IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CRI-2021-009-91
[2022] NZHC 2424

THE KING

v

NATHAN IHAKA TE HANA

Hearing:	21 September 2022
Appearances:	D L Elsmore for Crown A M Dawson for Defendant
Judgment:	21 September 2022

SENTENCING REMARKS OF EATON J

Introduction

[1] Nathan Te Hana, you are to be sentenced today having pleaded guilty to the manslaughter of Michael Graham.

Facts

[2] The facts of your offending have been captured in a prosecution summary of facts, one that you admit and accept as being the proper basis for your sentencing today.

[3] You and the victim were living together in shared accommodation with two other flatmates. You both had separate bedrooms upstairs at that address.

[4] On Friday 1 January 2021, Mr Graham and your other two flatmates were drinking heavily in the lounge. You do not drink. You were in your room.

[5] A female friend, who was a former partner of yours, visited the flat. After she had been at the address for some time, Mr Graham went upstairs to his bedroom. The female understood he was collecting an item for her. She followed him about a half an hour later and a verbal argument developed between them. Mr Graham then urinated in a bottle and as the female friend started to walk back down the stairs, he threw the bottle in her direction, and it broke at the bottom of the staircase.

[6] As the female friend turned to challenge Mr Graham, he lifted his leg, shaping it as if to kick her. You witnessed this action and challenged Mr Graham. You punched him once in the head, knocking him to the ground outside the door of his bedroom at the top of the stairs. As he lay on the ground, you then stomped on his head twice. You were wearing socks but no shoes at the time. That assault resulted in Mr Graham sustaining a visibly fat ear. At that stage no other injuries were obvious.

[7] You then walked back into your bedroom. Mr Graham was heard to use offensive and racially provocative language, and that led you to come out of your bedroom and confront him, asking what he had said. The female friend tried to deflect the comments as having been being directed at her, however, Mr Graham then addressed you using the most highly charged and offensive language. He was still lying on the ground where you had left him. In response, you stomped on his head again in a manner that was described by the female witness as being "really hard".

[8] You then left the flat and Mr Graham retreated to his bedroom.

[9] The following morning, Mr Graham went downstairs and told two of his flatmates that he didn't feel well, as he thought someone had "kicked him over the night before". He said he "felt crook and was sore, and was going to go back to his room to sleep it off". It was suggested by his flatmates that he see a doctor. Tragically, he declined.

[10] About two and a half hours later you returned to the flat and told your flatmates that you had "lost it" with Mr Graham and that you had punched and stomped on his head. You showed one of your flatmates your hand, which was swollen, and you yourself expressed concern that you may have killed Mr Graham. That same day you told another associate about the altercation, saying "I stomped him. I went stomp, stomp, stomp".

[11] At about 2.45 pm on Sunday 3 January 2021, one of your flatmates checked on Mr Graham after hearing groaning noises coming from his room. That flatmate saw dried blood on the carpet outside Mr Graham's bedroom and, on entering, found him slumped between his bed and the wall, unresponsive.

[12] An ambulance was called. However, Mr Graham died shortly after the first responders arrived. He had suffered a large right-side subdural haematoma causing a left mid-line shift of the brain. It was that injury that proved fatal. In addition, he had suffered a significant right sided subarachnoid haemorrhage with bruising to the right temporal lobe.

Victim impact statement

[13] Mr Graham's son, Michael, has provided a victim impact statement. That statement tells me how Mr Graham and his son were rebuilding their relationship and how his son loved and misses him. He thinks of his father every day and there is particular music which sparks a special memory of his father.

[14] Mr Graham's son expresses forgiveness to you. He does not want you, or any of your family, to suffer and he believes his father would have wanted this Court to focus on your rehabilitation and to encourage you to build stronger relationships with your whānau and to break the cycle of prison, pain and sorrow.

[15] I am pleased to hear this morning that Mr Dawson has read that victim impact statement to you prior to coming to Court and I am pleased that Mr Gilmore is here in Court today to witness the sentencing.

[16] I am sure you will appreciate, Mr Te Hana, from prior experiences with sentencings, that a response of forgiveness and encouragement is far from typical in a case where a loved one has been killed at the hands of another. So I strongly encourage you to reflect on the words of Mr Graham's son and to seek out the opportunities, both when you are serving the inevitable prison sentence I have to impose today and upon your release from prison.

Approach

[17] The maximum penalty for manslaughter is life imprisonment.[1]

[18] To fix the appropriate sentence for your offending I will first set a starting point that reflects the seriousness of your offence. That sentence must be consistent with sentences that are imposed in similar cases and the starting point should reflect any aggravating or mitigating facts of your offence. From that starting point I will then make adjustments, either increasing or decreasing the sentence, to take into account your personal circumstances.

[19] Overall, the sentence that I impose must have regard to the statutory purposes and principles of sentencing.[2] You are to be held accountable for your offending and you are to be encouraged to be responsible for and acknowledge the harm you have caused. The sentence must be sufficient to denounce your conduct and to protect the community. I must impose the least restrictive sentence that is appropriate in the circumstances and I must have regard to the need for your rehabilitation.

Starting point

[20] Sentencing for manslaughter cases is always difficult for this Court. There is no tariff for manslaughter sentences because of the degree of variance in the circumstances of each offence and in an individual offender's culpability.[3]

---

1 Crimes Act 1961, s 177.
2 Sentencing Act 2002, ss 7 and 8.
3 *R v Thomas* [2018] NZHC 819 at [49].

[21] In determining the appropriate starting point, I will adopt what has been described as the dual analytical approach.[4] That means first I will consider what starting point is appropriate by reference to a tariff case, *R v Taueki.*[5] In *R v Jamieson*,[6] the Court of Appeal said that in a case involving serious violence where serious injury, if not death, was a foreseeable outcome, *Taueki* is of considerable assistance in fixing the penalty for manslaughter. I will then cross check the appropriate starting point by reference to comparable cases.

R v Taueki analysis

[22] Ms Elsmore, for the Crown, places your offending at the top end of band two or the lower to middle of band three of *Taueki.* She submits a starting point of 12 years' imprisonment is called for. Your counsel, Ms Ayrey, in written submissions, and Mr Dawson in oral submissions today, submit this case falls somewhere on the cusp of bands one and two. I make this observation in relation to that submission, band one of *Taueki* is appropriate for offending involving violence at the lower end of the spectrum. As the Court of Appeal observed in *Taueki*, it is not appropriate for violence which is actually life-threatening.

[23] Both counsel support their respective submissions by reference to the aggravating factors identified in the guideline judgment and that are said to be present in your offending.

[24] What are the aggravating factors that apply to your case?

[25] The first is that the injury you inflicted was serious. It was the most serious in that your assault caused death. The stomping caused the brain injury, the brain injury caused the death.

[26] Next, your attack was focussed on the head of Mr Graham.

---

4 *Everett v R* [2019] NZCA 68 at [33]-[37].
5 *R v Taueki* [2005] NZCA 174, [2005] 3 NZLR 372.
6 *R v Jamieson* [2009] NZCA 555 at [33]-[34].

[27] Thirdly, Mr Graham had been knocked to the ground by the first punch and at that stage was intoxicated. Notwithstanding submissions made this morning, I think you must have known he was in that state. It follows that Mr Graham lying on the ground, drunk, was vulnerable.

[28] I do not consider the abuse of trust is significant in this case. You were simply flatmates and, from what I can tell, you were not particularly close. I also do not accept the Crown submission that I should regard the incident as involving discrete assaults. As I see it, it was a continuous event, albeit interrupted very briefly when you returned to your room. I think it would be artificial to adopt the approach proposed. By a fine margin, I find the level of violence that you inflicted fell short of extreme violence. The assault was limited to four blows, it was not prolonged and, as I will shortly address, I find it was not unprovoked.

[29] The combination of aggravating factors that I find brings your offending into the upper end of band two of *Taueki*, attracting a sentence starting point in the range of eight to 10 years. I assess the starting point, based on *Taueki* principles, to be eight and a half years' imprisonment.

Comparable cases

[30] Both the Crown[7] and your counsel[8] have provided me with a number of authorities they say have similar facts to your offending and I have reviewed all of those authorities.

[31] Ms Ayrey, in the written submissions, placed significant reliance on the decision of Dunningham J in *Blackler v R*, where a starting point of six years' imprisonment was taken following a guilty verdict to a charge of manslaughter.[9] A significant distinguishing feature in *Blackler* is that the punching injuries inflicted would not have given rise to the death of the victim. Death in that case occurred as a result of a pre-existing heart condition. On appeal in *Blackler*, the Court of Appeal

---

7 *R v Tai* [2010] NZCA 598; *R v Matchitt* [2021] NZHC 2747; *Felise v R* [2020] NZCA 60; *Te Pana v R* [2014] NZCA 55; and *Waipuka v R* [2013] NZCA 661.

8 *R v Blackler* [2018] NZHC 830; and *R v Gardner* [2021] NZHC 3174.

9 *R v Blackler*, above n 8.

observed that one punch manslaughter cases typically attract starting points of five to six years' imprisonment,[10] and that starting points of seven to eight years' imprisonment are imposed for sustained assaults to the head causing an unintended death.[11] The Court of Appeal in *Blackler* confirmed the appropriateness of the six-year starting point in that case, and they did so regardless of whether a blow was struck whilst the victim was on the ground.

[32] Here, your assault was the sole cause of Mr Graham's death and the most serious blows, being stomps, were inflicted whilst Mr Graham was on the ground.

[33] I regard your offending as more serious than that in *Tai*, which was a case of a kickboxer who threw a punch and then a hard kick to a victim — causing death — and where a seven year starting point was taken, and closer to *Te Pana* (an eight year starting point) and *Matchitt* (a nine year starting point). The case of *Jamieson*[12] had the features of multiple attackers, attacking the head, a vulnerable victim (particularly when he was knocked to the ground and defenceless) and a fatal outcome. That assault involved stomping and the Court of Appeal considered a starting point of nine years to be appropriate.

[34] I contrast all of those cases with your offending. The punch to Mr Graham was of sufficient force to knock him off his feet and leave him lying defenceless on the ground. That is not to suggest the punch caused any particular injury, but in the state he was in, it left him in no position to defend himself. The three stomps were then inflicted and they clearly involved significant force. Regardless of whether you were wearing shoes or not, I consider deliberate stomping aimed at the head of a person lying on the ground to engage a higher level of violence than punching to the face of a person standing. The power and force that can be generated by a stomp is plain. And when a victim is lying on a flat and firm surface, meaning there is simply no give, the potential for a serious brain injury and death is significant. I think you sensed that.

---

10 *Blackler v R* [2019] NZCA 232 at [27], citing *Everett v R*, above n 4, at [21], *R v Pene* [2010] NZCA 387; and *Murray v R* [2013] NZCA 177.

11 *Blackler v R*, above n 10, at [27], citing *Te Pana v R* [2014] NZCA 55; *R v Rangi* [2015] NZHC 1879; and *R v Hetherington* CA28/02, 20 June 2002.

12 *R v Jamieson*, above n 6, at [35].

As much is reflected in the comments you made the following day when you returned to the flat and you expressed concern that you might have killed him.

[35] I regard the appropriate starting point by reference to other decisions as being in the range of eight to nine years and that satisfies me the starting point I have indicated of eight and half years is appropriate.

Mitigating facts of offence

[36] I then turn to the mitigating facts of your offence.

[37] It has been submitted on your behalf that there are issues of self-defence and provocation that ought to result in a reduction from the starting point proposed by Mr Dawson of six years' imprisonment. He submitted that a six month reduction was appropriate to recognise those mitigating facts.

[38] I accept the initial punch was a spontaneous response to Mr Graham's assault, and his threatened ongoing assault on a female friend. I regard the stomping as reflecting your propensity to resort to serious violence when angered. On your behalf, Ms Ayrey, in the written submissions, confirmed that you accept it was completely inappropriate and unnecessary for you to stomp on Mr Graham's head once you had punched him to the ground, even if you were acting in defence of the female.

[39] I also accept that, having briefly returned to your room, you then heard offensive racial slurs that led you to re-engage with Mr Graham. His comments provoked you and you did become enraged. That is what led to the further stomping. In your words, you "lost it".

[40] The Sentencing Act requires a Court to take into account the conduct of the victim as a mitigating factor. The Court of Appeal in *Wairau v R*[13] confirmed that a flexible approach is required, with the evaluation of provocation being fact dependent. The Court stressed that the end focus is on whether the behaviour of the victim has materially reduced the culpability of the defendant. I accept that Mr Graham's actions

---

13 *Wairau v R* [2015] NZCA 215 at [28].

and words do mitigate your culpability, however, I exercise caution in determining the extent of any sentence reduction that should follow, given your response was clearly so disproportionate to the threat or provocation. You had previously been exposed to provocative racial slurs from Mr Graham. You could, and I am sure you know you should, have ignored his comments as drunken ramblings. But I accept that those slurs enraged you and were an operative cause of the violence that you then inflicted.

[41] A modest discount on the starting point for sentencing is appropriate[14] and I fix that discount as being one of nine months to reflect the conduct of Mr Graham. That equates to eight per cent and results in a starting point of seven years, nine months' imprisonment.

Personal considerations

[42] The next step in fixing sentence, Mr Te Hana, is to consider whether there should be any uplifts or discounts from the starting point because of factors personal to you.

Personal aggravating factors

[43] You have a number of previous convictions for offending of a violent nature. In 2020 alone you were convicted of common assault, two counts of assault on a person in a family relationship, male assaults female and common assault. Between 1993 and 2018 you have accumulated over 20 convictions of a similar nature. While I accept some of this offending is historical in nature, the more recent convictions for violent offending indicate that you regularly resort to violence. Previous prosecutions and sentencing have not deterred you at all.

[44] In the *Blackler* case that you have heard mentioned this morning, the defendant had a number of previous assault convictions, albeit less than reflected in your history. The Court of Appeal in that case described a 12 month uplift, which was about 15 per cent, on a starting point of seven years' imprisonment as being stern but within

---

[14] *Wairau v* R, above n 13, at [31].

range. In my view, the minimum I can responsibly impose by way of uplift to reflect your criminal history is one of nine months (10 per cent).

Personal mitigating factors

[45] I have been provided with a pre-sentence report, a cultural report and a psychiatric assessment, all of which detail your personal circumstances. I have also read a letter from the lawyers who are representing you in the enquiry into abuse in State care. That material informs the brief summary I am about to give.

[46] It is clear from these reports that your childhood was marked by violence, instability, deprivation, and substance abuse by those around you. You are from the iwi Tūhoe, but report being raised with a pākehā focus and feeling dislocated from your culture. You spent time in State care, during which you suffered various forms of abuse. You explained how these circumstances taught you to act "tough" and resort to violence in situations you felt uncomfortable in. You also describe feelings of anxiety, and anger, and sometimes a generalised sense of paranoia when remembering childhood events.

[47] Dr Monasterio says that you present with antisocial personality disorder and partial symptoms of post-traumatic stress disorder. In his report you also described a history of synthetic drug dependence, recalling that you used synthetic cannabis regularly for several months before the offending. However, you deny feeling any common psychiatric complications associated with the use of this substance.

[48] I agree with the submissions made on your behalf that there is a causative link between your background and upbringing, and your offending, and that a reduction in your sentence is appropriate. And I also acknowledge your willingness, now expressed through the reports, to engage in treatment to try and understand why it is that you have a propensity to act so violently when angered. The level of credit that I allow to reflect your background must however be tempered having regard to the very serious nature of your offending.[15] I have assessed the appropriate deduction as being one of 15 per cent.

---

[15] *R v Waho* [2020] NZCA 526 at [29].

[49] I briefly mention remorse because the pre-sentence report records comments, that your counsel describes as unhelpful, suggesting a complete lack of remorse and a lack of any empathy as to the consequences of your actions. In the subsequent reports, I sense a shift in attitude, you are now appearing to be far more reflective and, today in Court, through counsel, you express an apology that I accept is genuine.

[50] I accept that in recent months, perhaps reflecting your engagement with the author of the s 27 report and with Dr Monasterio, that you have thought more deeply about what happened and your responsibilities for your actions. That is a positive shift in thinking and I recognise that and I hope that Mr Graham's family recognise that as well.

Guilty plea

[51] Finally, in terms of mitigating factors, you have entered a plea of guilty. That was entered not long after the Crown agreed to substitute the charge of murder for a charge of manslaughter and there is agreement between Crown and your counsel that the guilty plea should attract a sentencing discount of 20 per cent and I agree with that.

[52] What that results in is a total deduction of 25 per cent to reflect personal considerations after I take into account the uplift for previous convictions and your guilty plea.

End sentence

[53] That leaves an end sentence of five years and ten months' imprisonment.

Minimum non-parole period

[54] The Crown submits the Court should impose a minimum period of imprisonment (MPI). Your counsel submit that an MPI is not called for but if I determine otherwise it should be fixed at no more than 50 per cent. An MPI is the time you must serve before you can be considered for release on parole. But for the imposition of an MPI, you would be eligible to be released having served one third of the sentence I impose.

[55] To impose an MPI I must be satisfied that the one third eligibility date for parole would be insufficient to hold you accountable for the harm you have done to the victim and the community; to denounce your conduct; to deter you or other persons from committing the same or similar offences; or to protect the community from you.[16]

[56] In determining whether an MPI is required, and if so, the duration of an MPI, I am required to take into account the purposes and principles of sentencing and the applicable aggravating and mitigating factors that I have discussed.

[57] Whilst I do not disagree with your counsel, and I have no doubt you will be well aware, the prospects of your release at one-third are negligible. I do not consider that factor as being relevant to my determination whether to impose an MPI. In my view, your eligibility for release after serving what would be less than two years' imprisonment would not adequately denounce your conduct or hold you accountable. Eligibility for release at that point of your sentence would not recognise the very grave consequences of your offending where there has been a death. In my view, a 50 per cent MPI is appropriate.

[58] Finally, I am advised there are $50 in outstanding fines which I remit today.

Result

[59] Mr Te Hana can you please stand.

[60] Mr Te Hana, on the charge of manslaughter, you are sentenced to five years and ten months' imprisonment with a minimum period of imprisonment of two years and eleven months.

[61] You may stand down.

.....
Eaton J

---

16 Sentencing Act, s 86(2).

Solicitors:
Crown Solicitor's Office, Christchurch
Public Defence Service, Christchurch
Public Defence Service, Dunedin