

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

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

**CRI-2018-009-9328  
[2022] NZHC 2470**

**THE KING**

v

**DANIEL GARY FRENCH**

Hearing: 28 September 2022

Appearances: P A Currie for Crown  
A J Bailey for Defendant

Judgment: 28 September 2022

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**ORAL SENTENCING REMARKS OF OSBORNE J**

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**Introduction**

[1] Daniel Gary French, you are to be sentenced today having pleaded guilty to the manslaughter of Luke Sears.<sup>1</sup>

[2] I am going to ask you to resume your seat for the time being. I need to explain the sentence to you, so you may be seated.

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<sup>1</sup> Crimes Act 1961, ss 66(2), 160, 171 and 177 – maximum penalty of life imprisonment.

## Facts

[3] The central facts of your offending were set out in a Crown summary of facts, as you know, which you have admitted. On your behalf, Mr Bailey has referred to additional matters, especially of background, which were in evidence at your trial in 2020 when you and your co-defendant, Alistair Cochrane, were found guilty of Mr Sears' murder and Tereina Sullivan was convicted of unlawful possession of a firearm. Your conviction for murder has subsequently been quashed by the Court of Appeal, which led to the Crown reconsidering the charge against you.<sup>2</sup> That led to your pleading guilty to the charge of manslaughter in June this year.

[4] The Court of Appeal, in its judgment, set out a narrative of events reflecting the evidence at trial and it is appropriate that I adopt it for the purpose of sentencing you.<sup>3</sup>

[5] You were involved in a large-scale cannabis growing operation at a property in Selwyn, Canterbury. You also had a firewood business and, at the relevant time, were in the process of setting up a pet shop business in Rolleston. You had been employing Ms Sullivan at the pet shop for nearly a year. Shortly before the events giving rise to Mr Sears' death, Ms Sullivan had introduced Mr Cochrane to you. Mr Cochrane had been carrying out manual labour work for the pet shop business. The three of you — you, Mr Cochrane and Ms Sullivan — had no gang affiliations.

[6] Mr Sears had known you for about a year. He was a patched member of the King Cobra gang. In the days before his death, Mr Sears was trying to collect a claimed debt of about \$40,000 that he said you owed to him or the King Cobras. You denied there was any such debt. Rather, you said that Mr Sears owed you \$20,000, being the balance of a \$60,000 debt for cannabis that Mr Sears had earlier purchased from you.

[7] On 12 October 2018, Mr Sears and an associate came to the pet shop to threaten you and to obtain payment of the claimed debt. An altercation took place, involving

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<sup>2</sup> *French v R* [2021] NZCA 702.

<sup>3</sup> At [8]–[15].

Mr Sears standing over you and punching you. Ms Sullivan produced a shotgun and placed it on the table in an apparent attempt to scare off Mr Sears. There was an argument about the weapon and a tussle over it. Mr Sears and his associate then left.

[8] Later that day, Mr Sears and his associate returned, again demanding payment of the alleged debt. He produced a pistol, threatened you with it, and punched you in the face. Ms Sullivan called the police. Police officers arrived and escorted Mr Sears and his associate from the premises. As a result of the police being called, Mr Sears “taxed” you by increasing the debt he said you owed him. Mr Sears told you that you had to sign over the rural property you owned at Sheffield as part of the alleged debt. On the same day, Mr Sears visited that property and told the tenant he needed to vacate the property and the concerned tenant had called you about that.

[9] The next day, 13 October 2018, you asked Mr Cochrane to accompany you to deliver a load of firewood and to act as a form of protection or “muscle”. This was in case you were confronted by Mr Sears or other members of the King Cobras. The two of you left the pet shop in your vehicle. You were the driver. Mr Cochrane was in the front passenger seat and had with him a loaded sawn-off shotgun in a bag.

[10] As you were driving along a rural road, you encountered Mr Sears driving the other way with his fiancée, Ms Lawson. Both vehicles stopped. You and Mr Sears got out and began to talk to each other on the road. A physical fight began between you and Mr Sears. Ms Lawson got out of Mr Sears’ car and tried to stop him engaging in the fight. Mr Sears told Ms Lawson to get back in the car. Mr Cochrane got out of the vehicle with the shotgun, pointed it at Mr Sears and told him to leave you alone. Mr Sears then walked towards Mr Cochrane, saying words to the effect of, “what are you going to do with that?”, while facing the gun with his arms outstretched. Mr Cochrane retreated. Ms Lawson was pushed away by Mr Sears and again told to return to the car. You said to Mr Cochrane to “put the gun away” and “let’s leave”, and Mr Cochrane may also have said something too about leaving the scene.

[11] Mr Sears moved to the driver’s door of your vehicle. The door was closed but its window open. Mr Cochrane went to the front passenger side of the vehicle. The window of the passenger door was also open. Mr Sears leaned through the driver’s

door window to take the keys out of the ignition, saying that you are “not going anywhere”. Mr Cochrane was still holding the shotgun. The shotgun was discharged, and Mr Sears was hit in the right side of his chest. He died of his injuries shortly afterwards.

[12] You and Mr Cochrane got into the vehicle and drove off. You both went to your address. You gave Mr Cochrane the keys to another vehicle and Mr Cochrane left. Several minutes later, you drove back to the scene of the shooting. You contacted the police and said the firearm had been accidentally discharged.

[13] Mr Cochrane was subsequently at your joint trial convicted of murder, a conviction that stands following his unsuccessful appeal. Your conviction for murder, as a party to Mr Cochrane’s offending committed in the prosecution of an unlawful common purpose, was subsequently quashed by the Court of Appeal.

[14] Your conviction for murder was set aside by the Court of Appeal for two reasons.

[15] First, the trial Judge had not directed the jury to consider whether it was reasonably possible that your shared understanding with Mr Cochrane was to present the firearm only in circumstances of justified self-defence or whether you foresaw a culpable killing. That is, the jury were not asked whether it was reasonably possible you did not agree to or anticipate an unjustified and unlawful killing of Mr Sears.<sup>4</sup>

[16] Secondly, when it came to your defence that you had withdrawn from any unlawful common purpose, the trial Judge had not adequately identified that the jury needed to consider whether you were withdrawing from the unlawful common purpose, that is to present a firearm to Mr Sears to scare him if you and Mr Cochrane encountered him when together.<sup>5</sup>

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<sup>4</sup> *French v R*, above n 2, at [63]–[66].

<sup>5</sup> At [83]–[89].

### **Your previous sentencing**

[17] When you were sentenced in the High Court following your murder conviction, you were also sentenced on the other charges to which you had pleaded guilty. On those charges you are at present serving a term of imprisonment of seven years and two months. That period is made up by a number of shorter sentences (as adjusted by the Court of Appeal) to be served cumulatively on each other:<sup>6</sup>

- (a) for possessing methamphetamine for supply and offering to supply methamphetamine: concurrent sentences of three years' imprisonment;
- (b) for cultivating cannabis and unlawfully supplying cannabis: concurrent sentences of three years' imprisonment;
- (c) for unlawfully possessing firearms and ammunition: concurrent sentences of one year's imprisonment; and
- (d) for theft and possession of N-Ethylpentylone for supply: concurrent sentences of two months' imprisonment.

[18] In other words, you have been sentenced on the drug and firearm charges to a total of seven years and two months' imprisonment.

### **Your plea of guilty to manslaughter**

[19] The charge to which you have now pleaded guilty is that you caused the death of Luke Sears by an unlawful act and thereby committed manslaughter.

[20] As Mr Bailey has recognised on your behalf, I must therefore treat you as having accepted both that you participated in an unlawful common purpose and that you did not sufficiently withdraw from that common purpose before Mr Cochrane shot Mr Sears.

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<sup>6</sup> At [93].

## **Victim impact statements**

[21] I want to acknowledge Mr Sears' family and the statements that you have provided, through two of you. I am grateful for that assistance provided to the Court. It helps me to understand who Mr Sears was and what he meant to you all and how that loss has affected, and will continue to affect, your family.

[22] One statement has been read in court today. The other statement was provided to me and I have read it.

[23] It is clear from the statements that Mr Sears was a much loved father, fiancé, son and brother. His young son's loss of his father is a desperately sad outcome of your offending. The horror and trauma suffered by Mr Sears' fiancée as he was shot before her eyes and she then did all she could to save him is a cruelty which, as she has described it, is beyond imagination.

[24] Mr Sears' family have told you directly, Mr French, and I don't need to repeat the detail here, the impact upon them of losing Mr Sears. I have to take that into account when imposing sentence and I will be doing so.

[25] I also recognise today, however, that no sentence I pass will redress the loss that you, as a family, have suffered.

[26] I further recognise that you and one of Mr Sears' sisters have recently participated in a restorative justice conference. I have read the report of that conference carefully. Mr Sears' sister, in her comments to you, identified clearly the disastrous consequences of the choices you made on 13 October. You spoke to her of "taking complete responsibility", in the context of the decisions you made to become involved in the drug world.

[27] The pre-sentence report writer has identified difficulties that you may experience in undertaking suitable programmes and treatment while in custody. It will clearly be a key part of your taking that complete responsibility for your involvement in the drug world, to which you have referred, and key to your rehabilitation in coming

back into society that you co-operate fully in relation to whatever services Corrections can make available to you during your period of custody.

### **Approach**

[28] The maximum penalty for manslaughter is life imprisonment.<sup>7</sup>

[29] To fix the appropriate sentence for your offending, I am required to consider, as you will have seen from counsel's submissions:

- (a) first, a starting point, that is a period of imprisonment which I consider reflects the seriousness, the culpability, of your crime;
- (b) secondly, any circumstances personal to you that make your offending worse; and
- (c) circumstances personal to you that reduce your level of responsibility for the crime of manslaughter.

[30] Overall, the sentence that I impose must have regard to the statutory purposes and principles of sentencing.<sup>8</sup> Those include accountability, denunciation, deterrence and your ultimate rehabilitation. I must consider the protection of the community. I must also aim to achieve consistency between your sentence and any other sentences for similar offending.

### **Starting point**

[31] There is no tariff case for manslaughter. That is because the circumstances of each offence of manslaughter and each individual's culpability vary so much.<sup>9</sup>

#### *Aggravating features of your offending*

[32] The aggravating features which I find to be present in your offending are these:

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<sup>7</sup> Crimes Act, s 177.

<sup>8</sup> Sentencing Act 2002, ss 7 and 8.

<sup>9</sup> *R v Thomas* [2018] NZHC 819 at [49].

- (a) premeditation — you were, with Mr Cochrane, deliberately in possession of a shotgun (we know that it was loaded but I do not treat you as being aware of the fact it was loaded) and you each had that shotgun with intent to use it if it proved necessary;
- (b) serious injury — Mr Sears died because of the injuries inflicted by the shotgun, this causing not only the loss of Mr Sears’ life but significant and ongoing harm to his family;
- (c) vulnerability of the victim — Mr Sears was unarmed and would have been unaware that the shotgun was loaded and therefore what degree of risk he faced; and
- (d) the drug-offending background — I must also have some regard, not as much as in relation to the other matters, to the context of your drug offending in which a shotgun and ammunition were involved. As Ms Currie has submitted that, itself, created a dangerous situation.

*Mitigating features of the offending*

[33] To assess your level of culpability for Mr Sears’ death, I must also take into account the matters which reduce the seriousness of your offending and your culpability. As Mr Bailey has submitted, the Court is required by s 9(2) Sentencing Act to take certain matters into account where they are established. I take the following into account:

- (a) Provocation: the Court of Appeal has indicated that the conduct of the victim is to be taken into account if I am satisfied that there was serious provocation which was an operative cause of the violence inflicted upon Mr Sears, and that it remained an operative cause throughout the commission of the offence.<sup>10</sup> I am satisfied that Mr Sears’ conduct, particularly against his gang background, was and remained an operative cause in your offending. As Mr Bailey submitted, your fears

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<sup>10</sup> *R v Taueki* [2005] 3 NZLR 372 (CA) at [32](a). See also *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [62]–[63]; and *Va v R* [2011] VSCA 426 at [42]

for your own safety stemmed from Mr Sears' earlier conduct over the preceding period. Those fears, I accept, were well-founded. It was undoubtedly the escalation of Mr Sears' aggression and violence the previous day that led to your involvement in the decision to be involved with a shotgun as you and Mr Cochrane drove off in your vehicle on 13 October. It was Mr Sears who had given you cause to fear for your own safety. That was a continuing situation.

- (b) Limited involvement in the offence:<sup>11</sup> you are to be sentenced on the basis that you did not fully withdraw from the common purpose involved in presenting a firearm at Mr Sears. But I accept, as Mr Bailey submitted, you did not at any point during the 13 October incident encourage Mr Cochrane in the actions he took in the incident and you took genuine steps towards withdrawal by attempting to have Mr Cochrane put the firearm back in the vehicle and to have you both leave the scene.<sup>12</sup>
- (c) Co-operation with police: as recognised by Ms Currie for the Crown, it is a mitigating factor that, after briefly driving home following the offending, you drove back towards the scene and contacted the police.

### *Reaching a starting point*

[34] *R v Taueki* is a guideline decision for sentencing in cases involving serious violent offending.<sup>13</sup> In *Taueki*, the Court of Appeal recognised three bands of grievous bodily harm offending, with Band 2 calling for starting points of five to ten years' imprisonment and Band 3 for nine to 14 years' imprisonment.<sup>14</sup>

[35] I consider your offending to be at the higher end of Band 2, particularly having regard to the involvement of the firearm.

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<sup>11</sup> Sentencing Act, s 9(2)(d).

<sup>12</sup> See also *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493 at [123].

<sup>13</sup> *R v Taueki*, above n 10.

<sup>14</sup> At [34].

[36] That said, the gravity of your offending was significantly affected by the mitigating features I have identified. While your offending remains serious, the circumstances that are directly relevant to your offending and that mitigate that offending are unusual in their nature and are clearly established. In my view, they call for an adjustment of the starting point of approximately one-quarter or 25 per cent.

#### *Comparable cases*

[37] An alternative way of considering the appropriate starting point sentence is to assess your culpability by reference to any comparable manslaughter cases.<sup>15</sup>

[38] The unusual features of your offending mean that it is difficult to find cases that are similar.

[39] That was illustrated by the Crown's reference to two cases: *R v Rapira* and *Pahau v R*.<sup>16</sup> I accept Mr Bailey's submission that those cases, involving participants setting out on confrontations intended to involve robbery and serious violence respectively, are of little assistance here.

[40] Mr Bailey has submitted that the case of *R v Innes* may be of some assistance. He points out that in that case there was a planned confrontation from the outset aimed at obtaining unlawful drugs.<sup>17</sup> The other party carried a hunting knife, rather than the loaded shotgun involved in your offending. Mr Bailey invites me to view the defendant in *Innes* as more culpable than you. He notes the common purpose in *Innes* was plainly unlawful from the outset. That is correct to some extent but the common enterprise in which you were involved — the potential use of a shotgun to scare or assault a person who was plainly and recently aggressive — carried with it a potentially greater risk of someone dying.

[41] I also view the four and a half years' starting point in *Innes* as sitting at the bottom of an appropriate range. In any event, I do not view that starting point of four and a half years, adopted by the Court in *Innes*, as appropriate for the circumstances

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<sup>15</sup> *R v Tai* [2010] NZCA 598 at [12]; and *R v Everett* [2019] NZCA 68 at [27].

<sup>16</sup> *R v Rapira* [2003] 3 NZLR 794 (CA); and *Pahau v R* [2011] NZCA 147.

<sup>17</sup> *R v Innes* [2016] NZHC 1195.

and outcome of the unlawful common enterprise on which embarked, even taking into account the significant mitigating features that relate to your offence.

*My assessment of a starting point*

[42] In these circumstances, I find the appropriate starting point for your offending is six years and nine months' imprisonment.

**Personal considerations**

[43] The next step in fixing your sentence, Mr French, is to consider whether there should be any uplifts or discounts from the starting point because of factors personal to you, that is, not directly associated with the offending itself.

*Personal aggravating factors*

[44] You have a number of previous convictions for firearm and drug offending. However, you have already been sentenced in relation to your drugs and firearm charges. The Crown has appropriately recognised that there should not be an uplift on account of your previous convictions.

*Personal mitigating factors*

[45] In considering your personal mitigating factors, I have taken into account both the pre-sentence report and the report from your restorative justice conference.

[46] At the outset, I indicate in relation to matters of personal mitigation that you will be given a full 25 per cent discount for your guilty plea, which the Crown recognises is appropriate.

[47] Mr Bailey has referred to your actions in the period immediately following the shooting. I have already taken those into account in setting the starting point as they closely relate to your offending.

[48] Mr Bailey has submitted that I should also grant a discount of 10 per cent for remorse. He says you have displayed a level of remorse in proportion to your

culpability. He correctly notes that the pre-sentence report refers to your “genuine sadness” about the outcome of what occurred that day, and submits that indicates you fully understand the harm resulting from Mr Sears’ death.

[49] I have carefully read the report of your restorative justice conference with Mr Sears’ sister. It is there that you most clearly identify the actions for which you take responsibility. What you said was that you take “full responsibility for dealing drugs”. It is far from clear to me that you have yet taken full responsibility for your involvement in the fatal incident with Mr Sears.

[50] I accept, as Mr Bailey has identified, that you have a genuine sadness about the outcome of your activities. But that is not the same as remorse for the outcome of your own involvement in Mr Sears’ death. It does not justify a separate allowance for remorse beyond that already involved in the 25 per cent discount that I am attaching to your guilty plea.

[51] Mr Bailey has submitted that it would be appropriate to give you a discount of five per cent for your attendance at the restorative justice conference. While I will not be allowing you a separate discount for any remorse shown either at that conference or more generally, it is appropriate to provide the five per cent discount suggested by Mr Bailey given the importance of restorative justice and your full participation in that process.

[52] In addition, Mr Bailey seeks a discount of 15 per cent on account of the difficulties that will arise for you in your period in custody. Mr Bailey has referred in particular to matters of record that indicate the level of animosity and even violence that members of the King Cobra gang have displayed towards you, the implications that has for your safety while in custody, and the fact that you have already had to be transferred to a segregated unit within the prison on account of the risks to your safety. Combined with that, Mr Bailey refers to the limited ability you may have, from the segregated unit, to participate in the treatment programmes that you need. That will in turn impact, I accept, on your prospects of being released on parole. I recognise that the matters identified by Mr Bailey will mean (as is already evident) that your period in prison will be more difficult for you than for many other prisoners and is

likely to be somewhat more extended. I consider a 10 per cent discount appropriate for those considerations.<sup>18</sup>

### **End sentence**

[53] That brings me to the calculation of an end sentence for the manslaughter conviction standing alone. The adjusted starting point was six years and nine months' imprisonment or 81 months.

[54] Deducting 40 per cent from that for the discounts I am allowing produces an end sentence of four years' imprisonment.

### **Totality**

[55] Your sentencing has not just been on the manslaughter charge alone. You were also sentenced, as I have said, to seven years and two months' imprisonment on the drug and firearm charges. That term was to be served concurrently with the life imprisonment sentence on the murder conviction as it then stood.

[56] Now that you are being sentenced on your conviction for manslaughter instead, the sentence I impose on you for manslaughter needs to take into account what will be the total length of the sentence that you will serve on all charges.

[57] On that totality basis, I find that it will be appropriate that you serve a term of three years' imprisonment, cumulative upon your existing sentences. That means that the total cumulative period of imprisonment on all sentences is 10 years and three months' imprisonment.

[58] Now please stand.

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<sup>18</sup> Sentencing Act, s 8(h); *R v RHB* [2012] NZHC 2879 at [54].

[59] Daniel Gary French, you are sentenced on the charge of manslaughter to three years' imprisonment to be served cumulatively upon the sentences imposed upon you on 26 June 2020 and as amended by the Court of Appeal.

**Osborne J**

Solicitors:  
Crown Solicitor, Christchurch  
A J Bailey, Barrister, Christchurch