-001335
[2021] NZHC 140**

THE QUEEN

v

**STEVEN MATTHEW KINGI
JESSEE JAMES BURNS
STEWART HUBBARD**

Hearing: 11 February 2021

Appearances: C R Walker for the Crown
M J Phelps for Mr Kingi
C Robertson (for L P F Lafferty) for Mr Burns
E J Forster for Mr Hubbard

Judgment: 11 February 2021

SENTENCING OF COOKE J

[1] Steven Kingi, Jessee Burns and Stewart Hubbard you appear today for sentencing on the charge of manslaughter of Mr Jermaine Ramos and the charge of aggravated robbery, to which you have pled guilty.

[2] In explaining the sentence I intend to impose for each of you I will first consider the general starting point for the period of imprisonment for the offending given the role you each played. I will then address circumstances personal to you that may affect your individual sentences.

The facts

[3] I first deal with the facts of the offending.

[4] On 30 March 2019 Mr Ramos arranged to meet an associate of yours, Ms Julia McRae. He drove to Hastings where he collected Ms McRae and took her to a motel where he agreed to pay for sexual services and requested methamphetamine. The following morning Ms McRae left the motel by a taxi following an argument. She felt disrespected at a request for another sex worker to participate, and because she had not received payment for her services in full. Mr Ramos said he would pay the outstanding balance online.

[5] When Ms McRae did not receive payment online, she contacted you Mr Kingi, to tell you what happened. When she did not receive payment the following day either, she contacted you again to discuss how to obtain payment. You suggested that Ms McRae lure Mr Ramos back to her address.

[6] That afternoon Mr Kingi you contacted Mr Burns advising him of a plan to rob someone. Mr Burns you then contacted you Mr Hubbard. You all met with Ms McRae to discuss how to get Mr Ramos inside her address so you could then come inside and obtain the money owed. Ms McRae told you she did not want there to be violence.

[7] Mr Ramos arrived at Ms McRae's address in the evening after withdrawing \$640. He was invited inside by Ms McRae. She went into a bedroom to check on her young child, which is when the three of you entered the address, assaulted him, took his cash and fled.

[8] Ms McRae describes the offending from what she heard behind a closed, blocked door. One of you demanded money and told Mr Ramos to shut up. Mr Ramos was heard saying "Please no, stop, stop". She then heard what she described as "banging", "crashing", "thumping" and "smashing". It then went quiet. When Ms McRae entered when it seemed safe, she saw Mr Ramos lying on the lounge floor.

[9] The assault was a serious one. Mr Ramos died following it. The pathologist describes multiple blunt force injuries to the head including scalp lacerations, bruising

to both sides of the forehead and the eyes and cheeks, abrasions about the head and lips, and bruising and blunt force injuries to the neck, limbs and torso. She considers that the injuries to the head, neck, torso and limbs were not sufficient to cause death in isolation, however. She records that Mr Ramos had consumed methamphetamine, but this also could not be solely responsible for his death. She also observed that he had a 50 per cent narrowing of one of the vessels on the surface of his heart, but not at a level which would be considered to be responsible for his death. She concluded that a combination of all three factors — the result of the assault, the methamphetamine use, and the narrowing of the coronary artery led to Mr Ramos having a fatal arrhythmia. A specialist in emergency medicine has agreed with the pathologist's conclusion.

Victim impacts

[10] I have had the advantage of victim impact statements. There has been considerable loss felt by those close to Mr Ramos. The statement from Mr Ramos' fiancé, Ms Gwendolyn Barber is particularly significant. She is no longer with us, but I have a victim impact statement earlier prepared by her that the Crown has referred to this morning. She had been shopping for their wedding when she received a call that first alerted her something was wrong. Instead of planning a wedding she had to plan a funeral. Mr Ramos was buried in his wedding tuxedo.

[11] Ms Barber has since passed away. She had to live with the reality of unanswered questions for the remainder of her life. As a result of your actions, she spent the final year of her life in grief. Mr Ramos' first cousin Mr Rommel Serrano explains the similar grief felt by the family both here and in the Philippines and I thank him for his statement and acknowledge those that have been watching the sentencing from overseas.

Starting Point

[12] I next address the question of the starting point of the sentence of imprisonment to be imposed. In doing so I take the lead charge as that of manslaughter. There are

no tariff cases on manslaughter. The Crown has suggested that the guideline judgment in *R v Taueki* be taken into account.¹

[13] Whilst there is authority for using the *Taueki* guidelines in sentencing for manslaughter, and the guidelines do provide some general assistance, it seems to me that the caution expressed by the Court of Appeal in *Turi v R* is important.² The best guide to assessing the starting point in this case given its special circumstances comes from an assessment of comparable cases, albeit that ultimately the sentence should be calculated by an evaluation of the culpability in your case.³ That is particularly so here where there has been a serious assault resulting in death, but where the cause of death was not solely the assault but the assault in combination with a latent medical condition of the victim and his drug use.

[14] In terms of periods of imprisonment, at the higher end of the scale is the decision of this Court in *R v Tafutu and Liatoa*, which also involved manslaughter and aggravated robbery where there was forced entry and an assault to steal cannabis where the death involved the combination of the assault and pre-existing diabetes and heart disease.⁴ A starting point of eight years three months was adopted. By comparison in *R v Holman* a starting point of six years three months was adopted by this Court for a serious assault about the head which would not have been expected to cause death, but due to an abnormally large heart there was a pre-existing vulnerability which contributed to death.⁵

[15] Given the possible differences between the approaches in earlier High Court decisions, it seems to me that I should be primarily guided by comparable cases in the Court of Appeal. In *Turi v R* the defendants entered an address by consent to attempt to procure drugs. Then they physically assaulted the victim who died as a consequence of the assault and his weakened heart. The Court of Appeal overturned a seven and a half year starting point and replaced it with five and a half years. Similarly in *Blackler v R* a defendant assaulted the deceased by striking him multiple times in the neck and

¹ *R v Taueki* (2005) 21 CRNZ 769.

² *Turi v R* [2014] NZCA 254 at [18].

³ At [11].

⁴ *R v Tafutu and Liatoa* [2014] NZHC 657.

⁵ *R v Holman* [2014] NZHC 438.

head such that his face was said to be almost unrecognisable, but where death was a combination of the assault and a pre-existing heart condition. The Court of Appeal accepted that a six year starting point was within range, and not excessive.⁶

[16] And even these cases indicate that each case varies in its circumstances and it would be wrong to simply mechanically apply the same starting point as another case. It is important to consider the key considerations here. Amongst the most relevant circumstances here are:

- (a) First, the assault was serious, involving multiple injuries. But it did not involve weapons other than the opportunistic use of a glass vase and it would not have been expected to have caused death were it not for the contributing factors. There were two other contributory factors — Mr Ramos' pre-existing heart condition, and his consumption of methamphetamine, albeit that the latter can be said to be related to the behaviour to lure him back to the address.
- (b) Secondly, the offending had a significant element of premeditation. It was a planned aggravated robbery and planned assault arising because of his earlier failure to pay what you thought was owed.
- (c) Thirdly, there were three of you involved in the assault. It has not been overtly described as a gang related operation, although it was obviously associated with gang activities. What is aggravating is the number of you taking part and the intimidation that would have been involved. In addition no medical assistance was sought when it would have been apparent that Mr Ramos was badly injured.

[17] The premeditation and group assault features mean that your case is more serious than *Blackler*, and the premeditated aggravated robbery feature means that it is more serious than *Turi*.

⁶ *Blackler v R* [2019] NZCA 232.

[18] The Crown seeks a starting point of between eight years three months and eight years six months. In the circumstances, and given the similar Court of Appeal cases, it seems to me the proper starting point for the offences here is lower and between six years six months and seven years' imprisonment.

[19] There is no information suggesting you played different roles in the administration of the assault itself. But there needs to be a recognition of the separate role that you played as the organiser Mr Kingi. In the circumstances it seems to me that your starting point should be seven years. The starting point for Mr Burns and Mr Hubbard will be six years six months.

Personal upwards and downwards adjustments

[20] The next stage is to consider circumstances personal to you that result in the starting point being uplifted or discounted.

[21] The Crown does not seek any upward adjustments except for you Mr Burns where it is suggested there should be a small uplift to the starting point given that you have numerous previous convictions, including for violence. I accept that this is justified given that you need to understand that continued violence offending will result in an upward adjustment to a starting point. It seems to me that an uplift of three months is appropriate.

[22] As to discounts the Crown accepts that there should be a full 25 per cent discount for the entry of guilty pleas to the amended charge notice for all three of you.

[23] I have the advantage of s 27 cultural reports for each of you. It is now well recognised that systemic cultural, social and economic factors can be a substantial contributor for the reasons for offending and that they can justify a discount. They can particularly apply to Māori. An understanding of culpability is incomplete without an appreciation that people like the three of you are the product of the way that society has disadvantaged groups of the community.

[24] Such discounts are only available if the requisite causative link between cultural deprivation and the offending is demonstrated. The purpose of the reports

obtained under s 27 is to identify the background of the offender, and to see whether part of the explanation for their offending can be seen in that background of disadvantage and deprivation.

[25] Each of the reports that have been provided about you paints a depressingly familiar picture. I have no doubt that systemic cultural, societal, and economic deprivation has played a significant part to explain your present lives, and what has caused you to end up before the Courts. There are differences — Mr Kingi you identify as part Māori, part Cook Island Māori, Mr Burns you identify to Ngāti Porou and Tainui and Mr Hubbard Tainui and Te Arawa. The details and extent of the deprivation also varies between you. But the general description of your backgrounds in the reports are otherwise very similar. A background of deprivation, violence, abuse, early drug abuse, disconnection between you and the community and the finding of a life associated with Black Power that operates as a kind of substitute for the kind of support that might have been provided by iwi and hapū were it not for this background.

[26] I do not need to traverse the individual life stories that have been provided in each of the reports for the three of you. I recognise that your backgrounds provide a partial explanation for your circumstances. For these reasons it is appropriate to give some discount to recognise these factors. For each of you the discount will be approximately 15 per cent.

[27] There has been a suggestion there should be an additional discount for remorse. I do not see that this should be so. It is apparent that you now regret what happened, but the premeditated nature of this offending suggests that the expressions of regret do not truly amount to remorse for the offending that should be recognised over and above the discount for remorse that is inherent in the discount for cultural factors.

[28] When added to the guilty plea discount, this means that there will be a total discount from the starting point for each of you of approximately 40 per cent.

Minimum period of imprisonment

[29] The Crown seeks a minimum period of imprisonment amounting to 50 per cent of the sentence to be imposed.

[30] Imposing a minimum period of imprisonment under s 86(2) is not a routine matter, and neither should a minimum period be arbitrarily imposed. There must be some reason why the principles referred to in s 86 have not already been sufficiently reflected in the sentence.

[31] I see no reason why the particular nature of this offending requires the imposition of a minimum period of imprisonment having regard to the factors in s 86. The principles of accountability, denunciation, deterrence and protection have already been addressed in the sentence itself. In terms of protecting the community, that is of course considered by the Parole Board when considering whether any of you should be released on parole. I see no reason why that should not be addressed in the normal way.

[32] For these reasons there will be no minimum period of imprisonment.

Aggravated robbery

[33] The three of you are also pleading guilty to the aggravated robbery charge. In the circumstances I will impose a sentence for that charge that will be served concurrently with the sentence of the lead charge of manslaughter. Given comparable cases and the discounts I have described, each of you will receive a sentence of three years' imprisonment for that charge.

Result

[34] Mr Kingi on the charge of manslaughter I sentence you to four years two months' imprisonment. On the charge of aggravated robbery you are sentenced to three years' imprisonment to be served concurrently with your sentence of four years two months' imprisonment, meaning that your overall sentence will be four years and two months' imprisonment.

[35] Mr Burns on the charge of manslaughter you are sentenced to four years' imprisonment. On the charge of aggravated robbery you are sentenced to three years' imprisonment to be served concurrently with your sentence of four years' imprisonment, meaning your overall sentence will be four years' imprisonment. Your unpaid Court fines are remitted.

[36] Mr Hubbard on the charge of manslaughter you will be sentenced to three years 10 months' imprisonment. On the charge of aggravated robbery you are sentenced to three years' imprisonment to be served concurrently with your sentence of three years 10 months' imprisonment, meaning that your overall sentence will be three years 10 months' years. Your unpaid Court fines are also to be remitted.

Cooke J

Solicitors:
Crown Solicitor's, Napier
M J Phelps, Hastings for Mr Kingi
L Lafferty, Napier for Mr Burns
E J Forster, Hastings for Mr Hubbard