

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2019-092-2340  
[2022] NZHC 2850**

**THE KING**

v

**ADAM MICHAEL ZACHARY SPEIR**

Hearing: 2 November 2022

Appearances: L P Radich and B A Mugisho for the Crown  
A G Speed and S Clark for the Defendant

Sentencing: 2 November 2022

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**SENTENCE OF GAULT J**

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Solicitors / Counsel:

Mr L P Radich and Mr B A Mugisho, Kayes Fletcher Walker, Office of the Crown Solicitor, Manukau City

Mr A G Speed and Mr S Clark, Barristers, Auckland

[1] Mr Speir, you appear for sentence after being found guilty of manslaughter<sup>1</sup> by a jury in June.

[2] I will begin by setting out the facts of your offending and referring to the victim impact statement. Next, I will explain the approach I am required to take in sentencing. I will select a starting point for your offending and adjust that starting point based on your personal circumstances in order to determine your end sentence.

### **Facts**

[3] On the evening of 27 January 2019, you smoked approximately two points of methamphetamine, and you did not sleep that night other than having a 'little rest' at one point. The next morning, on 28 January 2019, you smoked a 'cone' of cannabis. You then went for a walk in the local park and felt a twitch in your leg and thought "oh fuck, it's that feeling again". You began to feel scared and to sense some evil or malevolent energy.

[4] After visiting your grandmother, at about 5:00 pm, you were driving your car south down Botany Road in Botany Downs. You were speeding as you approached the intersection of Botany Road and Ti Rakau Drive. From a distance of at least two and a half kilometres from that intersection, you began driving dangerously.

[5] You drove the car within one metre of another car travelling around 50 to 60 kilometres per hour down Botany Road and started beeping your horn at the driver. You were laughing hysterically and waving at her. You were also swerving and crossing the centre line, edging past the corner of the car. Afraid that you would hit her, the driver pulled over to the side of the road. You pulled up next to her and stopped. Then, you suddenly accelerated your car away in an "S" manoeuvre, causing its wheels to spin and the car to temporarily cross into the wrong side of the road.

[6] Around one kilometre from the intersection, you passed another driver by driving at speed onto a median strip. At one point, you were observed driving with no hands on the steering wheel.

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<sup>1</sup> Crimes Act 1961, ss 171, 160(2)(a) and 177. Maximum penalty life imprisonment.

[7] At around 200 metres from the intersection, your car became temporarily airborne due to your speed. You continued approaching the intersection at over 100 kilometres per hour in a 60 kilometre per hour zone. There was a line of cars stopped at the intersection waiting for the lights to change. At a speed estimated by a serious crash investigator to have been between 106 km and 116 kilometres per hour, you drove your car into the back of a stationery vehicle, making no attempt to brake or avoid impact. As a result of the impact, two other cars in front of that vehicle were also propelled forward and sustained substantial damage. The crash was captured on CCTV.

[8] The victim, Mr Zhengwen Hu, also known as Alan Hu, was sitting in the driver's seat of the car you drove into. He died soon after impact.

[9] While still trapped in your car shortly after the crash, witnesses heard you yelling and screaming "I am Jesus Christ" and "Jesus will save you". You were unable to conduct a rational conversation with paramedics, speaking "gibberish" and required repeated doses of ketamine to keep you sedated.

[10] After the crash, at about 7:30 pm, methamphetamine was detected in your blood at a concentration of 0.2 milligrams per litre of blood and amphetamine was detected at a concentration of 0.04 milligrams per litre of blood. This level has been found to be in a range of drivers who have been demonstrating that they are impaired behind the wheel. The half-life of methamphetamine is six to 15 hours.

[11] The active ingredient of cannabis, tetrahydrocannabinol (THC), was detected at a concentration of approximately 0.4 nanograms per millilitre of blood. That level of THC is within a range found in the blood of people who have been deemed to be impaired.

[12] You told police in your DVD interview the next week that, in the moments before the crash, you heard voices telling you that if you killed yourself everyone would be saved and you were the saviour.

[13] You later told Dr Cavney, a forensic psychiatrist, that your sleeping had been disordered for weeks before the crash due to your use of methamphetamine. Dr Cavney's view was that you were psychotic at the time of the crash – that is, incapacitated – because of your drug use. I accept that you experienced a psychotic episode from about Mirrabooka Ave as you drove down Botany Road, but you were not incapacitated when you began driving after drug use in what was a major departure from the standard of care expected of a reasonable person driving a motor vehicle.

### **Victim impact statement**

[14] I am grateful to have heard the victim impact statement of Ms Hu, Mr Hu's wife. On behalf of her family, she describes the day of the crash as "the day when our lives were torn to pieces and our world turned upside down". 28 January 2019, Auckland Anniversary Day, was supposed to be a day of celebration for Mr Hu, Ms Hu, and their two daughters, then eight and 11 years old, because it was the day they had finished building their dream home. Over three years later, Mr Hu's daughters still expect him to return from work, take them to swimming classes, teach them to play basketball, drop them off at school and pick them up from dance classes. They want him to read their bedtime stories, teach them to be brave and inspire them to be outstanding citizens in New Zealand. Ms Hu expresses her grief that Mr Hu will not be there for the important milestones in their daughters' lives, and that she herself has lost the person she describes as "my rock, my anchor, my mate and my future". She has spent many nights crying and suffering from nightmares, asking why this had to happen to their family. She has attended counselling but feels scared to face the months and years ahead, including because of the ongoing financial stress now that she is the sole income earner. She says that while you may be able to restart your life after serving your sentence, she and her children face a sentence of emotional trauma for the rest of their lives.

[15] I thank Ms Hu for her courage, for giving me some insight into Mr Hu, and for sharing the continued impact of his loss on her and their daughters. I know that whatever sentence I impose today can in no way undo the harm done. I hope you, too, Mr Spier appreciate the profound and long-lasting pain you have caused by your offending.

## **Approach to sentencing**

[16] In terms of my approach to sentencing,<sup>2</sup> I will first set a starting point which reflects the nature and circumstances of your offending, having regard to its aggravating and mitigating features. I will then adjust that starting point – up or down – to take into account any aggravating and mitigating factors personal to you.

[17] I must have regard to the purposes and principles of sentencing as set out in the Sentencing Act 2002.<sup>3</sup> The relevant purposes of sentencing in your case include: to hold you accountable for the harm you have done; to promote a sense of responsibility for, and acknowledgement of, that harm; to provide for the interests of the victims, to denounce your conduct; to deter you and other persons from committing the same or a similar offence, to protect the community; and to assist in your rehabilitation and reintegration. I must also consider the gravity of your offending and your degree of culpability, and the seriousness of this type of offence. Finally, I must keep in mind the need for consistency between sentences for similar offending, and the need to impose the least restrictive sentence that is appropriate in the circumstances.

## **Starting point**

[18] I turn to the starting point for your offending. There is no guideline judgment setting the starting point for manslaughter since it is highly fact specific. However, the Court of Appeal has outlined the aggravating and mitigating factors that courts should take into account when sentencing an offender for driving causing death, which have subsequently been cited in manslaughter cases.<sup>4</sup> Given the overlap between the disputed aggravating and mitigating factors in this case, I outline the respective submissions before expressing my conclusions.

[19] Mr Radich, for the Crown, submits that your offending was aggravated by the following factors:

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<sup>2</sup> Following the approach set out by the Court of Appeal in *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46].

<sup>3</sup> Sentencing Act 2002, ss 7 and 8.

<sup>4</sup> *Gacitua v R* [2013] NZCA 234; *R v Atkinson* [2020] NZHC 1568 at [12]; and *R v Gebhardt* [2022] NZHC 1899 at [18].

- (a) Manner of driving / aggressive driving: the Crown says your driving was at highest end of bad driving.
- (b) Driving after knowingly having consumed drugs: the Crown says that while it is unclear exactly how close in time to the crash you consumed methamphetamine and cannabis, it is not disputed that you knowingly consumed those substances some time before you drove and the levels in your system were consistent with impairment.
- (c) Driving when knowingly deprived of adequate sleep or rest: you stated that you had weeks of scrambled sleep before the crash due to consuming methamphetamine. The night before, you had not really slept at all.
- (d) Driving when knowingly having recently experienced unusual psychological events: you described feeling a twitch in your leg on the day of the crash and sensing an evil or malevolent energy.
- (e) Victim impact: Ms Hu's victim impact statement demonstrates the shattering effect on Mr Hu's family.

[20] Your counsel, Mr Speed, submits there was no direct evidence that your driving was significantly impaired due to consuming methamphetamine, he says 17 hours previously or a 'cone' of cannabis two to four hours previously. He further submits there was no evidence of prolonged or persistent bad driving prior to your psychotic episode or that you were distracted or driving aggressively prior to that. He accepts that your driving was at the highest end of bad driving but only whilst suffering a psychotic episode. He does not accept that you drove after experiencing unusual psychological events. He submits it was not foreseeable that you would feel possessed by an evil or malevolent energy due to a twitch in your leg because you had experienced this leg twitch since you were young, meaning it was not "unusual". He submits that what was unusual was the psychotic episode you experienced while driving, which you could not have foreseen.

[21] In terms of mitigating factors, Mr Speed submits this is not a case of intoxication but of an unforeseeable psychotic episode, secondary to the consumption of methamphetamine 17 hours before, which should be taken into account as a mitigating factor.

[22] The Crown submits there are no mitigating factors. While acknowledging that a court must take into account as a mitigating factor that an offender has, or had at the time of the offending, diminished intellectual capacity or understanding,<sup>5</sup> it submits that a court must not take into account as a mitigating factor that the offender was affected by the voluntary consumption of drugs when committing the offending.<sup>6</sup> Mr Radich accepts that you suffered a psychotic episode immediately before the crash, but submits there were clear warning signs you ignored when deciding to drive, a time when there is no suggestion you were experiencing psychosis. Further, he submits that Dr Cavney accepted your psychosis was a function of your voluntary drug use. He also submits that “psychosis” is not a recognised condition or illness in itself but an umbrella term encompassing conditions which involve detachment from reality. Therefore, he submits that your culpability is not reduced because, as a result of your drug use, you were divorced from reality in the moments before the crash.

[23] It is important to assess these competing submissions in light of the jury’s verdict. As indicated, I accept that you experienced a psychotic episode from about Mirrabooka Ave as you drove down Botany Road, but you were not incapacitated when you began driving after drug use in what was a major departure from the standard expected of a reasonable driver. I also accept that the very high end of your bad driving occurred from about Mirrabooka Ave.

[24] You drove knowing that you had consumed drugs, that you had not really slept at all the night before and that on the day you sensed an evil or malevolent energy. This was unusual even if the twitch in your leg was not. You went to your grandmother’s house in an attempt to calm yourself. Your decision to drive in these combined circumstances was grossly negligent. Harm was foreseeable, even if the

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<sup>5</sup> Sentencing Act 2002, s 9(2)(e).

<sup>6</sup> Section 9(3); and see *R v Wihongi* [2011] NZCA 592 at [53].

psychotic episode was not. Your decision has had a traumatic effect on Mr Hu's wife and two young daughters as well as his own death.

[25] In any event, any psychotic episode was caused by your methamphetamine use. Evidence at trial did not indicate that you suffered from an underlying mental health disorder. I do not consider that a brief psychotic episode caused by your drug use should be viewed as a factor decreasing your culpability. Though each case turns on its facts, this aligns with the approach taken in other cases where an offender's psychosis was linked to their consumption of drugs (even where the offender may also suffer from an underlying mental illness).<sup>7</sup>

[26] By comparison with other motor manslaughter cases,<sup>8</sup> the Crown submits that a starting point between six and six a half years' to seven years' imprisonment should be adopted. Mr Speed submits that the cases cited by the Crown can be distinguished on the unique facts of your case, specifically, your psychotic episode and proposes a starting point of four to four and a half years' imprisonment. However, I have explained why your psychotic episode while you were already driving is not a mitigating factor of your offending. Insofar as it is relevant, I will consider it in relation to your personal circumstances.

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<sup>7</sup> See for example *R v Matara* [2017] NZHC 2198 at [15]; *R v Izett* [2021] NZHC 70 at [63]; and *Singh v Police* [2018] NZHC 2513 at [11].

<sup>8</sup> *R v Dods* [2021] NZHC 2666: After working long hours and consuming alcohol just over twice the legal limit, along with methamphetamine and anti-depressant medication, D drove erratically in the wrong direction in the fast lane of a motorway. He collided with an oncoming car at around 117km/h, killing the other driver. Aggravating factors: prolonged and deliberate course of very bad driving, consumption of drugs/alcohol, aggressive driving, driving when knowingly sleep-deprived. No mitigating factors. Starting point: 6.5 years' imprisonment.

*R v Te Rupe* [2021] NZHC 788: T consumed alcohol and cannabis and entered a car with three passengers. He began driving erratically and at speed; bursting a tyre, cutting corners, running a red light and crossing the centre line of a bridge directly onto the path of an oncoming motorbike, killing the rider and injuring one of T's passengers. Aggravating factors: excessive speed, disregard for passengers' warnings, prolonged and deliberate course of very bad driving, aggressive driving, driving while disqualified, eight previous driving convictions and death and injury caused. No mitigating factors. Starting point: 7.5 years. If previous convictions were considered separately, starting point would likely have been between and 7 years' imprisonment.

*R v Atkinson* [2020] NZHC 1568: A consumed alcohol to a level three times the legal limit and drove a vehicle at excessive speed, weaving in and out of an incoming lane and ignoring his passenger's requests that he pull over. He collided with a motor scooter at an intersection, killing the driver. Aggravating factors: consumption of alcohol, excessive speed, disregarding passenger's warnings, driving in breach of restricted licence, failing to stop and attempting to conceal offending. No mitigating factors. Starting point: 7 years.



[27] I also have regard to other cases of motor manslaughter where similar aggravating factors were present – such as aggressive driving with excessive speed, driving under the influence of alcohol and/or drugs, and driving when knowingly deprived of sleep.<sup>9</sup> I acknowledge that there were aggravating factors in some of those other cases which were not present in your case, including the presence of passengers in the car and ignoring their warnings, driving while disqualified, or driving in breach of a restricted licence or with no licence. I also acknowledge that your very bad driving was less prolonged.

[28] This Court has recently observed that starting points for motor manslaughter generally fall within the five or six to nine year range.<sup>10</sup> Where alcohol was an aggravating factor, appellate authorities have considered a starting point of around six or seven years' imprisonment is appropriate.<sup>11</sup> Where, as here, drugs such as methamphetamine and cannabis are an aggravating factor, a similar approach should apply. Taking into account the aggravating factors of your offending, I consider that a starting point of six years' imprisonment is appropriate.

### **Personal aggravating and mitigating factors**

[29] I now adjust that starting point for aggravating and mitigating factors personal to you.

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<sup>9</sup> *R v Price* [2020] NZHC 2995: After consuming alcohol at a bar and smoking cannabis or methamphetamine, P drove aggressively and on the opposite side of the road. He collided directly with a vehicle; killing the other driver. Aggravating factors: excessive consumption of alcohol and drugs, awareness of impairment and disregarding friends' warnings not to drive, duration and distance of the journey (23 km over nearly 30 minutes), driving an unwarranted vehicle, harm suffered by the victim's family. No mitigating factors. Starting point: 6 years.

*R v Makoare* [2020] NZHC 2289: Without holding a driver's licence and having smoked methamphetamine the previous night and that morning, M drove at 110-120 km/h on a wet road and attempted to overtake a truck at a blind corner. He collided with an oncoming car; a young child from his car was killed and several from both his car and the other were injured. Aggravating factors: impairment due to consumption of methamphetamine and sleep deprivation, vulnerability of the deceased, aggressive driving, disregarding a passenger's warnings, driving without a licence/with previous convictions for driving while forbidden and while subject to intensive supervision for unlicensed driving, death and injury caused. No mitigating factors. Starting point: 7 years on all charges.

<sup>10</sup> *R v Gebhardt* [2022] NZHC 1899 at [30]; *R v Atkinson* [2020] NZHC 1568 at [13].

<sup>11</sup> *Hayden v R* [2020] NZCA 369 at [43]; *Millar v R* [2019] NZCA 570 at [9]; and *R v Cossey* [2019] NZCA 104 at [53]-[57]. The Court in *Gacitua* surveyed earlier cases of driving under the influence of alcohol and found that starting points generally tended to be in the range of six years to six years and six months, rising to eight years or eight years and six months where there were two deaths: *Gacitua v R* [2013] NZCA 234 at [38] (and at n 30 and n 31).

### *Previous convictions*

[30] In terms of aggravating factors, you have 28 previous convictions dating back to 2009. Between 2013 and 2018, you were convicted of seven offences of driving while disqualified or suspended, three offences of sustained loss of traction and three offences of driving with excess blood alcohol. You also have six convictions for breaching sentences of community work and supervision.

[31] Mr Radich submits that this shows that you are someone who has little regard for the safety of others on the road and for the laws governing road use. He submits that I should uplift your sentence by six to eight months' imprisonment. Mr Speed submits that only a modest uplift is necessary, or no uplift at all. He submits that your history does not disclose frequent or serious offending, and that your more recent convictions were primarily for what he describes as "regulatory type" offences. He submits that an uplift needs to be proportionate to the sentence imposed for the original offence and notes that you have previously been given community-based sentences.

[32] Under the Sentencing Act, I must take into account as an aggravating factor the number, seriousness, date, relevance and nature of any previous convictions.<sup>12</sup> I acknowledge that some of your convictions are from several years ago and some of that earlier offending may have been driven by youthful impulsivity, but your record reflects that you have not been deterred by previous warnings about driving in an unsafe way or after having consumed alcohol. Instead, you repeatedly disregarded those warnings and orders preventing you from driving, thus endangering others on the road. This time it had a fatal consequence. I consider that an uplift is necessary and not inherently disproportionate. Accepting that you have not previously been sentenced to imprisonment, I impose an uplift of five per cent (approximately three and a half months).

### *Offending while subject to sentence*

[33] At the time of this offending, you were subject to a sentence of supervision for driving while suspended (third or subsequent). Mr Radich submits that I should uplift

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<sup>12</sup> Sentencing Act 2002, s 9(1)(j).

your sentence by a further two months for this, while Mr Speed submits that no uplift should be added.

[34] I must take into account as an aggravating feature the fact that you committed an offence while still subject to a sentence.<sup>13</sup> This demonstrates disregard or contempt for the criminal process and that the prior sentence has failed to deter you from further offending.<sup>14</sup> I apply an uplift of two and a half per cent (approximately two months).

*Personal mitigating factors*

[35] As for mitigating factors, Mr Speed submits that your sentence should be reduced because of your diminished capacity due to psychosis, background of cultural and social deprivation, mental health, drug addiction and prospects of rehabilitation, and your own injuries sustained in the crash. Rather than proposing separate discounts for these factors, Mr Speed seeks a global discount of 20 to 30 per cent. He also seeks a distinct discount of five per cent for genuine remorse.

[36] I have already addressed diminished capacity due to psychosis in relation to the nature of the offending. I will consider it again in relation to your personal circumstances as part of my consideration of your background.

[37] An offender's background of trauma or deprivation can warrant a discount where there is a causal nexus with the offending. This does not require the Court to be satisfied that those matters are a proximate cause of the offending.<sup>15</sup> If there is persuasive evidence showing a causal nexus, the Court needs to balance this with the purposes and principles of sentencing<sup>16</sup> such as denunciation, victim impact and community protection; reducing and perhaps eliminating any discount for culpability on social grounds.<sup>17</sup>

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<sup>13</sup> Section 9(1)(c).

<sup>14</sup> See *Clunie v R* [2013] NZCA 110 at [22].

<sup>15</sup> *Carr v R* [2020] NZCA 357 at [64]; *Nielsen v R* [2021] NZCA 447 at [53].

<sup>16</sup> See *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241 at [38]-[39].

<sup>17</sup> *Arona v R* [2018] NZCA 427 at [61], citing *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241 at [57].

[38] As well as two pre-sentence reports, I have recently received a report from Ms Isaacson, a clinical psychologist. While it is forward-looking in terms of your risk assessment and rehabilitative needs, it also provides some information about your upbringing and adult life prior to the offending.

[39] You were brought up in East Auckland with two siblings. Your mother left when you were about 11 years old. Your parents reportedly had significant substance abuse problems (specifically methamphetamine) and your father associated with gang members and sold drugs. Corrections corroborated that both your parents had criminal convictions. You reported that your mother also was diagnosed with Bi-Polar Affective Disorder. You went to live with your grandparents, with whom you formed a close bond. You stated that you felt loved and well provided for during your childhood.

[40] You struggled with dyslexia at school and were asked to leave at around 13 due to misbehaviour, including bringing alcohol and a BB gun to school. You also refer to having ADHD. You first started drinking and smoking cannabis around that age, and later started to use methamphetamine at around 20.

[41] You had a longstanding interest in cars and had your first car at around 15. Your grandmother says you were frequently in trouble with the police for doing 'burnouts' and this led to you receiving your first convictions.

[42] Since leaving school, you have sustained long-term employment in jobs like bricklaying and road-working.

[43] It was reported that you were assessed by the mental health crisis team in 2015 while in police custody, and in 2016 having expressed suicidal ideation to your grandfather. Around 2017, you reportedly lived in your car for approximately six months in a former employer's driveway and partially flatted with his daughter, who was fatally shot by her partner. You attempted to apply first aid and assisted emergency services.

[44] You have been in a relationship with your partner since 2017. She is a supportive influence. You began attending church in 2018. You state that you are motivated to be self-reliant financially so that you and your partner can buy a home together once you are released from prison.

[45] Ms Isaacson states it is possible that the effects of unresolved trauma and concealing your inability to cease substance use resulted in feeling internally conflicted, shameful and inadequate. During times of increased stress, unresolved trauma likely manifested in intermittent experiences of depersonalisation/disassociation whereby you felt externally controlled. This led to seeking religious explanations/intervention that over time likely became entangled in your sense of reality. A genetic predisposition to the development of a mental disorder was also recognised.

[46] While the reports are largely based on self-reported information, I accept, as Mr Radich acknowledged, that there appears to be a causal nexus between your upbringing and your drug use and addiction, which ultimately led to your offending. I also accept there are indicators of mental health issues albeit no diagnosis of illness. Ms Isaacson considers that substance abuse and unresolved trauma are rehabilitative needs. I agree, and these should be addressed. However, it appears that if you abstain from substance abuse, you have good rehabilitation prospects. You have indicated to the report writers that you are motivated to abstain and are willing to attend rehabilitative programmes to help you do so. Taking these interrelated factors together, I consider a combined discount of 20 per cent is appropriate.

[47] I do not consider you are entitled to a discount for your own injuries from the crash. I have no evidence indicating they were other than temporary.

[48] In relation to remorse, you expressed remorse in your police interview and you wrote a letter to Mr Hu's family dated February 2020 – albeit that was only received by the Crown this week – in which you said that your actions were “atrocious” and that you were so sorry, and that you are committed to making changes to better yourself or to make yourself a better person. But you also described your actions as careless, which showed limited insight and an attempt to minimise your offending. As

Mr Radich submitted, we do not have evidence of certificates of courses undertaken while on EM bail. More recently, the pre-sentence report writer considered that you understood some of the impact your offending has had on the victim's family, your own whānau and the community, that you took responsibility for what you did and displayed remorse. You recognised you have to live with the fact that you killed someone for the rest of your life. Ms Isaacson also considered that you expressed remorse, victim empathy and your regret appeared genuine. I accept, based on the material before me, that you have shown some remorse for your offending, but I do not consider that your remorse is of such a character that a discrete discount is appropriate.

[49] I also do not accept Mr Speed's separate submission that a sentence of imprisonment would be disproportionately severe for you on the basis that you have never served a term of imprisonment prior to this offending.

[50] In summary, total uplifts of 7.5 per cent and discounts of 20 per cent reduce the starting point of six years' imprisonment by 12.5 per cent, that is, by nine months, down to five years and three months' imprisonment.

#### *Time on EM bail*

[51] Counsel agree that you are also entitled to a discount for the time you spent on electronically monitored (EM) bail.<sup>18</sup> You were released on EM bail on 27 November 2020 with a restrictive 24-hour curfew although the curfew has been relaxed somewhat. You remained on EM bail for just over 18 months before you were found guilty at trial and remanded in custody. Mr Speed seeks a 70 per cent credit of 13 months. Mr Radich submitted a 30 to 50 per cent credit would be appropriate.

[52] The pre-sentence report writer described your compliance with EM bail as "exemplary". A discount for time on EM bail requires an evaluative decision.<sup>19</sup> Given your time on bail, your restrictive bail conditions and your very good compliance, I allow a credit of 50 per cent of the time you spent on EM bail,<sup>20</sup> that is, nine months.

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<sup>18</sup> Sentencing Act 2002, s 9(1)(h).

<sup>19</sup> *Rangi v R* [2014] NZCA 524 at [10]; *Chea v R* [2016] NZCA 207 at [110].

<sup>20</sup> *Paora v R* [2021] NZCA 559 at [53].

[53] This reduces your end sentence to four years and six months' imprisonment. Standing back, I consider that is the least restrictive sentence appropriate in the circumstances.

### **Disqualification**

[54] The Crown also seeks an order disqualifying you from driving.<sup>21</sup> The Court may order an offender to be disqualified from holding a driver licence for a specified period where the offending was facilitated by use of a motor vehicle. In your case, Mr Radich seeks a disqualification period of five to six years because your driving was amongst the worst of its kind and you have repeatedly failed to comply with disqualification orders in the past. He submits that disqualification is required to protect the community from you.

[55] Mr Speed submits that two years may be appropriate, but not five or more.

[56] Your offending was facilitated by use of a motor vehicle. A disqualification order may be imposed for a punitive or protective purpose, but it needs to be considered in the context of the overall sentence. Release on parole will only commence once the Parole Board is satisfied that you will not pose an undue risk to the safety of the community or any person or class of persons for the balance of your sentence.<sup>22</sup> In making that assessment the Parole Board will have regard to the support and supervision available to you following release, and the public interest in your reintegration into society as a law-abiding citizen.<sup>23</sup> You will also remain subject to the standard parole release conditions and any special conditions the Parole Board might impose.

[57] I consider it is necessary to hold you accountable and to protect the public for a period after you are released from prison given the nature of your offending in this case as described and your history of driving offences, but I consider disqualification for the lengthy period sought by the Crown is not required. I consider disqualification

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<sup>21</sup> Sentencing Act, s 124.

<sup>22</sup> Parole Act 2002, s 28(2).

<sup>23</sup> *Taiapa v R* [2019] NZCA 524 at [41].

for a period of two years following your release from prison balances the purposes and principles of sentencing.

**Result**

[58] Mr Speir, please stand.

[59] On the charge of manslaughter, I sentence you to four years and six months' imprisonment.

[60] You are disqualified from driving for two years, commencing on the date you are released from prison.

[61] Please stand down.

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Gault J