

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

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

**CRI-2019-009-006219  
[2021] NZHC 569**

**THE QUEEN**

v

**DAVID GRANT SINCLAIR**

Hearing: 19 March 2021  
Counsel: D L Elsmore and W S Taffs for Crown  
M Starling and N R Wham for Defendant  
Sentence: 19 March 2021

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**SENTENCE OF EDWARDS J**

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Counsel: M Starling, Christchurch

Solicitors: Raymond Donnelly and Co (Office of the Crown Solicitor) Christchurch

[1] Mr Sinclair, you are here to be sentenced for the murder of your baby son, CJ. A jury found you guilty of murder after a two-week trial last year.

[2] Sentencing is a solemn and formal occasion. But it is also an emotionally charged time, especially when the victim is a 10-month old baby. Before I go on, I do want to acknowledge those who are here today and who are directly affected by the loss of CJ's life, and in particular, his family who are in the back of the courtroom. It is clear that CJ was much loved.

[3] Mr Sinclair, the law provides that I must sentence you to life imprisonment unless the circumstances are such that this would be manifestly unjust. There is nothing to suggest that it would be manifestly unjust to impose that sentence in your case and so life imprisonment will be your sentence.

[4] What I must decide today is how long you will stay in prison before you will become eligible for parole. There is essentially no dispute between counsel that it should be 17 years, but the decision about the minimum period of imprisonment is mine to make. I therefore need to consider whether 17 years, or some other minimum period of imprisonment, should be imposed.

### **The offending**

[5] Sentencing follows a process, and the first step in that process is to summarise your offending.

[6] CJ was born on 6 September 2018. You and CJ's mother were not together and there was tension between you as to who was to care for CJ. His mother and her family looked after CJ for the first eight and a half months of his life, and then you became his sole caregiver. He lived with you and your older son from a different relationship.

[7] The evidence at trial suggested that CJ was a happy baby with an even temperament. He was sitting by himself, crawling, and pulling himself up on furniture. In the weeks leading up to his death, CJ was teething and as a result was probably grizzly.

[8] We do not know exactly what happened the night CJ died. But what we do know is that he was at home with you, and in the early hours of 9 July 2019, he sustained horrific head injuries that ultimately led to his death. And I will say more on these injuries shortly.

[9] We know that the injuries were likely sustained in the early hours of 9 July 2019 due to Google searches you did on your phone. At 3.27 am you googled “Does a baby’s head flop backwards from concussion”. You then accessed an on-line gambling website on your phone and at 4.17 am undertook a second Google search “What does it mean if my one-year old baby’s neck has gone all floppy after a fall out of bed”. Both these searches were done in a private mode browser. Soon after that you messaged your mother through Facebook and asked her to ring you. She did that, and came around to the house straightaway.

[10] CJ was alive when she arrived. He was lying still and taking small short breaths. Your mother told you to ring 111 and, at their direction, she started CPR. A team of medical and emergency people then arrived, and CJ was flown to hospital. His injuries were so severe however that nothing could be done to save him. His life support was turned off on and he died sometime later.

[11] Your original story that you told your mother, and those attending the scene, and police, was that CJ was sleeping in your bed and you had woken to a thud at about 3.00 or 4.00 am in the morning. You said that you had reached down, grabbed CJ by his legs, bringing him back on to the bed. That was a lie and you maintained that lie until shortly before trial. Then, you changed your story, admitting you had lied and saying that CJ did not fall out of bed, but in fact he had fallen down a flight of stairs.

[12] The weight of the medical expert evidence was that the injuries suffered by CJ were so extensive that they could not have been caused by a fall out of bed or a fall down the stairs. It is necessary for me to describe these injuries and I apologise if that causes distress to those present.

[13] CJ had an extensive skull fracture that went from one ear, across his head to the other ear, and a flap of bone that had popped up at the top. CJ also had tears to his

brain and extensive retinal haemorrhages. There were 30 plus bruises to CJ's head and body. These included bruises behind the ear, neck, and knees which are protected areas of the body, unlikely to be bruised in a fall.

[14] There was also bruising and swelling of the scrotum area and a broken bone in CJ's foot. Some of the bruises, the groin injury and the broken foot bone were likely sustained earlier than the night he died. The Crown relied on these earlier injuries at trial to show that there was a pattern of abuse leading up to CJ's injuries which made it more likely that the fatal injuries were deliberately inflicted rather than as a result of a fall down the stairs.

[15] The evidence that you did this deliberately to CJ was very strong. There was no suggestion that anyone else other than you could have inflicted such horrific injuries. The severity of them means you must have known they were likely to cause death at the time you inflicted them, and you went ahead anyway. That is murderous intent, and the jury must have reached that view when it returned a verdict of guilty.

### **Personal circumstances**

[16] Despite that evidence, you continue to deny murdering your son. You maintain that he died falling down the stairs.

[17] The closest you have come to acknowledging fault is to say that you deeply regret your son's death and that you accept responsibility for his death by failing to adequately care for him that night. You also told the pre-sentence report writer that you consumed cannabis and methamphetamine that evening, something that you denied when questioned by police. You told the pre-sentence report writer that you loved your son, and that you will never forgive yourself for what happened. I believe that to be true.

[18] At 32 years of age, you are fortunate to have a supportive family, and your mother, in particular, helped you with your older son and to care for CJ when he was with you. The impact of what you did that night will have a significant impact on your family – your mother, son, and all members of your family, for the rest of their lives.

## **Victim impact statements**

[19] Turning to the victim impact statements, now. I have read and considered those that were earlier filed both by CJ's mother, her parents and sisters. And we have heard those read out today. I do not intend to repeat everything that was said but it is clear that CJ's death has had a devastating effect on this family and will continue to affect them for years to come. I thank all those who had the courage to read, or have read, their victim impact statements today.

[20] Of course, the death of a baby has wider impacts too. Murders of babies and children are all too common in this country. It is a deep, deep mark of shame. We must all take some responsibility for ensuring that those that are most vulnerable, and that are our future, are kept safe from harm.

## **What is the minimum period of imprisonment that should be imposed?**

[21] I turn now to consider the minimum period of imprisonment to be imposed. The first step is to consider those features of your offending, Mr Sinclair, that make it particularly bad. I consider there to be five.

[22] First, there is the infliction of actual violence and the extent and the severity of the injuries. The skull fractures were described by an experienced paediatric radiologist as the most extensive and complex skull fracture she had ever seen in her career. Other medical experts compared CJ's head injuries to those seen in high speed car crashes, falls from multi-storey buildings and crush injuries. The force applied to the head of this small baby was significant.

[23] Second, there is the vulnerability of the victim. CJ was 10 months old. He was just a small baby. Totally defenceless, and completely vulnerable to any type of attack.

[24] Third, there is the extent of loss and harm your violent offending has caused. The loss of a young life has a deep and enduring impact on CJ's family, the wider community and the society at large.

[25] Fourth, there is the breach of trust involved. You were CJ's father. You were supposed to love him, care for him, protect him from harm, and shelter him as he grew up. Instead, you inflicted the most horrific and gruesome injuries that took his life when it had only just begun.

[26] Fifth, there is the delay in seeking help for CJ. You knew that CJ had suffered serious injuries. That much is obvious from the Google searches you did on your phone. But instead of calling emergency services, you waited, did some online gambling, and then entered another search regarding injuries from falling off a bed. You were already concocting a story to protect yourself rather than seeking the help that CJ needed. Even when you did finally seek help, you messaged your mother on Facebook, rather than contacting her directly or ringing 111. I accept that early intervention might not have saved CJ's life, but the delay in seeking help for your baby son is particularly callous and aggravates the offending in your case.

[27] Mrs Elsmore, for the Crown, suggests that the evidence of prior injuries suggests a pattern of abuse and that that also aggravates your offending. That evidence was called at trial to assist the jury in deciding whether the injuries that caused death were deliberately inflicted or sustained as a result of an accident. They were not the subject of a separate charge. It is the offending which led to CJ's death that is the focus of this sentence, and I put those prior injuries to one side for this purpose.

[28] The high level of brutality involved in your murder of CJ, and the fact that CJ was so vulnerable due to his age, brings your offending within a statutory provision that requires me to impose a minimum period of imprisonment of at least 17 years unless it would be manifestly unjust to do so.

[29] No one is saying that it would be manifestly unjust to impose that minimum period in your case. And I pause there to acknowledge your counsel's efforts on your behalf. He has really said all that he can say, and the fact that the 17-year period is not contested is no reflection on the submissions that he has made today. Despite the lack of contest, I have gone on to consider the question of manifest injustice independently.

[30] I am grateful to the Crown for referring me to several cases in which a 17-year minimum period was imposed or upheld for similar offending. I have read them all. They make for very sad reading. Some of these cases may have justified a minimum term of something less than 17 years, either because a lesser term was indicated for comparable offending or because 17 years was imposed for offending which was arguably more serious than yours.<sup>1</sup> On the other hand, other cases suggest that 17 years is appropriate.<sup>2</sup>

[31] Overall, I am satisfied that these cases show that even if the statutory provision had not been engaged, a 17-year term would have been necessary to hold you accountable for the harm you have done, to denounce your conduct, deter others, and to protect the community from you.

[32] Although you have appeared before the Court before, none of the convictions are relevant here today. The Crown does not seek an uplift, and I agree with that approach.

[33] There is nothing in your personal circumstances that would warrant a discount. You continue to maintain that it was not your fault. It is perhaps understandable that you would not want to admit doing something so terrible to your baby son, who I accept, you loved dearly. But accountability, responsibility, and remorse are all steps towards rehabilitation. You have shown none of those yet.

[34] Standing back then, I am satisfied that a 17-year minimum period is not manifestly unjust and that is what I intend to impose. What that means is that you must stay in prison for at least 17 years. Whether you are released after that will be a matter for the parole board to determine.

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<sup>1</sup> *R v Izett* [2021] NZHC 70; *R v Duff* [2018] NZHC 2690; *R v Taylor* [2017] NZHC 1257; *Ngati-Check v R* [2011] NZCA 543.

<sup>2</sup> *R v Pickering* HC Auckland CRI-2008-055-001273; *R v Ellery* [2013] NZHC 2609; *R v Solomon* [2016] NZHC 1653.

## **Sentence**

[35] Mr Sinclair, please stand. I sentence you to life imprisonment for the murder of your son. You must serve a minimum period of 17 years.

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Edwards J