

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

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

**CRI-2023-020-1626
[2023] NZHC 3483**

THE KING

v

MITHIAS OSHAE TE POU

Hearing: 1 December 2023

Appearances: S B Manning for the Crown
N M Graham for the Defendant

Sentencing: 1 December 2023

SENTENCING BY PALMER J

Solicitors
Elvidge & Partners, Napier
Nicola Graham Law, Napier

[1] E nga mana, e nga waka, e nga reo. Tēnā koutou, tena koutou, tena koutou katoa. This case is tragic for all involved. Mr Mithias Te Pou is aged 23 and has whakapapa connections to Ngāi Tūhoe and Ngāti Tūwharetoa. He has pleaded guilty to manslaughter, seven charges of reckless driving causing injury, and failing to stop for flashing red and blue lights. These offences are punishable by up to life imprisonment, up to five years' imprisonment, and a fine of up to \$10,000, respectively. I sentence him today. Because there are others involved with the same last name, I will call him Mithias, just to be clear.

What happened?

[2] On 29 October 2022, Mithias hosted a Halloween party. He was in a full-length plaster leg cast and needed crutches to walk. At the party, he consumed alcohol, methamphetamine, cannabis, and ecstasy (or MDMA). Many people at the party told him not to drive and attempted to remove his car keys. He ignored them and refused to hand over the keys.

[3] Around 11.30 pm, Mithias left the party and took eight others with him in his five-seater small SUV, to go to nightclubs in Napier. They were:

- (a) his younger sister, then aged 21, Sapphire Te Pou;
- (b) his cousins, Te Aroha Te Pou then aged 19, Makaire Hesketh then aged 21, and Harmony Te Pou, then aged 20;
- (c) his then partner and mother of his three children, Autumn McGirven, then aged 25; and
- (d) others he knew well, Ryan Boyce then aged 21, Elijah Watene then aged 19, and Quinesha Watene-Depina then aged 20.

[4] Makaire was in the front passenger seat. Te Aroha, Ryan, and Sapphire sat in the back seat. Quinesha lay across Ryan and Sapphire. Autumn, Elijah, and Harmony were in the boot.

[5] Mithias, in his leg cast, first drove to Ryan's house, accelerating over a speed bump. His passengers told him to slow down. He ignored them and continued to drive aggressively. He drove towards Clive Square in central Napier. Approaching an intersection there, he slammed the brakes on and off, jolting the people in the car backwards and forwards. Two marked Police cars drove past the intersection and Mithias accelerated heavily after the first one had passed, cutting in front of the second one, which avoided a collision by slamming on its brakes.

[6] The Police pursued Mithias' car, signalling him to stop. He continued to accelerate, doing an estimated 80 to 100 kph along Tennyson Street, in the 50 kph zone of central Napier. The Police stopped the chase. Mithias accelerated away, through a red light.

[7] Mithias was travelling at an estimated speed of 71 to 127 kph. He overtook a taxi but had to swerve back into the taxi's lane to avoid a head-on collision with another vehicle, causing the taxi to brake rapidly. By now, the passengers were all screaming at Mithias to stop and slow down. He ignored them. He continued to accelerate.

[8] Mithias lost control of the car. Its rear started to sway from side to side and collided with a parked car on the left side of the road. That caused Mithias' car to tip from side to side, before rolling, landing on the driver's side, and sliding along the ground uphill for around eight and a half metres. The car collided with another car parked on the opposite side of the road. I do not need to go through more of the details of the crash.

[9] Harmony died at the scene. The others were also injured, some severely:

- (a) Sapphire suffered a fractured finger.
- (b) Maikare suffered extensive bruising.
- (c) Ryan suffered cuts and extensive bruising.
- (d) Quinesha sustained a contusion to her left cheek and broken ribs.

- (e) Te Aroha spent three weeks in hospital with broken ribs.
- (f) Autumn spent two weeks in a critical condition in Christchurch Hospital and then five months in Christchurch. She is now paralysed from the waist down.
- (g) Elijah was in a critical condition with brain and spinal injuries for two weeks, spent another two weeks in Hastings hospital and was then moved to Porirua Rehabilitation centre. He could not remember his girlfriend Harmony had died at the scene of the crash and he has ongoing memory loss.

[10] Mithias was arrested at the scene. He had held a learner's licence but it was suspended so he was unlicensed to drive. His evidential breath alcohol reading was 527 micrograms per litre of breath. That is more than twice the legal limit for someone on a full licence. The limit for someone on a learner's licence that is not suspended is zero micrograms.

[11] Some of the victims of Mithias' offending have spoken today, reading their victim impact statements. And I have read the other victim impact statements. I do not repeat what they have all said, so clearly. But I do summarise:

- (a) Harmony's mother has talked about their close relationship. She has told us about Harmony: her excellence at school, her relationships with her three younger sisters and her older brother. Harmony was the light in the family, with her stubbornness, sarcasm, intelligence, determination, and tenacity. Her mother finds it hard to get out of bed now. She no longer has her job. She has panic attacks and depression. She feels a loneliness like she has never experienced and which can never be filled. She can rebuild but it will not be easy.
- (b) In their statements, Harmony's sisters talked about their relationships with Harmony. They describe Harmony as kind and loving. Her younger sister knows Harmony still looks down on her and her whānau.

Her youngest sister's last memory of her was seeing her hand at the tangi, because her sister's face had to be covered.

- (c) In her statement Harmony's sister-in-law was excited Harmony was going to be godmother to her child but upset Harmony was not at the birth as she had planned. She blames herself for not taking Harmony home when she picked up Harmony's brother. I'm sure she knows she should not blame herself. Harmony's brother said in his statement that losing her has created a gaping wound that will take a long time to heal. He says the whānau will forever be broken and will need to rebuild their lives.
- (d) In his statement, Harmony's father has talked about the emotional toll of her death which led him to end his current relationship. His life spun out of control and landed him back in prison. In her statement, Harmony's grandmother wants all those affected by what happened to reach a point of closure, to be able to move on, but says their lives will never be the same. Witnessing her grandchildren trying to rebuild their lives has had an enormous impact on her.
- (e) In their statements, Elijah's grandmother [Desiree Watene] and younger sister have described the impact of losing Harmony, and almost losing Elijah. They have explained the hurt and anger. The whole whānau will continue to suffer.
- (f) Elijah's statement, which was read today, has talked about the impacts of the crash, including his critical condition, his sedation, his loss of memory including thinking he had been driving and wondering where Harmony was, the treatment he had to go through, learning to swallow again, his ongoing brain trauma, and the effects on his whānau, both emotionally and financially. He has been unemployed since the crash, which became his worst nightmare, when he lost his true love. He missed her tangi. He has lost everything as a result of the crash — his

independence, his life, and his love. His recovery journey is not yet over.

- (g) Makaire's statement has also been read today. He described what he remembers from the crash, which has left him with nightmares, lack of sleep, and severe anxiety. He has stopped working because of it. The death of Harmony has affected his whole family.
- (h) Sapphire, Mithias' sister, has today described what happened as a life sentence of loss, constant trauma, grief, and prolonged injuries, for all involved. She says she and others have to live with the wrong decisions made that night, which have caused division within the whānau, changed lives forever, and lost Harmony's life. She says, when you're young, free, and out for a good time, your parents' reminders of safety or TV ads almost become forgotten. She has spoken directly to Harmony's mother and to her brother today. She hopes, when the time is right, the whānau will put itself together again. She still loves Mithias.
- (i) Autumn, Mithias' former partner, has spoken of the crash, the shattering of her world with Harmony's death, her five-and-a-half hour surgery to insert two rods in her back and her other injuries. She has no feeling in her legs. She is numb from the waist down. The mental and emotional damage is indescribable. She did not see her children for two months. She has talked about the effect on the children and the help needed from others. She feels helpless, and hopeless most of the time. But being a Mum helped her get through this. She chooses not to feel sorry for herself.

[12] In some ways, the reading of the victim impact statements to Mithias today is his sentence. Some of those who have spoken forgive Mithias. Others say they never will. That is understandable. I hope Mithias is able to rehabilitate himself with his whanaunga as well as with society. And I hope that one day, when it is right or tika,

and once ea or balance has been achieved, that the whānau can come out the other side of this tragedy and come together again.

Approach to sentencing

[13] Sentencing is conducted for the purposes, and according to the principles, in ss 7 and 8 of the Sentencing Act 2002. In terms of the principles of sentencing, I have regard to: the gravity of the offending and Mithias' culpability; the seriousness of these offences compared with others; the need to ensure the sentence is consistent with other sentences for this type of offending; the effect of the offending on the victims; Mithias' particular circumstances and background; and the requirement in law to impose the least restrictive outcome appropriate in the circumstances.

[14] In terms of the purposes of sentencing, I have particular regard to: the need to hold Mithias accountable for the harm his offending has done to the victims, their whānau, and the community; the need to promote in him a sense of responsibility for, and acknowledgement of, that harm; the interests of the victims; the need to denounce his conduct and to deter him and others from committing similar offences; the need to protect the community from his offending in future; and I do have regard to his eventual rehabilitation and reintegration into your community.

[15] The way the Court sentences is first to set a starting point reflecting the seriousness of the offending, then to make adjustments for the offender's personal circumstances, and finally to stand back to check that the sentence reflects the totality of the offending.¹

Starting point

[16] Having regard to other cases, Mr Manning, for the Crown, submits that a starting point of 10 to 11 years' imprisonment is appropriate. Ms Graham, for Mithias, submits a starting point of nine to 10 years is appropriate.

[17] Sentencing in cases of reckless or dangerous driving causing death, including manslaughter, depends on the facts. There is no guideline. In setting a starting point,

¹ *Moses v R* [2020] NZCA 296 at [46].

as submitted by both counsel, I have regard to the Court of Appeal judgment in *Gacitua v R*.² The Court discussed the approach to sentencing in cases of motor manslaughter and driving causing death, in light of what was then recent legislative changes increasing penalties for dangerous and reckless driving causing death.³ In particular, the Court discussed aggravating and mitigating factors relevant to assessing culpability.⁴ I consider the following are aggravating factors are present here:

- (a) Mithias' consumption of drugs as well as alcohol;
- (b) his greatly excessive speed, estimated to be 71 to 127 kph in a 50 kph zone in central Napier;
- (c) his disregard of warnings from his passengers;
- (d) his prolonged, persistent and deliberate course of very bad, aggressive and reckless driving, including pulling out in front the police car, running a red light, and overtaking another car;
- (e) being unlicensed, and driving with eight passengers including three in the boot;
- (f) causing serious injury and death; and
- (g) causing death after attempting to avoid apprehension by the Police.

[18] In *Gacitua* three aggravating factors applied and a starting point of between four and five years was considered appropriate.⁵ The offending here is clearly worse than that. I rely particularly on the cases decided after *Gacitua* and the law reforms it considered. Cases with different sorts of facts are not useful for this very fact specific inquiry.⁶ But there are some cases that are relevant to the starting point, which I mention briefly, and which guide me in setting a starting point:

² *Gacitua v R* [2013] NZCA 234.

³ At [22]–[23].

⁴ At [25]–[26] citing *R v Cooksley* [2003] EWCA Crim 996 at [15].

⁵ At [43].

⁶ *R v Strickland* [2020] NZHC 2314.

- (a) In *R v Thomas*:⁷ In 2017, after drinking bourbon pre-mixes and smoking cannabis, while unlicensed, Mr Thomas took a corner with a recommended speed of 55 kph at 90 to 100 kph, crossed the centre line, cut back in, was chased by Police, ignored passengers telling him to slow down, and lost control crashing into a parked car. One passenger died and two others suffered serious injuries. His alcohol breath test was double the legal limit. Moore J set a global starting point for manslaughter and other offences of eight years' imprisonment.⁸
- (b) In *R v Reihana*:⁹ In 2011, after four hours of drinking and while on a suspended learner's licence, Mr Reihana drove three of his cousins and his two-year-old daughter to the family urupa. He travelled at high speeds with minimal following distances, at twice the legal speed limit, swerving onto the other side of the road and trying to overtake a car, ignoring his cousins who told him to slow down. He lost control overtaking on a blind corner doing 142 kph, crashing into an oncoming car. His two cousins in the back died instantly. His daughter sustained a lacerated liver. Gilbert J set a starting point for manslaughter of eight and a half years' imprisonment.¹⁰
- (c) In *R v Guest*:¹¹ In 2012, while heavily intoxicated, Mr Guest drove six passengers dangerously and up to 180 kph, for a prolonged period, disregarding repeated pleas to slow down, crashing on a bend, killing one passenger and badly injuring five others. Venning J set a starting point of eight years and nine months' imprisonment for manslaughter.
- (d) In *R v Savigny*:¹² In 2021, at the age of 24 and having consumed alcohol, methamphetamine and other drugs, Mr Savigny took someone else's car without permission, overtook another car within a 30 kph roadworks zone, knocked over cones, caused another driver to take

⁷ *R v Thomas* [2018] NZHC 819.

⁸ At [58].

⁹ *R v Reihana* [2013] NZHC 1273.

¹⁰ At [22].

¹¹ *R v Guest* [2013] NZHC 2432.

¹² *R v Savigny* [2021] NZHC 164.

evasive action, overtook three vehicles on double yellow lines, was chased by Police at speeds of up to 130 kph in an 80 kph zone, lost control going more than 150 kph, crossed the centre line, and slid sideways striking a 50 kph sign and five trees. His only passenger died instantly. Doogue J set the starting point at nine years' imprisonment.¹³

[19] In comparing those cases with this one, I have regard to the aggravating factors I have already mentioned, the death of Harmony and the serious injuries caused to so many victims, the risk to the public in a busy city centre on Halloween, as well as the combination of Mithias' consumption of alcohol, and drugs, and driving in a leg cast. I consider his offending is marginally worse than those cases, given the number of victims and the risk to the public. I set a starting point of nine years and six months' imprisonment.

[20] In addition, s 125 of the Sentencing Act provides the Court may fix any period of disqualification from driving that it thinks fit, where an offender is convicted of manslaughter. The Crown submits that a period of four years' disqualification from driving is justified, starting on release from prison. Ms Graham acknowledges that, in the circumstances of this case, that cannot sensibly be opposed.

Adjustments

Reports

[21] Mithias, at the time of the offending you were a 22-year-old Māori man with whakapapa on your mother's side to Ngāi Tūhoe and your father's side to Ngāti Tūwharetoa. I have seen several reports about your personal background. I have: a pre-sentence report from the Department of Corrections; a report from Hawkes Bay Restorative Justice; a report by Ms Jacqui St Clair, a clinical psychologist; a report by Ms Tara Oakley under s 27 of the Sentencing Act about your personal background; and I have seen letters from you to the Court, and to the victims of your offending. I hope they are able to be delivered, if they have not been already.

¹³ At [37].

[22] In summary, you grew up disconnected from your marae and hapū. Gang culture was a more notable influence. You grew up around substance abuse and family violence, which you suffered yourself, leaving you with an attitude of disregard for the safety of others. You were first given methamphetamine and cannabis, by a relative, at the age of 11 or 12. You were taken into state care at the age of 13. In 2020, you were deeply affected by the death of your seven-year-old brother. But you clearly have skills. You completed levels 1, 2 and 3 in carpentry at EIT. You play classical guitar. But your use of drugs and alcohol resumed. This affected your relationship with your then long-term partner and three children. When you were remanded in prison for this offending you were suffering from drug-induced psychosis, for which you are currently medicated. You became suicidal. You have suffered from ADHD, depression, and anxiety. You have described your whole life as being spent in “fight, flight or fright”. You are now becoming more stable. Corrections says you know you need to address your addictions because you do not want your children seeing you as a drug user and as a violent person. You will understand how easy it is for children to copy their parents.

[23] You are now beginning to reconnect to your culture and you say you are finding a part of yourself that has always been missing. The Restorative Justice report recommends that restorative justice should occur after sentence or close to the time of your release, because you still need to take full responsibility for what happened and some of the whānau will need more time before they are ready to participate. The report recommends psychological counselling, which I expect would be helpful. Ms St Clair says you are now beginning to understand the perspectives of your whānau, which you’ve heard today, and accept responsibility for your part in the offending. She says your mental health is being well-managed in prison. Ms St Clair has made a series of recommendations which I commend to the Department of Corrections. They would involve a long-term programme to help you learn self-reflection and anger management, and a residential alcohol and drug rehabilitation programme. On release from prison you will require strict oversight of your medication and treatment, otherwise your mental health may decline and your drug-taking may restart. You should have access to parenting programmes. You need to begin your programme of healing as soon as possible.

[24] I now deal in turn with the potential adjustments to the term of imprisonment, discussed by counsel in their written and oral submissions.

[25] First, counsel agree that no uplifts are justified to the sentence for previous convictions which are not relevant to this offending. I agree with that.

[26] Second, Ms Graham submits that there is no doubt you have suffered significant trauma in your life, that has led to substance abuse. The drug use, combined with undiagnosed mental health issues, has formed the person who committed this offending. She submits a 15 per cent discount is appropriate to recognise your impaired choices and diminished moral culpability. Mr Manning acknowledges the consumption of drugs from a young age and mental health may have some causative contribution to the offending. I agree. But you did not have to refuse all the advice you got that night from your whānau — not to drive, to give up your keys, to slow down. I discount your sentence by 11 months, or around 10 per cent, for your youth and personal background.

[27] Ms Graham submits you readily admit to fault and your remorse is genuine. She says you do not seek to excuse your actions and you wish to tell the victims that you fully accept responsibility for your actions which causes so much pain to so many people. Ms Graham submits a discount for your remorse is appropriate at law. The Crown accepts you have demonstrated significant remorse, including being willing to attend a restorative justice conference, which justifies a discount.

[28] I consider that that your remorse is genuine. You have said that it was you who drove the car, you that hurt everyone, you that caused Harmony to die. You have said you have to live with the guilt every day and know what pain you have caused to everyone that you care about. You have said words will never make it better, what you have done. It hurts more than anything. I discount your sentence by six months, or around five per cent, for your remorse. It suggests you are open to rehabilitation.

[29] You say you will follow your nan's advice to do your best in prison and do some healing so that you are ready to see everyone when you get out. From the sound of your nan, you'd better do that. You are hopeful of working through your issues with

your former partner and helping with the children. Your mother also believes counselling is crucial to your future, acknowledging that your childhood has been very damaging. She asks me to consider your children's wellbeing, and I do so. She also believes that fairness to the victims is the first and foremost consideration. She is in a very difficult position.

[30] Finally, you pleaded guilty at a comparatively early opportunity. That has saved your whānau and the Police and court system the trauma and expense of having to relive the details of what happened that night in a trial. The Crown accepts that a full 25 per cent reduction to your sentence is justified for that, as is usual, and as Ms Graham submits. So do I. I discount your sentence by 29 months for your guilty plea.

[31] That means a total sentence of five years and eight months' imprisonment. I consider that properly reflects the totality of your offending.

Sentence

[32] Mr Mithias Te Pou, please stand. I sentence you to a total of five years and eight months' imprisonment. That comprises five years and eight months for manslaughter and, concurrently (or all at the same time):

- (a) three years' imprisonment for each offence of reckless driving causing injury to Autumn and Elijah; and
- (b) two years' imprisonment for each of the five other offences of reckless driving causing injury to the five others who were injured.

[33] For the offence of refusing to stop for red and blue flashing lights, I convict and discharge you. There is no point in imposing a fine.

[34] Upon release from prison, I disqualify you from driving for four years.