IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CRI-2021-012-1669
[2022] NZHC 1536

THE QUEEN

v

KRISHAN RANUI DICK-KARETAI

Hearing:	30 June 2022
Appearances:	R P Bates and M E A Brosnan for Crown C D Savage for Defendant
Judgment:	30 June 2022

SENTENCING NOTES OF DUNNINGHAM J

Introduction

[1] Mr Dick-Karetai you have pleaded guilty and you appear for sentence on a charge of attempted murder. And, as you know, that carries a maximum penalty of 14 years' imprisonment.

Factual background

[2] You accepted the summary of facts prepared by the Crown. It explains that you knew both the victim, Mr Hemi Tahuri, and his partner, Missy Parata. Mr Tahuri and Ms Parata had been in a long-term relationship. However, in 2020, they were separated and this is when you met Ms Parata and you formed a relationship with her.

[3] However, Ms Parata chose to resume her relationship with Mr Tahuri and she tried to end contact with you. However, you would not accept this and you would threaten self-harm or suicide if she did end contact with you. Furthermore, if she did not respond to your text messages promptly, or show her location on social media applications, you would inundate her with messages or calls.

[4] Four family harm episodes were attended by police relating to your unwillingness to accept the relationship with Ms Parata was over. On the first such incident, on 29 August 2021 you were trespassed from the property. However, there were three more incidents over the next month, two of which involved you going back to the property in breach of the trespass order.

[5] On 15 October 2021 you sent Ms Parata 35 abusive messages about the relationship ending. Between 6.46 am and 12.57 pm you also telephoned her 33 times. At 1.47 pm you demanded she indicate her location on her mobile phone. You then phoned her a further five times before messaging her at 2.12 pm saying "you're a liar and your probably with the fat cunt now". She replied "I don't want you and I don't want you to ever try and message or call me. You need to leave me alone". You then telephoned her a further 26 times before she called you at 3.13 pm and said to stop calling her. Around the same time, you also sent her eight messages to which she did not reply.

[6] After making a further four telephone calls to Ms Parata you went to Mr Tahuri's home at about 3.20 pm to talk to her. You drove up the driveway and began tooting your car horn in an attempt to have Ms Parata come out of the house. You then made another eight telephone calls to her while on the property. Mr Tahuri was outside on his ride-on lawn mower and went to speak with you. In the meantime, Ms Parata telephoned the police to report what was happening.

[7] The police call taker advised Ms Parata to lock the front door and Mr Tahuri did this. You then took your loaded .22 calibre rifle from your vehicle and walked towards the front door of the property, and began knocking on it. Mr Tahuri spoke to you through the locked glass door while Ms Parata remained on the phone talking to police. While you were at the door, you held the loaded firearm in your right hand

hidden from Mr Tahuri's view. You demanded that Ms Parata come outside and speak with you. However, Mr Tahuri told you that Ms Parata was not coming outside the house. You then raised the firearm and fired a single shot through the glass door, hitting Mr Tahuri in the forehead. You then fled the scene and were located a short time later by police and arrested. A .22 calibre rifle and ammunition were located inside your vehicle.

[8] As a result of being shot in the head, Mr Tahuri suffered life-threatening injuries. His family were initially told his chance of survival was one per cent. He has suffered significant and ongoing physical and cognitive impairment from the injuries, a matter which I will return to shortly.

The starting point

[9] I now turn to what the starting point should be when sentencing on this charge. In the submissions, the lawyers have talked about a decision *R v Taueki*, and it discusses sentencing on the charge of wounding with intent to cause grievous bodily harm, and this case is relevant by analogy to your case.[1] Offences that fall within band 3 (the highest band), attract a sentence of nine to 14 years' imprisonment, and these are offences that have three or more aggravating features that make the offending particularly serious.

[10] Here, there is no doubt that your offending falls in that category and the following aggravating features are present.

[11] First, and in my view the most aggravating feature, is the seriousness of the injury you caused. It is clear from the medical records that Mr Tahuri narrowly avoided death. Indeed, I consider this is about as close to murder as a charge of attempted murder can be. Mr Tahuri was hospitalised for months and is now in a slow and challenging rehabilitation period, as he tries to regain his damaged physical and cognitive abilities. He is permanently and visibly scarred. He has difficulty speaking, he suffers from fatigue, he has blurred vision on his right side, he has difficulty in learning and remembering information, his thinking has slowed, and he has apathy

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1 *R v Taueki* [2005] 3 NZLR 372 (CA).

due to the injury to his brain. It is not clear whether he will ever be able to work again, but it is obvious he will need ongoing support in his rehabilitation.

[12] I pause here, to acknowledge the victim impact statements that we have heard today. They explained to me what the medical reports mean in real life terms. The lives of those victims and of their families, have been turned upside down. Ms Parata can no longer work in the job she loved, and she has become a fulltime caregiver. Mr Stephens spoke of the hardship of seeing his son in the ICU, particularly when COVID restrictions limited the family's visitation rights, and the hardship of having to deal with the impact on his family of this tragedy.

[13] Ms Parata, quite rightly says it is difficult to describe the impact that this has had on her, but her victim impact statement did a pretty good job. She says she has been functioning in survival mode since the shooting and that makes sense. Her courage, and her determination, to ensure her partner has the best life he can, despite what you did, is awe inspiring.

[14] Turning then to the other aggravating features of your offending. The fact that it was an attack on the head is an aggravating feature because of the serious consequences that can, and, of course, in this case did follow.

[15] The use of a lethal weapon, being a firearm, is also a serious aggravating feature in this case.

[16] This ties in with a further aggravating feature which is that there was at least a degree of premeditation here. You took a loaded firearm to the property and then brought that firearm to the front door where the incident took place. While this is not evidence of significant planning, it does demonstrate at least a degree of premeditation.

[17] Victim vulnerability is present, in my view, to a modest degree, because you kept the weapon out of sight, and that meant Mr Tahuri was taken by surprise. He did not have the opportunity to take evasive action that he might otherwise have done.

[18] Finally, the fact that this offending involved the invasion of the sanctity of the home is an important aggravating feature. You turned up at the home of Mr Tahuri and his partner when that was in breach of a trespass order, and when you had repeatedly been told in the clearest of terms that you were not wanted there.

[19] These factors all suggest a starting point in that 9 – 14 year range.

[20] However, when I set the starting point I also have to look at other cases that have similar facts, and the lawyers in their submissions mentioned a number of cases.

[21] First, in *R v Nicol*, the defendant went for a drive with the victim.[2] He backed the car into a layby and asked the victim to check the position of the vehicle. He then shot the victim in the side of the head with a sawn-off .22 rifle. The aggravating features in that case were the use of a weapon, an attack to the head, serious injuries and premeditation, and a starting point of 11 years' was adopted.

[22] In *R v Vaioleti*, the defendant was drunk and began arguing with his wife, threatening to shoot and kill her.[3] He then took a 7.65 mm calibre pistol from the lounge and shot her in the upper jaw. Given the aggravating features there of the use of a lethal weapon, the defendant's intoxication, the victim's vulnerability, and the serious injury she experienced, again a starting point of 11 years' imprisonment was adopted.

[23] In *Marsters v R*, in the context of a road rage incident, the appellant took out a pistol and hit the victim in the face and bicep.[4] Again, a starting point of 11 years' imprisonment was adopted.

[24] Mr Savage drew my attention to *R v McKay*, where the victim was shot with three bullets from a car and a lower starting point was used.[5] However, there the victim did not suffer the kind of serious long-term harm that was suffered in this case.

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2 *R v Nicol* [2014] NZHC 2110.
3 *R v Vaioleti* [2013] NZHC 3358.
4 *Marsters v R* [2011] NZCA 505.
5 *R v McKay* [2021] NZHC 3360.

[25] In my view, this case is actually slightly more serious than those referred to because of the extent of the injuries caused and because the offending involved coming to the home of the victim in breach of the trespass order. In my view, it is more analogous to *R v Poole*, a case where the defendant shot the victim through a ranch slider while the victim was seated in his lounge.[6] The victim there suffered facial injuries, although they were not life threatening. The aggravating features there, were the use of a weapon, the attack to the head, a retribution or vigilante aspect to the offending and the fact the shooting violated the sanctity of the home as a place of safety. Katz J adopted a starting point of 11 and a half years and I consider the same starting point should apply here. While your offending did not have that level of pre-meditation nor the fact of retribution that was present in *Poole*, it caused far more serious harm to the victim.

Aggravating and mitigating factors of the offender

[26] I now turn to what we call the aggravating and mitigating features relating to you. It is common ground there are no aggravating features relevant to you. Indeed, until this offending you had no prior convictions.

[27] The primary mitigating feature here is your guilty plea. The Crown acknowledges that this was entered at a relatively early stage of the proceedings and has removed the need for trial. While I do observe that the evidence was extremely strong, I do not differ from the Crown's position that a full 25 per cent discount is warranted.

[28] I next turn to whether your lack of previous convictions and good character warrants a further discount. I was initially not attracted to that view until I read the s 27 report and then, the many references that were submitted in your support. For someone who is relatively young, at 25, you are someone who has been a positive role model to others and who gave a lot back to the community that supported you. I note that your mother had mental health issues and that meant that you were the one who was left to look after your brothers and sister, taking responsibility for keeping the household going in her absence. Despite this you have many positive achievements.

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6 *R v Poole* [2014] NZHC 1126.

You received a merit award while at high school for rendering first aid to a smaller child who was choking. You achieved a special award in year 11 at Kings High School for Māori and you were awarded a Ta O'Regan Scholarship in your final year, which enabled you to enrol at Lincoln College to study for a diploma in agriculture. In 2020 you were awarded the Agricentre South Community and Industry Award for Dairy Trainee Merit Award. Since then, you have been involved in conservation groups, in teaching kapa haka, in raising money to address teen suicide, and participating in fundraising activities to raise awareness of mental health issues. You have also been an engaged father to your younger son.

[29] Your whānau speak of your support of them in times of crisis and they describe you in glowing terms. So too do your former employers. Indeed, they are shocked that you are the one to find yourself in these circumstances.

[30] The s 27 report also addresses some of the hurdles you have faced in your life and makes at least some connection between them and your current offending. Your grandfather notes that you have always been pushed into the adult role and that you are the one that everyone goes to and who fixes everything, and he wonders whether you were simply overwhelmed at the time of the offending. Another family friend says that you were "so busy looking after others that he was unsure who you had to talk to about what you were feeling and what was going on for you". The s 27 report writer, too, says it seems you have "shouldered very adult responsibility from an early age, with little recognition of your own emotional and psychological needs".

[31] In that regard, I note you coped with your mother's mental health concerns and those of her partners, and yet you avoided turning to drink or drugs as a consequence as many young people would. However, you were clearly not as bullet proof as everyone believed and your own mental health seems to have been triggered during your relationship with Ms Parata, and you did not seek assistance to deal with this.

[32] Having regard to all this information I accept that you are clearly entitled to a discount for previous good character, despite your relative youth, and to some extent for the personal issues that you have repressed while trying to be the rock that everyone else could rely on. I am prepared to give you a discount for these factors of 10 per cent.

[33] There is then the issue of remorse. Your lawyer, Mr Savage, says you made no attempts to flee from inevitable capture and once in custody you took responsibility for the offence. The Crown, too, acknowledges that in your pre-sentence report you expressed remorse and wanted to convey how sorry you were to Mr Tahuri and also how sorry you were for the hurt you caused your own whanau. However, as the Crown notes, there are indications in the pre-sentence report that your remorse is primarily for the situation you now find yourself in and there are signs that you still blame the victim and minimise your role. Nevertheless, you have submitted a letter to this Court which speaks of your remorse, your sense of whakama or shame for having inflicted such pain on this family and your ongoing willingness to participate in restorative justice if Mr Tahuri or his whanau want it.

[34] Your family members have also spoken of the remorse that you have expressed to them. So, in all the circumstances, I am prepared to grant a discount for remorse over and above the acknowledgement of wrongdoing that is found in your guilty plea. I fix the discount at five per cent.

End sentence

[35] Taking into account the accumulated discounts of 40 per cent off the starting point of 11 years and six months brings the end sentence to six years 11 months. I am satisfied that that sentence would reflect the purposes and principles of the Sentencing Act 2002 and is the least restrictive outcome that is appropriate in the circumstances of this case.

[36] I also consider it is sufficient to denounce your conduct and hold you accountable for the harm done to your victim and the community and I see no need to impose a minimum period of imprisonment.

Conclusion

[37] Mr Dick-Karetai, please stand.

[38] On the charge of attempted murder, I sentence you to six years and 11 months' imprisonment. I also, as the Crown has sought, make an order for forfeiture and destruction of the .22 calibre rifle and ammunition, pursuant to s 69 Arms Act 1983.

[39] Stand down.

Solicitors:
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