

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

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

**CRI-2022-031-691  
[2023] NZHC 3620**

**THE KING**

**v**

**XAVIER AMELIO ZAVONNIE WHENUAROA**

Hearing: 11 December 2023

Appearances: G J C Carter for Crown  
S N Hewson for Defendant

Judgment: 11 December 2023

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**SENTENCE OF LA HOOD J**

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**Introduction**

[1] Xavier Whenuaroa, you appear for sentence having pleaded guilty to charges of murder<sup>1</sup> and arson.<sup>2</sup> It is agreed that a sentence of life imprisonment must be imposed on you today. What I need to decide is how long you must remain in prison before you are eligible to apply to be released on parole. Whether you are granted parole at the end of that period will be a matter for the Parole Board.

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

<sup>2</sup> Section 267(1) carries a maximum penalty of 14 years imprisonment.

[2] In setting that minimum period of imprisonment, I must apply a specific section of the Sentencing Act 2002,<sup>3</sup> which states that the minimum period of imprisonment must not be less than 10 years, and must be the minimum necessary to satisfy certain purposes of sentencing. Those purposes are holding you to account for the harm you have done; to denounce your offending; to deter you and others from committing similar offending, and to protect the public from you. Other purposes and principles of sentencing are only relevant to the extent that they impact on that assessment.<sup>4</sup>

### **The offending**

[3] Turning to the offending itself, you were 25 years old at the time. On 6 September 2022, you had travelled from where you were living in Christchurch to Levin. We have heard this morning that that was a condition of bail from a family violence offence you were charged with down in Christchurch. In Levin, you visited the victim James Ingle at his address.<sup>5</sup> It seems you may have gone to his house for some support with the difficulties that you were in. You were enjoying an evening of drinking before you started talking about ways in which you believed Mr Ingle may have wronged your family.

[4] There was a hammer in the kitchen at Mr Ingle's place. You got up and armed yourself with it, before going back to the lounge to resume the conversation. After more talking, you struck Mr Ingle in the head with the hammer. A struggle followed with you and Mr Ingle both on the floor of the house. The fighting continued with you hitting Mr Ingle with the hammer several times more rendering him semi-conscious.

[5] You then dragged Mr Ingle to a bedroom. You later told police that you heard Mr Ingle making gurgling noises, so you struck him again in the head with the hammer before taking his car keys from his pocket. This is all said to have happened past 10 pm.

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<sup>3</sup> Sentencing Act 2002, s 103.

<sup>4</sup> See Geoff Hall *Hall's Sentencing* (online ed, LexisNexis) at [SA 103.1]; *R v Walsh* (2005) 21 CRNZ 946 at [28]; *Brown v R* [2011] NZCA 95; and *Malik v R* [2015] NZCA 597 at [28].

<sup>5</sup> I intended to note at this point in my oral decision that Mr Ingle was Mr Whenuaroa's mother's ex-partner.

[6] You then spent the night driving around in Mr Ingle's car. At 6 am the next morning, you called your former partner and told her what you had done, believing that you had killed Mr Ingle. You talked on the phone for some time. Then you went back to Mr Ingle's house and set fire to a curtain in the lounge. The house became engulfed in flames and was substantially damaged.

[7] As firefighters were responding to the fire, you left the address and used Mr Ingle's bank card to buy food, petrol and alcohol. You then contacted some friends and told them what you had done before handing yourself over to the Levin police.

[8] The post-mortem of Mr Ingle showed that he died as a result of the injuries to his head and face by the blows with the hammer.

### **Victim impact statements**

[9] I have received a number of victim impact statements from members of Mr Ingle's family including his only son, his parents and his siblings. Many of them were read in Court this morning. I acknowledge the courage that it took to do this.

[10] The statements describe Mr Ingle as a talented, caring, loving and supportive father, son and brother. They talk about his talent as a musician, and we have heard a clip of him playing music this morning. They talk about his thoughtful and giving nature, his strong connection to a local church and his generous contributions to the local community. The family are devastated and traumatised by his violent, senseless death. The statements are expressed in a measured way, but understandably the family is experiencing, and will continue to experience, profound grief and loss.

### **Personal circumstances**

[11] Turning to your personal circumstances, Mr Whenuaroa, I have regard to the pre-sentence (PAC) report and the psychological and psychiatric reports that have been prepared as part of the Court process.

[12] The pre-sentence report talks about how you were feeling on the day of the offending. It says that you were processing many difficult emotions, having to deal

with moving back to Levin and feeling like a failure because you did not think you had met the high expectations your father had placed on you. You had taken a cocktail of drugs that day, including MDMA (or ecstasy), cannabis, LSD and alcohol. The discussion of your family history with Mr Ingle is said by you to have made you snap.

[13] You also told the report writer that you intended for your offending to be a murder-suicide and that once you had set fire to Mr Ingle's house, you intended to stay inside. The report says that you believe you were struggling significantly with your mental health and you feel this was the primary factor in your offending. You did express remorse about the offending, and you describe Mr Ingle as a "good guy" who "didn't deserve what happened". The report states that your sister and a good friend said you are a mellow and "chilled" person who does not get angry or stressed. It appears the offending was shockingly out-of-character for you. You told the report writer that your focus now is on trying to help others.

[14] A recent psychological report has been prepared for the Court. It says that you are in a much more mentally stable state now than when you committed the offending. At that time, you told the report writer that you cared about nothing and wanted to die. Those thoughts remained when you were taken into custody initially, but now, you say you feel comfortable seeking help if the need arises. You acknowledge in the report the seriousness of the offending and you want to make up as much as possible for what you have done.

[15] This report goes into your background in some detail. You are of Tūwharetoa descent with two sibling and eight half siblings. You told the report writer that your parents split up when you were aged two and you were brought up by your father.<sup>6</sup> You describe your father's negativity towards you as being responsible for you holding a negative view about yourself. You say he was intimidating and verbally abusive. Your sister gave her perspective on your relationship with your father to the pre-sentence report writer. She said that you were "a little spoilt and arrogant growing up" because your father pandered to you as a child and had high expectation of you

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<sup>6</sup> I have corrected a slip in my oral decision where I ended this sentence with the word "mother" instead of "father".

doing well in life. Your childhood also included coping with your 15 year-old brother's suicide.

[16] In summary, the report writer notes that other than being an eruption of pent-up emotions in the context of intoxication, there does not appear to be any factors that explain your offending. You do not have a history of offending or violence apart from the charge that we have heard about this morning. While you experienced some dysfunction growing up, you appear to have had some stability, performed appropriately at school and showed promise, and you did not suffer any physical or sexual abuse. The assessment recommends that you try to get help with and a handle on your substance abuse issues. There will be help available in prison, but it will be up to you to make the most of the treatment available. You appear motivated to do so.

### **Submissions**

[17] I am now going to summarise what each of the lawyers have had to say about the appropriate sentence.

[18] The Crown says that your minimum period of imprisonment should be a starting point of 15 years based on the following aggravating factors of your offending: your use of the hammer as a weapon to target Mr Ingle's head; that the attack happened in Mr Ingle's home; that the attack happened in a frenzied way once Mr Ingle had begun to lose consciousness; and they also point to your conduct in setting fire to the house and using Mr Ingle's bank card to buy food and alcohol.

[19] In relation to personal factors, the Crown acknowledges that you are relatively young and have no previous convictions, that you pleaded guilty and had indicated at an early stage that you would do so. The Crown does not accept, however, that you intended for the offending to include your suicide.

[20] Your lawyer, Mr Hewson, says the minimum period of imprisonment should be between 10 and 13 years. That is because there was no pre-meditation or planning involved; you have not offended before; that you were suffering from deteriorating mental health at the time of the offending; and you handed yourself over to the police immediately making full admissions. Mr Hewson also says that all indications point

to you wanting to commit suicide at the time of the offending. He notes you had consumed a lot of alcohol, and we know other drugs, you had a long phone conversation with a former partner, and he points also to the way that the fire was lit.

### **Starting point**

[21] Turning then to the appropriate sentence. The penalty for murder is life imprisonment unless, given the circumstances of the offence or the offender, that would be manifestly unjust.<sup>7</sup> The presumption of life imprisonment is a strong one – it reflects the value placed on the sanctity of human life – and it is only in exceptional circumstances that it should not be imposed.<sup>8</sup>

[22] As noted at the outset, there is no suggestion here that a sentence of life imprisonment would be manifestly unjust. The sentence for murder will be life imprisonment.

[23] As already noted, the Court must order a minimum term of imprisonment, which may not be less than 10 years.<sup>9</sup> The focus is on how much more than the minimum 10 years is required to achieve the purposes of sentencing I referred to at the outset.<sup>10</sup>

[24] I agree with the lawyers that s 104 of the Sentencing Act does not apply to your case. Without in any way diminishing the brutality of your attack, I do not consider it reaches the particularly high level of brutality, cruelty, depravity or callousness required for that section of the Act to apply.<sup>11</sup>

[25] The main aggravating features of the offending are the brutal and frenzied attack to the head and face with a hammer, and the fact that the attack took place in Mr Ingle's home, a place of sanctuary where he was entitled to feel safe. The arson and use of the bank card are also aggravating features. I do not consider it lessens your culpability that you may have murdered Mr Ingle to ensure you followed through

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<sup>7</sup> Section 102.

<sup>8</sup> *R v Van Hemert* [2021] NZCA 261 at [34]-[42].

<sup>9</sup> Sentencing Act, s 103.

<sup>10</sup> *R v Howse* [2003] 3 NZLR 767 (CA).

<sup>11</sup> *R v Christison* [2013] NZHC 2813 at [38].

with a desire to commit suicide, as you have suggested in the most recent psychological report.

[26] In terms of comparable cases, the Crown relies on the case of *R v Fa*.<sup>12</sup> In that case, there were three to four blows with a hammer to the head (a bloodied knife was also found at the scene but does not appear to have been used to inflict the fatal blows). The offender had prepared himself for violence and his actions showed an element of preplanning.<sup>13</sup> A minimum period of imprisonment of 14 years was imposed.

[27] The Crown also cites *R v McKee* which was a frenzied attack involving the offender stabbing the victim some 28 times around the head and neck in a way that caught the victim completely by surprise.<sup>14</sup> There was an attempt to light the body on fire in that case. A minimum period of imprisonment of 15 years was imposed.

[28] Having regard to these cases, I consider that a starting point of 14 years is appropriate without factoring in the arson. The arson, in my view, clearly increases the seriousness of your offending. I consider this should be reflected in an uplift of one year.<sup>15</sup> I therefore consider the overall starting point for the minimum period of imprisonment should be 15 years.

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

[29] Turning then to personal, aggravating and mitigating factors, given the specific purposes of sentencing applicable to imposing a minimum period of imprisonment for murder, credit for personal mitigating factors is constrained.<sup>16</sup> Credit for a guilty plea is normally in the range of one to two years.<sup>17</sup>

[30] While your guilty pleas were entered two weeks before trial, the Crown acknowledges that you had long before indicated your willingness to plead guilty. I understand the delay to be mainly as a result of the psychological assessments. I

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<sup>12</sup> *R v Fa* HC Auckland CRI-2006-004-003084, 17 August 2007.

<sup>13</sup> At [23].

<sup>14</sup> *R v McKee* HC Christchurch CRI-2007-009-017060, 7 August 2008 at [6].

<sup>15</sup> *R v Brackenridge* [2019] NZHC 1627 at [31].

<sup>16</sup> *Hall's Sentencing*, above n 4.

<sup>17</sup> *R v Peeni* [2020] NZHC 1352 at [24].

reduce the minimum period of imprisonment by 18 months to reflect the fact that pleading guilty has saved Mr Ingle's family the anguish of a trial. However, I also acknowledge that the evidence against you was very strong.

[31] By all accounts this offending was completely out of character and you are as shocked that it happened as everyone who knows you. You acknowledge the seriousness of what you have done, and you have not attempted to minimise your actions. You say you now want to focus on helping others.

[32] I agree with the recent psychological report that there does not appear to be any factors that really explain your offending except a pent-up eruption of emotions in an intoxicated state. The report writer says that you appear to have had a waxing and waning low mood and substance abuse disorder exacerbated by biology, experiences and lifestyle factors. Your childhood included some difficulties, including coping with the suicide of a brother, but you were not subjected to the type of deprivation or abuse that many defendants suffer. Although these matters appear to have had limited causative impact on your offending, I am prepared to factor them into a modest overall reduction for personal mitigation.

[33] However, I consider your genuine remorse, and your prospects of rehabilitation given your relatively young age, desire to change and previous good character, are the main mitigating features. Taking all those personal mitigating factors into account, a further modest credit of six months is warranted.

### **Summary**

[34] Mr Whenuaroa, I take an overall starting point of 15 years for the minimum period of imprisonment. This is reduced by two years for personal mitigating factors including your guilty plea.

### **Result**

[35] Mr Whenuaroa, please stand.



[36] On the charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 13 years.

[37] On the arson charge, I sentence you to four years' imprisonment to be served concurrently.

Solicitors:  
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**La Hood J**