

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

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

**CRI-2023-054-1040
[2023] NZHC 3555**

THE KING

v

PATRIZIA STEPHENS

Sentencing: 7 December 2023

Counsel: G J Carter and J P Field Turner for the Crown
P L Murray for the Defendant

Sentencing Notes: 7 December 2023

SENTENCING NOTES OF GWYN J

Introduction

[1] I want to begin by acknowledging the loss and grief of Mr Thomas Martin's family. From what I have read, and heard today, Tom was a much-loved son, father, grandfather, uncle and friend to many in the community. What strikes me is that he was a very fine, decent man. The loss of his life has had a profound effect on his family and friends.

[2] My primary focus today is on the sentencing, but none of us should lose sight of that loss, or of the injury and lasting damage done to Mr Zane Bullivant and Ms Stephanie Reeves. I will talk later about the other victim impact statements I have received.

[3] Patrizia Stephens, on 21 July 2023,¹ I gave you a sentence indication. I said that if you pleaded guilty to one count of manslaughter by the unlawful act of reckless driving² and two counts of reckless driving causing injury,³ an appropriate sentence would be four years and two months' imprisonment, subject to any further discounts that may be appropriate when pre-sentence reports were received.

[4] After the sentence indication, you pleaded guilty to all charges. You now appear before the Court for sentencing.

What happened

[5] You are a first-time offender. You were aged 18 at the time of the offending that I go on to describe.

[6] On 14 October 2022, you say you consumed 20 bongs of cannabis in the evening. Approximately 30 minutes before getting into your car, you had your last bong. You drove to Palmerston North, arriving at Stephanie Reeve's home address around 7.00 pm. Ms Reeve got into the car, sitting in the passenger seat, and you drove to a shopping centre. Driving Ms Reeve was in breach of the conditions of your restricted licence. Afterwards, the pair of you went to the "skids".⁴ In a Bunnings car park, you joined a "skid train".⁵ The skid train drove to a location in Linton to do burnouts. At this location, you accepted another passenger, Zane Bullivant, who sat in the back of your car.

[7] The skid train drove to a second skids location where the presence of Police led to the skid train moving on, aiming to arrive at a third skids location for the evening. The skid train drove into Palmerston North city and up Main Street, heading towards the next skids location in Ashhurst.

¹ *R v Stephens* HC Palmerston North CRI-2023-054-1040, 21 July 2023 (sentence indication of Gwyn J).

² Crimes Act 1961, ss 171, 160(2)(a) and 177. The maximum penalty is life imprisonment.

³ Land Transport Act 1998, s 36(1)(a). The maximum penalty is five years' imprisonment or a fine not exceeding \$20,000.

⁴ The "skids" refers to a location where car enthusiasts congregate and do burnouts, a practice where drivers cause the wheels on the car to spin while the car remains stationary or moves slowly.

⁵ A "skid train", also referred to as a "skid chain", involves car enthusiasts driving their vehicles in a line following each other. The skid train travels between locations known as "the skids" where the skid train participants do burnouts.

[8] At approximately 11.58 pm, you were driving in that skid train along Main Street. You were driving at between 75 and 87 kilometres per hour. You drove through the intersection at Main and Albert Streets, then along Main Street towards the intersection at Main and Ruahine Streets. As you were doing this, Reuben Davis, someone unknown to you, was driving south-east along Ruahine Street towards the intersection at Main and Ruahine Streets.

[9] The traffic light went red several seconds before you reached the intersection. Mr Bullivant, from the back seat, told you to stop for the red light, an instruction which you ignored as you changed lanes, drove around the vehicle stopped at the red light in front of you, and entered the intersection, travelling between 75 and 87 kilometres per hour. In this manoeuvre, your car collided with Mr Davis' vehicle which had lawfully entered the intersection on a green light. Mr Davis' vehicle was written off.

[10] You lost control of your car during this crash. Your car veered into a streetlight before being redirected down and across the two north-east bound lanes and the service lane. Between 90 and 100 metres away from the crash location, your car, still out of your control, mounted the footpath and crushed a pedestrian, Mr Thomas Martin, who was, responsibly, walking home from the pub.

[11] During the crash, the rear passenger door where Mr Bullivant was sitting was flung open. He tried to hold on to the headrest of the driver's seat. When the car stopped, Mr Martin was on top of Mr Bullivant. Mr Martin died at the scene from his injuries.

[12] Mr Bullivant required two plates and 16 screws to repair his broken bones. His pelvis broke in four places and his sternum broke. At the time of the crash, he had internal bleeding and coughed up blood in the ambulance. The crash exacerbated his anxiety disorder — he now has daily panic attacks.

[13] Ms Reeve sustained bruising, swelling and pain, and torn knee ligaments. As a result of the torn ligaments, she used crutches for over three months and was in a knee brace for six months. She had to stop working for a traffic management company

and then a truck wash company because her injury made working too painful. She has not had an income since the crash.

Victim impact statements

[14] Before I assess your sentence, I will mention the Victim Impact Statements provided by the victims of your offending. An aspect of sentencing of fundamental importance is that members of the community who are the victims of an offence and those who have been affected by an offence are able to speak about the impact the offending has had on their lives.

[15] Your offending has affected the lives of many people, Ms Stephens. You have physically injured and psychologically traumatised the passengers in your vehicle at the time of the crash. You additionally traumatised a friend of Mr Martin's who provided aid at the crash scene. You killed a pedestrian. His family and friends have to live with the enduring pain of that loss and the completely avoidable circumstances of his death.

[16] We have heard from Daniel (Dan) Martin in person and on behalf of Tom's sister Vanessa; Alan and Robyn Martin; and Shaun's partner. Thank you for your courage in sharing your pain in this public forum. In addition, I have received Victim Impact Statements from the following people.

[17] Shaun Martin: Shaun is Tom's youngest son. He describes having to identify Mr Martin's body. That was a devastating experience. He then had to call their grandmother, who lives in Ireland, and who had been expecting a call from Mr Martin, to tell that he had been killed. Shaun Martin says it was heart-breaking to hear her say "not my Tommy!" over the phone.

[18] Ms Reeve: Ms Reeve's statement says that, other than one text you sent her the day after the crash saying "sorry", you have not made any other attempt to make amends. Ms Reeve describes her torn knee ligaments. She is currently out of work because her knee injury makes work too painful. She is not receiving ACC assistance or benefits from Work and Income New Zealand. She gets PTSD symptoms at traffic lights with orange and red lights, particularly the lights along Main Street. She had

trouble sleeping for three months after the crash, and now has a dog to help her. She expresses sorrow at Mr Martin's death.

[19] Mr Bullivant: I have already described Mr Bullivant's physical injuries. In his statement he says you destroyed his body and mind as a result of the completely avoidable crash.

[20] Mr Davis: Mr Davis, the driver of the other car, says he knows he could have easily been injured in the crash if you had crashed into the driver's door instead of the front of the car. He describes the emotional effect of the crash on him. Although the crash was not his fault, he feels guilty and somewhat responsible for Mr Martin's death because if you had not crashed into him, the outcome could have been avoided. He remains a cautious driver, fearful something out of his control might happen to him again.

[21] Jilese Simpson, a friend of Mr Martin, describes his kindness and generosity, saying it was an honour to know him. She is saddened by her last memory of him. He had hugged her goodbye at the pub they had been drinking at and started walking home. She describes hearing the crash just minutes later and running to assist, not realising that Mr Martin was a victim for several minutes. She unhooked his arm bracelet from the car door and held him as he passed away. These memories cause her sleepless nights and feelings of anxiety, panic attacks, anger, heartbreak, terror, and guilt. She fears for her family walking home. The crash has affected her ability to work and strained her relationships.

[22] Neve Prichard describes the pain of losing her uncle and the family's shock and hurt by your lack of remorse and refusal to take accountability. She describes your actions following the crash, particularly your posts on social media, as "beyond repulsive".

Submissions

[23] I will now summarise the submissions that your lawyer and the Crown have made. I have read their more detailed written submissions filed in advance of this hearing and I have considered what they have said to me in Court this morning.

For the defendant

[24] Mr Murray, your lawyer, submits that further discounts of up to 30 per cent are available in addition to those I indicated back in July, to take account of your remorse and your youth. Mr Murray also says that reducing your sentence will support your rehabilitation and potential for future rehabilitation, as well as your mental health.

[25] Mr Murray does not dispute that your use of cannabis remains problematic. He says that for you it is a deeply entrenched coping mechanism, and you told a Probation Officer you are ashamed of this.

[26] Mr Murray says you are remorseful. He notes the psychiatric report which says you did not attempt to portray yourself in a favourable light and did not attempt to justify or minimise your criminal offending. Mr Murray notes that you tried to participate in a restorative justice conference. You and your family travelled 79 kilometres to attend this conference, although you broke down and did not meet with Mr Martin's family. Mr Murray also refers to the assessments by a psychiatrist, an alcohol and drug counsellor and the Department of Corrections, as showing your remorse. On the basis of those reports Mr Murray says I should reduce your sentence by up to 10 per cent for your remorse.

[27] Mr Murray also urges me to give a further discount for your youth. He submits that your negligent and reckless behaviour is, at least in part, attributable to your lack of development as a young person: 18 at the time of the crash. Mr Murray says any youth discount must incorporate your previous good character — you have no previous convictions. In support, Mr Murray refers to the report of the psychiatrist which said imprisonment would be difficult and detrimental to you. Mr Murray submits that a youth discount of up to 20 per cent is available.

[28] Mr Murray acknowledges that disqualification from driving for a substantial period is inevitable.

For the Crown

[29] Mr Carter, the lawyer for the Crown, agrees that a discount for youth and good character is available but says no other discounts are appropriate.

[30] The Crown says it is up to you to show genuine remorse. That requires something more than accepting responsibility. You abandoned the restorative justice conference shortly before it was due to start. Willingness to engage in restorative justice is not enough to justify a discount for remorse.⁶ To the Crown's knowledge, you have not shown remorse to Mr Martin's family in any other way, such as by writing a letter of apology. The victim impact statements record the victims' hurt and anger that you have not engaged with the family and that you posted videos of the crash to social media. The victims say your actions demonstrate a disregard for the harm you have caused and callousness.

[31] The Crown refers to your continued daily use of cannabis, in breach of your bail conditions, as being the antithesis of remorse, particularly since cannabis use was a clear contributing factor to your offending. It shows that you have not taken steps to put right what you did. In fact, the Crown says it appears from the reports that your dependence on cannabis has increased since the crash. Further, your statements to report writers demonstrate your concern is about yourself rather than the consequences your offending had on others. Accordingly, Mr Carter says I should not give you any discount for remorse and rehabilitative efforts.

[32] The Crown acknowledges that your youth at the time of the offending is relevant to sentencing. Mr Carter has referred me to a case where the High Court applied a 35 per cent discount for youth, good character and remorse, emphasising the deterrence and denunciation purposes of sentencing.⁷ In another case, the Court of Appeal recognised that youth have greater vulnerabilities to face when charged with serious offending, as compared to adults, and found a 15 per cent discount for youth alone would be justified.⁸ In your case, the Crown says I could reduce your sentence

⁶ *R v Pene* [2023] NZHC 1234 at [27].

⁷ *R v Murcott* [2014] NZHC 971.

⁸ *Millar v R* [2019] NZCA 570.

by between 15 and 20 per cent to recognise your previous good character and your youth.

[33] The Crown submits there is no information disclosed in the psychiatric report prepared about you that would support any further reductions of your sentence. The report records that you had a healthy home environment, you have supportive parents and you do not suffer from any serious mental impairments. In the Crown's submission, your post-traumatic stress disorder (PTSD) symptoms are an inherent consequence of your offending.

[34] The Crown seeks reparations but does not yet have full details of those, other than the \$900 excess on Mr Davis' insurance policy. Mr Carter asks me to make orders for reparation with leave to the Crown to file a memorandum confirming the insurance excesses for the other two victims.

[35] Mr Carter says a period of disqualification is appropriate, in the region of three years.

Approach to sentencing

[36] 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, I have regard to the seriousness of the offending and your culpability; the seriousness of your offences compared with other cases; the need to ensure the sentence is consistent with other sentences for this type of offending; the effect of the offending on the victims; your particular circumstances and background; and the requirement in law to impose the least restrictive outcome appropriate in the circumstances.

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

[38] 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.⁹

Manslaughter by the unlawful act of reckless driving

[39] You have pleaded guilty to manslaughter.¹⁰ This offence carries a maximum penalty of life imprisonment.

Reckless driving causing injury

[40] You have also pleaded guilty to two counts of reckless driving causing injury.

My reasoning

Starting point

[41] The first stage in sentencing is calculating a starting point. As I indicated in the sentencing indication,¹¹ the starting point is five years and six months' imprisonment. This is a global starting point, incorporating all three of the charges to which you have pleaded guilty. That starting point reflected the aggravating factors in your offending: your consumption of drugs; excessive speed and the prolonged period of bad driving; driving with passengers on a restricted licence; and causing death and serious injury to other victims.

Whether reductions to the starting point are available

[42] The second step in sentencing is to decide whether I can make any reductions to the starting point.

[43] As I indicated in July, I will apply a 25 per cent discount to your sentence to recognise that you pleaded guilty after the sentence indication.

⁹ *Moses v R* [2020] NZCA 296 at [46].

¹⁰ Crimes Act, ss 160 and 170.

¹¹ Criminal Procedure Act 2011, s 116.

[44] Today, I have to consider whether I should make any further deductions to the starting point.

[45] Your counsel has provided four pre-sentence reports. As I will go on to explain, I consider a further, small discount is appropriate given the information in these reports.

[46] The Provision of Advice to Courts (PAC) report dated 11 September 2023 was prepared by the Department of Corrections. It records that you accepted full responsibility for the offending. You did not attempt to shift blame to anyone else. You said you chose to overtake the vehicle because it braked suddenly, rather than acting purely impulsively, whilst not attempting to make excuses for your actions. You continue to hold feelings of guilt and sadness, being angry it was not you that died in the crash.

[47] The PAC report identified your consumption of drugs, impulse control, decision-making and lifestyle as contributing to your offending. The report says you receive “major support” from your whānau, particularly your parents, sister, cousin and a long-term friend.

[48] The PAC report states you are currently unemployed. You are attending a course to obtain NCEA level two, having left school after completing level one and working in the dairy farming industry after that. Since the events of 14 October last year, you have not attended the skids. Your mental health has declined and after four months of self-medicating with cannabis, you sought medical help. You say you are diagnosed with PTSD, bipolar disorder and obsessive compulsive disorder. You are prescribed anti-depressant and anti-anxiety medication and are attending counselling. You continue to use cannabis daily, although you have expressed a desire to reduce your use of cannabis. The PAC report assessed you as suitable to attend an alcohol and drug treatment programme whilst in prison.

[49] The PAC report notes that you have indicated a willingness to pay reparation once released from prison and acknowledge it is your responsibility to repay the

damage you have caused. You are currently paying \$40 per week from your job seekers' benefit to Mr Davis for the insurance excess on his car.

[50] The PAC report assessed your risk of reoffending in a similar manner as low. It notes you are a medium- to high-risk of harm to other people.

[51] The second report I have is the restorative justice report, dated 6 October 2023. That report notes that a restorative justice conference was scheduled to take place between your family and the victim's family. As you entered the conference room, you became distressed and fell to the floor. Your dad spoke to the victim's family. You told the facilitators that you felt unable to cope with the conference and so it was abandoned. The facilitators advised you that restorative justice options remain possible after sentencing.

[52] I have also received an alcohol and drug counselling report, dated 14 August 2023, which says you have engaged in regular counselling. Your sessions have taught you strategies to manage depression and anxiety. You feel shock, numbness and disbelief about the events for which you are being sentenced. You experience flashbacks and insomnia. Your counsellor said you are remorseful for the trauma and grief that the event caused and have been becoming more "present" in the sessions. You have acknowledged that you were responsible for a fatal accident. You say reality has hit you having seen the trauma Mr Martin's whānau is suffering. You are seeking continuing counselling to come to terms with the aftermath of the incident and processing the grief the victim's whānau are experiencing.

[53] Finally, I have a psychiatric report prepared under s 38(1)(c) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 on 14 November 2023. This report records that until recently, you enjoyed joining skid trains and being in cars doing burnouts. You told the report writer that you have always been a risk-taker and a heavy-footed driver who ensured you won if you were racing another car. You have lost confidence driving since the crash, but you continue to drive. You avoid driving through roads with traffic lights.

[54] You have one friend who lives in another city — you communicate with her online. You say you are happy on your own because when you are alone you cannot get into trouble. You have not experienced psychologically traumatic events except for the crash. You have been prescribed an antidepressant medication to help you with your anxiety following the crash, but you believe the medication does not work and instead your (unprescribed) cannabis use¹² helps you more. You recognise your addiction to cannabis but have no motivation to remove illicit substance use from your future. You want to reduce your cannabis use because you understand you will fail drug tests and may be unable to gain employment if you continue to smoke every day.

[55] A counsellor visits you every fortnight. You say you are neither happy nor depressed most days. The psychiatric report writer assessed you as suffering from PTSD of moderate severity given your intrusive memories of the crash, irritability and feeling of being “on edge” and avoiding triggering aspects of driving such as roads with traffic lights. The report writer suggested your PTSD is not severe, given you sleep 12 hours a night, have a normal appetite, your adaptive function is not grossly impaired, and your mood is average. The report writer believes your PTSD is modified by the antidepressant medication and masked by your heavy cannabis use. You did not disclose any delusional beliefs to the report writer or appear to be responding to auditory hallucinations.

[56] The report writer recommended the Court should have regard to your developmental status as an adolescent. Adolescent brains have a diminished decision-making ability, are less efficient at processing information than adult brains, are easily influenced by social factors and the use of substances, have less future orientation than adult brains, and tend to assign less weight to consequences than immediate risk and thrill, as recognised by the Court of Appeal.¹³ The report writer also refers to another case¹⁴ where the Court acknowledged that “[a]dolescent behaviour reflects the slow pace of the development of those parts of the brain that control higher-order executive functioning, such as impulse control, risk assessment and planning ability” and noted neurological development may not be complete until a person is aged 25. The report

¹² For the avoidance of doubt, the cannabis is not the prescribed, medicinal kind.

¹³ *Churchward v R* [2011] NZCA 531 at [50]–[55] and [80].

¹⁴ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [77] and [78].

writer believes your antisocial behaviour is likely to be limited to your adolescence and is unlikely to persist throughout your life. The report writer believes your risk of recidivism would reduce if you abstain from using all illicit substances and increase your sense of connection to te ao Māori.

[57] The report writer believes a custodial sentence will increase your sense of estrangement from the community and thereby increase your risk of reoffending. The report writer also believes you would experience withdrawal from cannabis and increase in the severity of your PTSD if you received a custodial sentence, given imprisonment is psychologically stressful. The report writer suggests you receive a sentence of intensive supervision and monitoring in the community. The report writer further suggests a residential substance abuse treatment programme might be beneficial.

[58] Having considered those pre-sentence reports, I am satisfied that your youth was a contributory factor in your offending. Your risk-taking, susceptibility to impulsive behaviour and failure to consider the consequences of your actions (poor future planning) are hallmarks of youth. Sentence reductions on account of the offender's youth are generally between 10 and 30 per cent.¹⁵ I consider a 15 per cent reduction, to take account of both youth and rehabilitative prospects, is appropriate in the circumstances of your offending. Although at age 18 at the time of the offending, you had attained adulthood, you were (and are) still at an early stage in your life. Your rehabilitative prospects are generally expected to be higher at a young age than an older adult.

[59] I have also considered whether any further discount should be made for remorse. I am not persuaded that you have shown genuine remorse. As Mr Carter said, this requires something more than merely accepting responsibility for the crash.

[60] You may initially have been willing to engage in the restorative justice process, but the reality is that you did not. I accept that meeting face to face with Mr Martin's family would be difficult and traumatic. The reality is that it would have been much

¹⁵ At [175]; and see also *Pouwhare v R* [2010] NZCA 268; (2010) 24 CRNZ 868 at [98].

more difficult for them, but they showed up. It seems you have not attempted other ways of conveying your remorse to them, such as by writing to them.

[61] A critical factor for me is your continued, daily use of cannabis. Not only is it in breach of your bail conditions but it indicates that you have not yet taken responsibility and accountability for your recklessness and the harm you have caused. Instead of processing what you have done and making amends, you instead choose to avoid processing what you have done by smoking cannabis.

[62] There is no evidence before me that you have engaged in any kind of drug rehabilitation programme to address your dependence.

[63] For those reasons, I am not prepared to give any discount on sentence for remorse.

[64] I want to emphasise that the small reduction I have applied to your sentence to reflect your relatively young age and rehabilitative prospect is in no way excusing your offending on account of your age. You were an adult, albeit a young adult, when you killed Mr Martin and injured Ms Reeve and Mr Bullivant. You drove recklessly around a car and through a red light whilst under the influence of a large amount of cannabis and in breach of the conditions of your restricted driver licence. You showed a disregard for the law, for your passengers' safety despite their pleading for you to slow down and stop at the red light, and for the safety of members of the public and other drivers by virtue of getting behind the wheel in such an impaired state.

Sentence calculation

[1] The starting point is five years and six months' imprisonment.

[65] I reduce the starting point by 25 per cent for your guilty plea.

[66] I reduce the starting point by a further 15 per cent for your youth and previous good character.

[67] With these reductions, the end sentence is three years and four months' imprisonment (rounded to the nearest whole month).

Disqualification from driving

[68] Because you have pleaded guilty, I am required to disqualify you from holding or obtaining a driver licence for a period of at least one year.¹⁶

[69] In my view, a longer period of disqualification is necessary given your reckless and illegal driving killed one person and seriously injured two others. I will disqualify you from driving for four years, to commence on your release from prison.

Reparation

[70] The Police seek reparation for the damage you caused in the crash. The Police provided three reparation schedules:

- (a) \$14,161.02 for repairs to the roading infrastructure and traffic lights you damaged when the car spun out of control;
- (b) \$6,667.71 for repairs to the garage door and window that you hit with your car when you collided with the deceased victim; and
- (c) \$900 for the insurance excess on Mr Davis' car that you crashed into when running a red light.

[71] I order that you pay reparation to Mr Davis in the amount of \$900 and I grant leave to the Crown to file a memorandum quantifying the details of the further reparation sought.

Conclusion

[72] Ms Stephens, please stand.

¹⁶ Land Transport Act 1998, ss 36(2)(b) and 36AA(2)(b).

[73] You are sentenced to three years and four months' imprisonment, with an order disqualifying you from driving for four years from the date of your release from prison.

Gwyn J

Solicitors:
Crown Solicitor, Palmerston North
Mr Murray, Palmerston North