

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2020-092-002562  
[2021] NZHC 1605**

**THE QUEEN**

v

**MICHAEL KEITH ROBINSON**

Hearing: 1 July 2021

Appearances: Chris Howard for the Crown  
Shane Tait and Peter Choi for the Defendant

Judgment: 1 July 2021

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**SENTENCING REMARKS OF MOORE J**

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## **Introduction**

[1] Mr Robinson, at the age of 30 you appear for sentence on one charge of murder<sup>1</sup> and one charge of wounding with intent to cause grievous bodily harm.<sup>2</sup>

[2] Both charges arise from an incident which took place in Otara, Auckland on 28 February 2020.

[3] On 23 April 2021, as a result of a request from your lawyer, Mr Tait, I gave you a sentence indication. I indicated that if you entered pleas of guilty to both charges, you could expect to be sentenced to life imprisonment with a minimum period of imprisonment (“MPI”) of 13 years.

[4] I said that the indication would be subject to adjustment in the event that further material was provided to me on the question of your personal circumstances, noting that I could not make any further comment until I had the opportunity to consider any such material if it was presented.

[5] You accepted the indication and on 7 May 2021, you pleaded guilty to both charges and convictions were entered. You were also given a warning under the so-called “three strikes” law. You were remanded to today for sentence.

[6] There will be aspects of what I say this morning which are necessarily repetitive and which you heard when I gave the indication just over two months ago. However, because sentencing is quintessentially a public function which must be undertaken in open Court (unlike the giving of a sentence indication which cannot be published or reported) a good deal of what I say today will be repetitive. That may seem tedious, but it is necessary in the interests of open justice.

[7] The real issue today is whether the indicated 13 year MPI should be adjusted downwards and, if so, by how much.

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<sup>1</sup> Crimes Act 1961, ss 167 and 172. Maximum penalty life imprisonment.

<sup>2</sup> Section 188(1). Maximum penalty 14 years’ imprisonment.

## **Agreed facts**

[8] I turn next to the facts on which you are to be sentenced. The Crown and Mr Tait have agreed on the relevant facts which are contained in a summary. What I am about to record is drawn from that summary.

[9] Your victims are Mr I, who died from the injuries you inflicted, and Joseph Ngamu who was very badly injured. The attack on them both took place at a property on Bairds Road, Otara. This was the Ngamu family home where Mr Ngamu lived with his daughter, Ruthanda, who was Mr I's partner. Also living at that address were Mr Ngamu's brother, Bruce Ngamu, Mr Ngamu's adopted daughter and her partner.

[10] Your co-defendant is Timothy Huriwaka. On the evening of Friday, 28 February 2020, Mr Huriwaka picked you up and you both drove to the Ngamus' home. There you met a number of the occupants who were gathered in the garage drinking and listening to music. Mr Huriwaka asked Bruce Ngamu about a statement that had been made against him. Bruce Ngamu said that he knew nothing about it. Mr Huriwaka then told one of the other occupants his son owed money and that Bruce Ngamu owed him by reason of the statement made against him. You and Mr Huriwaka were at the address for about 10 minutes before you left in the car.

[11] Later that evening, you and Mr Huriwaka were back in the car together with two others when you told Mr Huriwaka to drive to a Mangere address where you went inside and returned a short time later with a sawn-off firearm. You then drove back to the Ngamu home. On route, you and Mr Huriwaka spoke about how those at the Ngamu property would be in possession of money and drugs.

[12] When you arrived, you and Mr Huriwaka got out and spoke to Joseph Ngamu who was standing near the garage. Although Mr Ngamu did not know you, he invited you inside for a drink. As you walked together towards the house, you presented the gun at Mr Ngamu. You aimed it at his chest. Mr Ngamu grabbed it and pushed it down, but as he did, you pulled the trigger and shot him in the stomach.

[13] Ruthanda Ngamu immediately intervened. She attempted to restrain you. She pushed you up against a fence. Mr I ran to help Ruthanda. As he approached, you pointed the gun at him and pulled the trigger. The gun misfired at least once before discharging. The bullet hit Mr I, entering his upper left arm, penetrating his chest and piercing his heart and lungs. This caused necessarily fatal wounds from which Mr I died shortly afterwards.

[14] Ruthanda and Bruce Ngamu attempted to restrain you. You broke free and you and Mr Huriwaka ran back to the car and drove off. You were arrested a few days later.

[15] When you were spoken to by the Police, you denied being involved.

[16] Although Mr Ngamu's injuries were not fatal, they were, nonetheless, serious. The bullet entered his right lower abdominal area, passing through the tissue which supports the bowel and severing blood vessels. Surgery repaired the blood vessels and the bullet was removed. Mr Ngamu was discharged from hospital a week later. He still suffers from post-operative pain and has extensive scarring.

### **Legal principles**

[17] The purposes and principles of sentencing are well-known and it is unnecessary to set them out now for the purposes of the present exercise. It is, however, necessary to briefly traverse the law as it relates to sentencing for murder.

[18] The sentence for murder is life imprisonment unless, given the circumstances of the offence and the offender, such a sentence would be manifestly unjust.<sup>3</sup> There is no question here that the presumption in favour of life imprisonment for murder should be displaced. You will be sentenced to life imprisonment.

[19] The law also requires that if a sentence of life imprisonment for murder is imposed, the MPI may not be less than 10 years and must be the minimum term the Court considers necessary to satisfy any or all of the sentencing principles of

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<sup>3</sup> Sentencing Act 2002, s 102.

accountability, denouncement, deterrence and community protection. As I noted in the sentence indication, the focus in your case is how much more than the 10 year MPI is necessary to meet the sentencing purposes I have just mentioned.<sup>4</sup>

[20] Furthermore, the law says that if one or more specified aggravating factors are present, the sentencing Judge is required to impose an MPI of at least 17 years unless he or she is satisfied that it would be manifestly unjust to do so.<sup>5</sup>

[21] When I gave you the sentence indication, I told you that I had decided s 104 of the Sentencing Act 2002 was not engaged and I gave my reasons for deciding that. Despite that, it is necessary for me to repeat those reasons, although I shall do so briefly.

#### **Why s 104 is not engaged**

[22] The closest aggravating factor listed in s 104 is whether the murder involved the unlawful entry into or unlawful presence in a dwelling place.<sup>6</sup> I decided, by reference to other cases,<sup>7</sup> that on the agreed facts there was no entry or presence in the dwelling place at Bairds Road. That is because although you were invited into the Ngamu home before the attack, you did not enter it before you fired the fatal shot. Your presence in the property only became unlawful once the attack commenced.<sup>8</sup> I also determined that the meaning of “a dwelling place”, while sufficiently broad to include areas beyond the exterior walls of a house, would be stretched in your case where the events proximate to and causative of Mr I’s death all occurred in the driveway.

[23] For these reasons, I concluded that I was not required to impose an MPI of at least 17 years.

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<sup>4</sup> Sentencing Act 2002, s 103.

<sup>5</sup> Section 104(1).

<sup>6</sup> Section 104(1)(c).

<sup>7</sup> *Pahau v R* [2011] NZCA 147 at [71]; *R v Clayton* HC Wellington CRI-2006-054-557, 22 June 2007 at [7]; *Simeon v R* [2010] NZCA 559.

<sup>8</sup> *Cummings v R* [2016] NZCA 509 at [77].

[24] This meant that for sentencing purposes and, in particular, calculating the appropriate MPI, it was necessary to consider the four purposes I mentioned earlier.

[25] So, if the MPI is not 17 years, what should it be? I turn to that question now. First, the aggravating features of your offending.

### **Aggravating features of the offending**

[26] At the indication I agreed with Mr Stevens, for the Crown, that there were four aggravating features to your offending:

- (a) actual violence through the use of a lethal weapon;
- (b) unlawful entry into or presence in, a dwelling place;
- (c) premeditation; and
- (d) the loss, damage or harm resulting from the offence.

[27] I turn now to consider each of these.

#### *Actual violence through the use of a lethal weapon*

[28] You entered the property armed with a sawn-off firearm. Having been invited inside, but while you were still outside, you aimed the gun at Mr Ngamu's chest. When he pushed it down you pulled the trigger and shot him in the stomach. Ruthanda attempted to restrain you. When Mr I ran to help her, you shot and killed him. All shots were fired at close range.

[29] This description easily meets any definition of extreme violence. Your offending involved two victims both of whom you shot with a lethal weapon. This aggravating factor exists, in my view, to a high degree.

*Unlawful entry into or presence in, a dwelling place*

[30] As I have already discussed, while the offending did not involve the actual unlawful entry into or presence in a dwelling place, and therefore does not meet the threshold for s 104, both shootings occurred in reasonably close proximity to the Ngamu home and in a place where the occupants were entitled to feel safe and secure. While your offending does not bear the hallmarks of a home invasion, it did involve armed entry onto private property followed by the commission of serious violent offending. I am satisfied this factor exists to a moderate to high degree.

*Premeditation*

[31] Your offending was premeditated. You obtained the firearm before you drove to Bairds Road. Exactly why you decided to do that is not apparent on the summary. However, it is plain from all the circumstances that you intended to go back to the property for the purpose of confronting one or more of the occupants. This was planned. I am satisfied this feature is present to a moderate degree.

*Extent of loss, damage or harm resulting from the offence*

[32] Mr Ngamu's injuries required surgery and a period of hospitalisation. Given the close range and the area of Mr Ngamu's body which appears to have been targeted, there can be no doubt at all that he is very lucky to be alive. While his injuries may not have been life threatening, they were, nonetheless, serious.

[33] As for Mr I, he lost his life. I have read the victim impact reports and have listened carefully to those statements which were read in open Court to me. The comments are from those close to Mr I. They include his mother, his cousin, Ruthanda Ngamu and other members of Mr I's immediate family. Ruthanda was pregnant to Mr I at the time he died. She speaks of her new son being robbed of a father. Unsurprisingly, for her and for the others in the family, Mr I's death haunts them and they continue to grieve.

[34] Mr I's family describe their world as falling part and how unfair it is that, with all his life ahead of him, he was taken from them at the age of 24. They speak of nightmares and depression. His loss will be with them forever.

[35] Plainly, the loss and harm caused by your offending is present to a very high degree.

### **Mitigating features to the offending**

[36] There are no relevant mitigating factors to your offending. The Crown and your lawyer agree with that. And so I now turn to setting the MPI.

### **Setting the MPI**

[37] Mr Howard, for the Crown, submits that a provisional starting MPI of 13 years' imprisonment on the charge of murder is appropriate. Mr Tait submits an MPI starting point of 11 years' imprisonment is appropriate.

[38] Both sets of lawyers have referred me to a number of cases which I discussed in my sentence indication, but which I will not set out in detail in these remarks. They are footnoted for reference.<sup>9</sup>

[39] I concluded that the appropriate starting point MPI on the charge of murder was one of 13 years' imprisonment. All parties were agreed that an 18 month uplift to take account the shooting of Mr Ngamu was appropriate and I agree. This brings the total MPI starting point to one of 14-and-a-half-years.

[40] The Crown, responsibly so in my view, does not invite me to impose a further uplift on account of your previous offending which is somewhat aged. However, the other side of that coin is that there can be no discount for previous good character.

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<sup>9</sup> *R v Mills* HC Palmerston North CRI-2009-054-3808, 16 June 2010; *R v Paewhenua* [2018] NZHC 301; *R v Te Poono* [2020] NZHC 1188; *T v Te Tomo* [2015] NZHC 2671; *R v Harrison & Pakai* [2014] NZHC 2705; *R v McCallum & Ors* HC Whanganui CRI-2008-083-2794, 12 February 2010.

## **Guilty pleas**

[41] Next is the issue of your guilty pleas and what discount they should attract. You accepted the sentence indication and entered your pleas approximately six weeks before the scheduled start of your trial. Normally, if I was considering a finite sentence, pleas entered at that stage of the progression of the case would attract a discount of the order of 10 to 15 per cent. However, as I discussed with your lawyer earlier, percentage discounts are inapt when calculating the appropriate MPI.<sup>10</sup>

[42] By pleading to both charges, the trial would have been shortened with savings of time and expense. And while your victims, being Mr Ngamu and Mr I's family, were not spared the ordeal of Mr Huriwaka's trial, they will, at least, have the reassurance that the man principally responsible for the death and injury of their loved ones has acknowledged and recognised his wrongdoing by the pleas of guilty. While that, of course, is no substitute for the damage you caused, it may go some way to providing a degree of relief and perhaps some closure. For that reason, as I indicated, a discount of 18 months is appropriate.

[43] What all this means is that I remain satisfied that an MPI of 13 years is appropriate before your personal circumstances, as revealed in the cultural report and the pre-sentence report, are taken into account. It is to those documents which I now turn.

## **Pre-sentence report**

[44] To the author of the pre-sentence report, you said you committed the offending and so you have "taken it on the chin". You said that you were under the influence of alcohol and drugs. What I take that to mean is that you say you cannot remember what happened but are satisfied the main culprit was you. You were also described as "guarded in [your] responses and at times not willing to engage with the questions posed...". Of some concern, the author described you as having "a high sense of entitlement when discussing the circumstances which led to [your] offending, often shifting blame to others". He assessed you as presenting a high risk of re-offending

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<sup>10</sup> *Malik v R* [2015] NZCA 597.

until such time that you are able to gain insight into your offence cycle. You are also assessed as presenting a high risk of harm given that your actions resulted in loss of life.

[45] In terms of your personal circumstances, the report reflects the observations contained in the s 27 cultural report, that is that your childhood was abusive, that you had no strong role models growing up and an intrinsic lack of trust in the adults in your life at the time. It was also recorded that you have no connection to your Māori culture and heritage.

### **Cultural report**

[46] At your lawyer's request, a cultural report<sup>11</sup> has been prepared. It was compiled by Ms Shelley Turner who is well-known and respected by this Court. The report runs to 24 pages. It is comprehensive and helpful in painting a picture of who you are. Ms Turner describes your upbringing and cultural background. As with so many urban Māori you grew up without *te reo me o nga tikanga* and the inherent value system of *te ao* Māori. She describes your fate as being predetermined long before you were born. As with many displaced Māori youth, you came into contact with the criminal justice processes. You found solace not only in youth gangs, but also in substance abuse. You have abused alcohol, cannabis and methamphetamine. As far as the latter is concerned, you claim you have avoided addiction. However, as Ms Turner observes, your connection with that drug may well have been the impetus for your offending and the poor decisions which led to the death and injury you inflicted on the Ngamu family. She points out that violence was normalised in your life from a very young age. It shaped your views and instilled in you both a susceptibility and propensity for violence.

[47] Ms Turner concludes that there has been limited opportunity for you to break the cycle of disengagement, deprivation, exclusion and offending; that there is a direct causal nexus between your social and cultural deprivation and your offending.

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<sup>11</sup> Sentencing Act 2002, s 27.

[48] Mr Tait submits that on account of Ms Turner’s comments, a reduction of 18 months on the MPI is appropriate. Mr Howard submits a reduction of no more than six months.

[49] As the Crown points out, the key question in determining whether a discount should be given on account of social, cultural and economic deprivation is whether there is a “demonstrative nexus with the offending”.<sup>12</sup>

[50] I am satisfied, and I did not detect any contrary view by the Crown, that there is the necessary nexus in your case for the reasons given by Ms Turner.

[51] That being so, I have considered the cases referred to me by counsel on that point.<sup>13</sup> The extent of any discount is naturally fact-specific. However, where the defendant is facing sentence for murder, particularly one committed with the seriously aggravating factors I have already listed, the Court’s ability to reduce an otherwise appropriate sentence on account of an offender’s background and cultural deprivation, is necessarily limited for the reasons discussed in the caselaw.<sup>14</sup>

[52] Taking into account these factors, I agree with the Crown that the maximum discount available in the circumstances is one of six months.

[53] This leads to an MPI of 12-and-a-half years.

## **Sentence**

[54] Mr Robinson would you please stand.

[55] On the charge of murder, you are sentenced to life imprisonment with an MPI of 12-and-a-half years.

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<sup>12</sup> *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [161]-[162].

<sup>13</sup> *R v Marsters* [2021] NZHC 1268; *Whittaker v R* [2020] NZCA 241 at [51]; *Carr v R* [2020] NZCA 357 at [67]; *Hohua v R* [2019] NZCA 533 at [44]; *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241.

<sup>14</sup> Particularly *Hohua v R*, above n 13.

[56] On the charge of wounding with intent to cause grievous bodily harm, you are sentenced to seven years' imprisonment. Obviously that sentence will run concurrently with the other sentence I have imposed.

[57] Stand down.

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**Moore J**

*Solicitors:*

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