

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

**I TE KŌTI MATUA O AOTEAROA
TE TIHI-O-MARU ROHE**

**CRI-2021-076-1065
[2022] NZHC 1517**

THE QUEEN

v

TYREESE STUART FLEMING

Hearing: 29 June 2022

Appearances: A R McRae for Crown
T C G Nation for Defendant

Judgment: 29 June 2022

ORAL SENTENCING REMARKS OF OSBORNE J

Introduction

[1] Mr Fleming, I am going to ask you to stand please.

[2] Tyreese Stuart Fleming, you appear for sentence on five charges of dangerous driving causing death, to which you pleaded guilty and were convicted on 5 April 2022.¹ By your dangerous driving you took the lives of five teenagers:

(a) Andrew Goodger, aged 15 years;

¹ Land Transport Act 1998, s 36AA(1)(b) and (2) – maximum penalty of 10 years' imprisonment or a fine not exceeding \$20,000, and at least one year's disqualification from driving.

- (b) Javarney Drummond, aged 15 years;
- (c) Niko Hill, aged 15 years;
- (d) Jack Wallace, aged 16 years; and
- (e) Joseff (Joey) McCarthy, aged 16 years.

[3] Mr Fleming, I am shortly going to ask you to sit again while I explain the sentence I will be imposing on you. Necessarily, this will take time. I will indicate to you towards the end when you need to stand again.

[4] Please be seated now.

[5] As you have heard, the Crown submits that a starting point of between five and six years' imprisonment is appropriate. The Crown submits that even when mitigating factors are taken into account the appropriate sentence will still be one of imprisonment.

[6] Your counsel submits that a starting point of four years' imprisonment would be appropriate. He suggests that that should be reduced by four discounts and a community-based sentence would be justified.

[7] I am going to indicate to you now that I have determined that your sentence will be one of imprisonment and that you will be sentenced to two years and six months' imprisonment.

[8] I will now explain why that will be your sentence.

Agreed summary of facts

The offending

[9] At the time of your offending, you were 19 years old. That compares to the ages of your victims who were variously 15 and 16 years old.

[10] On 4 August 2021, you obtained your restricted driver's licence. The conditions of your licence precluded you from driving if you had had any alcohol, and from having any of the victims as passengers.

[11] At approximately 6.20 pm three days later, on 7 August 2021, you entered a liquor store in Timaru and purchased two boxes of a vodka-based RTD.

[12] At about 6.25 pm you drove to the skatepark at Caroline Bay, carrying Andrew Goodger and Niko Hill as your passengers. Javarney Drummond, Jack Wallace and Joey McCarthy joined you at around 6.40 pm. The group of you spent time around the skatepark drinking the alcohol you had purchased until approximately 7 pm. While there, you posted a "Snapchat" of yourself sculling at least two bottles of the alcohol.

[13] At around 7.02 pm, everyone got into your vehicle except for Andrew Goodger. He stood at the rear of your vehicle. You got out of the vehicle and opened the boot allowing Andrew to get in. You then closed the boot, got back into the vehicle and drove out of the area. You were therefore now in breach of two restrictions of your licence. Niko Hill was your front seat passenger. In the back seats were Jack Wallace, Joey McCarthy and Javarney Drummond. The seated passengers other than Joey McCarthy were wearing seatbelts. Andrew Goodger rode in the boot.

[14] You turned right into Evans Street and travelled north onto the Hilton Highway. At the intersection of the Hilton Highway and Meadows Road, you turned right onto Meadows Road.

[15] Andrew Goodger spoke to a friend on the phone whilst travelling in the boot. In the background a person could be heard telling you to speed up.

[16] You travelled north along Meadows Road around 7.20 pm. You passed a number of commercial businesses and then entered the residential rural area, with a posted speed limit of 100 kilometres per hour. You continued in the northerly direction towards Seadown Road. The intersection of Meadows Road and Seadown Road is a T-intersection controlled by a give-way sign at the intersection, a

give-way warning sign 200 metres before the intersection, and the appropriate markings on the road itself. You were required, when approaching the intersection, to give way. You failed to reduce your speed. You crossed the centre line of Meadows Road onto its south-bound lane of that road. You were travelling at a speed of between 110 and 115 kilometres per hour. You failed to yield at the intersection. You did not approach the intersection with caution or with any intention to stop. You tried to make the turn onto Seadown Road but lost control of the vehicle. You veered into the grass verge.

[17] The overloading of the vehicle and the weight imbalance of having a passenger in the boot contributed to your car's loss of traction. The car travelled a distance of approximately sixty metres from the intersection before it collided with a large concrete pole. At the time of impact, the car was travelling between 107 and 115 kilometres per hour.

[18] The vehicle split in two on impact with the concrete pole. Jack Wallace and Niko Hill were thrown from the vehicle. The rear half of the vehicle containing Javarney Drummond, Joseff McCarthy and Andrew Goodger remained at the point of impact. The front half of the vehicle in which you were seated travelled approximately 26 metres further north along Seadown Road.

[19] All your passengers were killed instantly. You alone survived.

[20] Within minutes someone arrived on the scene. You were trying to use your cellphone. You were transported to Timaru Hospital. You sustained a fracture to your nose and ribs and a lacerated spleen. You remained in hospital for some days but did not need surgery.

[21] A blood sample was taken from you at 9.03 pm (that is, one hour and 43 minutes after the crash). The sample returned a result of 50 milligrams (plus or minus two) of alcohol per 100 millilitres of blood. You declined to be interviewed by the police.

[22] The following day, from the hospital, you posted the following message on social media:

Hello everyone just wanted to say I'm not dead I am very, very lucky to still be alive and I can't believe what has happened and I am so, so, so sorry to the families I have put in pain coz of stupid mistakes that I have made that has costed 5 lives.

[23] You were originally in December 2021 charged with five counts of manslaughter. On 5 April 2022, those charges were amended to charges of dangerous driving causing death. You immediately pleaded guilty to those charges.

Acknowledgement of victims

[24] I first acknowledge your five primary victims. I acknowledge the heightened tragedy through the death of five young people with all their zest for life and their promising futures that have been stripped away.

[25] I acknowledge also the statements I have received this morning, including those that have been read in court today, from the members of the families of Andrew, Javarney, Niko, Jack and Joey. Their losses are irreparable. Their grief beyond measure. I thank each of you for all you have done in providing this Court with the information that informs this sentencing process, and particularly for your courage in providing those.

Mr Fleming's personal circumstances

[26] I have been assisted in understanding your personal circumstances by six sets of reports. A health assessor's report provided by a psychiatrist, Dr Norris. A neuro-psychological report carried out by two psychologists. A pre-sentence report from your probation officer. And the reports of three restorative justice conferences you attended with the family of the victims. I have also received a reference from your employer.

[27] The reports tell me these things about you. You are now 20 years old. You live with your mother, stepfather and brother in Timaru. You were born in Nelson but moved with your mother to Timaru soon afterwards, and have never met your

biological father. In Timaru, your mother commenced her relationship with your stepfather.

[28] You have enjoyed a caring and supportive upbringing. You have a good relationship with your parents and your younger brother. The psychologists assess you as someone with a “secure, stable and protective” relationship with your family.

[29] You struggled academically at high school but did not present any significant behavioural problems. You achieved NCEA Level 1. You left school at age 17. For the last two and a half years, you have had employment, currently as a fish filleter. Your employer speaks favourably of your overall work ethic, noting you have recently commenced an apprenticeship. Your employer reports an increase in your maturity since your offending.

[30] Your weekly income (after expenses) is \$650. You have modest savings around \$1,500. You have offered to make reparation payments totalling \$20,000 over two years if a community-based sentence is imposed.

[31] It is reported that, in 2020, you sustained a head injury after being kicked in the head at the skatepark. You received facial injuries but were not diagnosed with any brain injury or any long-term impacts.

[32] You are reported as being “socially immature”. You apparently feel more at ease in the company of younger friends. It is reported that, since your offending, you have withdrawn from socialising activities and have been the subject of abuse from community members.

[33] You have no convictions for prior offending. That said, you were summonsed for wilful damage at Caroline Bay in March 2021, a matter which was dealt with by diversion, and a Trespass Notice issued excluding you from that area. There was an incident in October 2020 for which you were given a verbal warning. In short, not a completely clean history, but matters which pale in comparison to the charges here.

[34] You informed the report writer that, before the offending, you would consume moderate amounts of alcohol weekly and did indulge in weekend binge drinking. That said, you have ceased all alcohol use since your offending. You are assessed as presenting a low risk of harm.

[35] The neuro-psychological assessment identifies a number of weaknesses in your cognitive functioning. You are reported as being emotionally immature and socially naïve, with a tendency towards impulsive behaviour. That said, you have no history of diagnosable mental illness or previous mental health difficulties.

[36] Following the accident, you understandably presented as extremely distressed. You were referred by a social worker to a youth alcohol, drugs and mental health service for counselling. You have maintained regular contact with that service since August 2021. You have received support in dealing with the emotional consequences of your offending and have participated in therapeutic activities.

[37] You retain the benefit of a very caring and supportive family, who have assisted you in rebuilding your life.

Restorative justice

[38] You engaged in three restorative justice conferences with family members of two of the victims. The reports were generally positive in nature. They detail the extended explanations you gave as to your offending and meaningful discussions between you and those taking part in the conferences with you.

Approach to sentencing

[39] The Sentencing Act 2002 sets out the purposes and principles of sentencing that must be considered by the Court.² A starting point is based on the offending and is adjusted to reflect aggravating or mitigating features personal to the offender.³

² Sentencing Act 2002, ss 7 and 8.

³ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.

[40] There is no tariff case for dangerous driving causing death. A relevant list of aggravating and mitigating factors was set out by the Court of Appeal in *Gacitua v R*.⁴ In that case, the Court referred to the reforms made by Parliament in 2011 to increase the maximum sentence of imprisonment for dangerous or reckless driving causing death from five years to 10 years' imprisonment. The Court of Appeal recognised the amendment sent a message to the courts that tougher sanctions were required for "drunk, drugged, dangerous or reckless drivers who cause death".⁵

[41] The Court of Appeal, in *Gacitua*, also noted there was particular difficulty in determining a person's culpability for dangerous driving causing death because of the extremely serious harm caused but as an unintended consequence.⁶ The Court of Appeal in *Gacitua*, and again more recently, has required that sentencing for this type of offending remains a very fact-specific task in that the sentencing Judge should not simply tick off factors — the identified factors are instead to be used as a guide.⁷

Submissions

Crown submissions

[42] The Crown submits that the predominant aggravating feature in your case is the extent of harm you caused,⁸ although by definition, offences of this type always give rise to extremely serious harm.⁹ The Crown submits that the other aggravating features present were:

- (a) the consumption of alcohol;
- (b) driving a dangerously loaded vehicle;
- (c) the commission of other offences at the same time (driving in breach of your three-day-old restricted licence); and

⁴ *Gacitua v R* [2013] NZCA 234 at [23], discussing the updated English test in *R v Cooksley* [2003] 3 All ER 40 (Crim App).

⁵ At [10] and [30].

⁶ At [24], citing *R v Cooksley*, above n 4, at [1].

⁷ *Gacitua v R*, above n 4, at [22] and [29]; *Pollard v R* [2018] NZCA 244 at [25].

⁸ Sentencing Act, s 9(1)(d).

⁹ *Gacitua v R*, above n 4, at [24].

- (d) driving above the speed limit, at great speed through a give-way sign and on the wrong side of the road when attempting to enter Seadown Road.

[43] The Crown submitted that your driving could be categorised as falling somewhere between a case of highly dangerous driving and a case involving an extremely high level of culpability, adopting categories used in the leading United Kingdom authority.¹⁰

[44] The Crown referred to four cases that it submitted are useful in determining the appropriate starting point in your case. Those cases are explained in a Schedule I attach to this judgment.¹¹ The Crown notes that the decisions in *Delany* and *Prince* pre-date the 2011 increase in the maximum sentence.

[45] Having regard to those cases the Crown submitted that the appropriate starting point is between five and six years' imprisonment.

[46] The Crown then turned to matters of mitigation.

[47] The Crown first recognised that you should receive a full credit of 25 per cent for your guilty pleas.¹²

[48] The Crown suggested that there might be an additional 10 per cent discount for the remorse shown by you, particularly in your restorative justice conferences with the Goodger and Hunt families. But, in the Crown's submission, that discount would require reconsideration if you are sentenced, as you will be, to imprisonment and will then be unable to make reparation.

[49] Finally, the Crown recognised that a further discount of no more than 15 per cent might be available through the combined effect of your youth and some

¹⁰ *R v Cooksley*, above n 4.

¹¹ *R v Griffiths* [2018] NZHC 1104; *R v Delany* HC Christchurch T95/02, 16 April 2003; *R v Guest* [2013] NZHC 2432; *R v Prince* HC Whanganui CRI-2011-083-1775, 5 December 2011.

¹² Sentencing Act, s 9(2)(b).

degree of an impairment, which that means you have a tendency to act impulsively, with poor decision-making skills.

[50] In the Crown's submission, the end prison sentence thereby calculated should appropriately be more than two years. That means that you would not be eligible for a sentence of home detention.

Supplementary orders

[51] The Crown submits that you should also be disqualified from holding or obtaining a driver's licence for between five and six years.¹³ The Crown refers to the six-year disqualification imposed on the defendant in *Griffiths*.¹⁴

Defence submissions

[52] Your counsel recognises the statutory purposes and principles of sentencing are to be applied.

[53] He accepts that the following aggravating features apply to your offending:

- (a) you caused five young men to lose their lives;
- (b) your offending occurred when you had been on a restricted driver's licence for only three days and were highly inexperienced;
- (c) you drove in breach of the terms of your restricted licence both in carrying passengers and consuming alcohol; and
- (d) you were travelling between 107 and 115 kilometres per hour when your car struck the pole.

[54] Counsel submits that other factors identified by the Crown need further discussion:

¹³ Land Transport Act, ss 36AA(3) and 81.

¹⁴ *R v Griffiths*, above n 11, at [43].

- (a) while the adult blood alcohol limit is 50 milligrams per millilitre of blood, it has not been proven that your level was more than 48 milligrams per millilitre of blood;
- (b) you accept that, by reason of your speed at the intersection, you were in no position to give way to any oncoming vehicles;
- (c) you accept that you travelled on the wrong side of the road to try to negotiate the corner; but
- (d) you challenge the Crown's assertion that you "chose to travel through the intersection at speed and to cross over the centre line". Counsel suggests your manner of entering the intersection was entirely consistent with your being unaware it was an intersection. Counsel says your handling of the car at the intersection is at least equally attributable to your being unaware of the intersection rather than some manoeuvre by way of "showing off".

[55] Your counsel then referred in some detail in his written submissions to the factors identified in the United Kingdom authority.¹⁵ Counsel submitted that care must be taken in relation to some of the factors identified by the Crown in this case. In particular he submitted:

- (a) your level of alcohol should not be regarded as excessive because it fell below the adult level;
- (b) while the way in which you loaded your vehicle may have adversely affected its handling, that cannot be said to have caused the loss of traction; and
- (c) your excess speed (10 to 15 kilometres per hour above the speed limit) cannot be described as "excessive" when compared to the higher excess speeds in cases such as *Gacitua*.

¹⁵ *R v Cooksley*, above n 4.

[56] Counsel referred to the cases discussed by the Crown and submitted they involved more culpable features. Counsel referred additionally to two other cases, which again I will discuss in the Schedule.¹⁶

[57] By reference to all the cited cases he submitted that a starting point of four years' imprisonment is appropriate.

Adjusting the starting point

[58] Counsel submitted the following discounts should then be applied to the starting point:

- (a) a discount of 25 per cent for your guilty pleas;
- (b) a discount of 20 per cent for remorse: it is said that you have demonstrated remorse both through the restorative justice process, your offer of reparation (if you were able to receive a non-custodial sentence); and your preparedness to participate in a road safety video recording;
- (c) a discount of 30 per cent to recognise your youth, impairment and the greater difficulties that you would experience during a term of imprisonment given your communication difficulties in particular; and
- (d) a 10 per cent discount for previous good character.¹⁷

Suggested outcome

[59] Counsel then suggested an end point sentence of 12 months' home detention, 400 hours of community work, emotional harm reparation payments of \$20,000 and judicial monitoring. Counsel did not take issue with the Crown's suggested period of disqualification.

¹⁶ *Hati v R* [2017] NZHC 687; *R v Bahadori-Esfahani* [2019] NZHC 1532.

¹⁷ Citing *Chai v R* [2020] NZCA 202; *Singh v R* [2020] NZCA 211; and *Faiyum v R* [2020] NZCA 523.

Analysis

Setting the starting point

[60] The Court has to set a starting point for your offending. I have regard to the submissions of both the Crown and defence. In my view the most relevant aggravating features in your case were:

- (a) you caused multiple fatalities — five teenagers died through your offending;
- (b) your vehicle was dangerously loaded — notwithstanding counsel's submission in relation to the evidence as to loss of traction, the facts as you have admitted them were that the weight imbalance of having a passenger in the boot contributed to your vehicle's loss of traction;
- (c) you had drunk a significant quantity of alcohol before driving — the consumption of alcohol is properly treated as an aggravating feature even if the blood or breath readings do not exceed the legal limit for adults¹⁸ — a causal link can appropriately be inferred by reference to your conduct before you drove, your manner of driving and the blood alcohol level detected afterwards;
- (d) your breach of your restricted licence — as counsel has accepted, you were grossly inexperienced yet deliberately breached two conditions of your restricted licence which precisely exist for the protection of yourself and others; and
- (e) you drove at excessive speed — your speed at the intersection was not just marginally excessive. The very fact that you were travelling at such a speed throughout your approach to the intersection provides the likely explanation for your failure to recognise or take account of the warning post and the appropriate road markings. Your mind was pre-

¹⁸ *Gacitua*, above n 4, at [40].

occupied with speed to the exclusion of caution at the intersection and on the road generally.

[61] The Court is not here considering straight line speed — this case is concerned with the speed you adopted in cornering through a give-way intersection. Your driving is far removed from categories discussed in some authorities by reference to the concept of momentary lapse.

[62] It is an unfortunate reality that some cases referred to by counsel involved a worse standard of driving but less loss of life. The disparity between the actual fault and the consequences that flow from it have to be kept in mind. However, the immense scale of the loss that resulted from your dangerous driving must be properly accounted for in the starting point. Counsel have both recognised that the primary aggravating factor is the extent of the harm you caused.

[63] The aggravating factors of your offending combine to place it towards the higher end when compared with the cases that have been referred to. The case of *Griffiths*, which bears a number of similarities to your case, illustrates the difficulty of drawing direct comparisons.¹⁹ In *Griffiths*, the defendant's speed was significantly greater, the breath alcohol level in excess of the adult limit, and the defendant was involved in "show-off" activities. On the other hand, a single passenger died in the accident and one other was hospitalised. Overall, the culpability of your offending is at least equal to that of the defendant in *Griffiths*, where the Judge adopted a starting point of five and a half years' imprisonment.

[64] Your offending is considerably more serious than that of the defendant in *Prince*, where a starting point of five years' imprisonment was considered appropriate.²⁰ And it is decidedly more culpable than, for instance, the offending in *Bahadori-Esfahani*, the more serious of the two cases referred to by your counsel where on the lead charge a starting point of four and a half years' imprisonment was adopted.²¹

¹⁹ *R v Griffiths*, above n 11.

²⁰ *R v Prince*, above n 11.

²¹ *R v Bahadori-Esfahani*, above n 16.

[65] In the circumstances, I have adopted a starting point of five and a half years' imprisonment.

Adjusting the starting point

Guilty plea discount

[66] In the circumstances of your guilty pleas, as discussed by both counsel, I consider a credit of 25 per cent is appropriate.

Discount for youth and cognitive issues

[67] This Court in *Bahadori-Esfahani*, by reference to other authorities, identified it can be appropriate to allow a discount for youth where a young driver is being sentenced.²² In this way the Court can take account of the greater capacity that young people have for rehabilitation into their communities and also the neurological differences between young people and adults when it comes to acting impulsively and not resisting negative influences. In your case these considerations are heightened by the information contained in the psychiatric and psychological reports the Court has received. The identified weaknesses in your cognitive make-up serve to reinforce the appropriateness of a discount. There will also be issues you will face in prison which arise from your cognitive weakness and your difficulties of communication. I conclude that a discount of 15 per cent, as suggested by the Crown, is appropriate on these combined features.

Remorse

[68] The potential for a discount to have regard to remorse was recognised by the Supreme Court in *Hessell v R*. The Court said:²³

Remorse is not necessarily shown simply by pleading guilty. Sentencing judges are very much aware that remorse may well be no more than self pity of an accused for his or her predicament and will properly be sceptical about unsubstantiated claims that an offender is genuinely remorseful. But a proper and robust evaluation of all the circumstances may demonstrate a defendant's remorse. Where remorse is shown by the defendant in such a way, sentencing credit should properly be given separately from that for the plea.

²² *R Bahadori-Esfahani*, above n 16, at [45]–[46].

²³ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [64].

[69] The pre-sentence report writer, in a very balanced report, recognised that the sheer magnitude of your offending may call for a sentence of imprisonment. But in relation to your level of remorse he identified a number of compelling aspects of your progress since the offending which point to your expressed remorse being genuine.

[70] The reports provided in relation to your three restorative justice meetings which took place in May and June also demonstrate genuine remorse on your part. I cannot view it as completely unreserved remorse — there is, for instance, an inconsistency between your acceptance of the summary of facts and the prepared statement you read to those attending the restorative justice meetings. On the one hand you have admitted in this Court that it was you who opened the boot allowing Andrew Goodger to get in, then closing the boot on him. In your restorative justice notes for the families you described Andrew letting himself into the boot. The difference in detail has some significance when the Court is asked to determine an additional discount for remorse beyond that already implicit in a guilty plea discount. That said, your willingness to attend restorative justice conferences and your open participation in them warrants a significant additional discount.

[71] The extent of your remorse was reinforced for me by your proposal to make total reparation payments of \$20,000 to the victims' families should you receive a community-based sentence, which would have allowed you to earn income over the next two years. I accept that offer was sincere. It happens that because you will be sentenced to imprisonment, no order in relation to reparation will be made. But that does not mean your offer should be ignored in this context.

[72] On account of your genuine remorse, I will allow an additional 10 per cent.

Previous good character

[73] Having regard to the credit I am allowing in relation to your youth, it might not be considered appropriate to also provide a distinct discount for your previous good character. Relevantly, you were at the very start of your driving career when you embarked on the dangerous course of conduct for which you have been sentenced. The incidents in which you were involved in the previous year in Timaru, while not amounting to offences, might reasonably be found to cut across any discount for good

character. That said, the Court of Appeal in *Millar v R* found a five to 10 per cent discount was appropriate in a case of a 19 year old driver's previous good character was combined with his own serious head injuries and his close friend's death.²⁴ In the circumstances I consider in your case a further five per cent discount is appropriate to reflect the regard in which you have been held by those closest to you, including your employer.

[74] From the starting point of five and a half years' imprisonment (66 months), the total credits I have identified amount to 55 per cent (36 months). Accordingly the sentence I will be imposing is one of two years and six months' imprisonment. That sentence means that you will not be eligible for home detention.

Disqualification

[75] Disqualification from holding or obtaining a driver's licence for five years is appropriate, having regard to the seriousness of your offending.

Additional comments

[76] My additional comments to you Mr Fleming. You will be sentenced to a term of imprisonment because that is the only appropriate form of sentence in these circumstances. It is the only sentence which will hold you properly accountable for the harm you have done. It is the outcome needed to properly denounce your conduct and to discourage others who would also engage in similarly dangerous driving.

[77] I recognise you have a real need of rehabilitation, of getting back to a balance in your life where you have come to terms with the gravity of the events of 7 August last year. I recognise that in your genuine remorse you are focused on making your future the meaningful life that your actions have denied to Andrew, Javarney, Niko, Jack and Joey. The steps you now take to achieve that will likely start with appropriate programmes in prison. Your sincerity in the conferences you held with some of the family members will properly be tested in the future, not by my assessment today, but by the actions you take in the future: in your day-to-day life, in your working life, in

²⁴ *Millar v R* [2019] NZCA 570 at [34].

your relaxing life. You are fortunate in the remarkable support you have from your own family. What it now needs is your full commitment to the sort of life you committed to in those restorative justice conferences.

Conclusion

[78] Mr Fleming, would you please now stand.

[79] I sentence you on each of the charges of dangerous driving causing the death of Andrew George Goodger, Javarney Wayne Drummond, Niko William Hill, Jack Graeme Wallace and Joseff Allan McCarthy, to two years and six months' imprisonment all to be served concurrently.

[80] Pursuant to s 80 Land Transport Act 1998, you are disqualified from holding or obtaining a driver's licence for five years from today's date.

[81] Please stand down.

Osborne J

Solicitors:
Crown Solicitor, Timaru
Timpany Walton, Timaru

SCHEDULE OF CASES

- (a) *R v Griffiths*:²⁵ the defendant, who was 18 years old at the time of the offending, appeared for sentence on charges of dangerous driving causing death and dangerous driving causing injury. The defendant performed an extremely dangerous manoeuvre by applying the handbrake while travelling at a highly excessive speed (averaging 125 to 143 kph on a motorway with a speed limit of 80 kph). The defendant was on a restricted licence, driving after curfew and with three teenage passengers. He was also driving under the influence of alcohol (an evidential breath screening test returned a result of 587 micrograms of alcohol per litre of breath, well over the adult limit of 400 and in breach of the zero limit for drivers under 20). The driver told the passengers he intended to pull the handbrake. One passenger told him not to do it and placed his hand over it in an attempt to stop him from doing so. He nevertheless pulled the handbrake, causing the vehicle to lose control. It crossed both lanes of traffic, struck the median barrier, then impacted another vehicle. One of his passengers was killed and another hospitalised. A starting point of five and a half years' imprisonment was considered appropriate.
- (b) *R v Delany*:²⁶ the defendant, a young man, pleaded guilty to three charges of reckless driving causing death and one of reckless driving causing injury. After drinking alcohol, he drove with four passengers. He drove with excessive speed, at one stage reaching 180 kph, as part of a prolonged course of poor driving over approximately 20 km, in which he ignored one of the passenger's pleas for him to slow down, passed multiple cars at a time and performed doughnuts. The defendant lost control of his car on a corner when travelling at around 150 kph, forcing a driver travelling the other direction to take evasive action. The three back-seat passengers were killed. The front-seat passenger suffered serious injuries. The Judge placed the defendant's culpability at the very highest level of reckless driving of this sort and considered the appropriate starting point was the (then) maximum sentence of five years' imprisonment. Evidently, this case pre-dated the increase in penalty for such offending in 2011.

²⁵ *R v Griffiths* [2018] NZHC 1104.

²⁶ *R v Delany* HC Christchurch T95/02, 16 April 2003.

- (c) *R v Guest*:²⁷ the 22-year-old defendant faced one charge of manslaughter and five charges of being in charge of a motor vehicle causing injury. After drinking, he drove with six passengers, two of whom were in the boot. He drove at speeds of between 150 and 180 kph, passing vehicles and negotiating bends while ignoring repeated warnings from his passengers to slow down. He lost control of the car at a corner and crashed. Four passengers, as well as the defendant, were thrown from the car. One died at the scene with all the others sustaining significant injuries, including two receiving traumatic brain injuries. A blood sample taken from the defendant disclosed an alcohol reading of 192 milligrams per 100 millilitres of blood. The Judge adopted a starting point of eight years and nine months' imprisonment.
- (d) *R v Prince*:²⁸ the 18-year-old defendant was sentenced on a charge of manslaughter and four charges of dangerous driving causing injury. After a drinking session, the defendant, who was on his restricted licence, drove with five passengers. The vehicle was overloaded, with two of the passengers crouching in the luggage area. The defendant was angry and aggressive and started driving erratically at approximately 140 kph, swerving across the centreline. He ignored his passengers' requests for him to slow down. During one of these swerving manoeuvres, the defendant lost control of the vehicle. One of the passengers died at the scene and the others all sustained at least moderate injuries. The defendant was tested almost three hours after the crash and was found to have a blood alcohol level of 5 mg per 100 ml of blood. The Judge considered the worst aspect of the offending was the defendant's deliberate choice to drive very badly and at grossly excessive speeds. A starting point of five years' imprisonment was considered appropriate.
- (e) *Hati v R*:²⁹ the 19-year-old defendant was charged with dangerous driving causing death and dangerous driving causing injury. He was unlicensed and had previously been warned not to drive until he was licensed. The defendant was travelling at speed at night when he accelerated through an intersection

²⁷ *R v Guest* [2013] NZHC 2432.

²⁸ *R v Prince* HC Whanganui CRI-2011-083-1775, 5 December 2011.

²⁹ *Hati v R* [2017] NZHC 687.

controlled by a stop sign. He made no attempt to stop and crashed into the side of a truck he failed to see was approaching. One of the occupants of the truck was killed and another seriously injured. A starting point of two and a half to three years' imprisonment was considered appropriate.

- (f) *R v Bahadori-Esfahani*:³⁰ the 20-year-old driver pleaded guilty to one charge of dangerous driving causing death, one of causing death while driving with excess breath alcohol, and one of failing to stop or ascertain injury. After consuming alcohol, the defendant drove a vehicle into a carpark pay station, causing minor damage. Police were called but the driver left the carpark, ignoring their requests to stop. He drove at an average speed of 87 kph in a 50 kph area in the Auckland city centre. He drove through an amber light and three red lights before running another red light at between 61 and 74 kph and colliding with a vehicle. The driver of the impacted vehicle died at the scene. The defendant left the scene and was ultimately located by police helicopter. He blew 908 micrograms of alcohol per litre of breath (almost four times the legal limit). The Judge adopted a starting point of four and a half years' imprisonment, along with an uplift of 12 months for the associated offending.

³⁰ *R v Bahadori-Esfahani* [2019] NZHC 1532.