

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

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

**CRI-2020-090-002497
[2021] NZHC 2615**

THE QUEEN

v

NATALIE JANE BRACKEN

Hearing: 1 October 2021 (by VMR)

Appearances: B Dickey, A McClintock and N Herewini for Crown
A Couchman for Defendant Bracken

Sentencing: 1 October 2021

SENTENCING NOTES OF VENNING J

Solicitors: Meredith Connell, Auckland
Counsel: A Couchman/K Hamblin, Auckland

[1] Natalie Bracken you are for sentence on one charge of being an accessory after the fact to wounding with intent to cause grievous bodily harm.

[2] On 19 June 2020 you were staying at an address at 84 Reynella Drive. You heard a motor vehicle crash and went out onto Reynella Drive. Your attention was first drawn to a woman who was screaming. Her husband had been injured in the crash involving Mr Epiha's car. You went to assist her. At about the same time you saw Mr Epiha shooting at Constable Goldfinch and Constable Hunt. In all Mr Epiha fired 14 shots at the police officers, four of them hitting Constable Goldfinch and, relevantly for your sentence, four of them hitting and ultimately killing Constable Hunt.

[3] After he had shot Constable Hunt Mr Epiha approached you and your associates Mr Tiatia and Ms Hetherington, who by this time had joined you on the side of the road. Mr Epiha was still carrying the semi-automatic weapon. He wanted to be driven away before any further Police arrived. Mr Tiatia and Ms Hetherington ran inside the property leaving you with Mr Epiha.

[4] The cell phone video of what happened next is clear for all to see. You tried to get into the driver's door of Mr Tiatia's Mazda that was parked at the side of the road but it was locked. You ran back inside number 84 and returned with the keys, unlocked the car door and drove Mr Epiha away. While you were inside the property getting the keys Mr Epiha remained standing by the passenger door of the car. During this time, Constable Hunt lay dying on the road. You then drove Mr Epiha to 105 Amreins Road, Taupaki, the home of his associate, Mr Conza. After dropping Mr Epiha at that address you had no further involvement with him. But on your way back from Amreins Road you drove past a marked police patrol car without stopping or attempting to tell them what had happened and where Mr Epiha was.

[5] There are a number of factors relevant to your sentence. I accept there is no evidence that you had any prior association with Mr Epiha. You were in Reynella Drive that morning as a matter of chance. Next, during the course of the trial the charge against you was reduced from a charge of being an accessory after the fact of

murder to the charge you were ultimately convicted of. The maximum sentence for that charge is five years' imprisonment as opposed to seven.

[6] Your defence to the charge was two-fold, first, that you drove Mr Epiha away from the scene, not to help him avoid arrest, but to do the right thing and to protect others. Second, that you were acting under compulsion. In finding you guilty of the offence the jury rejected your explanation and nor did they accept you were acting under compulsion when you drove Mr Epiha from the scene. I do not accept that it is open for you to maintain you were acting to protect others. I sentence you on that basis.

[7] In sentencing you I am also required to have regard to the purposes and principles of the Sentencing Act 2002. The relevant purposes are to hold you accountable for your actions and for your offending, to denounce such conduct and to deter others from assisting offenders to leave the scenes of crime or to otherwise avoid arrest.

[8] The particularly relevant principles are to take into account:

- (a) the seriousness of the offence;
- (b) your culpability in this case;
- (c) the effect on the victim's family. You have heard Mrs Hunt's statement this morning;
- (d) the desirability of consistency with sentencing for similar offending, and finally;
- (e) the Court is directed to impose the least restrictive sentence appropriate.

[9] Counsel are largely in agreement as to the relevant authorities and are not far apart on the starting point. The Crown argue for a starting point between 14 to 18 months' imprisonment. The Crown suggests an uplift of up to two months could be applied to that to take account of the fact your offending occurred while you were on

bail for other offending. The Crown accepts that some discount could be given for the fact you were on electronically monitored bail for a period of some seven and a half months. Nor does the Crown actively oppose the sentence of home detention and acknowledges the proposed address is a pro-social one.

[10] Mr Couchman has accepted that a start point of between 12 to 14 months' imprisonment could be imposed but argues for the lower end of that band. He accepted that if there was to be an uplift for offending on bail it should be no more than one month. Mr Couchman emphasised that your personal factors and the time you spent on EM bail would support a reduction of three months on your sentence. He argued strongly for the imposition of a sentence of home detention after taking account of the time you have spent in custody.

[11] As counsel have noted there is no tariff for offending of this nature. Each case must turn on its own circumstances. I have considered the cases that counsel have helpfully referred to.¹ In my assessment, in your case the most relevant authorities in terms of similarity are *R v Keepa* and *Duncan v R*.² In *Keepa* an associate of Mr Keepa showed up at Mr Keepa's house and asked for his help. Mr Keepa took the associate back to the crime scene in the car to recover his associate's patch. There for the first time Mr Keepa became aware the victim was dead. Mr Keepa then drove his associate away from the scene. They returned shortly thereafter and Mr Keepa stayed in the car while his associate retrieved items that had been dropped during the fight. When Mr Keepa saw the Police coming he yelled at his associate to get in the car and sped away, fleeing the Police. The High Court Judge took a starting point of 14 months' imprisonment. The charge in that case carried a maximum of seven years.

[12] Ms Duncan in her case had driven her partner away from the scene of a shooting. He remained in possession of the firearm that had been used. After observing that there was no established tariff for such offending, which was accessory

¹ *Moses v R* [2020] NZCA 296; *R v Keepa* [2019] NZHC 3042; *Duncan v R* [2013] NZCA 354; *R v McKenzie* HC Christchurch CRI-2005-009-615, 10 March 2006; *R v Tito* [2015] NZHC 2969; *Boyd v R* [2015] NZHC 822; *Boskell v R* [2015] NZHC 286; *R v Afamasaga* [2015] NZHC 2142; *R v Ovalau* HC Auckland CRI-2006-092-10484, 13 March 2007; *R v Moala* HC Auckland CRI-2006-092-000461, 12 December 2007; *Agar v R* [2021] NZCZ 350; *Keown v R* [2010] NZCA 492; *Nicholson v Police* [2016] NZHC 300;

² *R v Keepa*, above n 1, and *Duncan v R*, above n 1.

after the fact of wounding with intent to cause grievous bodily harm, (the same offence as in your case) the Court of Appeal noted the crime was serious and that Ms Duncan had provided prompt and effective assistance to the offender. The offender and shotgun were removed before the Police arrived. The Court of Appeal accepted in that case that a starting point of 12 months' imprisonment applied by the High Court Judge was appropriate. Unlike you, in that case Ms Duncan was a young and immature person with previous good character.

[13] In your case Ms Bracken I consider the circumstances to be more serious. It is relevant that you directly observed Mr Epiha's actions before you assisted him. You were aware of the seriousness of what he had done. You had seen him shoot two police officers. You had the opportunity, like your associates, Mr Tiatia and Ms Hetherington, of running away or staying inside the house instead of returning with the car keys, but you returned and helped Mr Epiha by driving him away.

[14] As a result of your actions Mr Epiha was able to avoid arrest at the time. He was able to take the firearm he had used in the course of his attack on the two officers away from the scene, together with another firearm, and he had the opportunity to either use them again or to dispose of them. It was only a matter of chance and good policing that Mr Epiha was able to be apprehended within a few hours and without further violence. Mr Couchman submitted that if you had not removed Mr Epiha there was a reasonable possibility further life could have been lost. You have given effectively the same explanation in your interview with the probation officer, but by assisting Mr Epiha you ensured he could not be arrested at the scene and further, as noted, you knew he had the firearms with him. He could have used them against others later or, as he did, he could have tried to dispose of them and avoid arrest.

[15] In your case I take a starting point of 14 months' imprisonment. I uplift that by one month to take account of the fact the offending occurred whilst you were on bail. That leads to an adjusted start point of 15 months.

[16] I then turn to your personal circumstances.

[17] You were born in Auckland, raised in Whangarei by your mother and stepfather. Despite that you were able to maintain a relationship with your father. Unlike a number of people who appear before this Court for sentence you described your childhood as 'great'.

[18] You have young twins who are in a relative's care at present. You have an extended family who are supportive of you. While you were on EM bail you were at a family property in Kaeo. I have received the letters of support from members of your whanau, the people who know you well, all of whom speak positively of you and they speak highly of your positive attributes. You have potential.

[19] There are no personal aggravating factors. The pre-sentence report confirms you have a number of convictions for various types of offending involving driving, drugs, dishonesty, assault and possession of weapons. None of that offending is directly or particularly relevant to your current offending. I put it to one side.

[20] Mr Couchman has emphasised that while you were on EM bail to your family and in a supportive environment, you took steps to turn your life around. That is supported by the letters from your family that I have referred to. You have also completed a number of counselling sessions. Ms Bracken, at the age of 31 you can still turn your life around but it is up to you to take the steps that you have to take to do that. To do that you will need the support of your family and you are fortunate it seems that you have that. But importantly if you are to turn your life around you need to remove yourself from your association with people who use serious drugs and people who have the sort of negative attitude towards Police and authority shown by your recent partner.

[21] Considering the positive features I can from your background and the time that you have spent on EM bail and the steps, small they may be, that you have taken to turn your life around I apply a credit of three months to reduce the sentence. That reduces it to 12 months.

[22] The principal issue for the Court on sentence is whether that sentence of imprisonment should be commuted to a sentence of home detention. As I have said

Mr Couchman has submitted that is the appropriate sentence on your behalf. The pre-sentence report recommends it. The Court is required to impose the least restrictive sentence appropriate in the circumstances.

[23] I have considered the matter carefully in this case Ms Bracken but I have to say in your case I do not consider the seriousness of your offending would adequately be met by a sentence of home detention. A sentence of imprisonment is required to reflect the seriousness of your actions and the offending and to denounce and deter actions such as assisting a dangerous criminal to leave the scene of a crime and avoid arrest. In the circumstances of this case home detention would not be an appropriate response.

[24] Ms Bracken on the charge of being an accessory after the fact to wounding with intent to cause grievous bodily harm you are sentenced to 12 months' imprisonment.

[25] As it is a short term of imprisonment you will be subject to the standard conditions under the Parole Act 2002. In addition the special conditions proposed at paragraphs 1 to 4 in the pre-sentence report relating to the sentence of imprisonment are imposed. The conditions will expire at the sentence expiry date. That's all.

Venning J