

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CRI-2021-041-880
[2022] NZHC 3030**

THE KING

v

HEMI RAPATA MEIHANA CAHILL

Sentencing: 18 November 2022

Counsel: S B Manning for the Crown
E J Forster for Mr Cahill

Sentencing Notes: 18 November 2022

SENTENCING NOTES OF GWYN J

Introduction

[1] Hemi Rapata Meihana Cahill you appear for sentence having pleaded guilty to charges of murder¹ and aggravated robbery.² At trial, you were convicted on a charge of assault with a weapon.³

[2] You came before me for a sentence indication in September 2022. I indicated that your sentence for the murder charge would be life imprisonment with a minimum period of imprisonment of 15 and a half years to be reduced by 18 months if you pleaded guilty. You accepted that sentence indication and pleaded guilty. At that time

¹ Crimes Act 1961, s 172(1): the presumptive sentence for murder is life imprisonment.

² Section 235(b) carries a maximum penalty of 14 years' imprisonment.

³ Section 202C carries a maximum penalty of five years' imprisonment.

I noted the possibility of further reductions in your minimum period of imprisonment depending on the pre-sentence reports I would receive.

[3] I now have a Provision of Advice to Courts (PAC) report, prepared by the Department of Corrections on 3 November 2022, a s 27 cultural report into your background and a Restorative Justice Conference Report. The reports have given me more relevant information to decide on a final sentence. I emphasise at the outset that your sentence will not be higher than what I indicated in September, so please do not worry about that.

[4] Although you heard the comments I made in my sentence indication in September, I will repeat some of those comments which explain the way in which I reach the sentence. Because sentencing is a public function, I will also describe the background facts that are relevant to the sentencing process.

[5] In sentencing you today, I apply a law called the Sentencing Act 2002, which sets out the purposes and principles of sentencing. The main purposes of sentencing in your case are to hold you accountable for the harm you have caused to Mr Lui, his family and the community; to denounce your conduct; to deter you, and others, from committing the same kind of offending; to protect the community; and to assist in your rehabilitation and reintegration into society.⁴ The sentence I decide on has to mark the callous and cruel nature of your crime, but also to acknowledge who you are and your particular circumstances and background.

The offending

[6] I am now going to talk briefly about the facts of what happened. I apologise in advance because I know that repeating what happened will be upsetting for family members here in Court today.

[7] On the afternoon of 29 March 2021, you and your co-defendant, Mr Te Aonui-Tawhai chased the victim, Mr Peter Lui, in a car while he was riding a motorcycle. You were the driver in this chase. When Mr Lui got to his destination, you drove the

⁴ Sentencing Act 2002, s 7.

car into Mr Lui's motorcycle, knocking him over. As Mr Lui lay beside his motorcycle, you reversed the car a few metres and again drove forward, hitting Mr Lui with the car.

[8] You got out of the car and, along with your co-defendant, attacked Mr Lui. Eyewitnesses describe seeing both co-offenders being involved in punching and/or kicking Mr Lui, although you deny hitting Mr Lui at all. Mr Te Aonui-Tawhai had a knife which he used to stab Mr Lui multiple times, but you deny knowing about the presence of a knife.

[9] Finally, after you and Mr Te Aonui-Tawhai stopped attacking Mr Lui, you forcibly took his gang patch. The Crown says that collecting his gang's patch as a trophy was the motivation for the attack.

[10] You and Mr Te Aonui-Tawhai then drove from the scene. Mr Lui died soon after as a result of blood loss.

Co-defendant's sentence

[11] Your co-defendant, Mr Te Aonui-Tawhai pleaded guilty to murder, aggravated robbery and assault with a weapon. He was sentenced on 29 August 2022 to life imprisonment with a minimum period of imprisonment of 13 years on the charge of murder; seven years' imprisonment for aggravated robbery; and 18 months' imprisonment for assault with a weapon.⁵

Victim impact

[12] Mr Lui's death has had a profound effect on his family, as demonstrated by the victim impact statements filed by Mr Lui's mother, children, wife, sisters, brothers, niece, nephew and former partner. Many of them are here today at this sentencing.

[13] I have read all of those statements and they tell of a world of pain and grief. You have heard Ms Cook, Mr Lui's wife, read her statement to the Court. She described how your actions meant that she lost her best friend and partner in

⁵ *R v Te Aonui-Tawhai* [2022] NZHC 2169.

circumstances that pain her every day. Mr Lui's mother wrote about his loving, caring nature and the goodness of his character. You have also heard this morning from Mr Lui's daughter Lisa and son Michael. Mr Lui's children express grief that their own children will not get to experience the warmth and love Mr Lui gave them. You heard too from Mr Lui's sister Janet. Mr Lui's sisters describe Mr Lui as the head of their family and their constant guide. They say he was part of a gang but was also so much more and he will be sorely missed. Mr Lui's niece describes the disbelief the whānau still feels that Mr Lui is no longer in their lives.

[14] As I said at the sentence indication hearing, I have been struck too by the generosity of spirit their statements reflect. They are angry and distraught, but also a number of Mr Lui's family members express the hope that you might eventually understand exactly what you have done and use that understanding to change the way you live your life. That sentiment was reflected by their willingness to attend a restorative justice conference with you in November.

Personal circumstances

[15] As I said, I have now read a PAC report from Corrections, a cultural report into your background and a Restorative Justice Conference Report, to give me a better understanding of your circumstances. I have also reviewed your criminal history.

[16] The PAC report notes that you are 31 years of age and had a clean criminal record up until 2019, but since then you have been convicted for a number of dishonesty-related offences and breaches of community sentence. The offending for which you are being sentenced today represents a major escalation in seriousness and violence.

[17] The report writer notes that you did not dispute the summary of facts to which you have pleaded guilty. You have expressed remorse for your offending. You have recognised the grave impact your actions have had on the victim's whānau as well as your own. You recognise that you have let yourself down.

[18] The report writer describes the tumultuous time you were experiencing during the period leading up to and immediately after the offending. Your mother was very

sick with cancer. You were not coping well. You had been using methamphetamine for a number of days prior to the offending and on the day of the offending. After the offending you continued to use methamphetamine. Your mother died the following day. Your partner had a new-born baby at the time but she grew increasingly anxious about your behaviour because you tried to keep the fact of the offending from her. You only started to appreciate the seriousness of what you had done, and the impact of those actions on your own whānau, once you got a chance to detox from the drugs after you were taken into custody.

[19] Mr Cahill, the PAC report tells me you have three young children, aged two, four and ten. You have been in a relationship with your partner for six years. Your partner is a big support in your life, as is your sister.

[20] Drugs have been a negative factor in your life for some time. You had been using methamphetamine and cannabis for a number of years before the offending and, as I have already mentioned, you had been using methamphetamine heavily for a period of eight days leading up to the offending. The report has also noted that you have been assessed as a high-risk gambler.

[21] The report writer identifies your gang affiliation and drug abuse as contributory factors to your violent offending and, recommends you receive support from a psychologist as part of your sentence to address those issues.

[22] The s 27 cultural report describes your background. It says you have experienced systemic deprivation through factors such as an unstable family life, the death of whānau members, including your father's suicide when you were only twelve, physical and psychological abuse, exposure and addiction to drugs and alcohol, gang exposure and cultural and social disconnection.

Life imprisonment

[23] The penalty for murder is life imprisonment unless, given the circumstances of the offence and the offender, that would be manifestly unjust.⁶ The presumption of

⁶ Sentencing Act, s 102.

life imprisonment is a strong one – it reflects the value placed on the sanctity of life – and it is only in exceptional circumstances that it should not be imposed.⁷

[24] There is no suggestion here that a sentence of life imprisonment would be manifestly unjust. I indicated that your sentence for the murder charge would be life imprisonment. I confirm this.

Minimum period of imprisonment

[25] The main issue I have to decide is what the minimum period of imprisonment (MPI) should be. During that minimum period there can be no parole from prison. Only after you have served that minimum period can the Parole Board assess whether you should be released on parole.

[26] Where, as here, a sentence of life imprisonment is imposed, the Court must order a minimum term of imprisonment which may not be less than 10 years.⁸ In some circumstances, a minimum period of imprisonment of 17 years must be imposed, unless that would be manifestly unjust.⁹

[27] Your lawyer and counsel for the Crown agree that s 104 of the Sentencing Act applies to your case because the murder of Mr Lui was committed in the course of another serious offence (aggravated robbery), to which you have pleaded guilty and the murder was committed with a high degree of callousness. It involved some pre-meditation, extreme violence, serious injury, use of weapons, attacking the head, facilitation of robbery and multiple attackers in the context of gang conflict. Section 104 requires a minimum period of imprisonment of 17 years unless that would be manifestly unjust.

[28] Accordingly, I must consider whether a minimum period of imprisonment of 17 years would be manifestly unjust in your case.

⁷ *R v Van Hemert* [2021] NZCA 261 at [34]-[42].

⁸ Sentencing Act, s 103.

⁹ Section 104 and *R v Williams* [2005] 2 NZLR 506, (2004) 21 CRNZ 352 (CA) at [51].

[29] In the sentence indication I said that imposing a minimum period of imprisonment of 17 years in your case would be manifestly unjust. While you were an active participant in what was a joint attack, you were not the principal offender. You did not inflict the knife wounds that led to Mr Lui's death. I also accept that it is not clear exactly what you knew about the use of the knife or Mr Te Aonui-Tawhai's state of mind in using the knife. Finally, parity with Mr Te Aonui-Tawhai (by which I mean treating you in an even-handed way) would be a factor in making it manifestly unjust to impose a 17-year minimum period of imprisonment in your case when Mr Te Aonui-Tawhai received a minimum period of imprisonment of 13 years.

[30] To reflect your lesser role in the offending, I indicated a minimum period of imprisonment of 15 and a half years, with a possible reduction depending on the reports I received.

Adjustments to the MPI

[31] Having read those reports, I now discuss the factors that are personal to you that might lead to a reduction in the indicated MPI.

Guilty plea

[32] First, your guilty pleas.¹⁰ As I said when I gave the sentence indication, I will discount your minimum period of imprisonment by 18 months for your decision to plead guilty, saving Mr Lui's family the anguish of another trial. This discount reflects that you were charged as a party and you were not the principal offender.

Personal mitigating factors

[33] Remorse is a separate mitigating factor that may justify a further discount, in addition to the guilty plea discount.¹¹ I have to be satisfied that you are genuinely remorseful.

¹⁰ Sentencing Act, s 9(2)(b); *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [75].

¹¹ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

[34] From the PAC report and the Restorative Justice Conference Report, I can see that you have genuinely thought about your offending and its impact on all the various people involved. You have not attempted to minimise your actions or their seriousness. You took part in a restorative justice meeting with Mr Lui's family. I acknowledge that would have been a difficult thing to do. You say that you are grateful that Mr Lui's family were willing to attend that meeting. Importantly, you realise that your actions have permanently taken away someone very precious to Mr Lui's whānau and you are sorry for that. You want to change aspects of your life that contributed to your offending: you want to leave the gang before you are released from prison; you plan to take part in the rehabilitative courses that will be offered to you in prison; you want to address your impulsive behaviour.

[35] Both the lawyer for the Crown and your lawyer agree that you should get a discount for the remorse you have expressed and I am satisfied that your remorse is genuine. I will reflect this in your sentence by a reduction to the minimum period of imprisonment.

[36] Mr Forster, your lawyer, has also made the point that you have expressed remorse by pleading guilty after the first trial resulted in a hung jury on the charge of murder. You say this was brought on after you listened to the evidence against you during the trial and decided that you were equally to blame as your co-offender, Mr Te Aounui-Tawhai.

[37] In sentencing you today, I must take into account your personal, family, community, and cultural background.¹²

[38] The writer of your cultural report notes that what has happened to you in your life cannot excuse what you have done. But it can help me to understand how you got to that point and what the way forward for you may be.

[39] The cultural report has detailed the difficulties you faced in your early life. Your father died by suicide when you were a child and you carry the trauma that followed from that. It led you to disconnect from school, which you had previously

¹² Sentencing Act, s 8(i).

loved, with all the negative consequences that follow from that in later life. You have also lost other people who you were close to in tragic circumstances, leading you to abuse drugs and alcohol to try to cope with your emotions, as well as becoming associated with a gang.

[40] The cultural report says that all of these things are symptoms of systemic social and cultural deprivation, as a Māori tane disconnected from Te Ao Māori. You have expressed a desire to change that and to try to rectify the disconnect from your whakapapa that you have experienced. I acknowledge that.

[41] Balancing your remorse and personal circumstances against the need to reflect the seriousness of your crimes and the need to give effect to legislative policy behind setting minimum periods of imprisonment for particularly callous and brutal murders,¹³ I reduce the MPI by 18 months.

[42] You say you have been deeply affected by the consequences your actions have had on various people. You feel great guilt and shame – whakamā – at what you have put Mr Lui’s whānau, and your own whānau, through. You have expressed a desire to change. You say that your children are your motivation. You are doing well to participate in the Kaupapa Māori Pathways Unit Program, through which you attend Terei Au four days a week. But, as you recognise, this is only the start of your journey. It is heartening to see your whānau’s support for you. But change can only happen if you stay the course. I wish you strength and fortitude for the work you have ahead of you.

Summary

[43] Mr Cahill, I adopted a starting point of 15 and a half years for your minimum period of imprisonment. I reduced this by 18 months for your decision to plead guilty and a further 18 months to reflect the remorse you have expressed and your personal circumstances and mitigating factors, including the impact of you being in prison for a significant part of your children’s upbringing.¹⁴

¹³ *Hohua v R* [2019] NZCA 533 at [44].

¹⁴ *Campbell v R* [2020] NZCA 356.

[44] Overall, that leads to an end minimum period of imprisonment of 12 and a half years.

[45] You will serve this concurrently with your sentence on the charges of aggravated robbery and assault with a weapon, of seven years' imprisonment and 18 months' imprisonment, respectively.¹⁵ That means that the sentences run at the same time, rather than being added on to each other.

Result

[46] Mr Cahill, please stand.

[47] On the charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 12 and a half years.

[48] On the charge of aggravated robbery, I sentence you to seven years' imprisonment, to be served concurrently.

[49] On the charge of assault with a weapon, I sentence you to 18 months' imprisonment, to be served concurrently.

Gwyn J

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¹⁵ *R v Te Aonui-Tawhai*, above n 5, at [23].