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

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

**CRI-2020-075-500**
**[2022] NZHC 2037**

**THE QUEEN**

v

**ADRIAN REGINALD GEORGE PHILLIPS**

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| Hearing: | 16 August 2022 |
| Counsel: | J N Hamilton and R L Mann for Crown<br>R M Mansfield QC for defendant |
| Sentence: | 16 August 2022 |

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**SENTENCING NOTES OF HARLAND J**

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Solicitors/Counsel:
Crown Solicitor, Hamilton
R M Mansfield QC, Auckland

[1] Mr Phillips, you are before the Court today for sentence having been found guilty by a jury of murder. The maximum penalty for murder is life imprisonment. In addition, you are before the Court for sentence having entered a guilty plea to a charge of unlawful possession of a firearm. That charge carries a maximum penalty of four years' imprisonment. Convictions have been entered and a stage one strike warning was given to you upon your conviction for murder.

[2] There is no dispute today that a sentence of life imprisonment must be imposed. The only issue I need to decided is the length of the minimum term that you must serve in prison before being permitted to apply for parole. I mention this, so that those present today understand that the minimum term the court imposes is not the sentence you will serve. Once you are eligible for parole it will be up to the New Zealand Parole Board to determine how long you should remain in prison before being released.

**The facts**

[3] Although at trial the jury were responsible for determining your guilt in respect of the murder charge, I now address the facts relevant to the issue I must decide.

[4] On the morning of 5 August 2020, nobody, let alone you or Bayden Williams would have expected that by the end of the day, you would be responsible for causing his death by shooting him. That context is important, because the killing of Mr Williams by you was not premeditated in the usual sense of the word. However, it is clear to me that over a lengthy period of time, you developed an unhealthy grudge towards Mr Williams arising from what you perceived to be the facts surrounding his separation from Chloe Randall, his long-standing partner and the mother of their child. Chloe Randall's twin sister was your partner and prior to Mr Williams' separation from Chloe Randall you and Mr Williams were good friends.

[5] It is not necessary for me to go into the reasons for your animosity towards Mr Williams apart from to say that it was exacerbated by your own mental state which had nothing to do with Mr Williams (a point I return to later) and a series of unfortunate events involving the Randall and Williams families arising from the difficulties that occurred following the separation of Mr Williams and Chloe Randall

and in which you became unwittingly involved. You felt aggrieved that the police did not lay charges against Mr Williams and his father when Peter Randall (Chloe and Macy's father) and you were assaulted by Mr Williams and his father following an unannounced attempt to remove Chloe Randall's belongings from the house she had shared with Mr Williams in January 2020.

[6] Two days before you shot and killed Mr Williams, you became aware through a Facebook post that there was the prospect of Mr Williams and Chloe Randall reconciling. This reignited your grievance against him and resulted in you engaging in a series of text messages with Paula Randall (Chloe's and Macy's mother) the day before the shooting. You asked to be advised when Mr Williams would next be visiting, raised the January incident, referred to the fact you and Peter Randall had not received an apology for what had happened to you both in January and clearly gave her the impression you wanted to beat Mr Williams up. You said that Mr Williams and his father would be sorry when you were done with them. Despite Mrs Randall's attempts to reason with you in her reply messages, you described the situation between Mr Williams and his family as personal between you and them.

[7] Although at the outset of the day when you fatally shot Mr Williams this may not have been at the forefront of your mind, your sense of grievance towards him was easily retrieved when you heard that Mr Williams and Chloe Randall had secretly arranged to meet that evening in Thames.

[8] You became aware of this proposed meeting while you were alone at the beach in Miranda, a place you went to calm down to help you cope with your mental health problems that had developed following the trauma you experienced after being burnt in a fire in December 2018, and where that evening you had gone to smoke cannabis and drink several cans of beer. I accept that your mental health issues which I consider in more detail later, contributed to the decisions you made when you heard about the meeting proposed between Chloe Randall and Mr Williams. They do not excuse your actions but they help to explain them.

[9] The knowledge of the meeting between Mr Williams and Chloe Randall produced in you an immediate response and you made the decision to confront

Mr Williams on the road between Tairua where he lived and Thames where the meeting with Chloe Randall was to occur. That stretch of road is a rural road known as the Kopu-Hikuai Road. It traverses through a state forest and is hilly and windy and although a state highway, can fairly be described as remote.

[10] Your decision to confront Mr Williams was an impulsive and irrational decision that required you to travel from Miranda towards Tairua. You said you wanted an apology from Mr Williams, however the snapchat messages you sent at the time to James Whitham and your friend Jono Taylor, which were automatically deleted shortly after the murder reveal that you were not intending to have a civilised discussion with him to clear the air between you.

[11] As well you had your shotgun with a sleeve attached holding five rounds of ammunition in the front seat of your vehicle. You were not legally authorised to have a firearm in your possession as you did not have a licence. You had become used to travelling around with it in your vehicle since you illegally purchased it and the ammunition from a friend and an acquaintance the previous month. I return to this aspect of your offending shortly.

[12] Upon seeing Mr Williams' distinctive Jaguar vehicle travelling in the opposite direction from you, you executed a U-turn to follow him. It is not clear to me whether he initially knew it was you who was following him. This is because although the incident occurred during the early hours of the evening, it was August, wintertime and it would have been dark.

[13] In my view, you were the aggressor in relation to the driving that followed. You said that both vehicles, yours and Mr Williams', were driving erratically – "playing silly buggers". I do not accept this. Although both of you may have travelled onto the wrong side of the road, your vehicle clipped the edge of his with enough force to cause his vehicle to enter a spin, veer across the road and exit the road backwards down a steep bank coming to rest with its headlights still on facing up towards the road. This incident would have been terrifying for Mr Williams, a young man who minutes earlier had been driving to Thames, no doubt looking forward to meeting up

with the mother of his child and perhaps hoping to discuss the possibility of them reconciling.

[14] Rather than driving away from Mr Williams after his car had exited the road down the bank, you decided to park your car by the nearby layby, you said, to see if Mr Williams was hurt. However, what you did is not consistent with this explanation being your primary motivation, because you decided to take your shotgun with you when you went to the edge of the road to look down the bank. If you had been genuinely concerned for Mr Williams' safety, you would not have needed to take your shotgun with you.

[15] Unsurprisingly, Mr Williams exited his car to try and get up the bank. You said it was hard to see what was happening because the headlights were shining up the bank. However, you said Mr Williams threatened to cut you and kill you and then charged up the bank with what you believed to be a knife in his hand. Because of what had happened in January and because you knew Mr Williams to be a person who carried a knife, you say you fired a warning shot at him. However, I accept that when you fired the subsequent shots, he was crouching in front of his car. When he did not stop you then fired two more shots at him while he was down the bank, the first hit his left thigh and the second hit his shoulder. Both shots left gaping wounds, which as a hunter, would have known it was the likely consequence, even if you did not turn your mind to it at the time. You clearly had the upper hand, being on the edge of the bank and armed with a shotgun.

[16] It was never your case that there was in fact a knife; rather you believed there to be one. No knife was found at the scene by the police, even though it is accepted there was a knife in the bum bag located under and separate from Mr Williams' body.

[17] It was during Mr Williams' last attempt to get to the top of the bank having been shot twice by you, that you fatally shot him in the head at the top of the road when he was just over a metre away from you.

[18] I accept that the incident happened very quickly, it was dark, and the headlights were shining up the bank. But by the time Mr Williams reached the top of the bank

having shot and connected with his body twice (something that must have evoked a response from him) he was no threat to you at all.

[19] The jury rejected your defence of self-defence and so do I. You demonstrated Mr Williams lunging at you with his left hand in which you thought there was a knife, however, the evidence at trial was that Mr Williams was right-handed, whereas you are left-handed. I am satisfied the Crown proved beyond reasonable doubt that you were not acting to defend yourself when you shot Mr Williams in the head. Even if you did believe Mr Williams had a knife, your response in shooting him to the head, having previously shot him twice, meant you no longer needed to defend yourself. Because you targeted Mr Williams' head, you clearly intended to kill him.

[20] After that, you dragged Mr Williams' body to the edge and pushed him down the bank where he came to rest in front of his motor vehicle. You then disposed of the firearm and ammunition before meeting up with you partner Macy. You did not attempt to conceal what had happened and told her that you had shot Mr Williams.

[21] Your partner at the time, Macy Randall, acted impeccably. I want to congratulate her for the efforts she made during an extremely difficult and stressful time. It was she who contacted the police. When the police became involved, you were cooperative, acknowledged what you had done and explained the scenario as it had unfolded which subsequently and independently was confirmed to be correct. You are entitled to some credit for being up front with the authorities from the start.

**Victim impact**

[22] Any murder involves significant damage to a large number of people. Mr Williams was a young man in the prime of his life, a much loved and respected young man. Your actions have left a young son without a father, parents without their eldest and cherished son, grandparents without a grandson, aunts, uncles and cousins without a close relative, and friends without their mate. I also accept given the close nature of the Tairua community and the fact that Mr Williams worked there that there is an impact on that small community.

[23] I have had the benefit before sentencing today to read the heartfelt victim impact statements from a large number of Mr Williams' family, and I have heard today from three members of that family. Mr Phillips, Many have been traumatised by your offending. Their lives will never be the same again.

[24] However, you accept that your actions have caused this pain, a point I return to again in a moment.

**Aggravating factors**

[25] Your offending has several aggravating factors. First, it involved the use of an illegally sourced firearm. The deadliness of this weapon would have been obvious to you. Secondly, it comprised a shot to the head at close range that occurred after you had already shot Mr Williams twice. I also consider Mr Williams was vulnerable, a matter I develop shortly.

[26] The Crown submitted there was also an element of premeditation associated with your offending because you acquired the firearm in advance, you made some comments that you intended to use it to "have some fun" with Mr Williams, and you decided to travel to intercept Mr Williams in an isolated place, all of which suggest you planned in advance to confront him with the firearm. However, the Crown do not suggest you intended to kill Mr Williams before the confrontation.

[27] Your counsel points to Dr Cavney's finding that your decision to confront Mr Williams was impulsive and he submits that there is no evidence of a premeditated intention to hurt or kill Mr Williams, and this was entirely out of character for you. I agree with this and therefore place little weight on the Crown's submission about premeditation.

[28] You have no previous convictions and there are no aggravating features relevant to you personally.

**Approach to sentencing for murder**

[29] The presumption of life imprisonment for murder is only displaced in exceptional cases.[1] As I have already outlined, it is accepted that the presumption of life imprisonment is not displaced in your case.

[30] If I sentence you to life imprisonment, I must order that you serve a minimum period of imprisonment (MPI) of at least 10 years.[2]

[31] That MPI must be the minimum I consider necessary to hold you accountable for the harm done to the victim and community, denouncing your conduct, deterring you and other persons from committing a similar offence, and protecting the community from you.[3]

[32] I must apply an MPI of at least 17 years if one or more of the factors in s 104 of the Sentencing Act is engaged, unless such an MPI would be manifestly unjust.

[33] I must therefore first consider whether any of the factors in s 104(1) are present. I must then determine the MPI that would ordinarily apply to your offending by considering similar cases, your personal circumstances, and any aggravating or mitigating factors, particularly those listed in s 104.[4]

[34] If s 104 is engaged, but the MPI that would otherwise apply is under 17 years, I must consider whether it would be manifestly unjust to impose an MPI of 17 years.[5] Whether a sentence is manifestly unjust is to be assessed in light of the purposes and principles outlined in ss 7–9 of the Sentencing Act.[6]

**Is s 104 of the Sentencing Act 2002 engaged?**

[35] The Crown argues that s 104(1)(g) applies because Mr Williams was particularly vulnerable when you killed him. This is because it is submitted you

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1 *R v Rapira* [2003] 3 NZLR 794 (CA) at [121].
2 Sentencing Act 2002, s 103(1) and (2).
3 Section 102(3).
4 *R v Williams* [2005] 2 NZLR 506 (CA) at [52].
5 At [54].
6 At [55] and [56]; citing *R v Rapira*, above n 1.

deliberately ambushed him in a remote rural road and caused his vehicle to leave the road. The Crown submits Mr Williams was stranded, alone at night, and faced with you with a deadly weapon. The Crown submits Mr Williams became even more vulnerable after you shot him in the leg and shoulder, leaving him unable to defend himself.

[36] However, your counsel submits that s 104 does not apply as Mr Williams was not particularly vulnerable.

[37] Section 104(1)(g) is engaged if "the deceased was particularly vulnerable because of his or her age, health, or because of any other factor". The deceased must be "particularly" vulnerable, this is because most victims of murder are vulnerable in some way, but s 104 is designed to require longer sentences for the "most serious murders", and it must be interpreted in that way.[7]

[38] Muir J has described the requirement as follows and I adopt his reasoning:[8]

> The particularly vulnerable threshold is a high one. It is most often restricted to cases involving the murder of infants, the elderly, people with disabilities, or people who were physically unable to defend themselves, for example by reason of unconsciousness at the time of the fatal assault… the standard under s 104 is stricter than that under s 9(g) of the Act in that the cases establish that a victim should have an identifiable impediment, either by virtue of age or disability that makes him or her unable to defend the attack.

[39] Of course, each case depends on its own facts and for this reason comparison with other cases although useful and required is not determinative.

[40] I was referred to *R v Garson*, where Gordon J found two visitors to New Zealand, sleeping in a campervan in an isolated area, when they were approached and one of them shot were vulnerable enough to engage s 104.[9]

[41] I was also referred to *R v Winders* where a road worker was shot while in an isolated area in circumstances where it was established that the killing was

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7 *Williams v R,* above n 4, at [47].
8 *R v Tai* [2018] NZHC 1602 at [40].
9 *R v Garson* [2020] NZHC 3259.

premeditated.[10] In that case the isolated area where the killing occurred was not sufficient to justify a finding that the victim was particularly vulnerable.

[42] As the Crown say, Mr Williams was taken unawares, and unable to defend himself against the deadly weapon you used. He was vulnerable. But this is true of many, if not most victims of murder. However, the distinguishing factor in this case is that Mr Williams was driven off the road by you in the dark on a remote stretch of road. This resulted in his car ending up down a relatively steep bank in the bush before he was shot by you from the top of the bank as he was trying to ascend it. he would have been shocked, if not traumatised, by the accident only to be faced by you up the bank armed with a shotgun. I consider that in combination, these facts meet the high threshold required for particular vulnerability.

[43] In *R v Williams*, the Court of Appeal set out the procedure the Court should follow when considering the application of s 104. The first step is to review other cases of broadly similar offending to see whether the minimum terms imposed in those cases are broadly consistent with the minimum term to be imposed in your case.

**Similar cases**

[44] I therefore compare your offending to four similar cases: *R v Winders*,[11] *Skinner v R*,[12] *R v Hall*,[13] and *R v Garson*.[14]

[45] I first refer to *R v Winders*.[15] In this case, the defendant blamed the victim, who operated a stop-go sign at a roadworks site, for his father incurring a bill after backing into another vehicle. A week later, the defendant removed the number plates from his vehicle and drove toward the roadworks with a rifle. He stopped, beckoned the victim over, and shot him in the head at a distance of less than a metre. He then

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10 *R v Winders* [2016] NZHC 2964; upheld on appeal *Winders v R* [2018] NZCA 277, [2018] 2 NZLR 305.
11 *R v Winders*, above n 10.
12 *Skinner v R* HC Auckland CRI-2008-092-14599, 30 August 2010; upheld on appeal *Skinner v R* [2011] NZCA 655.
13 *R v Hall* [2017] NZHC 410.
14 *R v Garson*, above n 9.
15 *R v Winders*, above n 10.

sped away, on a pre-planned escape route and went to work. He disposed of the firearm and altered the appearance of his vehicle.

[46] Toogood J did not accept the Crown's argument that the defendant was particularly vulnerable as he was taken by surprise and had no way of defending himself. However, s 104 was engaged for another reason; the fact that the murder involved calculated planning. The Judge in that case applied a 17-year MPI.

[47] The Crown submits this case involved similar offending to your own, although acknowledges your sentence should be lower as, while the defendant in *Winders* carefully planned the murder, you did not set out with the intention of killing Mr Williams.

[48] Your counsel notes that, despite the similar circumstances, Toogood J did not find the deceased particularly vulnerable.

[49] I agree your offending was less serious than that in *Winders*, given the Crown's admission that you did not set out with the intention of killing Mr Williams.

[50] I next refer to *Skinner v R*.[16] In that case, the defendant believed his house was being robbed by two men who were in fact undercover police officers. He and an associate pursued the men and cornered them in the driveway of another property. The defendant then shot both men several times at close range with a .22 air rifle, killing one and injuring the other.

[51] Venning J found the offending was "deliberate and sustained" for a period of time but did not reach the standard envisaged in s 104.[17] He applied a 13-year MPI for the murder, before uplifting that sentence for other offending.[18]

[52] The Crown submits you must receive a higher sentence, as the defendant in *Skinner* reacted impulsively, although over a period of time, to being robbed, whereas you planned in advance to confront Mr Williams in an isolated area.

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16 *R v Skinner*, above n 12.
17 At [14] and [23]–[26].
18 At [28].

[53] Your counsel disagrees and submits that the defendant in *Skinner* deliberately "hunted [the victims] down".[19] Even on the Crown's version of events, you did not pursue Mr Williams with the intention of killing him.

[54] I consider your offending similar to that in *Skinner*. Like that defendant, you formed an intention to kill on an impulse. But you also pursued your victim for some time. Where the defendant in *Skinner* cornered his victims in a driveway, you ran Mr Williams off the road. As in *Skinner,* you then shot him several times at close range.

[55] Your offending was slightly less premeditated but involved a more inherently dangerous weapon and, as I have said, the driving down the bank.

[56] I next consider *R v Hall*.[20] In this case, the defendant lived apart from his ex-partner and their daughter. One evening he made several attempts to contact her. She made it clear she did not want to get back together. He then went to her address with a bottle of wine and a firearm and entered via an unlocked door. She asked him to leave. He told her that he had come to return the firearm as its safe was at the address, but then used the opportunity to ask the victim why she did not want to be with him. When she asked him to leave again, he shot her in the head at close range, killing her. Their child slept through the murder.

[57] Lang J considered the aggravating features of the offending were the shot to the head at close range, the presence of a young child in the house, and that the offending occurred in the sanctity of the victim's home, after she asked the defendant to leave.[21] It was not however proved beyond reasonable doubt that the offending was pre-meditated because he found the defendant had an excuse to arrive with a firearm, and had also brought a bottle of wine.[22]

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19 At [15].
20 *R v Hall*, above n 13.
21 At [18].
22 At [19].

[58] Lang J found other cases involving murder after the breakdown of a relationship, with MPIs of 12 to 14 years. He considered a 13-year MPI appropriate, before applying s 104.[23]

[59] The Crown submits your offending warrants a higher MPI, as *Hall* involved no premeditation. Your counsel notes the fatal shot in *Hall* was likely fired from inside the victim's mouth.

[60] Like your offending, *Hall* involved what could be described as an engineered confrontation with the victim, with intent to kill only arising once the confrontation had begun. In my view, your offending was more serious than that in *Hall*, but not significantly so.

[61] Finally, I refer to the case of *R v Garson*.[24] In that case, the defendant drove with an associate and a shotgun to a remote lookout at night, where the pair smoked methamphetamine. The defendant then asked the associate to kill him, as he was unable to commit suicide with the shotgun. The associate refused and drove away, leaving the defendant stranded. The defendant then woke the occupants of a nearby campervan, both visitors to New Zealand. He first asked for a ride, then demanded the keys to the campervan. As one of the occupants searched for the keys, the defendant shot him in the body. The occupant continued to search, but the defendant shot him a second time. He swore at the other occupant, forcing her to leave, and drove away with the victim's body.

[62] Gordon J held that s 104 was engaged as the murder involved unlawful entry into a dwelling place, aggravated burglary, extreme callousness, and particularly vulnerable victims who were visitors to the country and sleeping in a campervan in a very isolated area.[25] But for s 104, Gordon J considered an MPI of 15 years, six months would have been appropriate, uplifted to 17 years to account for the defendant's actions toward the other occupant of the caravan.[26]

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23 *R v Hall*, above n 13, at [25]. Section 104 applied as the killing involved unlawful entry into the victim's home.
24 *R v Garson*, above n 9.
25 At [71].
26 At [55] and [56].

[63] The Crown note *Garson* involved the impulsive murder of someone at random, rather than the planned confrontation of a particular victim. Your counsel submits *Garson* is unhelpful as the facts are too different from your case.

[64] I agree with your counsel. Despite some superficial similarities, the offending in *Garson* was considerably more serious than your own. It fully engaged four factors in s 104, each of which individually indicates that a murder is particularly serious.

[65] I have taken the time to go through these cases so that people present understand that there are comparatives that need to be brought into a consideration at this point of the sentencing. In my view, taking into account the cases before me, your offending would justify a minimum term of imprisonment of 14 years.

**Firearms offending**

[66] Although an uplift was not sought in relation to this offending, I consider your unlawful possession of the shotgun and ammunition to be significant. There is no suggestion that the purchase of this firearm was precipitated by your mental health difficulties. Your primary purpose in obtaining it was to hunt with it, however you also considered it could be used if you decided to end your life.

[67] However, the presence of this weapon "at the ready" in your vehicle, coupled with your mental health difficulties, created the possibility for this deadly encounter. I consider that but for the presence of this weapon in your vehicle this incident may not have occurred.

**Would it be manifestly unjust to impose a minimum term of 17 years imprisonment?**

[68] The Crown accepts that a failure to reduce the term below the specified 17-year period would result in your personal circumstances being left unrecognised which would be manifestly unjust. I agree.

[69] I note at this point, that the Crown submits a minimum non-parole period of 15 and a half years is appropriate, you counsel submits it should be ten years.

***Mitigating factors***

[70] I now consider the mitigating factors personal to you, and these are those facts that are unrelated, at least in some respect to your offending. Your counsel submits your youth, mental health, remorse, previous good character, and that particular difficulties faced while in prison all require recognition. The Crown acknowledges that you should receive some discount for your background, but casts doubt on your previous good character.

[71] I address these factors one by one.

*Age*

[72] At the time of the offending you had just turned 23.

[73] It has been acknowledged by the courts that youth can reduce culpability as, for neurological reasons, young people are more likely to make poor, impulsive and risky decisions, and are more susceptible to negative influences.[27] This can remain relevant as the brain continues to develop until the age of 25.[28] In addition, young people are likely to suffer more from the "crushing" effect of long sentences of imprisonment, and to have a greater capacity for rehabilitation.[29]

[74] In *R v Kaea*, a 19-year old defendant received a 15 per cent combined discount for his age, previous good character and remorse. I accept the Crown's submission that you are older than this and therefore at towards the upper end of any discount for age. But I do accept that some is warranted.

*Previous good character*

[75] The Crown acknowledges you have no convictions, but notes you grew and used cannabis, unlawfully acquired a firearm, and had shown tendencies to be violent and drive dangerously.

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27 *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77] and [80]; *R v Kaea* [2022] NZHC 1803 at [44].
28 *R v ARW* [2013] NZHC 1476 at [41].
29 *Churchward* above n 27, at [77].

[76] Your counsel relies on letters from your friends and family. The common theme in these letters is that your burns changed you. You were a good partner, brother, uncle and friend, you were a hard worker, and you were well liked. Your counsel call this your "true character". You struggled with relationships and work after the fire incident but you were making efforts to improve. Your sister reported that finding treatment was a long and difficult process. As a result, your counsel says you are likely to become a positive and contributing member of the community upon your release.

[77] I have read the letters from your friends and family and I have also read the letter that you have written to me and I will address aspects of that in a moment. But I agree that prior to the fire incident, you were a person of previous good character; it seems that your use of cannabis started after the fire and in an attempt to deal with the pain you were suffering. I do consider some discount is warranted, although because of the unlawful acquiring of the firearm, that should be more limited than would normally be the case because you have no previous convictions.

*Mental health*

[78] Your counsel submits this shift in behaviour after the fire indicates your mental health contributed significantly to your offending. He relies on the new report of Dr Cavney.

[79] Dr Cavney considers you suffered from PTSD at the time of your offending. A psychologist who treated you before the offending, Mr Seal, disagreed and diagnosed you with severe depression and anxiety. Dr Cavney notes that there is an overlap in symptoms and focuses on those, rather than a precise diagnosis. I accept that that is the intent of the new report.

[80] It was widely agreed, among experts and those who know you, that your behaviour changed dramatically after the fire. Dr Cavney considers it left you prone to uncharacteristically rash and impulsive decision-making. At the very least, this contributed to your decision to confront Mr Williams. Dr Cavney goes on further to suggest that the news Mr Williams and Ms Randall were to meet triggered a response of hyperarousal and reckless behaviour often associated with PTSD. He considers this was exacerbated when you were confronted with both the car crash and the presence

of Mr Williams. Overall, Dr Cavney considers it highly likely your mental health contributed to your offending.

[81] There were conflicting views at trial about whether or not you suffered from PTSD and the extent to which these matters may have contributed towards your poor decision-making.

[82] Your counsel submits mental health is an important mitigating factor when shown to be causative of offending, and particularly where a defendant is taking steps to address mental health issues and prevent any further harm to community.

[83] Mr Mansfield referred to *R v Reid*, in which the defendant believed the victim was spying on him due to a "major psychiatric illness".[30] While the jury in that case rejected insanity, the Judge held that, but for the illness, the defendant would not have offended. He also made positive steps to address his illness. In that circumstances, the presumption of life imprisonment was overturned.

[84] I was also referred to decisions of *R v Cole*,[31] *R v Kaea*[32] which I have already referred to, and the case of *Thompson v R*[33]which I consider helpful. In that case, the sentencing judge noted that the defendant had been found to have exaggerated his mental illness in an attempt to be found insane or unfit to stand trial. On appeal, the psychiatrist in question clarified that the defendant's delusional paranoia was likely to have at least contributed to his offending.

[85] The Court of Appeal found the presumption of life imprisonment was not displaced. It distinguished *Reid* on the basis that the psychiatrist had found only a contributory, not causative effect, the defendant had not attempted to improve his mental health and had made other threats, and while in *Reid* the defendant was very remorseful, the defendant in *Thompson* had shown an extreme level of callousness toward his victim.

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30 *R v Reid* HC Auckland CRI-2008-090-2203, 4 February 2011.
31 *R v Cole* [2017] NZHC 517.
32 *R v Kaea*, above n 27.
33 *Thompson v R* [2020] NZCA 355.

[86] The sentencing Judge applied a 15 per cent discount for mental illness and age (in that case the defendant was 68). Given the contributory effect of the defendant's mental illness, the Court of Appeal raised the discount to 20 per cent.

[87] As your counsel submits, your mental health issues do not reach the level required to displace the presumption of life imprisonment. Dr Cavney considers it highly likely they contributed to your offending, but no one has suggested the "but for" test in *Reid* or *Cole* is satisfied.

[88] However, a finding that your mental health contributed to your offending, particularly as it is supported by the observations of so many of those close to you, justifies, in my view, a discount. I consider that a discount similar to that imposed in *Thompson* is justified. In my view, you are more clearly remorseful and are taking positive steps to address the issues that contributed to your offending and were doing so at the time of the shooting.

*Remorse*

[89] Your counsel submits that you are remorseful. As I have already mentioned, this is evidenced by your cooperation with the police shortly after the offending, and certainly it seems to have been a theme presented or evident in the psychiatric report done by Dr Cavney who interviewed you.

[90] I also now want to refer your letter to the Court, although this might be difficult and hard for Mr Williams' family to accept, I am going to read out two paragraphs from your letter to me:

> I want to start this letter by offering my whole hearted apology to the Williams family, the Randalls, my own family and all of Baden's friends and loved ones, for what happened on 5 August 2020. I took Bayden's life from him and from those who loved him. I cannot imagine his family's pain and suffering.
>
> I will always regret what happened. I will never forgive myself for what I did. I know that I created the situation that lead to Bayden's death and that if I hadn't gone to confront him that night he would still be here today. I will always be deeply sorry for this. Not a day goes by where I don't think about it and wish I could undo what has happened.

*Particular hardship of imprisonment*

[91] This is set out in a letter to the Court from your sister and it outlines that sentence of imprisonment will be particularly significant for you and your family because both of your parents are to some extent deaf. You are unable to communicate with them by telephone, and because of COVID-19 restrictions, they have been unable to visit you in prison. It is unclear when this will change.

[92] Sometimes discounts are given to defendants who have no family in New Zealand, ranging from three to ten per cent.[34] However, I consider that the COVID-19 restrictions will not necessarily continue forever. But I do consider that there should be some recognition of your family situation nonetheless, albeit a small discount.

[93] Taking into account all of these matters, I propose to reduce the minimum term of 17 years to one of 14 years. This will result in a term of imprisonment of 14 years.

**Sentence**

[94] Mr Phillips, on the charge of murder, you are sentenced to life imprisonment and you are ordered to serve a minimum term of 14 years before being eligible for parole.

[95] On the charge of unlawfully possessing a firearm, you are sentenced to six months' imprisonment.

[96] The sentences are to be served concurrently.

Harland J

[34] *Xie v R* [2019] NZCA 218; *R v Balkind* [2019] NZHC 2095.