

[2] Five days before trial, Mr Epiha pleaded guilty to having murdered Constable Hunt and dangerous driving causing injury to Mr Sattar. At the conclusion of his trial Mr Epiha was also found guilty of having attempted to murder Constable Goldfinch.

[3] Mr Epiha was sentenced by Venning J to life imprisonment for the murder of Constable Hunt with the condition he serve a minimum period of imprisonment (MPI) of 27 years before he is eligible to be considered for parole. Mr Epiha was sentenced to concurrent sentences of 12 years' imprisonment for the attempted murder of Constable Goldfinch and one year's imprisonment for dangerous driving causing injury to Mr Sattar.²

[4] Mr Epiha appeals his sentence. The essence of his appeal is that the adjusted MPI starting point of 29 and a half years' imprisonment adopted by Venning J was too high and that insufficient credit was given for Mr Epiha's personal mitigating circumstances. It is submitted on behalf of Mr Epiha that the errors in sentencing resulted in a sentence that is manifestly excessive.

The offending

[5] At approximately 10.30 am on 19 June 2020 Mr Sattar was loading items into his car in Reynella Drive, West Auckland. At the same time Mr Epiha was being pursued along Reynella Drive in his Toyota sedan by Constables Hunt and Goldfinch, who were driving a marked police patrol car with the lights and sirens operating. Mr Epiha lost control of his vehicle and crashed into Mr Sattar's car, causing a number of injuries to Mr Sattar. Mr Epiha tried to drive his car from the crash but was unable to do so because of the damage that had occurred to his vehicle. Mr Epiha got out of his car with a 7.62 mm NHM-90 Norinco semi-automatic rifle, a weapon which is manufactured in China and is similar to the Russian Kalashnikov AK-47. Mr Epiha left a second rifle in his car.

[6] Constables Hunt and Goldfinch arrived at the scene just as Mr Epiha was getting out of his vehicle. Constable Goldfinch alighted from the front passenger seat

² At [65].

of the police car to render assistance to anyone who may have been injured in the crash. Neither constable was carrying a firearm. Mr Epiha immediately pointed his rifle and fired at Constable Goldfinch as he ran for cover behind a Suzuki SUV that was parked on the opposite side of the road. Constable Hunt initially remained in the police car while he called for assistance.

[7] When sentencing Mr Epiha, Venning J explained in the following way the evidence concerning Mr Epiha's attempt to murder Constable Goldfinch:

[9] Constable Goldfinch ... described a sort of cat and mouse situation that took place around the [Suzuki] SUV. You were trying to get around it to get at him. He was trying to keep the SUV between him and you so you could not get a clear shot at him. He pleaded with you to stop. He put his hands up and told you to just "f'ing walk away". He said he wouldn't arrest you. Constable Goldfinch's evidence about your response was chilling. He described you looking at him like you were thinking about it and it was as though you just "clicked" and decided you were going to kill him. You then leaned the weapon over the top of the SUV and shot at him through the roof of it. Remarkably the shot missed him.

[8] Constable Goldfinch ran down the road to get away. As he did so, Mr Epiha fired multiple rounds at the constable, who described the ground as "exploding" around him. Some of the shots that missed the policeman penetrated nearby houses. Four bullets struck the constable as he ran for his life. He managed to cross the road, escape down a driveway and leap over a fence, after which he used his radio to call for help.

[9] Mr Epiha fired 10 shots at Constable Goldfinch. One bullet hit him in the left hip, two penetrated through his right calf muscle and one hit one of his boots. Fortunately, none of the wounds were fatal.

[10] As Constable Goldfinch fled, Constable Hunt got out of the patrol car. He probably did so to assist his colleague. Mr Epiha immediately turned his weapon on Constable Hunt and fired four shots, while standing just a few metres from the unarmed officer. All four bullets struck Constable Hunt. Venning J explained:³

The first shot was a glancing blow off [Constable Hunt's] left chest as he turned away from you, the other three were fired when [Constable Hunt] was

³ At [12].

turned away and had his back to you. The last two shots were fired when Constable Hunt was falling or was close to the ground.

[11] Constable Hunt suffered extensive injuries, particularly from the last three shots. As Constable Hunt lay dying, Mr Epiha ignored the officer's plea for assistance and instead, he walked to his Toyota car and took out the second gun before getting into a car driven by Ms Bracken, who assisted Mr Epiha flee from the scene.

[12] Video footage taken on a cell phone camera by a member of the public showed Mr Epiha nonchalantly left Constable Hunt to die. When cross-examined about why he looked so calm, Mr Epiha said he was practising "mindfulness", an explanation that Venning J said was "bizarre".⁴

The guilty plea

[13] On 7 July 2021, Mr Epiha pleaded guilty to having murdered Constable Hunt and to the charge of driving dangerously causing injury to Mr Sattar. The guilty plea to murder was tendered on the basis that Mr Epiha was guilty of murder, not because he meant to cause Constable Hunt's death (the definition of murder in s 167(a) of the Crimes Act 1961), but because he only meant to cause bodily injury, knowing those injuries would be likely to cause death and that he was reckless as to whether death ensued or not (the definition of murder in s 167(b) of the Crimes Act). The Crown did not accept Mr Epiha lacked the requisite intention to kill Constable Hunt in terms of s 167(a). In these circumstances, Venning J acceded to a request from Mr Edgar, counsel for Mr Epiha, to suspend the entry of conviction for murder pending the hearing of the evidence in relation to the attempted murder charge.

[14] The trial commenced on 12 July 2021 and concluded on 27 July 2021. Although the primary focus of the trial was on the charge that Mr Epiha had attempted to murder Constable Goldfinch, the evidence traversed the shooting of Constable Hunt as that evidence was relevant to assessing Mr Epiha's intentions when he shot at Constable Goldfinch. The jury also had to consider the charge against Ms Bracken. She was initially charged with being an accessory after the fact to murder but was

⁴ At [14].

ultimately convicted of an amended charge of being an accessory after the fact to wounding with intent to cause grievous bodily harm.⁵

[15] During the trial Mr Epiha gave evidence and continued to claim he did not intend to murder Constable Hunt, notwithstanding the evidence that he fired a powerful semi-automatic rifle at Constable Hunt from close range and struck him four times in the chest and back.

[16] Following the trial, Venning J reviewed the relevant evidence and issued a ruling in which he explained he was satisfied beyond reasonable doubt that when Mr Epiha shot at Constable Hunt he intended to kill him and that he had murderous intent under s 167(a) of the Crimes Act.⁶

[17] When sentencing Mr Epiha, Venning J again firmly rejected Mr Epiha's claim that he did not intend to murder Constable Hunt, saying Mr Epiha had refused to accept full responsibility for his actions and that his argument he was guilty of only reckless murder was "nonsense".⁷

Sentencing

[18] Venning J considered but rejected the possibility of sentencing Mr Epiha to life imprisonment without parole.⁸ That option was considered because the murder of Constable Hunt was Mr Epiha's second "strike offence" under the three strikes regime, which applied when Mr Epiha was sentenced. In particular, s 86E of the Sentencing Act 2002 was engaged. The effect of that section was that the Court was required to sentence Mr Epiha to life imprisonment without parole unless the Court was satisfied, given the circumstances of the offence and the offender, it would be manifestly unjust to apply that sentence. Venning J concluded that sentencing Mr Epiha to life imprisonment without parole would be manifestly unjust and that the need to protect the community from him could be achieved by imposing a long finite MPI.

⁵ Ms Bracken was sentenced to imprisonment for one year.

⁶ *R v Epiha* HC Auckland CRI-2020-090-2497, 28 July 2021 (Ruling 6 of Venning J).

⁷ Sentencing notes, above n 1, at [16].

⁸ At [63].

[19] The Judge reasoned that the murder of Constable Hunt warranted an MPI of 24 years.⁹ That assessment was reached after comparing Mr Epiha's offending with two other cases, namely, *R v Luff*¹⁰ and *R v Tully*.¹¹

[20] *R v Luff* involved the shooting and killing of one police officer and the shooting and injuring of another in the Manawatū in 2002. The offender was 17 years old. He pleaded guilty at an early stage and had no previous convictions. Ronald Young J considered an MPI of 20 years was justified but imposed an MPI of 17 years after taking account of Mr Luff's age, guilty plea, previous good character and his remorse.¹²

[21] Venning J considered Mr Epiha's offending was significantly more serious than Mr Luff's primarily because of the nature of the weapon used by Mr Epiha and the number of shots he fired.¹³

[22] Venning J considered *R v Tully* provided closer guidance for setting the starting MPI for Mr Epiha.¹⁴ Mr Tully was convicted of two charges of murder and one of attempted murder after he entered the office of Work and Income New Zealand (WINZ) in Ashburton armed with a pump-action shotgun and shot dead two WINZ employees and fired a shot at another WINZ employee, but fortunately missed her. When sentencing Mr Tully, Mander J described the offending as a carefully planned retribution that stemmed from Mr Tully's grievances about the way he thought he had been treated by WINZ staff. The Judge sentenced Mr Tully to life imprisonment with an MPI of 27 years in relation to the two convictions for murder and a concurrent term of 11 years' imprisonment for the attempted murder conviction.¹⁵ Mr Tully was 50 years old at the time of his offending and had previous convictions for threatening to kill and presenting a firearm. Mr Tully had a history of mental instability. He showed no signs of remorse.

⁹ At [38].

¹⁰ *R v Luff* HC Palmerston North S4/02, 18 September 2002.

¹¹ *R v Tully* [2016] NZHC 1133.

¹² *R v Luff*, above n 10, at [26].

¹³ Sentencing notes, above n 1, at [37].

¹⁴ At [35]–[36].

¹⁵ *R v Tully*, above n 11, at [41].

[23] Venning J accepted that aspects of Mr Tully’s offending were more serious than Mr Epiha’s, in particular, Mr Tully carefully planned his attack on WINZ employees. On the other hand, Mr Epiha “engaged in a shooting spree” against two police officers. “The semi-automatic firearm [he] used was more lethal than the pump action firearm used by Mr Tully. Further, [Mr Epiha] fired 14 shots compared to [Mr Tully’s] five or six”.¹⁶

[24] After adopting an MPI starting point of 24 years for the murder of Constable Hunt,¹⁷ Venning J assessed the attempted murder of Constable Goldfinch as being “near the most serious of cases for attempted murder” and concluded “[a] sentence of 12 years’ imprisonment for the offending against Constable Goldfinch alone would be justified”.¹⁸

[25] After having regard to the attempted murder of Constable Goldfinch and the injury of Mr Sattar “and taking account of totality” Venning J considered an uplift was warranted to the MPI reached in relation to the murder of Constable Hunt. The Judge said a further five years was “required to reflect the seriousness of [Mr Epiha’s] actions”. This resulted in an adjusted starting point for the MPI of 29 years.¹⁹

[26] When considering Mr Epiha’s personal aggravating circumstances, the Judge observed that his offending occurred whilst he was on parole for previous offending involving a firearm. He had only been out of jail for seven months when he committed his offences against Constable Hunt, Constable Goldfinch and Mr Sattar. Venning J said that because Mr Epiha’s offending occurred whilst he was on parole, an uplift of six months to the MPI was required.²⁰

[27] We will return to explain Mr Epiha’s previous relevant offending at [47] and [48]. In assessing mitigating factors personal to Mr Epiha, Venning J focused upon the guilty plea and Mr Epiha’s background.

¹⁶ Sentencing notes, above n 1, at [36].

¹⁷ At [38].

¹⁸ At [40].

¹⁹ At [42].

²⁰ At [43].

Guilty plea

[28] The Judge explained Mr Epiha's guilty plea to the murder charge "was of little value. It was not an acknowledgment or acceptance of culpability ... It did not amount to an acceptance of the true nature of [Mr Epiha's] actions". Mr Epiha's claim that he did not intend to murder Constable Hunt "was entirely misguided" and "[t]he trial still took almost the same length of time it would have taken even if there had been further evidence regarding the killing of Constable Hunt". Furthermore, Mr Epiha had "no possible defence" to the "overwhelming" case against him.²¹

[29] Venning J therefore decided there could be only a "very modest" six-month reduction in the MPI to reflect Mr Epiha's guilty plea.²²

Mr Epiha's background

[30] Venning J considered a pre-sentence report and a cultural report prepared by Ms Turner pursuant to s 27 of the Sentencing Act (s 27 report). Those reports referred in detail to Mr Epiha's "troubled upbringing". He was raised in an unstable environment dominated by gang affiliations. Mr Epiha became "immersed in a youth gang, the Bloods", at a young age, and at the age of 19 he committed serious offences for which he was sentenced to four years' imprisonment.²³

[31] Venning J accepted Mr Epiha's background could explain "in some way" why he involved himself in violence and firearms offending. It did not, however, excuse his actions when he murdered Constable Hunt and attempted to murder Constable Goldfinch.²⁴ The most the Judge said he could deduct to reflect Mr Epiha's personal background was two years, resulting in the MPI of 27 years.²⁵

[32] For completeness, we note Venning J rejected a submission from Mr Edgar that Mr Epiha deserved credit for remorse. The Judge described Mr Epiha as having an

²¹ At [44].

²² At [44].

²³ At [50].

²⁴ At [55].

²⁵ At [56].

“arrogant attitude throughout the ... trial” and that he displayed a “complete lack of empathy and refusal to accept responsibility for [his] actions”.²⁶

Grounds of appeal

[33] Mr Edgar challenged the adjusted MPI of 29 and a half years reached in relation to the murder of Constable Hunt.

[34] It was contended that the similarities between Mr Luff’s offending and that of Mr Epiha warranted a starting MPI of “around 20 years” for all of Mr Epiha’s offending. Mr Edgar submitted the similarities between Mr Luff and Mr Epiha’s cases included the fact a police officer was murdered in each case during the execution of their duties and that there was an attempt to murder a second police officer. Mr Edgar emphasised Mr Luff was a proficient hunter and experienced with firearms. According to Mr Edgar, the fact Mr Luff discharged a total of five bullets and used a bolt-action rifle were not significant points of distinction from Mr Epiha’s offending.

[35] Mr Edgar also suggested Venning J’s reliance upon *R v Tully* resulted in a disproportionately high MPI for Mr Epiha.

[36] Mr Edgar submitted the key distinguishing feature between Mr Tully’s offending and that of Mr Epiha concerned the former’s premeditation. It was said that a striking feature of Mr Tully’s crimes was his planning and determination to kill WINZ employees. It was also significant that Mr Tully murdered two victims. In comparison, Mr Epiha was said to have acted almost on the spur of the moment and murdered just one victim.

[37] Mr Edgar also emphasised the fact Mr Tully used a pump-action shotgun in a confined office space negated the emphasis Venning J placed on the type of rifle used by Mr Epiha and the number of bullets he fired.

[38] When focusing on mitigating factors Mr Edgar submitted insufficient discount was given for Mr Epiha’s guilty plea and that there was also a failure to give

²⁶ At [45].

appropriate credit for Mr Epiha's prospects for rehabilitation, particularly in light of his comparatively young age at the time of his offending.

Analysis

Starting point

[39] Section 8(e) of the Sentencing Act recognises the "general desirability" of sentencing offenders consistently with the way offenders who have committed similar offences have been sentenced. While there are some similarities between the offending in *R v Luff* and the case before us, there are three key reasons why we reject Mr Edgar's submission that Venning J erred by not adopting an MPI starting point of approximately 20 years as occurred in *R v Luff*.

[40] First, we agree with Venning J that Mr Epiha's offending was more serious than Mr Luff's because of the way Mr Epiha fired multiple high-calibre bullets in a suburban area at a time when members of the public were at risk of being killed or injured. A number of the bullets Mr Epiha fired at Constable Goldfinch entered surrounding properties. One ricocheted off a fence. The Crown is right when it submits that it is very fortunate that members of the public were not also shot by Mr Epiha. The indiscriminate way in which Mr Epiha fired his semi-automatic rifle was quite different from the way in which Mr Luff fired his single-action rifle at his two victims.

[41] Second, Mr Luff was sentenced just two and a half months after the Sentencing Act came into force. His case was, in all likelihood, the first to engage s 104 of the Sentencing Act which requires the imposition of an MPI of at least 17 years' imprisonment in cases of particularly serious murder, unless imposing that sentence would be manifestly unjust. Modern sentencing practices and policies for murder were still evolving when Mr Luff was sentenced. Unfortunately, sentences for murder under s 104 of the Sentencing Act are no longer rare. The length of sentences imposed on those convicted for murder has steadily increased since the commencement of the Sentencing Act.

[42] Third, courts must have the capacity to respond to the need to protect the community from increasing violence involving guns, particularly high-powered military-style weapons. There is widespread and legitimate concern about the increasing prevalence and use of such weapons. The risk of harm to the community caused by those who use them justifies the courts in imposing longer MPIs than occurred when Mr Luff was sentenced.

[43] Mr Tully's level of premeditation was more pronounced than Mr Epiha's. Nevertheless, Mr Epiha had every opportunity to not shoot at Constables Goldfinch and Hunt. Instead of simply backing off Mr Epiha chose to shoot at police officers with the clear intention of murdering them. His shooting spree was similar to that of Mr Tully's. But the fact that the victims were police officers was clearly a serious aggravating factor, which must be brought into account under s 9(1)(fa) of the Sentencing Act. We cannot accept Mr Edgar's submission that this is not a proper basis for distinguishing this case from Tully.

[44] We therefore are satisfied that Venning J did not err when he adopted an adjusted MPI starting point of 29 and a half years in relation to the murder of Constable Hunt, weighted as it was by the need to reflect the serious offending against Constable Goldfinch. A stern response was required.

[45] For completeness we record Mr Edgar took no issue with the six-month uplift to the MPI to reflect the fact Mr Epiha's offending occurred while he was on release conditions following his earlier sentence of imprisonment.

[46] Although Venning J did not refer in detail to Mr Epiha's earlier offending, the events that led to him being sentenced to four years' imprisonment in November 2016 illustrate why the Judge was justified in being very concerned about the risk Mr Epiha poses to the community.²⁷

[47] The earlier offending involved Mr Epiha and other offenders firing a SKS rifle (a Russian semi-automatic rifle) at the home of a family following a minor altercation between one of the occupants of the house and one of Mr Epiha's associates. Six shots

²⁷ *R v Epiha* [2016] NZDC 22419.

were fired into the house. At the time, children were sleeping in the house. Mr Epiha was also sentenced to concurrent terms of imprisonment for being in possession of five firearms in addition to the SKS rifle and a variety of explosives. He was also sentenced to concurrent terms of imprisonment for drug offending.

[48] The weapons found in Mr Epiha's possession comprised the SKS rifle, a pump-action shotgun, a Mossberg rifle, a double-barrelled shotgun, a cut-down pump-action shotgun and a Ruger pistol. According to the sentencing notes of the Judge who sentenced Mr Epiha, he claimed his arsenal was "for hunting and duck shooting".²⁸ Seven months after he was released from prison for this offending Mr Epiha again had possession of guns, including the semi-automatic weapon he used against Constables Hunt and Goldfinch.

Guilty pleas

[49] The six-month deduction from the adjusted MPI that was made in response to Mr Epiha's pleas of guilty to the murder of Constable Hunt and dangerous driving causing injury to Mr Sattar has to be assessed in the context of the following four facts.

[50] First, the guilty pleas were entered over a year after Mr Epiha was charged. This was not a case in which material facts emerged that could explain the delays in pleading guilty. Mr Epiha knew the evidence against him from the outset. That evidence was compelling, indeed overwhelming.

[51] Second, the guilty pleas were entered just five days before the trial commenced.

[52] Third, as noted by Venning J, the plea of guilty to having murdered Constable Hunt did little to alter the length of the trial as a lot of the evidence that concerned the murder of Constable Hunt also related to the charge of attempting to murder Constable Goldfinch.

²⁸ At [11].

[53] Fourth, the guilty plea in relation to the murder of Constable Hunt was tendered on the basis that Mr Epiha did not intend to murder the constable. This in turn necessitated the trial Judge making factual findings which he did after the trial. He ruled Mr Epiha's actions constituted murder as defined in s 167(a) of the Crimes Act. The argument Mr Epiha only "recklessly" killed Constable Hunt was misconceived and demonstrated Mr Epiha's persistent failure to take full responsibility for his actions.

[54] Notwithstanding Mr Edgar's submissions to the contrary, the deductions made for Mr Epiha's guilty plea were appropriate. While Mr Epiha was fully entitled to maintain his not guilty pleas and to defend the charge of attempting to murder Constable Goldfinch, his decision not to accept full responsibility for his actions at an early juncture deprived him of the opportunity to receive a meaningful discount for guilty pleas.

Personal factors

[55] The pre-sentence report provided little hope for Mr Epiha. The report writer noted Mr Epiha disclosed little information about his upbringing and displayed no genuine remorse for his actions. Instead, Mr Epiha claimed the shots he fired were meant as "warning shots" to encourage the police to leave the scene. The report writer maintained that until such time as Mr Epiha undergoes intensive treatment to address his ingrained anti-social lifestyle "he will remain a very high risk to the general public".

[56] Mr Epiha engaged with Ms Turner, the author of the s 27 report. Ms Turner explained Mr Epiha is Māori on his mother's side and that his father is Niuean. Mr Epiha explained to Ms Turner that he was brought up in an impoverished and unstable environment.

[57] Ms Turner observed Mr Epiha's family has extensive connections with numerous gangs and that it was almost inevitable he would become fully immersed in gang culture, including being exposed to physical violence and drug dealing.

[58] Mr Epiha reported he started dealing in cannabis when he was just seven years old. His life quickly spiralled out of control when he became absorbed in the Bloods. He was expelled from high school because of his affiliation to that gang and his association with the Bloods led to the offending we have summarised at [47] and [48].

[59] According to Ms Turner, Mr Epiha accepts responsibility for having murdered Constable Hunt. Ms Turner's report, however, states Mr Epiha regarded the killing of Constable Hunt as an act of recklessness. He accepted that he had injured Constable Goldfinch and that he was therefore "guilty of something" but not attempted murder.

[60] Ms Turner said, "[t]here is a fire that burns in Mr Epiha's belly that speaks to the disconnection between whānau, whakapapa and culture caused by colonisation and indigenous dispossession of land and culture". This mindset has shaped Mr Epiha's belief system and, in particular, his distrust of police and others in authority.

[61] Mr Epiha does have an appreciation of the cultural consequences of his offending. He understands his actions will inflict inter-generational whakamā on his whanau and that he and his family will forever carry the shame of his offending.

[62] Ms Turner's report was carefully considered by Venning J, when he concluded there were factors in Mr Epiha's upbringing that contributed to his use of guns. In particular, understanding Mr Epiha's cultural dislocation helps in gaining some appreciation of the factors that have contributed to his very violent behaviour.

[63] The factors identified by Ms Turner as matters that contributed to Mr Epiha's offending had to be balanced against the risk he poses to the community, the need to denounce his conduct and the need to deter others from such offending. The Judge felt he could only adjust the MPI by two years to reflect the matters contained in Ms Turner's report.²⁹

[64] Mr Epiha's history of serious violence, the extreme violence involved in the murder of Constable Hunt and the attempted murder of Constable Goldfinch, his

²⁹ Sentencing notes, above n 1, at [56].

failure to accept full responsibility for his actions and the disturbing assessment of his future risk to society mean the discount of two years to reflect the matters in Ms Turner's report was appropriate.

Overall assessment

[65] When considering the sentence imposed by the High Court, we have had regard to Mr Epiha's age. He was 24 when he offended. There is evidence some young people do not fully develop cognitively until they reach 25. We also appreciate Mr Epiha will be 52 years old before he can be assessed for parole. That is a very long sentence for a young man. It is, however, a proportionate response to what was the merciless shooting of two police officers, the taking of a young constable's life and an ongoing reluctance by Mr Epiha to take full responsibility for his actions. He is a violent man from whom the community must be protected.

[66] The sentence imposed by the High Court for the murder of Constable Hunt was not manifestly excessive. Nor were the sentences imposed in relation to the attempted murder of Constable Goldfinch and dangerous driving causing injury to Mr Sattar.

Result

[67] The appeal against sentence is dismissed.

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