

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

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

**CRI-2021-041-880
[2022] NZHC 2169**

THE QUEEN

v

BELMONT SONNY FREEDOM ERUITI TE AONUI-TAWHAI

Hearing: 29 August 2022

Appearances: S B Manning for the Crown
R B Philip for Mr Te Aonui-Tawhai

Sentencing: 29 August 2022

SENTENCING BY PALMER J

Solicitors
Crown Solicitor, Napier
Bramwell Bate Lawyers, Hastings

[1] Mr Belmont Te Aonui-Tawhai has pleaded guilty to:

- (a) murder, which is punishable by life imprisonment;
- (b) aggravated robbery, which is punishable by up to 14 years' imprisonment; and
- (c) assault with a weapon, which is punishable by up to five years' imprisonment.

[2] I sentence him in accordance with a sentence indication I provided on 21 June 2022.¹

What happened?

[3] Mr Te Aonui-Tawhai, and his co-defendant are patched members of the Mongrel Mob. On the afternoon of Monday 29 March 2021, they were in a car when they saw and chased the victim, Mr Peter Lui, who was on his motorcycle. Mr Lui was a 63-year-old patched member of the Outlaw Motorcycle gang. Mr Te Aonui-Tawhai's intention was to take Mr Lui's patch as a trophy.

[4] Mr Te Aonui-Tawhai has pleaded guilty on the basis of a statement of facts that alleged both he and his co-defendant attacked Mr Lui while he was lying on the ground. Mr Te Aonui-Tawhai used a knife to inflict 11 stab wounds to Mr Lui's upper arms and nose, and two incised wounds to his chest and right upper arm. Mr Te Aonui-Tawhai and, allegedly, the co-defendant, kicked and punched the victim and took his patch. They left him lying on the ground, bleeding. Mr Lui died soon afterwards due to blood loss.

[5] Mr Te Aonui-Tawhai either intended to murder Mr Lui, was reckless as to his potential death, or meant to cause grievous bodily injury to facilitate an aggravated robbery and death ensued from the injury. The offending involved a pre-meditated

¹ *R v Te Aonui-Tawhai* HC Wellington CRI-2021-041-880, 21 June 2022.

attack on a member of another gang and the use of a weapon, multiple times, to facilitate robbery of a gang patch.

[6] Mr Philip acknowledges, for Mr Te Aonui-Tawhai that Mr Lui's death was totally unnecessary and avoidable and influenced by his consumption of methamphetamine. He has read Mr Te Aonui-Tawhai's letter of apology and what he submits is genuine remorse. He refers to his upbringing in a gang culture as normalising violence, substance abuse and anti-social behaviour. Mr Manning says it is important to the Lui family that I and Mr Te Aonui-Tawhai know more of who Mr Lui was, a family man, an electrician riding his motorcycle on his lunch break.

Victim impact

[7] The primary victim of the offending was obviously Mr Lui. But his family and friends have also suffered serious emotional harm from the offending. Our law recognises them as victims too.² Twenty or so of Mr Lui's family and friends have attended the sentencing. I have read all the victim impact statements. Six have read their victim impact statements here in Court today. I do not repeat what they have said. But to give a sense of it for the record:

- (a) Mr Lui's wife, who uses Peter's nickname "China", was with him for 10 years and they were married for five years. Meeting China was the best thing that had happened to her. He became her best friend as well as her partner and would tell her he loved her multiple times a day, which never changed over the years. Five days was the longest they were ever apart and that was super hard for both of them. Her world was turned upside down when he was stabbed. A piece of her died with him, being robbed of the only man she had ever loved, and robbed of all her happiness, security and her future. She is haunted by the way China's life was viciously taken from him. It replays over and over in her head. She says, Mr Te Aonui-Tawhai, that you have ruined multiple people's lives and caused pain and trauma that will never go away. She

² Victims' Rights Act 2002, s 4.

says the family will not forget about China but will talk about him and love him forever. He was a legend to them.

- (b) Mr Lui's son says this event has taken a great emotional toll on him and the family. He thinks about the life events his Dad was at and the fact the grandkids will never get to see their grandfather anymore. He is worried about how his kids will grow up now and about the effect on Mr Lui's mother. He hopes you understand the full effect you have had on him and his family's lives.
- (c) Mr Lui's daughter says her father was not a perfect man but the love he had for his family was evident to her throughout her whole life. He was loving, shy, a cook, with a good sense of humour, in the background, who gave everything he could and always had the latest gadget. This loss has stopped her always being quick to smile. He will never be able to walk her down the aisle or be around for her nieces and nephews. She feels sorry for you but says no upbringing excuses your actions. She hopes you will realise the gravity of what you have done.
- (d) One of Mr Lui's sisters says Peter was her older, protective and only brother and they were close. She acknowledges Peter had an entire other side of him, being part of the Outlaws gang. There, she says he believed you did not need to be involved in criminal or violent activities. But he was a hard-working, caring and loving Dad to his children. They are still trying to process and understand his death and the fact he is no longer around to guide and support them. His death has left a huge void as he has been the head of the Lui family since his father's passing in 1984. She misses him every day. The family will always keep him close in their hearts and in the memories they share of him. She hopes Mr Te Aonui-Tawhai you are able to turn your life around to make you and your family proud, with professional support, so that Peter's death will not have been in vain and he will continue to make a difference.

- (e) Another of Mr Lui's sisters says that when she received the call about Peter it was beyond her comprehension, as he was just coming back to health after his battle with cancer. Under their Chinese custom, Peter was head of their line of the family, which they could trace back to the year 1200. Peter was someone she knew she could count on if needed – a loving big brother with a dry sense of humour and a rough, often scary outward appearance. The Motorcycle Club was just one aspect of his life. He was an electrician. He helped her to believe in herself. She is left anxious, vulnerable and helpless and says the family does not deserve to have gone through this terrible process. She hopes you make the most of your time in custody. If you are genuinely remorseful, she can forgive you. But nothing will ever bring Peter back.
- (f) Mr Lui's niece says Peter was a dedicated family man who was sorely missed at their family reunion last year and her children are incredibly saddened by his passing. Her own disbelief at his death is constant and she talks about the heavy emotional and physical toll it has taken on the whole family, particularly her grandmother. Nothing will ever be the same.

Life imprisonment

[8] The penalty for murder is life imprisonment unless, given the circumstances of the offence and the offender, that would be manifestly unjust. There is no suggestion it would be manifestly unjust here. The sentence for the murder will be life imprisonment.

Minimum period of imprisonment

[9] The primary issue is what the minimum period of imprisonment (MPI) should be. During that period there can be no parole from prison, and only after that is the judgment about parole left to the Parole Board to assess on an ongoing basis. Counsel agree that s 104 of the Sentencing Act 2002 (the Act) applies here, because the murder was committed in the course of another serious offence, aggravated robbery. The murder was also likely committed with a high degree of callousness, involving some

pre-meditation, extreme violence, serious injury, use of weapons, attacking the head, facilitation of robbery and multiple attackers in the context of conflict between gangs. So the section applies for that reason too. It requires me to impose an MPI of 17 years unless that is manifestly unjust.

[10] Cases involving this sort of manifest injustice need not be rare, but they will be exceptional.³ In the sentencing indication, I said the starting point for sentencing, in this case, is that the Court must impose an MPI of at least 17 years unless it is satisfied that it would be manifestly unjust to do so.⁴ I noted that other offences justified an uplift to the MPI and that a guilty plea would justify a discount. I also said that, while there was no guarantee, it was a reasonable possibility that your youth and background circumstances would mean an MPI of 17 years would be manifestly unjust, depending on reports I would receive.⁵

[11] I have now read a cultural report produced by Ms Shelly Turner for the purposes of s 27 of the Act, and a pre-sentence report by the Department of Corrections about your personal background. It is clear you were raised in dysfunction, poverty and violence, and cultural deprivation over several generations. Your family and role models were entrenched in the Mongrel Mob, which was like a family to you. You grew up without your biological father. You were close to your grandmother who died when you were eight. Your mother was imprisoned at a crucial point in your development, suffered from addiction issues and you were told you would never amount to anything. You started smoking cigarettes at six, using cannabis at six or seven and you have been addicted to methamphetamine, which you first tried at 14. These substance abuse issues arose in a context of alcohol and drug abuse over several generations, and grief and loss. You were subject to family violence from the age of about five and you learnt how to resolve conflict through violence. Despite all this you did well at school. And your Mum loves you no matter what. She has told the cultural report writer, Ms Turner, that today is heart breaking and she will probably fall to pieces when it all hits her.

³ *R v Williams* [2005] 2 NZLR 506 at [67].

⁴ *R v Te Aonui-Tawhai*, above n 1, at [8].

⁵ At [11]–[12].

[12] Your pathway into the gang and a life of increasingly serious crime means, as Ms Turner observes, your life path was almost pre-determined, at least to this point. Ms Turner says the real challenge for you is whether you can separate yourself from the gang which has got you where you are today. I agree. You can change the direction of your life if you are strong enough to do so.

[13] You were 22 at the time of the offending, two weeks off turning 23. Mr Manning, for the Crown, submits this age is towards the outer limit for consideration of a reduction in MPI. Mr Philip submits your youth is reflected in your shock that the victim died. The Corrections report refers to immaturity as a factor in the offending. I take into account psychological research which indicates that brain development is still not complete until the age of 25, which may be linked to impulsive offending.⁶ The Court of Appeal has also said that is relevant in making young people more vulnerable to peer pressure, more impulsive, more vulnerable to the crushing effect of a long sentence and to a greater capacity for rehabilitation.⁷

[14] You also have a three-year-old child, whose interests I must take into account, even if you have not.⁸ The impact of that in relation to the sentencing principles of deterrence and denunciation of such a serious crime as murder, is necessarily less. And you are not your child's primary caregiver. But, as Mr Philip submits, they will lose access to the love and support of their father in their formative years. I recognise this as a relevant consideration to whether a 17-year MPI is manifestly unjust.

[15] Overall, as the Crown acknowledges, your personal circumstances and particularly the gang influence on your upbringing will have had a considerable impact on your offending. It explains, though it does not excuse, your pursuit of Mr Lui for his patch. It is less persuasive in explaining the nature and extent of the violence you inflicted on him. Your addiction to methamphetamine may explain some of that. As

⁶ Ian Lambie *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand* (Office of the Prime Minister's Chief Science Advisor, Auckland, 2018); Ian Lambie *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand*. (Office of the Prime Minister's Chief Science Advisor, Auckland, 2020).

⁷ *R v Churchward* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

⁸ United Nations Convention on the Rights of the Child 1577 UNTS 3 at art 3(1). And see Sentencing Act 2002, s 8(i) and *Campbell v R* [2020] NZCA 356 at [45].

the Crown also agrees, there is a clear link between your upbringing and the offending and there is support for a finding that an MPI of 17 years would be manifestly unjust. And a lesser MPI would give practical recognition to the benefits of your guilty plea. I agree that your personal circumstances are sufficiently powerful and bear on the offending so that it would be manifestly unjust to impose on you an MPI of 17 years.⁹

Adjustments to MPI

[16] I now address what MPI would be just in the circumstances. Section 103 of the Act requires me to order that the MPI be at least 10 years. In setting an MPI, the principles and purposes of sentencing remain relevant.¹⁰ The MPI must also:¹¹

- (a) hold you accountable for the harm done to Mr Lui, his family, and the community;
- (b) denounce your conduct;
- (c) deter you and others from committing the same kind of offending; and
- (d) protect the community.

[17] As I said in the sentencing indication:¹²

- (a) 17 years is the starting point.
- (b) Your other recent convictions for violence, including for possession of a knife, demonstrate a propensity for gratuitous and unprovoked violence. They justify an uplift to the MPI of three months.
- (c) Your early guilty plea has saved Mr Lui's family, and the Court, the time, the anguish and the expense of a lengthy trial in relation to your offending. That justifies a discount to the MPI of one and a half years.

⁹ At [66].

¹⁰ At [71]; and Sentencing Act 2002, ss 7–9.

¹¹ Sentencing Act 2002, s 103(2).

¹² *R v Te Aonui-Tawhai*, above n 1, at [8]–[9].

[18] Your age has to be viewed in the context of the nature of your previous convictions, and the serious, premeditated and sustained violence of this attack. But some recognition for your age is justified.

[19] As the Crown and report writers accept, you have shown genuine remorse for your offending in the reports and in your letter. You understand that whatever you say will not address the anger and hurt that Mr Lui's family has towards you. In the cultural report, Ms Turner says you have said it is "ratshit" how things have turned out for Mr Liu's family. You say the week leading up to the offending was highly drug oriented for you and you were under the influence of methamphetamine during the offending. You acknowledge that is no excuse. In your letter, you sincerely apologise to the family and all those affected. You have told the Corrections report-writer you take full responsibility for your actions.

[20] As Mr Philip submits on your behalf, these documents suggest you understand the loss to Mr Lui's family and the impact on your own whānau. They also suggest you are capable of rehabilitation; you have said you want to live a normal life. To do that, you will need to find a way of getting out of gang life. Embracing your whakapapa and your Māori identity could help you find out where you come from and who you are. As the Crown says, your offer to meet with Mr Lui's family is significant. They may find it helps bring a sense of closure.

[21] Overall, having regard to similar cases,¹³ including the cases referred to by Mr Manning and Mr Philip, I consider your personal background circumstances of youth, addiction, and personal background, and the potential for rehabilitation, justify a discount to the MPI of two years and nine months, which is around 16 per cent of the 17-year starting point. Greater discounts have been given for similar personal circumstances in setting finite sentences of imprisonment.¹⁴ But, as the MPI must accurately reflect the seriousness of the crime and the need to give effect to legislative policy behind an MPI for particularly callous and brutal murders.¹⁵

¹³ For example, *Baille v R* [2021] NZCA 458.

¹⁴ *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241.

¹⁵ *Hohua v R* [2019] NZCA 533 at [44].

[22] Overall, that leads to an end MPI of 13 years. You are responsible for serious offending that has caused tremendous harm. You have been on the path to this for most of your life. I consider that this period of time without any possibility of parole would reflect the seriousness of your offending in the context of the mitigating factors, consistent with comparable cases. I leave it to the Parole Board to assess your eligibility for parole after that. It will depend on whether you are strong enough to choose a different path.

Other offences

[23] For completeness, I am also required to state the sentences for the aggravated robbery and assault with a weapon. It does not have much effect given the sentence of life imprisonment for murder, but I agree concurrent sentences of seven years' imprisonment for aggravated robbery, given the use of violence and use of a weapon,¹⁶ and 18 months for assault with a weapon would be appropriate.

Sentence

[24] Mr Te Aonui-Tawhai, please stand. I sentence you to life imprisonment for murder, with a minimum period of imprisonment of 13 years.

[25] I sentence you concurrently to seven years' imprisonment for aggravated robbery and 18 months' imprisonment for assault with a weapon.

[26] I remit your currently outstanding fines and enforcement fees so that if and when you are eventually released, you can start a new life afresh. I urge you and the Department of Corrections to find counselling and treatment programmes to address your acknowledged drug addiction issues and your propensity for violence.

Palmer J

¹⁶ *R v Mako* [2000] 2 NZLR 170 (CA).