

**ORDER PROHIBITING PUBLICATION OF EVIDENCE AND SUBMISSIONS
CONTAINED IN THIS JUDGMENT IN RELATION TO ANY OF THE
VICTIMS' MENTAL HEALTH, PSYCHOLOGICAL DIAGNOSES AND
CONSEQUENCES OF THE OFFENDING PURSUANT TO S 205 CRIMINAL
PROCEDURE ACT 2011. PUBLICATION OR DISSEMINATION IN THE
PUBLIC DOMAIN OF THE CCTV FOOTAGE OF THE OFFENDING IS ALSO
PROHIBITED. SEE**

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360354.html>

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

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

**CRI-2021-012-821
[2022] NZHC 924**

THE QUEEN

v

LUKE JAMES LAMBERT

Hearing: 3 May 2021

Appearances: R D Smith and M Brosnan for Crown
J A Westgate for Defendant

Judgment: 3 May 2022

SENTENCING REMARKS OF EATON J

[1] Firstly, I acknowledge the presence today of the victims of this offending, their support network, family, friends, any representatives of Countdown, management or employees, and any of the first responders who were involved in dealing with this offending.

[2] Mr Lambert you may be seated.

Introduction

[3] Mr Lambert, I am now going to impose sentence on you following your pleas of guilty and convictions in December last year on the four charges of attempted murder.

Strike warning

[4] Before I impose the sentence for your offending, I must give you what is called a strike warning. No doubt Mr Westgate has explained this to you. The warning is in these terms.

[5] Given your convictions for attempted murder, you are now subject to the three strikes law. I must give you a warning of the consequences of another serious violence conviction. You will also be given a written notice which contains a list of these “serious violent offences”.

(a) If you are convicted of any one or more serious violent offence other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release.

(b) If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment without parole unless it would be manifestly unjust to do so. In that event the Judge must sentence you to a minimum term of imprisonment.

[6] That is the strike warning.

[7] I am now going to deal with the facts of your offending. The facts are only too well known to your victims, to their families and to their work colleagues. They will be well known to you. But sentencing is a judicial function. It is required to be undertaken in a public court and transparency in cases of this nature is fundamental and so it is necessary for me to set out, in this Court, the factual basis upon which I fix the sentence that I am going to impose.

[8] I do just say to any of the victims or their families, if they prefer not to hear me detail the facts and the injuries that they suffered then they should not feel obliged to stay in the Court while I read that detail. If anybody would like to leave, please feel free to do so. But I am going to go through the facts in some detail.

[9] Mr Lambert, at 12.38 pm on 10 May 2021 you entered the Dunedin Central Countdown supermarket. You checked your bank balance using the Westpac ATM in the foyer of the supermarket and you then moved around the store for about 30 minutes culminating in you purchasing a pie and a soft drink with your Eftpos card, before you attempted to purchase two cans of beer in a second transaction. That transaction was declined as you had insufficient funds.

[10] You left the supermarket at 1.07 pm and you were later seen in the Octagon by an associate at about 2 pm. That associate described you as agitated and pacing around. You spoke to the associate and told him that the “[d]octor wouldn’t give [you] any medication” and that “someone is going to get it”. When you were asked by the associate who was going to get it, you replied “don’t worry”.

[11] The police made enquiries and there is no evidence from your medical records to suggest that you had been denied access to any medication.

[12] But at about 2.30 pm you returned to the Dunedin Central Countdown supermarket and you went to aisle six. There you uplifted a packet of four vegetable knives from a shelf. The blades of the knives were 70 mm in length.

[13] You walked into aisle seven, which is the pharmacy section of the supermarket. You walked past one of your victims, Countdown manager Dallas Wilson, to a point

halfway down the aisle where you then placed your backpack on the floor. You removed not one but two of the knives from the packaging.

[14] Armed with both knives you walked over to Countdown supervisor Ms W, who was working in the aisle and had her back to you. You approached the victim from the left side, reaching out and turning her to face you. Then, using the knife in your right hand you slashed at her face, striking her from the left ear lobe and cutting her through to her chin.

[15] As the victim walked back you pushed and tripped her deliberately to the floor. You leant over her and began stabbing her around the head area, causing further lacerations to the chin and left ear. While the victim attempted to defend herself, you continued to stab at her, causing multiple wounds and injuries to her forearms and hands. As you attacked Ms W you told her that you were going to kill her.

[16] The second victim, Mr Wilson, was working further up the same aisle, heard the commotion and immediately ran to help his work colleague and friend. He pulled you away from Ms W. He then restrained you by holding you from behind, around the upper body. At that point, the fourth victim, shopper Jorge Fuenzalida, and another Countdown staff member then attempted to assist in restraining you.

[17] You swung the knife, striking Mr Wilson multiple times. You stabbed him in the upper abdomen and in three areas in the right side of his torso. That included a deep wound to the pelvis where the knife only stopped when it struck bone.

[18] But you were strong. You were able to break free, and as you did, you struck Mr Fuenzalida and he fell to the floor.

[19] His wife, Vanessa Miller-Andrews, rushed forward to help her husband. You grabbed her. You stabbed her twice in the back and caused her to fall to the floor. You then approached Mr Fuenzalida who was on the floor on his back and defenceless and you stabbed him in the chest and upper stomach area. You then turned your attention back to Ms Miller-Andrews, who was sitting, injured, in the aisle. You grabbed her and stabbed her in the back two more times. The knife pierced her intercostal artery.

Another wound caused blood to enter the lining of the lung and another wound punctured an axillary muscle.

[20] Notwithstanding his injuries, Mr Fuenzalida intervened to save his partner from the attack by grabbing her and your response was to stab him again. As he rolled over on the floor you stabbed him in the neck.

[21] An off-duty police officer then approached you from behind and you turned and threatened that female officer with a knife and you continued in your endeavour to attack Mr Fuenzalida who was lying badly injured in the aisle. Members of the public, Countdown staff and another police officer then restrained you at the scene and first aid was administered immediately to the victims until an ambulance arrived.

[22] It is clear to me that the first aid that was administered in the aisles of the supermarket was critical in preventing the loss of life from the serious injuries that you had inflicted on all four victims.

[23] The physical injuries that were received by the victims can be summarised as follows:

- (a) The first victim, Ms W, suffered three separate deep wounds to her facial area requiring plastic surgery, including a 16 cm long laceration from left earlobe to chin, a 4 cm long laceration to the chin and a 1.5 cm laceration to the left ear. She suffered multiple wounds to both arms and hands including a 1.5 cm puncture wound on the underside of her left forearm, a 3 cm long wound on the pinkie-finger edge of the palm of the left hand, a 2.5 cm long superficial cut to the webspace of the left thumb, a 2.5 cm cut on the tip of the left thumb and a 2.5 cm superficial cut to the upper arm near the shoulder. On the right side, she suffered a 7 cm long cut into the subcutaneous fat in the underside of the right forearm, a 1.5 cm cut to the tip of the right thumb, a 6 cm superficial scratch to the top of her hand and a 3 cm long cut to the pinkie edge of the right hand. She also suffered extensive bruising associated with the

multiple stab wounds, and a large bruise on the outside of the left thigh and light bruising on her chest.

- (b) The second victim, Countdown worker, Dallas Wilson suffered four separate wounds, each at least 7 cm in depth which was the full length of the blade. It included a deep wound in his left upper abdomen which went through the abdominal wall and into the colon and required a laparotomy in surgery to repair the colon. He suffered a deep wound between the ribs that touched the lung but did not puncture it, but required a chest drain. There was a deep wound just above the kidney that stopped just before the liver which required internal and external surgical repair during the laparotomy. Lastly, there was a deep wound to the pelvis which, as I say, stopped when the knife struck the pelvis bone. Mr Wilson also suffered extensive bruising associated with the stab wounds over the right flank and he suffered internal bleeding in the pelvic muscles and back muscles. The surgeon noted that each of the wounds was close to, and could so easily have included, a major blood vessel which would have been fatal.
- (c) The third victim, Ms Miller-Andrews, suffered four stab wounds to the back. This included a pierced intercostal artery in the upper right back, a wound 8 cm in length in the lower right back that cut through muscle, punctured axillary muscles in the upper left back with haematoma removed, and a pierced diaphragm and haemothorax in the lower left back. A haemothorax is blood entering into the lining of the lung but not into the lung.
- (d) And finally, the fourth victim, Jorge Fuenzalida, sustained a complex fracture to his right wrist that required surgery. Screws and plates had to be put in. He suffered a stab wound to his posterior left arm that was 5 cm long and 3 cm deep, a stab wound to the left neck area that was 10 cm long and 5 cm deep and within 1 cm of major blood vessels, a stab wound 7 cm in length to his chest that fractured a rib, and a

superficial wound 2 cm in length and 2 cm deep to the lower chest. He suffered torn ligaments in his left thumb.

[24] Mr Lambert, that captures the essential facts on which you are to be sentenced. They represent violent offending on a scale rarely seen in New Zealand.

Victim impact statements

[25] I have read and listened very carefully to the victim impact statements. I can only summarise them. It is clear the impact your offending on each of your victims is profound and enduring. It is physical, it is emotional, and it is psychological. They have all suffered great trauma. The common theme, as you have heard this afternoon is constant pain, physical and mental exhaustion, lethargy, physical scars, the prospect of ongoing surgeries, diminished strength, sleeping difficulties, loss of confidence and, of course, I refer only generally to the mental scars that you have heard about that clearly run so deep. Their daily lives have been indelibly affected.

[26] Those are the direct consequences of your actions on 10 May last year for which you bear responsibility.

Personal circumstances

[27] I have the benefit of comprehensive reports. I have a pre-sentence report from the Department of Corrections and I have psychologists' opinions as to your mental state.¹

Department of Corrections' pre-sentence advice

[28] The pre-sentence report details your upbringing, in which you spent the first ten years of your life on a small farm. When your parents separated, you moved to Waikouaiti with your mother and sister. You left home after completing sixth form and pursued studies first in electrical engineering and then in computer science without completing either course and you then found employment locally.

¹ These reports were prepared to assess Mr Lambert's fitness to stand trial and the availability of a defence of insanity pursuant to s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

[29] You described the deaths of your dogs and passing of your mother, which you estimated as occurring in 2018, as a significant turning point for you.

[30] After these events it seems your lifestyle deteriorated. For financial reasons, you began living in a car and then, after crashing that car, you had no reliable shelter. You spoke at length to the report writer about the struggles of your lifestyle in that time period, especially the amount of money you spent on alcohol. In the weeks leading up to the offending you reported that your health and general circumstances had been deteriorating, noting that your severe back pain sometimes prevented you from being able to walk. You said you had “lost the plot” and kicked a car door that resulted in you being prosecuted for wilful damage. At that time you considered seeking help from Wakari Hospital, but unfortunately that did not eventuate.

[31] Prior to the offending you said that you had no access to cannabis so were using mushrooms as well as smoking and eating hemlock. You said you were aware that hemlock was a poison but felt it was helping you to cope and at the time did not care if you poisoned yourself. I note that following your arrest blood tests were taken and no hemlock was identified in your blood.

[32] The pre-sentence writer felt that they were unable to assess whether you fully understood the impact of your offending or whether you displayed remorse, especially given the fact you told them and others that you had no recollection of the offending or your first days in custody. When you were shown a record of the offending you accepted what you did but said you were trying not to think about it and you must have mentally been a “time bomb”. You said if you could take it back, you would.

[33] The report author concluded that you are a high risk of harm to others and a high likelihood of re-offending. A sentence of imprisonment was inevitably recommended.

[34] As has been noted by your counsel this afternoon, your criminal history is sparse. In 2005 you were convicted and discharged for being an unlicensed driver. In 2013 you were convicted for cultivating cannabis and possessing a firearm without a licence and on 4 March 2021, an incident to which I have just referred, you wilfully

damaged a vehicle, and you were ordered to pay reparation. You do not have any convictions for violence.

Psychological assessments

[35] You were assessed by consultant forensic psychiatrist, Dr Justin Barry-Walsh to determine if you were fit to stand trial on these charges. He interviewed you on 15 May last year and completed a report dated 16 June 2021. At interview, he described you as generally calm, but you were complaining of problems with your memory. You had little recall for your thinking and actions at the time of the offending. You reported that you had been up-and-down and slightly depressed recently.

[36] You admitted to times when you had wished that you were dead in the past but denied any recent thoughts of suicide and you denied that you had tried to take your own life.

[37] There was a report dated 29 October 2021 that was prepared by Mr Ghazi Metoui to assist the Court in determining whether you were insane within the meaning of s 23 of our Crimes Act 1961.

[38] Mr Metoui's report recorded that you had had limited contact with your General Practitioner (GP) over the years about mental health related concerns, with your first relevant documented concern dating back to 5 December 2012. The GP notes record that you had attempted to harm yourself, you were feeling paranoid and had panic attacks, you were hurting yourself and feeling in despair. It was noted there was no clear psychotic content in your speech but plenty of preoccupations with poisons, pesticides, political systems and local Nazis. Your GP's clinical impression was that you had a "[c]omplex psych presentation", with a suicide risk that was not high. You were prescribed medication for sleep and possible mood stabilisation and told to stay off cannabis and alcohol. A week later you saw your GP, who recorded that you no longer seemed suicidal but you were depressed and there were later visits recording ongoing mild depression but nothing to the level recorded on the visit on 5 December 2012.

[39] Mr Metoui expanded on your personal history by detailing an approximately eight-year stage of your life when you reported to be living like a hermit in Moeraki after you were feeling disappointed with how others had treated you. You reported being happy with that lifestyle, living with your dogs and with very little outside contact other than with your mother and sister. You reported an interest in seeking out conspiracy-type material and during this time, you were growing your own cannabis and smoking it on a daily basis.

[40] As I mentioned, you explained that the loss of your mother in 2018, and the later loss of your dogs, was traumatic for you. The report from Mr Metoui records that you became homeless and very itinerant over the next three years. You lost your normal routines and you relapsed into heavy drinking to numb pain and feelings of distress. You were struggling financially over that period. He noted that after crashing your car, you ended up living in Dunedin along the bush of Queens Drive, using a tarpaulin for shelter. At that time you became particularly resentful of the cost of food prices and the capitalist nature of New Zealand.

[41] You acknowledged overarching feelings of despair and hopelessness leading up to the offending but you denied that these extended to pervasive or fleeting feelings of anger or rage. You acknowledged you had dreams about zombies and witches but said you were not preoccupied with these when awake, and you denied feeling any type of hallucination or delusional ideation in the weeks and days leading up to the offending. You denied any suicidal ideation.

[42] Mr Metoui concluded that many of your characteristics speak to you having an unusual and eccentric personality structure rather than you suffering from an underlying functional psychotic illness such as schizophrenia or delusional disorder. He noted that at no time during the interview, or during your time in Wakari Hospital or Invercargill prison, did you reveal any well-systemised delusional ideation of any type and neither did you manifest any signs or symptoms of hallucinatory experiences. You have not displayed any disorganised cognition or behaviour, which Mr Metoui explained were hallmark symptoms of psychotic disorders. He also noted that the forensic clinicians who assessed and cared for you in Wakari Hospital considered you did not suffer from any major mental disorder.

[43] He considered that your presentation to your GP back in 2012 and concerns about your mental health that had been raised by your sister were most likely an indication of you being grossly affected by substance abuse, alcohol, cannabis and ‘magic mushrooms’, in addition to psychosocial stress and you having an obsessional interest in conspiracy theories and the like.

[44] Mr Metoui was not convinced that your various views of the world are indicative of delusional ideation but he did conclude, from a diagnostic standpoint, that on a balance of probabilities, you had personality features that pertained to paranoid personality disorder, schizotypal personality disorder and narcissistic personality disorder.

[45] Finally, there was a further report by Mr Barry-Walsh on 6 November 2021, prepared after he had seen the CCTV footage, read the witness statements and read Mr Metoui’s report. He found that you presented with serious personality dysfunction, as conveyed in your oddity on presentation, emotional disconnection, mistrust of the world and hints of an inner life which probably includes compensatory violent fantasies, misogyny, and a strong sense of injustice. Given your guardedness he concluded he could not exclude the presence of an underlying psychotic illness such as schizophrenia. He also noted it being possible that elements of your personality dysfunction may be described as schizotypal which may predispose you to the subsequent development of a psychotic illness.

Overview of recall of the event

[46] Mr Lambert, I refer in detail to those matters because, particularly for your victims and, of course for the wider community, the unanswered question is why did you attack four innocent victims and do so violently? To conclude my summary, which is the exploration for an answer to that question, I am going to now summarise from Mr Metoui’s report and various witness accounts, exactly what it is you have said both before, during, immediately after and since the offending to try and understand your motive.

[47] An off-duty police constable who was on the scene reported she heard you say, and repeat, the phrase “they’re witches”. She also heard you saying something similar

to “they are wearing black” and then “you’re witches”. That officer also recalled you telling the police to “just shoot me”.

[48] A Countdown worker recalls your anger and heard you shouting “you’re a witch” more than once and then saying “slit my throat”.

[49] A police constable noted you were muttering about witches, Satan and the fact you were probably going to be trespassed. When the constable asked why you had stabbed these people, you said witches had told you to make a blood bath. You made utterances about Satan, God and witches. I do note that your sister told the police that your father used to call people “witches bitches” as a slur, and she said she would not be surprised if you were still using that term.

[50] A police detective said that when you looked at him you told him to “get it over and done with”. You have since said that you were not intending to “knock yourself off”.

[51] After arrest, you referred to what had happened, you acknowledged you had apparently stabbed people, and you said any injuries that you personally had sustained from other people were “fair enough”. A constable also recalled you saying “[a]ll work and no play, go on a massacre today” and “if you do bring me food don’t give me knives or forks”. At one point the constable recalled you saying you “just wanted them to shoot me” and that you wished you had a police officer’s gun.

[52] But to Mr Metoui, you denied any recall of these interactions or having any recall of any voices or beliefs associated with witches and you denied any recall of having a desire to end your life.

[53] At Dunedin Hospital a detective recorded you as saying that you “just wanted them to shoot” you. You were assessed by a nurse on the evening of 10 May 2021 who recalled you telling her that you heard voices every now and then, and the voices were telling you to stab people. You described having bad dreams of killing people and thoughts, at the time, about harming yourself. But you were seen by the same

nurse two hours later and this time you reported you were no longer hearing voices but still expressed a desire to end your life.

[54] On 13 May 2021 you were assessed by Dr Julie Norris in Invercargill prison and she noted a vagueness in your responses related to the offending. You denied any memory of the offending. Similarly, Mr Barry-Walsh was unable to obtain a clear account of your thinking and actions and you reported blanket amnesia of the offending to Mr Metoui.

[55] Ultimately, Mr Lambert, it is just not possible to make any determinative finding as to your motivation for this offending. However, as the Crown and Mr Metoui opine, suicide by police is certainly a possible explanation.

Principles and purposes of sentencing/approach to sentencing

[56] The sentence that I impose on you today must hold you accountable for your actions, which on my assessment you are yet to fully accept. It must acknowledge the ongoing harm and loss caused to the victims, their families and the wider community by your actions. The victim impact statements read this afternoon should have made it clear to you, Mr Lambert, that the effect your actions have had on so many people are significant and they will continue to have long-lasting and enduring effects. The sentence must also denounce your conduct and deter you, and others from such offending. But I also must have regard to your personal circumstances, including those that I have just outlined, and assess your prospects of rehabilitation.

Totality/concurrent/cumulative principles

[57] You have heard mention of the totality principle. It is set out in s 85 of our Sentencing Act.² It guides sentencing in relation to multiple offences. It guides the Court as to whether concurrent or cumulative sentences should be imposed. In arriving at an appropriate sentence for several offences, a sentencing Judge should not only consider each offence individually but also assess the offender's overall

² Sentencing Act 2002, s 85.

criminality and determine what effective sentence is appropriate for the totality of an offender's conduct.³

Approach to sentencing

[58] To determine your sentence, I must engage in a two-step process which is in accordance with the Court of Appeal decision in *Moses v R*.⁴ Firstly, I determine the appropriate starting point to be adopted having regard to any aggravating and mitigating factors of the offending.⁵ Secondly, I apply and make any adjustments that are appropriate for aggravating and mitigating personal circumstances and for your guilty plea.⁶

[59] It is at that second stage, where any discount for personal mitigating factors is amalgamated with the guilty plea discount, before being taken off the starting point.

STAGE ONE - Starting point

[60] While there is no guideline judgment specifically for the charge of attempted murder it is appropriate to employ the guidelines contained in *R v Taueki*, in which the Court of Appeal established three sentencing bands for serious violent offending into which offending can be placed by reference to the presence of aggravating factors involved in carrying out an offence with the intention to cause grievous bodily harm.⁷

[61] Of course, as Mr Smith has mentioned, in your case you have pleaded guilty to charges of attempted murder. That involves the presence of a more serious, specific intention to kill and it is a further factor to be taken into account.⁸

[62] In *Taueki* 14 features of offending were identified which, when present, will contribute to the seriousness of the conduct and criminality involved in offending

³ *Herlund v R* [2021] NZCA 71 at [57], citing *R v Bradley* [1979] 2 NZLR 262 (CA); *R v Strickland* [1989] 3 NZLR 47 (CA); and *R v Dodd* [2013] NZCA 270 at [32]–[33], citing *R v Barker* CA57/01, 30 July 2001 at [10].

⁴ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.

⁵ At [46(a)].

⁶ At [46(b)].

⁷ *Torrance v R* [2020] NZCA 57 at [33], citing *R v Taueki* [2005] 3 NZLR 372 (CA).

⁸ *Taylor v R* [2017] NZCA 53 at [21], approved in *Ali v R* [2019] NZCA 35 at [8].

carried out with intent to cause grievous bodily harm. Those are referred to as “*Taueki* features” and their presence informs the Court of the assessment as to which sentencing band your offending is appropriately placed for the purpose of setting a starting point.

[63] Band 2 is appropriate for offending which features two or three of the *Taueki* aggravating features, and offending will be appropriate for placement in band three if it has three or more of the aggravating features and where the combination of the features make the offending particularly serious. Offending within band three will attract a starting point of between nine and 14 years’ imprisonment.

[64] In your case, as you have heard, the Crown submits the aggravating factors are:

- (a) extreme violence;
- (b) attacks to the head and neck;
- (c) use of a weapon;
- (d) serious injuries;
- (e) vulnerable victims;
- (f) premeditation; and
- (g) multiple victims.

[65] The Crown submits the factors of extreme violence, attacks to the head, the use of a lethal weapon and serious injuries should all be viewed as having considerable weight and the factors of victim vulnerability and premeditation still carry moderate weight. The Crown submits that the presence of multiple victims should lead to uplifts on a totality basis and submits this offending falls within the middle of band 3 of *Taueki*.

[66] Mr Smith has referred to a number of cases the Crown submits are relevant in fixing a starting point. He refers to cases both where the lead offence is attempted murder and those where the lead offence is wounding with intent to cause grievous bodily harm. I have had regard to all those cases and I will refer to them in my written decision.⁹

[67] But by reference to those cases the Crown submits that a starting point in the range of 10 to 11 years for the first offence of attempted murder against the first victim is appropriate. And from there it is submitted uplifts of three to three and a half years are appropriate for each of the further three offences, resulting in a total adjusted starting point in the range of 19 to 21 and a half years' imprisonment.

[68] The Crown submits this is consistent with previous decisions of this Court involving acts of serious violence against multiple victims.¹⁰

[69] Mr Westgate agrees with the Crown that a starting point should be fixed by reference to the offending against victim one with cumulative terms for each of the other three offences. He does not dispute the aggravating factors identified by the Crown but submits the starting point for victim one should be no more than nine and half years given that the injuries inflicted, although very serious, were not potentially fatal. In support of that submission, he too refers to cases: *Walker*,¹¹ *Falani*¹² and *Mullen*.¹³ Mr Westgate agrees that this offending falls within band 3 of *Taueki*.¹⁴ In relation to the other three offences, he contends there was little or no premeditation with you merely reacting and lashing out over a short period of time. He submits uplifts of no more than nine years total is called for.

⁹ *R v Warren* [2017] NZHC 1913; *R v Nuku* [2021] NZHC 410; *R v Owens* [2017] NZHC 319; *R v Nelson* HC Rotorua CRI-2004-077-0015577, 16 August 2005; *R v O'Kane* HC Dunedin CRI-2009-002-190, 2 April 2009; *R v M* [2008] NZCA 148; *R v Walford* [2022] NZHC 69; *R v Fenton* [2020] NZHC 2044; *R v Cameron* [2016] NZHC 2604; *Lewis v R* [2015] NZCA 444; *R v Wereta* [2015] NZHC 2683; *Saber v R* [2010] NZCA 603; *R v Mohamed* [2007] NZCA 170; *R v Konui* [2008] NZCA 401; and *Shen v R* [2017] NZCA 103

¹⁰ Citing *R v Warren*, above n 9, where a total starting point of 18 years' imprisonment was adopted; and *R v M*, above n 9, where 17 years' imprisonment was adopted as a starting point.

¹¹ *R v Walker* [2015] NZHC 3214.

¹² *R v Falani* [2014] NZHC 1879.

¹³ *R v Mullen* [2014] NZHC 917.

¹⁴ *R v Taueki*, above n 7.

[70] He therefore submits a starting point of 18 and a half years' imprisonment is appropriate. As has been recognised during the course of discussion this afternoon, notwithstanding the absence of any authority closely on point for this offending, there is not great disparity between counsel as to what is the appropriate starting point.

Mitigating features of the offending

[71] There is no suggestion that there are any mitigating factors relevant to your offending.

Starting point analysis

[72] So, what of the starting point? As I have said, I have been referred to a great number of cases involving both attempted murder and wounding with intent to cause grievous bodily harm. The grievous bodily harm offence carries the same maximum penalty as attempted murder. I have considered those cases in fixing a starting point. But, like counsel, I have been unable to locate a precedent in New Zealand for the sentencing of a defendant of four charges of attempted murder where that defendant has not also committed murder.

[73] I have found the cases of *R v Warren*,¹⁵ which you have heard referred to this afternoon, and to *R v M*,¹⁶ which you have heard referred to, provide the most useful guidance and I am going to summarise them so that you can understand why that is.

[74] In *Warren* the defendant had been found guilty on two charges of attempted murder, a charge of wounding with intent to cause grievous bodily harm and a charge of using a firearm against police.¹⁷ The maximum penalty on all four offences was 14 years' imprisonment. The victims were on-duty police officers who had entered the defendant's home after it was suspected a firearm had been discharged from the property. The defendant lay in wait for the police and when they entered, he fired a .303 bolt action rifle at police at very close range. Two officers were injured by the first shot which fortuitously struck the sight mounting on the officer's rifle. Fragments

¹⁵ *R v Warren*, above n 9.

¹⁶ *R v M*, above n 9.

¹⁷ *R v Warren*, above n 9.

wounded the officer in the face leaving him dazed. He suffered shrapnel injuries to his face and right-hand requiring surgery, and he suffered scarring to his face which was permanent. The second officer was more seriously injured by the same shot. The fragments penetrated his skull necessitating brain surgery and a lengthy associated recovery. The third victim, a constable, suffered multiple wounds to his left knee from the second of the three shots fired. That victim required surgery and four months of rehabilitation before being able to return to full duties. All three officers had suffered psychological trauma.

[75] The police had retreated from the premises, having been shot, but a police issue Glock pistol was accidentally left behind by an injured officer. And about one hour after the police vacated the premises the defendant used that pistol to fire at another officer who was keeping watch over the property from about 35 metres away. That officer was struck by a bullet in his left ring finger and palm, which caused problems with his grip and lasting bouts of pain due to nerve damage.

[76] In that case, the sentencing Judge grouped the first three offences together and applied a global starting point of 14 years' imprisonment, having identified aggravating features as being premeditation, serious injury, use of a weapon, attacking the head and the fact that the victims were public officials. The Judge then uplifted that sentence by four years to reflect the additional charge of attempted murder after police had vacated the premises. A 50 per cent minimum period of imprisonment would have been imposed but ultimately that offender was sentenced to preventive detention with the minimum period of imprisonment of 10 years.

[77] In *R v M* a sentence of 15 years' imprisonment, in respect of three charges of wounding with intent to cause grievous bodily harm and one charge of unlawfully detaining with intent to confine, was challenged on appeal.¹⁸ The victim was the appellant's de facto partner. The offender had threatened to kill her and her children if she reported him to police. The victim fled. The appellant attacked the three children who were aged nearly four years, 20 months and seven weeks. Each of the children suffered serious injuries requiring medical intervention to save their lives. At

¹⁸ *R v M*, above n 9.

first instance, a starting point of 20 years was applied. The Court of Appeal held that starting point was beyond the range available. A starting point of 17 years was substituted with the Court of Appeal particularly noting that notwithstanding the seriousness of the offending, the Crown had accepted pleas to lesser charges of wounding with intent to cause grievous bodily harm rather than pursuing the original charges of attempted murder. The Court, therefore, found the reduced starting point was appropriate to reflect that decision.

[78] Mr Lambert, ultimately, each case will be determined on its own facts. As I have said, counsel have been unable to find any other case where anybody in New Zealand has been sentenced for trying to kill four people.

[79] I agree with counsel this offending falls within band three of *Taueki*.¹⁹ The aggravating features that I find apply in your offending are as follows.

Extreme violence

[80] The ferocious and sustained attack on the victims involved extreme violence to a very high degree. You inflicted multiple stabbings with force and with determination. You intended to kill your victims. The violence was unprovoked, it was gratuitous, and I reject the submission made on your behalf that after the initial attack you were reacting and lashing out. The CCTV record evidences you breaking free from those very brave people who were trying to restrain you only for you to then set upon your injured victims who were lying defenceless on the ground. And while the entire incident may have only taken a short time, I have no doubt that you would have continued this attack and you would have killed and injured others if you had not been restrained.

Serious injuries inflicted

[81] I have referred in detail to the serious injuries you inflicted on all four victims. The extent of the injuries you caused, both physical and mentally, is plainly an aggravating factor.

¹⁹ *R v Taueki*, above n 7.

Use of a lethal weapon

[82] You armed yourself with not one but two knives. Knives are lethal weapons. They are used to cause serious injury and to cause death. You used these knives with intent to kill. You inflicted multiple blows.

Attacking the head and neck

[83] What is clear is that your assault began with a focussed attack to the face of victim one. While it is clear you then did stab indiscriminately in order to avoid restraint, as soon as you broke free, I find you again directed blows intentionally at the neck region of the victims. The use of a knife to attack the neck speaks for itself. That is an aggravating factor.

Vulnerability of victims

[84] You attacked the first female victim giving her no chance whatsoever to defend herself. It was a surprise attack and surprise attacks are recognised as attacks on a vulnerable victim.²⁰ You attacked victims three and four as they lay injured and defenceless on the ground. And make no mistake, Mr Lambert, your victims were vulnerable.

Premeditation

[85] I find that you did act with premeditation albeit not at a level to significantly aggravate your offending. You had expressed verbally an intention to inflict harm to an associate. You went to the supermarket and went to the aisle where the knives were shelved. You then went to an adjoining aisle. You walked past victim two to where victim one was working on her own. You had to drop your backpack in order to open the packaging to release not one but two knives, before you then launched your attack on the victim. This all took time and it indicates to me that you did have a plan, a plan which you then carried out with tenacity. This reflects a degree of premeditation, albeit I accept not at the level of some of the cases that I have considered.

²⁰ *Graham v R* [2011] NZCA 131 at [14].

[86] There can be no mistake, Mr Lambert, that your offending falls within the most serious category of violent offending.

Structure of sentence

[87] During my discussion with counsel, I have talked about the structure of your sentence and your case does pose challenges as to how to structure the sentence for four such serious offences. The maximum that can be imposed for a single offence of attempted murder is 14 years' imprisonment. The multiple aggravating factors for this offending and the fact that four distinct offences of attempted murder were committed requires a global starting point well in excess of the statutory maximum for a single offence.

[88] Both counsel have proposed that I fix a starting point in relation to the first victim and then add a much lesser cumulative term in respect of each of the other three offences and the Crown refers to the approach taken by Brewer J in *R v Warren* as the authority for this approach.²¹ The offence for which the cumulative term was applied in *Warren* was, however, an offence that was committed about an hour after the other three offences. I see that, therefore, as a factual scenario that left it open to the sentencing Judge to find there were really two distinct groups of offending separate in time, if not circumstance. That is not a distinction that applies to your offending.

[89] Your sentencing is governed by the Sentencing Act 2002 and that Act prescribes the various tools that are available to a Judge to mould a just and appropriate sentence. Generally, cumulative sentences are appropriate for offending which is different in kind and concurrent sentences are appropriate if the offending is of a similar kind and makes up a connected series of offences.²² Despite this, the Courts have commented that cumulative sentences may be necessary if the appropriate total sentence exceeds the maximum penalty for any one offence and to recognise the harm done to multiple victims.²³

²¹ *R v Warren*, above n 9.

²² Sentencing Act, s 84.

²³ Simon France (ed) *Adams on Criminal Law – Sentencing* (online ed, Thomson Reuters) at [SA84.02].

[90] Counsel have proposed that cumulative sentences be imposed on the sentence to be imposed in relation to victim one. Inevitably, however, the term of any cumulative sentence on a particular charge would be significantly less than that which would be imposed as a concurrent sentence. And you have heard that it has been suggested that the cumulative term for each of the other three offences be in the region of three to three and a half years. I have a distinct sense of discomfort in taking that approach.

[91] In my view these four offences are appropriately seen as a single event. I find it preferable to fix a global term of imprisonment that reflects your overall culpability and, if the end sentence meets the principles and purposes of sentencing, to then impose concurrent sentences that more accurately reflect your culpability for each offence. I do not consider it realistic to try and distinguish between the four charges for which you are to be sentenced. Each had its own combination of aggravating factors. Each has had its own significant consequences for the named victims. Each was a very serious offence of violent offending.

[92] Mr Lambert, your offending shocked the nation. The randomness of your acts, the murderous intent, your determination and the level of violence is seldom seen in this Court. That nobody was killed is miraculous and reflects the extraordinary bravery and self-sacrifice of both your victims and those on hand, all of whom acted without regard for their well-being to stop this attack. Had the victims and other members of the Dunedin community not stepped in I have no doubt there would have been multiple deaths.

[93] I consider your culpability, therefore, to be higher than that of *Warren*²⁴ and *M*.²⁵ Neither of those case involved charges of attempted murder. I fix a global starting point having regard to the aggravating factors I have outlined, to other cases that have been referred to by counsel (but particularly to *Warren* and *M*) to the fact of multiple victims, and to the intent that you had which is central to the charges to which you have pleaded guilty. I find the appropriate starting point to be one of 20 years' imprisonment.

²⁴ *R v Warren*, above n 9.

²⁵ *R v M*, above n 9.

STAGE TWO - Personal considerations

There are no personal aggravating factors that warrant an uplift. I now turn to the mitigating factors personal to you.

Mental health

[94] The only potential mitigating factor is your mental impairment which has been outlined in the psychosocial reports.

[95] It is important for your victims to understand how mental health impairment fits into the sentencing process. It is accepted that a mental disorder that falls short of insanity may mitigate a sentence either because it is causative of the offending and thereby reduces the offender's moral culpability or because it renders a sentence of imprisonment less appropriate for reasons such as imprisonment weighing more heavily on the offender than it would to others because of their mental state.²⁶ However, it may also elevate the risk of repetition offending, which in turn may direct this Court's attention to the issues of deterrence and the focus on protecting the public.²⁷

[96] It is accepted that if mental health disorders are considered in terms of diminishing an offender's culpability the mere existence of a mental disorder does not of itself justify a reduction in the starting point of a sentence.²⁸ There must be evidence that the mental disorder had a causative impact on the culpability of the offender.²⁹

[97] Therefore, mental health issues may mitigate the offending by diminishing moral culpability and thereby diminishing deterrence, accountability and denunciation as sentencing concerns, but any discount will reflect the evidence of a causative connection.³⁰

²⁶ *E(CA689/2010) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [68].

²⁷ At [69].

²⁸ *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [50].

²⁹ At [50].

³⁰ *Orchard v R* [2019] NZCA 529, [2020] 2 NZLR 37 at [46].

[98] Discounts of up to 30 per cent have been seen as appropriate when mental illness has a strong causative connection to offending.³¹

[99] In your case, Mr Westgate argues for a discount of 20 per cent. He points to the report of Dr Barry-Walsh describing the deterioration in your psychosocial function, your increasing marginalisation, isolation and an intensifying sense of victimisation, combining into a substantial grievance. Mr Westgate highlights that Mr Metoui found that you meet the diagnostic criteria for the three disorders I have described and that you likely had desires to end your life.

[100] The Crown, on the other hand, contends that any causative link between your offending and your mental health is unclear. Mr Smith refers to Mr Metoui's opinion that many of your characteristics speak to an underlying unusual and eccentric personality structure rather than to an individual suffering from any underlying functional psychotic illness. The Crown submit this is one of those cases where the proven mental impairment might be seen as two-edged sword. Mr Smith points to the observation in *Taueki* that an obsessive disorder that manifests itself in violence may require a deterrent and protective, rather a mitigated response.³²

[101] The Crown stands back and submits that if I determine a reduction is allowed it ought to be no more than 10 per cent.

³¹ *E(CA689/2010) v R*, above n 26, at [71]. The Court of Appeal cited the following cases: *R v Wright* [2001] 3 NZLR 22 (CA) (discount of 30 per cent where offender smothered her child while suffering from Munchausen's Syndrome by Proxy, where a parent causes or feigns sickness in a young child for sympathy and attention); *R v Tuia* CA312/02, 27 November 2002 (discount of 25 per cent where the offending had been contributed to by a medical condition for which he could be seen to bear no responsibility); *R v Whiu* CA195/07, 20 December 2007 (discount of 20 to 25 per cent given where there was some causal relationship between the drink driving offending and the offender's post-traumatic stress disorder insofar as the offender's decisions had been affected by her disorder); *R v Edwards* [2007] NZCA 382 (discount of 15 to 20 per cent justified where offender's schizophrenic condition reduced moral culpability to the extent that it contributed to the rape offending and reduced need for deterrence); *Dalley v R* [2010] NZCA 290 (13 per cent discount given where Court accepted hypermanic episode explained offender's attack on the victim, even though it was likely due to lack of medication, but offender was not responsible for his manic state as he could not be relied upon to take his medication); and *R v M*, above n 9, (discount of 12 per cent where, although there was no causal nexus between the offender's low intellectual levels and the offending, because of his diminished ability to cope with the stresses of life, a term of imprisonment may weigh more heavily on him than others)

³² *R v Taueki*, above n 7, at [45].

[102] Mr Lambert, I have found it difficult to determine how your mental impairment appropriately fits within this sentencing. Such serious and random violence necessarily calls into play, as a first port of call, the need to protect the public. I accept the expert opinion that you meet the criteria for the three named disorders. The evidence itself does not identify in my mind a strong link between the diagnoses and your offending. Further, Mr Metoui believes that you acted with sufficient volitional control, planning and purpose to fulfil an instrumental gain – most likely to create a homicide and suicide scenario. As the Court of Appeal has observed, the moderation of culpability due to mental disorder follows from the principle that any general criminal liability is founded on conduct performed rationally by one who exercises a willed choice to offend.³³ You profess to have no memory of your offending or of the various comments attributed to you before, during and after the offending. I accept Mr Metoui’s opinion in relation to this being an example of you having sufficient volitional control, planning and purpose to carry out this act for an instrumental gain. And that factors against a substantial discount for mental impairment.

[103] I am also assisted by the cases, in particular of *Walker* where discounts of around 10 per cent were allowed for mental impairment.³⁴ Overall, there can be no doubt that you were mentally impaired, Mr Lambert, but, on the evidence before me, I do not find that the diagnosed disorders significantly diminish your culpability.

[104] And it has not been suggested that your mental impairment would render a sentence of imprisonment harsher for you to serve so I cannot reduce the sentence on that basis.

[105] Finally, in relation to your mental health, I find that, given the extreme level of random violence engaged in this offending and the absence of any treatment recommendation that might address causative factors, you do present public safety issues that I must consider in fixing any reduction to recognise your mental well-being.

³³ *R v Tuia*, above n 31, at [15].

³⁴ *R v Walker*, above n 11. The case of *R v O’Kane*, above n 9, was referred to, however, this was later found to be in error.

[106] Overall, I fix the discount to reflect your mental impairment as being at 10 per cent.

Guilty plea

[107] The Crown proposes that a discount of no more than 20 per cent is appropriate, given your initial not guilty pleas and what is described as being overwhelming evidence. Mr Westgate argues strongly for the full 25 per cent discount to be allowed.

[108] Your guilty plea was entered on 8 December 2021. Mr Westgate submits that the not guilty plea initially entered must have been appropriate while investigations as to your fitness to plead and the availability of any psychiatric defence were fully explored. As regards the strength of the prosecution evidence, he highlights the difficulties that are often posed for the prosecution in preferring a charge of attempted murder and submits the guilty pleas avoided the delays, the distress and the cost of a trial.

[109] The seriousness, the apparently random nature and the unexplained motivation of your offending against a historical background of possible drug use and mental impairment clearly necessitated an inquiry as to your fitness to plead and the availability of psychiatric defences. I find your pleas were entered in a relatively short period after those reports had been completed. I also find it important that the guilty pleas avoided the victims having to relive the terror of your attack at a public trial.

[110] In those circumstances I do consider the full credit of 25 per cent is appropriate.

End sentence

[111] From a starting point of 20 years' imprisonment, I allow a total discount of 35 per cent. That leads to an end sentence of 13 years' imprisonment.

Minimum period of imprisonment (MPI)

[112] The Crown argues a minimum period of imprisonment in the range of half to two-thirds of the overall sentence imposed is appropriate.³⁵ A minimum period of imprisonment is the length of time you must serve in prison before you are eligible for parole. It does not indicate when you would be released on parole.

[113] It is submitted by the Crown that eligibility for parole at one-third of the overall sentence would be insufficient to meet the sentencing purposes of deterrence, denunciation and for the protection of the community. The Crown further submits that eligibility for parole at one-third would not adequately hold you accountable for attempting to take the lives of four people. Mr Westgate submits that the issue of parole should be left to the Parole Board.

[114] Mr Lambert, you have committed such serious violent offences at a level, as I have said, so seldom seen in New Zealand. I agree with the Crown that the prospect of your release at one-third of the sentence would not hold you accountable, denounce and deter your conduct and it would not adequately protect the community. I sense you are yet to truly appreciate the harm that you have caused. You are yet to demonstrate remorse. I consider a minimum period of imprisonment of 50 per cent, or six and a half years, is appropriate.

Sentence

[115] Mr Lambert, will you please stand.

[116] On each of the four charges of attempted murder you are sentenced to 13 years' imprisonment. You will serve each of those sentences concurrently. I impose a minimum period of imprisonment of six and a half years' imprisonment.

[117] I remind you of the strike warning, which will be served on you now.

[118] And I confirm I have made an order prohibiting publication of any reference made in my sentencing remarks to the identity of victim one, Ms W, to the references

³⁵ See Sentencing Act, s 86.

within the victim impact statements to psychological consequences of the offending,
and to the publication of the CCTV footage of the offending.

[119] Mr Lambert, you may stand down.

.....
Eaton J

Solicitors:
RPB Law, Dunedin

Copy to:
John Westgate, Barrister, Dunedin