

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

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

**CRI-2021-019-003618
[2022] NZHC 2209**

THE QUEEN

v

JOHN KINA EDWARDS

Hearing: 31 August 2022

Appearances: Rebecca Guthrie for the Crown
Nicola Graham for the Defendant

Sentencing Notes: 31 August 2022

SENTENCING NOTES OF MOORE J

Introduction

[1] John Edwards, at the age of 55, you appear for sentence having pleaded guilty to a charge of manslaughter.¹ As you will know, the maximum penalty for manslaughter is life imprisonment.

The offending

[2] It is first necessary for me to set out the facts of your offending. No one will know them better than you but because sentencing is a judicial function which the law says must be undertaken in public, it is necessary for me to describe what happened and, in particular refer to those facts which are directly relevant to setting the sentence I must impose. Those facts are set out in a summary which you have accepted. There is no dispute about them.

[3] You knew the man you killed, Deiderick Grant, because you were both longstanding patched members of the Mongrel Mob.

[4] The background to what happened needs to be set. Around two years ago a safe containing over \$250,000 in cash, apparently belonging to you and your partner, was stolen. You and your associates believed Mana Bennett was responsible. He had previously lived at the property where the safe had been stored.

[5] Mana Bennett and Mr Grant had a close relationship. Mr Grant was in a relationship with Mr Bennett's mother and had been something of a father figure to him for many years.

[6] After the safe was stolen, Mr Bennett and his partner received threats. You confronted him. You demanded that he return the stolen property. He consistently denied any responsibility for or involvement in the theft.

[7] Mr Bennett's mother and a number of Mongrel Mob members visited you with the aim of resolving the matter. Those discussions failed.

¹ Crimes Act 1961, ss 171 and 177. Maximum penalty of life imprisonment.

[8] Mr Bennett met with Mr Grant and told him what had happened. Given his friendship with you, Mr Grant indicated that he would attempt to resolve the dispute.

[9] On 5 June 2020, you and a number of other Mongrel Mob members, travelled to Mr Grant's home. His partner, adult daughter and three children were there at the time. Mr Grant was not home. His daughter texted him. He replied that he would return home.

[10] When Mr Grant got home, he spoke with you in the garage. From there you both went into the house to speak privately. Your discussions became heated; in fact, very heated. Those elsewhere in the house could hear loud banging sounds coming from one of the bedrooms.

[11] You accept you struck Mr Grant. He fell to the ground. While he was lying prone you repeatedly stabbed him in the face and chest with a plastic ballpoint pen. During the assault the pen broke. You continued stabbing him regardless.

[12] Your assault on Mr Grant caused him very significant injuries which combined with Mr Grant's methamphetamine toxicity and pre-existing heart disease, caused his death. The injuries included multiple clusters of abrasions, lacerations and sharp force injuries to the right side of his face and upper chest; contusions and bruising around his right eye, nose and upper lip; a broken nose; defensive wounds to his forearms, wrists and hands; and, significantly, a three centimetre penetrating wound which extended through his right upper eyelid and the right orbital part of his frontal bone and into the adjacent dura which is the thick membrane which surrounds the brain and spinal cord.

[13] Mr Grant's partner entered the room shortly after you left. She attempted to give first aid. Emergency services were called. Despite their intervention Mr Grant was pronounced dead at the scene.

Victim impact statements

[14] As you have, no victim impact statements have been filed. I am aware from the summary and other sources that Mr Grant had a partner. It is unfortunate that I have

no written material about how his death has affected her. That is likely to be a product of gang convention, and that is unfortunate. A similar position applies to Mr Grant's family, particularly those who were present at the time. They would have been traumatised by what they witnessed at first hand. And I acknowledge Mr Grant's wider whānau who I am told are present in the public gallery today. The Victim Rights Act 2002 is designed to assist all families affected by crime of this sort, including Mr Grant's, to find some comfort and closure through their active involvement in the Court process. It cannot be assumed, simply because no one has been prepared to speak out, that those close to Mr Grant have been left unaffected by his killing.

Pre-sentence report

[15] There is a pre-sentence report but because you refused to engage in the process it is necessarily limited in what it reveals.

What is the appropriate starting point?

[16] The first stage in the sentencing process is to set the starting point. This is done by reference to the aggravating and mitigating factors of your offending and to other cases similar to yours. After that I shall consider what adjustments need to be made to the starting point to account for your personal circumstances.

[17] There is no guideline judgment for manslaughter. That is because manslaughter is recognised as being a crime which may be committed in wide-ranging circumstances.² The proper sentencing approach in manslaughter cases where serious violence is involved is to cross-reference the starting point determined by the application of the guideline judgment for wounding with intent to cause grievous bodily harm against comparable manslaughter sentencing.³ Adopting that approach provides a degree of cross-checking. Either approach should end up at about the same.

[18] The guideline judgment for wounding with intent to cause grievous bodily harm is *R v Taueki*.⁴ There the Court of Appeal set out three bands for setting starting

² *Everett v R* [2019] NZCA 68 at [24].

³ At [27] citing *Ioata v R* [2013] NZCA 235 at [25] and [28].

⁴ *R v Taueki* [2005] 3 NZLR 372 (CA).

points.⁵ In your case the relevant one is band three. Under band three, starting points range between nine and 14 years' imprisonment.⁶ Band three is appropriate for serious offending which has three or more of the listed aggravating features present and the combination of those aggravating features is particularly grave.⁷ In your case I have concluded there are seven aggravating factors present to a greater or lesser degree. Let me set them out and list the degree of weight I give each of them:

- (a) *The extreme violence involved in the attack:*⁸ Your actions involved a deliberate and brutal infliction of harm. The attack ended in Mr Grant's death. The injuries, while not the sole cause of death were, nevertheless, significant operative causes of death and were, by any analysis, very serious and easily meet the test of extreme violence. I am satisfied this feature is present to a high degree.
- (b) *Targeting Mr Grant's face and head:*⁹ This is a further aggravating feature because, self-evidently, attacks to the head can, and in this case did, have particularly serious consequences.¹⁰ I am satisfied this feature is also present to a high degree.
- (c) *The serious injuries caused by the assault:*¹¹ I have previously described the nature and extent of Mr Grant's injuries. Most critical is that the attack resulted in his death. This feature is to a considerable extent duplicated by the previous two factors and so I give this aspect proportionately less weight when assessed on its own.
- (d) *The use of a weapon:*¹² Although a plastic ballpoint pen is hardly a conventional weapon, it was a lethal one in these circumstances. You used it to cause serious injuries, including the penetrating wound

⁵ At [34].

⁶ At [34(c)].

⁷ At [40].

⁸ At [31(a)].

⁹ At [31(e)].

¹⁰ At [31(e)].

¹¹ At [31(c)].

¹² At [31(d)].

through Mr Grant's eye and into the area next to his brain. I am satisfied this factor is present to a moderately high level.

- (e) *The vulnerability of Mr Grant:*¹³ Conventionally this factor tends to relate to vulnerability by reason of age or infirmity, but it is not intended to be restrictive. If the victim is more susceptible to injury or death in the event of attack that will meet the test. I am satisfied there is evidence Mr Grant was vulnerable after he fell to the ground and you continued to attack him. His defence wounds tend to support that conclusion. It is accepted you continued to attack him while he was lying prone on the ground. This involves a degree of vulnerability. I am satisfied this element is present to a moderate degree.
- (f) *The element of home invasion and breach of trust:*¹⁴ Although you did not forcibly enter Mr Grant's home, you did attack him once he returned home and while his family was present. Any mitigation allowed for not forcibly entering the home is countered by the fact that you used your prior relationship to gain entry and, it follows, there was an element of trust which permitted you to gain entry. I am satisfied this element is present to a low to moderate degree.
- (g) *Gang involvement:*¹⁵ Where serious violence is perpetrated by members of a criminal gang this is regarded as an aggravating factor. Here you have a connection to the Mongrel Mob. However, I do recognise your offending does appear to have been driven more by personal retribution rather than conduct arising out of your accepted gang membership. That said your connection to Mr Grant through the Mongrel Mob and the fact that you arrived at his home with other members of the Mongrel Mob cannot be entirely disregarded. I regard this factor to be present to a modest degree.

¹³ At [31(i)].

¹⁴ At [31(j)].

¹⁵ At [31(k)].

[19] Ms Graham, on your behalf, submits that a preliminary starting point of seven to eight years' imprisonment would be appropriate. Ms Guthrie, for the Crown, submits that the appropriate starting point is nine years' imprisonment. That latter figure sits at the lowest starting point available in band three and I agree with the Crown that in terms of *Taueki* that is where the starting point should sit here.

[20] Having determined your offending fits within band three I must compare your offending with comparable manslaughter cases in terms of the cross-checking process recommended by the caselaw.

[21] The Court of Appeal in *R v Tai* recognised a starting point of seven to eight years is appropriate in cases where there was serious injury, leading to death, repeated attacks to the head and vulnerability arising from the victim lying defenceless on the ground.¹⁶

[22] Counsel have also referred me to *Blackler v R*.¹⁷ There the Court of Appeal upheld a starting point of six years' imprisonment for manslaughter in which there was extreme violence, multiple attacks to the head, moderate vulnerability of the victim and an abuse of trust similar to yours.¹⁸ As was the case for Mr Grant, the autopsy in *Blackler* indicated that death resulted from a combination of the injuries and certain co-morbidities.

[23] The Crown also referred me to *Everett v R* and *Te Pana v R*. However, I consider that the vulnerability and domestic and familial relationship factors in those cases were a good deal more engaged than in your offending.¹⁹

[24] As for manslaughter cases involving the use of a weapon, Ms Graham has referred me to two decisions. First, in *R v Day* this Court adopted a nine-year starting point for manslaughter. That case involved an argument after which the defendant left his living room to get a knife to stab the victim.²⁰ A knife is plainly a more lethal

¹⁶ *R v Tai* [2010] NZCA 598 at [11], affirmed in *Te Pana v R* [2014] NZCA 55 at [22]–[24].

¹⁷ *Blackler v R* [2019] NZCA 232.

¹⁸ At [4]–[8] and [27].

¹⁹ *Everett v R* [2019] NZCA 68; and *Te Pana v R* [2014] NZCA 55.

²⁰ *R v Day* [2014] NZHC 3412 at [6]–[9] and [23].

weapon than a pen, but none of the other aggravating features present in your case were present in *Day*.

[25] Second, is *R v Eastham*.²¹ That case concerned a bar fight which escalated resulting in an overzealous self-defence.²² I do not consider the case to be of much assistance here.

[26] In *R v Ormsby*, this Court adopted an 11 year starting point for an attack in which the defendant used a metal bar to attack the head of the victim, causing serious injury.²³ After the attack the victim attempted to stand up and fell against an associate of the defendant, who proceeded to strangle the victim. The cause of death was a combination of head injuries from the metal bar and asphyxiation. In that sense there are some parallels with Mr Grant's death.

[27] I consider the most comparable cases to your offending are *Tai* and *Blackler*. Although the Court of Appeal in *Blackler* upheld a six-year starting point, it was noted that a seven to eight year range was appropriate for the type of offending. Your offending is worse because you used a weapon and you and Mr Grant were members of the same gang. *Ormsby* involved the use of an intrinsically more lethal weapon as well as repeated attacks to head justifying an 11 year starting point.

[28] Against that catalogue, I consider that the appropriate starting point is 10 years' imprisonment.

Adjustments to the starting point for personal circumstances

[29] I now turn to consider what adjustments need to be made to the starting point to account for your personal circumstances.

[30] The Crown and Ms Graham submit that there are no aggravating features personal to you because your criminal history is historic. I agree.

²¹ *R v Eastham* [2013] NZHC 2792.

²² At [23].

²³ *R v Ormsby* [2016] NZHC 2220.

[31] Ms Graham submits that you should receive a 10 per cent discount for the matters raised in your s 27 report and for the remorse you have shown. I have read the s 27 report and recognise the truly difficult start to life you had and how it has, in part, led to your offending. As Ms Graham insightfully comments, your circumstances mirror those we see far too often in our Courts; the normalisation of violence (often extreme violence), lack of appropriate role models, cultural dislocation and gang affiliation. It is heartening that while none of this excuses what you did, you do seem to recognise the effect of your actions on the whānau and the importance of reconnecting to your whakapapa and your Ringatu father.

[32] Ms Graham informs me that you were prepared to undertake restorative justice but that an administrative error in the Court led to this not taking place. You cannot be penalised for that. You are entitled to some discount for that offer which I accept is genuine. I agree with Ms Graham that it is appropriate to allow a 10 per cent discount for remorse, willingness to participate in restorative justice and the matters raised in your s 27 report.

[33] I give you full credit for an early guilty plea, which is a 25 per cent discount.

Minimum period of imprisonment

[34] The Crown submit that I should impose a minimum period of imprisonment (“MPI”) of 50 per cent. Ms Graham disagrees.

[35] The relevant principles for imposition of an MPI are:²⁴

- (a) holding the offender accountable for the harm done to the victim and the community by the offending;
- (b) denouncing the conduct in which the offender was involved;
- (c) deterring the offender or other persons from committing the same or a similar offence:

[36] Each of these factors point in favour of imposing an MPI greater than the ordinary non-parole period. This was an intentional and extremely violent attack. The

²⁴ Sentencing Act 2002, s 86(2).

underlying motive for it was retribution. It is necessary to strongly denounce your conduct in seeking vengeance in such a violent manner, ultimately causing Mr Grant's death. The killing of another person, while unintentional, nevertheless involves gravely serious harm for which you must be held accountable. That is especially because the infliction of fatal harm to Mr Grant was no accident although I accept by your plea it was not with murderous intent. It is also necessary to deter others from taking matters into their own hands as you did, particularly in the gang context where violent retaliation is the norm.

[37] I am accordingly satisfied that the ordinary non-parole period would be insufficient to meet these purposes of sentencings. An MPI of 50 per cent is required.

End sentence

[38] Please stand Mr Edwards.

[39] On the charge of manslaughter I sentence you a term of six years and six months' imprisonment.

[40] I impose an MPI of three years and three months.

[41] Stand down.

Moore J

Solicitors:
Crown Solicitor, Hamilton
Ms Graham, Napier