

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

**I TE KŌTI MATUA O AOTEAROA  
TAURANGA MOANA ROHE**

**CRI-2021-070-4281  
[2023] NZHC 3700**

**THE KING**

**v**

**DANE MARK PUKEPUKE**

Hearing: 14 December 2023

Appearances: R W Jenson and C Houia for Crown  
S McColgan for Defendant

Sentence: 14 December 2023

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**SENTENCING REMARKS OF LANG J**

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Solicitors/counsel:  
Pollett Legal Ltd, Tauranga  
S McColgan, Barrister, Auckland

[1] Mr Pukepuke, you appear for sentence having pleaded guilty to the murder of Mr David Kuka. Mr Kuka was shot and killed at the address where he was living in Tauranga on the evening of 11 February 2018.

[2] There is no dispute that you must be sentenced to life imprisonment.<sup>1</sup> The only other issue I am required to determine today is the minimum term of imprisonment you should be required to serve before being eligible to apply for parole.

### **Background**

[3] You pleaded guilty at your first appearance in this Court. At that stage no summary of facts had been agreed with the Crown. You disputed aspects of the summary of facts. It has therefore been agreed that I should sentence you on the facts as I found them to be on the evidence given at the trial of your three co-defendants in September 2023. Mr Belmont, Mr Rewiri and Mr Wright were charged with being parties to Mr Kuka's murder but were acquitted of that offence. Their trial gave me a good insight into the events that led to Mr Kuka's death.

[4] You disputed the suggestion by the Crown that you killed Mr Kuka as a premeditated act by way of retribution on behalf of the Mongrel Mob gang for the fact that a member of Mongrel Mob, Mr Lance Waite, had been shot and killed at Mr Kuka's address on 3 January 2018. I heard submissions on that issue on 11 December 2023 and issued written factual findings later the same day.<sup>2</sup> I now sentence you in accordance with those findings, which will also be annexed to and form part of these remarks.

[5] There was no dispute at trial that you and your co-defendants were members of the Mongrel Mob gang. Mr Rewiri and Mr Wright belonged to the Tauranga chapter of the gang whilst Mr Belmont and you belonged to a chapter in the central North Island. Mr Rewiri was senior in status to Mr Wright and Mr Belmont was senior in status to you.

[6] It was also common ground that on 3 January 2018 another member of the Mongrel Mob, Mr Lance Waite, was shot and killed at the address in Wilrose Place,

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<sup>1</sup> Sentencing Act 2002, s 102(1).

<sup>2</sup> *R v Pukepuke* [2023] NZHC 3619.

Tauranga where Mr Kuka was living and was subsequently shot. You attended Mr Waite's tangi in Hawkes Bay on 8 and 9 January 2018.

[7] During the weeks following the shooting of Mr Waite, Mr Belmont travelled to Tauranga on two occasions. You were living in Rotorua and also travelled to Tauranga during this period. Cellphone polling data showed that you and Mr Belmont were in Tauranga on the day when members of the Mongrel Mob visited Mr Stewart Keepa, who lived at the address where Mr Waite had been shot. They forced Mr Keepa to write a list of names of the persons who were present at the address on the night when that occurred. Mr Kuka's name was on that list. The list was found some months later at Mr Belmont's mother's address at Raetihi.

[8] You also visited Mr Mark Puata's address in Tauranga on at least two occasions. On these occasions you asked Mr Puata questions about who was responsible for shooting Mr Waite.

[9] The events that led to Mr Kuka's death began on the morning of 11 February 2018 when Mr Belmont left his home address in Raetihi. He was driving a distinctive silver Ford Falcon motor vehicle with a red bonnet. His vehicle was captured on CCTV at a service station just outside Taupō at 11.54 am. It was then filmed travelling along Te Ngae Road, Rotorua at 12.55 pm. At or about the same time Mr Belmont was engaged in a telephone discussion with you that lasted for just under three minutes. Thereafter Mr Belmont's cellphone ceased polling until the following day.

[10] The Crown case at trial was that you and Mr Belmont both travelled from Rotorua to Tauranga in Mr Belmont's vehicle. The Crown also alleged that Mr Belmont and you were together throughout the events that followed. I consider the jury's not guilty verdict in relation to Mr Belmont reflects the fact that they could not be sure he was in his vehicle with you after it left Rotorua. Nor could they be sure that he provided you with a vehicle and firearm in the knowledge that you would use them to travel to Tauranga to shoot an occupant of the Wilrose Place address where Mr Waite had been killed. I will therefore sentence you on the basis that you were alone in the vehicle after it left Rotorua and that you acted alone in the events that subsequently took place.

[11] The vehicle in which you were travelling was filmed on CCTV in the main street of Te Puke at 4.20 pm before travelling on to Tauranga, where it was captured on CCTV at 4.39 pm. At 6.40 pm, the vehicle was captured on CCTV turning left off Cameron Road and driving past the address in Wilrose Place where Mr Kuka was shot just over three hours later. The vehicle then travelled to the Pyes Pa area.

[12] Your cellphone began polling in the Pyes Pa rural area at 6.53 pm. It polled again in the same area at 7.21 pm and 8.14 pm. The Crown contended that during this period the vehicle travelled to the address where Mr Rewiri was staying at 76 Merrick Road, Pyes Pa. I am satisfied that this occurred, and, for the reasons I shall shortly outline, that Mr Rewiri made arrangements at this point for you to have the use of another vehicle.

[13] The vehicle you were driving remained in the Pyes Pa area until 8.20 pm, when it was captured on CCTV travelling towards Greerton through the Pyes Pa roundabout. At 8.22 pm, the vehicle travelled through the Greerton shopping centre and then along Cameron Road to Gate Pa. Your cellphone was polling in Gate Pa at 8.27 pm.

[14] At 8.32 pm, your vehicle arrived at the Gate Pa shopping centre in the vicinity of the Marble Bar. At 8.38 pm, the vehicle was captured on CCTV leaving the area. The admitted facts at trial recorded that Ms Harata Kiwi was present at the Marble Bar at this time. She could not see the driver of the vehicle but could see the passenger. This was an older man with a beard. She subsequently picked this person out of a photograph montage the police showed her. The admitted facts record that on 21 February 2019 Ms Kiwi identified you from the photo montage as having been the passenger in Mr Belmont's vehicle.

[15] Whilst this vehicle was at the Marble Bar a silver Ford Falcon AU model motor vehicle was also in the vicinity. That vehicle had previously been in the possession of Mr Kingi Tokona. It appears that there had been some discussion between Mr Tokona and Mr Wright about Mr Rewiri taking possession of the vehicle. At 6.13 pm on 11 February 2018 Mr Tokona had sent Mr Rewiri a text message asking whether he still wanted the vehicle. Mr Rewiri then called Mr Tokona at 8.08 pm and the Crown alleged that this led to your vehicle travelling from the Merrick Road address to the Marble Bar a short time later.

[16] Mr Rewiri and Mr Wright were charged as parties to Mr Kuka's murder on the basis that they provided you with the vehicle that you used to travel to and from Mr Kuka's address. I consider the jury's not guilty verdicts on the charges that they faced reflect the fact that the jury could not be sure that those defendants knew what you intended to do with the vehicle after you took possession of it.

[17] The Ford Falcon AU and the vehicle in which you were travelling left the Marble Bar at 8.38 pm travelling in convoy. The two vehicles were then captured on CCTV travelling together down Cameron Road towards Pyes Pa at 8.50 pm. From 8.54 pm until 9.10 pm, your cellphone also polled in the Pyes Pa area. At 9.13 pm, both vehicles left the Pyes Pa area and travelled towards Welcome Bay, arriving at 9.18 pm. Your cellphone was polling in the Welcome Bay area between 9.18 pm and 9.34 pm.

[18] The Crown contended that the two vehicles must have stopped in Welcome Bay Road and that you took possession of the Ford Falcon AU. At 9.52 pm, that vehicle travelled from Welcome Bay Road to Courtney Road, close to 18 Wilrose Place. It was captured on CCTV at 9.58 pm travelling towards 18 Wilrose Place and was then filmed driving away from the area at 10.02 pm. The Ford Falcon AU then travelled along Fraser Street and down Oropi Road to State Highway 29A, arriving at 10.05 pm. It then entered Welcome Bay Road at 10.11 pm.

[19] At 10.36 pm, the vehicle in which you were travelling was seen on CCTV leaving Welcome Bay Road and travelling along State Highway 29A to Oropi Road. Just under an hour later, at 11.23 pm, it was seen travelling from Pyes Pa back to Welcome Bay Road before being filmed travelling through Te Puke at 11.36 pm.

[20] At 12.30 am on 12 February 2018, a police officer stopped Mr Belmont travelling in his vehicle in Brent Road in Rotorua. You were not in the vehicle at this time. Your cellphone was polling in Rotorua at 1.13 am.

[21] The central issue I was required to decide on 11 December 2023 was whether the Crown had established beyond reasonable doubt that you killed Mr Kuka as a premeditated act on behalf of the Mongrel Mob in retribution for the fact that Mr Waite had been killed at the Wilrose Place address some weeks earlier.

[22] Given the way in which events unfolded after Mr Waite's death I was satisfied beyond reasonable doubt that Mr Kuka was killed as a result of a decision taken by you to exact retribution for Mr Waite's death on behalf of the Mongrel Mob. It is not possible to be sure that you decided to shoot Mr Kuka as opposed to any other occupant of the Wilrose Place address even though his name was on the list created by Mr Keepa. Rather, I was satisfied beyond reasonable doubt that you decided to shoot an occupant of the address where Mr Waite had been shot as retribution on behalf of the Mongrel Mob for that event. The fact that you travelled to Tauranga prior to 11 February 2018 at a time when you and other members of the gang were asking questions about Mr Waite's shooting suggests you were considering the issue of retribution from an early stage after Mr Waite's death.

[23] I did not consider there was any reasonable possibility that you killed Mr Kuka spontaneously as a result of an argument or dispute that may have arisen shortly after you arrived at his address on the evening of 11 February 2018. I reached this conclusion for several reasons.

[24] First, there was no evidence of any struggle having occurred at the address where Mr Kuka was shot. Rather, Mr Kuka was shot in the head and neck at close range. Secondly, your journey from Rotorua to Tauranga was clearly a pre-planned event. This involved Mr Belmont travelling from Raetihi to Rotorua to provide you with the vehicle and you also acquired a firearm. You also then acquired a second vehicle in Tauranga that you used to travel to and from Mr Kuka's address.

[25] Thirdly, if you had wished to meet with an occupant of the Wilrose Place address for any other purpose it is likely that you would have stopped at the address when you drove past it at 6.40 pm, shortly after arriving in Tauranga. Instead, you did not go to the address until more than three hours later. During this period you travelled to the Oropi area where I am satisfied that arrangements were made for you to be provided with an alternative vehicle. This undoubtedly occurred because you did not wish to travel to Mr Kuka's address in Mr Belmont's vehicle due to its very distinctive appearance.

[26] Fourthly, I consider the very narrow timeframe within which the shooting occurred is a matter of considerable significance. Less than four minutes elapsed

between the vehicle arriving at Wilrose Place and then departing. It is difficult to see how you and Mr Kuka would have had time during that period to become involved in some form of dispute that escalated to the point where it resulted in Mr Kuka being fatally wounded.

[27] I was therefore satisfied that you entered Mr Kuka's dwelling with the intention of shooting an occupant of the address and that you were armed with a firearm for that purpose. You then discharged the firearm at Mr Kuka virtually immediately after you entered the dwelling and encountered him in the kitchen upstairs. You did so on behalf of the Mongrel Mob by way of retribution for the shooting of Mr Waite at that address.

[28] I now need to determine whether s 104(1) of the Sentencing Act 2002 is engaged. The Crown argues that it is whilst your counsel contends it is not.

### **Section 104(1) of the Sentencing Act 2002**

*Is s 104(1) engaged?*

[29] Section 104(1) of the Sentencing Act 2002 requires the Court to make an order imposing a minimum term of imprisonment of at least 17 years if the commission of a murder has any of the characteristics listed in the section.

[30] The Crown contends the section is engaged because of three factors. First, it says that Mr Kuka's murder involved calculated and lengthy planning by you.<sup>3</sup> This factor will only be engaged where the offending involves a heightened degree of planning.<sup>4</sup> Your preparation led to you acquiring Mr Belmont's vehicle and a firearm before travelling to Tauranga. There you acquired the use of a second vehicle for the purpose of travelling to and from Mr Kuka's address. These acts satisfy me that this particular murder was committed in circumstances where there was a heightened degree of planning and premeditation. I consider they are similar in some respects to the acts of the offender on *Winders v R*, a case cited by the Crown in its submissions.<sup>5</sup> I am therefore satisfied that this factor is engaged in the circumstances of your offending.

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<sup>3</sup> Sentencing Act, s 104(1)(b).

<sup>4</sup> *Winders v R* [2018] NZCA 277, [2019] 2 NZLR 305 at [68].

<sup>5</sup> *Winders v R*, above n 4.

[31] The Crown also says the offending involved either the unlawful entry into, or unlawful presence by, you in Mr Kuka's dwelling.<sup>6</sup> There is nothing in the evidence to suggest that the door to the dwelling was forced. Nor is there anything in the evidence to suggest that you had arranged to visit Mr Kuka at around 10 pm on the evening of 11 February 2018 or that he invited you into his dwelling. I have found that you unlawfully entered Mr Kuka's address because you did so at night with the intention of shooting an occupant of the address. I am satisfied this factor is also engaged.

[32] Thirdly, the Crown contends that you carried out the murder in a manner that was particularly brutal, cruel and callous.<sup>7</sup> The Crown relies for this proposition in part on a finding that this factor was engaged in *R v Moala*.<sup>8</sup> In that case the offender had shot the unarmed victim in the face at close range and this was held to be conduct that came within s 104(1)(e). However, the Court of Appeal has confirmed that s 104(1)(e) will only be engaged where elements of cruelty, callousness and indifference are present to a high level.<sup>9</sup> There are certainly elements of callousness and cruelty in your conduct, including the fact that you left the scene when you must have known Mr Kuka was severely injured and likely to die without medical intervention. These factors will obviously be relevant in setting the appropriate minimum term of imprisonment. However, I do not consider they reach the level of engaging s 104(1)(e).

[33] I have therefore found s 104(1) to be engaged on two of the three bases advanced by the Crown.

### *Approach*

[34] In any case where s 104(1) is engaged the Court must first determine the length of minimum term of imprisonment that would be imposed putting aside that section. This requires the Court to compare the circumstances and culpability of the offending with the minimum terms of imprisonment imposed in other similar cases.<sup>10</sup> This is

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<sup>6</sup> Sentencing Act, s 104(1)(c).

<sup>7</sup> Section 104(1)(e).

<sup>8</sup> *R v Moala* HC Auckland CRI-2006-092-461, 12 December 2007.

<sup>9</sup> *R v Gottermeyer* [2014] NZCA 205 at [79(d)].

<sup>10</sup> *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 affirming the approach taken in *R v Williams* [2005] 2 NZLR 506 (CA).



not a straightforward exercise however, because, although other cases may have similarities to the index case, they also inevitably have differences.

[35] Where this exercise suggests the minimum term would ordinarily have been less than 17 years, the Court must stand back and determine whether it would be manifestly unjust to impose a minimum term of 17 years imprisonment. This requires the Court to determine whether, as a matter of impression, the offending in question is of a type that Parliament intended s 104(1) to apply to.

#### *Other cases*

[36] The Crown relies on the approach taken in three cases in support of its submission that a minimum term of around 16 years would normally be imposed. In *Moala*,<sup>11</sup> the defendant and associates engaged in a confrontation with members of a rival gang. During the confrontation, the defendant raised a shotgun and fired it at a member of the opposing gang from close range. The defendant then fled the scene with his associates. The Court held that the appropriate minimum term was 13 years imprisonment.<sup>12</sup>

[37] The Crown also refers to *R v Samuels*, in which a minimum term of 14 years imprisonment was held to have been appropriate but for the operation of s 104(1).<sup>13</sup> In that case the victim of the offending had come to the door of an address armed with an axe and the offender had shot him at close range in response.

[38] I consider the offending in your case to be more serious than that in either *Moala* or *Samuels* because it involved a greater degree of premeditation as well as the killing of an innocent and unarmed victim in his dwelling at night.

[39] Finally, the Crown relies on *R v Tapaevalu*.<sup>14</sup> However, the circumstances of that case were again very different because it involved a shooting that was the culmination of a lengthy period of negotiation about drug dealing activity. It also involved an attack using firearms by two persons on two unarmed victims. This

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<sup>11</sup> *R v Moala*, above n 8.

<sup>12</sup> At [16].

<sup>13</sup> *R v Samuels* [2019] NZHC 2948 at [35].

<sup>14</sup> *R v Tapaevalu* [2019] NZHC 1867.

resulted in the death of one victim and the near death of the other. Not surprisingly, the Court in that case held that minimum periods of 17 and 19 years imprisonment were justified putting aside the application of s 104(1).<sup>15</sup> The circumstances of the offending in *Tapaevalu* were plainly more serious than those in the present case.

[40] For the reasons already given in relation to the first two cases cited by the Crown, I do not accept Mr McColgan's submission on your behalf that a minimum term of 13 years would ordinarily have been appropriate. And, as with the cases cited by the Crown, the cases Mr McColgan has cited also have important factual differences to those in the present case.<sup>16</sup>

[41] Your offending has several significant aggravating features. It involved the premeditated and unprovoked shooting of an innocent victim at night in what should have been the sanctity of his own dwelling. It was also committed as an act of retribution for the shooting of a member of a gang of which you were a member.

[42] Taking these factors into account I have concluded that, but for the operation of s 104(1), your offending would have attracted a minimum term of 16 years imprisonment before taking into account any credit to be given for mitigating factors. Given that the minimum term would ordinarily be less than 17 years imprisonment it is now necessary to stand back and determine whether your offending was of a type that Parliament intended s 104(1) to apply to.

[43] The aggravating features of your offending that I have already identified satisfied me that this type of offending falls squarely within the type of offending to which Parliament intended s 104(1) to apply. But for the mitigating factor present in your case, I would therefore not consider it manifestly unjust to impose a minimum term of 17 years imprisonment. However, your counsel has referred me to two mitigating factors that he contends would render it manifestly unjust to impose a sentence of 17 years imprisonment. The Crown accepts that this is so in relation to one of the mitigating factors but not the other.

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<sup>15</sup> At [46] and [49].

<sup>16</sup> *R v Afamasaga* [2014] NZHC 2142; *R v Phillimore* [2023] NZHC 2225; and *R v Tinei* [2021] NZHC 556.

[44] The first mitigating factor both counsel have identified relates to your guilty plea. This was entered at the earliest possible stage and would ordinarily attract a discount of around two years from the minimum term of imprisonment.<sup>17</sup> However, I accept the Crown's submission that you diluted the value of your plea to some extent by applying on two separate occasions to vacate it. You filed the first of these applications not long after you entered your guilty plea. This application was left undetermined for a very considerable period whilst counsel who was then acting for you endeavoured to assemble material to support it. Notably, you never provided an affidavit setting out the basis on which you sought to vacate your plea. You ultimately withdrew the first application after conferring with your counsel on the morning it was scheduled to be heard.

[45] You then renewed your application to vacate your guilty plea very shortly before the commencement of the trial. You filed no further material in support of the second application. Instead you asked the Court to determine it on the basis of the material filed in support of the first application. This included an affidavit filed by the Crown from Mr Martin Hine, counsel who acted for you when you entered your guilty plea. He confirmed that he had acted for you on previous occasions, and he also knew other members of your family. He said he advised you not to enter a guilty plea at such an early stage. He also said that nothing in his dealings with you led him to suspect that you were not capable of making a rational decision at the time you entered your plea. Not surprisingly, I dismissed the second application in a judgment delivered on 28 August 2023.<sup>18</sup>

[46] The principal value generally inherent in a guilty plea lies in the fact that it constitutes an acknowledgement by the offender that he or she committed the crime that forms the subject of the charge. In the present case I consider the value of your plea as an acknowledgement of your wrongdoing was diluted or dissipated to some extent by your subsequent attempts to vacate the plea.

[47] A guilty plea also commonly relieves the state of being put to the expense of a trial. That was not the outcome in the present case because your co-defendants

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<sup>17</sup> *Frost v R* [2023] NZCA 294 at [78].

<sup>18</sup> *R v Pukepuke* [2023] NZHC 2347.

proceeded to trial. However, the length of the trial was reduced significantly because of your plea and the credit to be given for your guilty plea should not be diminished because the Crown was still required to proceed with the trial of your co-defendants.

[48] I am satisfied it would be manifestly unjust not to give credit for your guilty plea even though you subsequently attempted to withdraw it on two occasions. Ordinarily I would have applied a discount of two years to reflect your very early guilty plea. However, I propose to reduce the two-year discount by nine months to reflect the fact that you subsequently attempted to vacate your plea on two separate occasions. This means a discount of 15 months is appropriate.

[49] Your counsel has tendered a report under s 27 of the Sentencing Act. He submits that I should provide you with a further discount of 12 months to reflect mitigating factors identified in this report. The Crown contends that given the seriousness of your offending no further discount should be given.

[50] You are now 56 years of age. The report records that you grew up in circumstances involving familial disconnection, rejection and abuse. You were largely raised by your grandparents because your parents were often absent due to work commitments during your early years. You suffered different forms of abuse at the hands of several family members and the trauma from this is likely to have led to your subsequent severe addiction to drugs as well as mental health issues.

[51] You were exposed to gang culture from an early age and ultimately found a sense of purpose and identity in the Mongrel Mob gang. These were aspects of your life that had been lacking until you became associated with the gang. This led you to develop a deep sense of loyalty to the Mongrel Mob, a factor that is obviously prominent in the present offending.

[52] The abuse of alcohol and drugs has also been a feature of your adult life. Your substance abuse also led to a deterioration in your mental health and culminated in you being admitted to hospital in 1991 where you underwent different forms of therapy. During this period you were diagnosed as suffering from drug induced psychosis and bipolar disorder.

[53] After your release from hospital your criminal convictions for different forms of offending began to escalate. This resulted in you being sentenced to 11 years 10 months imprisonment in 1993 on two charges of rape and one charge of assault with intent to rape. You say you began using methamphetamine whilst serving this sentence and that your consumption of methamphetamine increased significantly following your eventual release from prison. Between 2002 and 2016 you received several shorter sentences of imprisonment for offending involving drugs, dishonesty and violence. Between 2019 and 2021 your convictions comprise driving offences. The report says you continued to use methamphetamine on a regular basis during the period leading up to the present offending.

[54] I am satisfied that some allowance can be made to reflect the issues you encountered during your upbringing given the close association between these and your longstanding attachment to the Mongrel Mob gang. You have been a member of the Mongrel Mob for over 30 years. This led directly to the situation in which you now find yourself. You told the writer of the report that one of your friends (who I assume to be Mr Waite) was shot as part of a drug/gang rivalry and you became involved in trying to avenge the friend. I propose to make an allowance of nine months to reflect the mitigating factors identified in the s 27 report.

[55] The discounts I have identified therefore reduce the minimum term of imprisonment that would otherwise have been imposed by two years.

### **Sentence**

[56] If you would now stand Mr Pukepuke. On the charge of murder, you are sentenced to life imprisonment and ordered to serve a minimum term of 15 years before being eligible to apply for parole.

[57] You may stand down.

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TAURANGA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TAURANGA MOANA ROHE**

**CRI-2021-070-4281  
[2023] NZHC 3619**

**THE KING**

v

**DANE MARK PUKEPUKE**

Hearing: 11 December 2023

Appearances: R Jenson for Crown  
S McColgan for Defendant

Judgment: 11 December 2023

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**FACTUAL FINDINGS OF LANG J**

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This judgment was delivered by Justice Lang  
On 11 December 2023 at 2.00 pm  
Registrar/Deputy Registrar

Date:.....

Solicitors/counsel:  
Pollett Legal Ltd, Tauranga  
S McColgan, Barrister, Auckland

[1] At approximately 10 pm on the evening of 11 February 2018, Mr David Kuka was shot and killed at the address at which he lived in Tauranga. Mr Pukepuke has pleaded guilty to Mr Kuka's murder. He is to be sentenced on 14 December 2023.

[2] Mr Pukepuke entered his guilty plea on his first appearance in this Court. No agreement had been reached with the Crown at that stage regarding a summary of facts. It has now been agreed that I should sentence Mr Pukepuke on the basis of the facts as I found them to be during the trial of Mr Pukepuke's three co-defendants. Mr Belmont, Mr Rewiri and Mr Wright were all acquitted of being parties to the murder of Mr Kuka.

[3] Mr Pukepuke accepts that he travelled to the address where Mr Kuka was killed on 11 February 2018 and that he is the party responsible for Mr Kuka's death. He also accepts that a firearm was involved in Mr Kuka's death. Further, he has not sought to challenge the pathological evidence which was to the effect that Mr Kuka was shot at close range in the head and the neck. These injuries led to his death.

[4] However, Mr Pukepuke disputes other aggravating features of the offending upon which the Crown relies. In particular, he disputes the Crown's contention that Mr Kuka was killed as a premeditated act of retribution by the Mongrel Mob for the fact that a member of the Mongrel Mob had been shot and killed at Mr Kuka's address on 3 January 2018. He also disputes having entered Mr Kuka's address unlawfully.

[5] I now set out the factual basis on which I propose to sentence Mr Pukepuke.

### *Background*

[6] There was no dispute at trial that all four defendants were members of the Mongrel Mob gang. Mr Rewiri and Mr Wright belonged to the Tauranga chapter of the gang whilst Mr Belmont and Mr Pukepuke belonged to a chapter in the central North Island. Mr Rewiri was senior in status to Mr Wright and Mr Belmont was senior in status to Mr Pukepuke.

[7] It was also common ground that on 3 January 2018 another member of the Mongrel Mob, Mr Lance Waite, was shot and killed at the address where Mr Kuka

lived and was subsequently shot. Mr Pukepuke attended Mr Waite's tangi in Hawkes Bay on 8 and 9 January 2018. Another person was subsequently charged with murdering Mr Waite but was found guilty of manslaughter following a trial by jury.

[8] During the weeks following the shooting of Mr Waite, Mr Belmont travelled to Tauranga on two occasions. Mr Pukepuke, who lives in Rotorua, also travelled to Tauranga during this period. Cellphone polling data showed that he and Mr Belmont were in Tauranga on the day when members of the Mongrel Mob visited Mr Stewart Keepa, who lived at the address where Mr Waite had been shot. Those persons forced Mr Keepa to write a list of names of the persons who were present at the address on that night. Mr Kuka's name was on that list. The list was found some months later at Mr Belmont's address at Raetahi.

[9] Mr Pukepuke also visited Mr Mark Puata's address in Tauranga on at least two occasions. On these occasions he asked Mr Puata questions about who was responsible for shooting Mr Waite.

*The events that occurred on 11 February 2018*

[10] Mr Belmont left his home address in Raetahi on the morning of 11 February 2018. He was driving a distinctive silver Ford Falcon motor vehicle with a red bonnet. His vehicle was captured on CCTV at a service station just outside Taupō at 11.54 am. It was then filmed travelling along Te Ngae Road, Rotorua at 12.55 pm. At or about the same time Mr Belmont was engaged in a telephone discussion with Mr Pukepuke that lasted for just under three minutes.

[11] At 3.24 pm Mr Belmont engaged in an exchange of text messages with Mr Galvin-Taikato, a senior member of the Mongrel Mob who lived in Rotorua. The Crown alleged that this resulted in Mr Belmont or Mr Pukepuke picking up a firearm from an address in Rotorua. I accept that there must be a reasonable doubt about this because an arrangement by Mr Belmont to source a firearm for Mr Pukepuke's use in shooting an occupant of Mr Kuka's address would have been sufficient for the jury to find Mr Belmont guilty of knowingly being a party to Mr Kuka's murder or manslaughter.



[12] The Crown case at trial was that Mr Pukepuke and Mr Belmont both travelled from Rotorua to Tauranga in Mr Belmont's vehicle. The Crown also alleged that Mr Belmont and Mr Pukepuke were together throughout the events that followed. However, after polling in Rotorua Mr Belmont's cellphone ceased polling until the following day. I consider the jury's not guilty verdict for Mr Belmont reflects the fact that they could not be sure that he was in the vehicle with Mr Pukepuke after it left Rotorua or that he knew what Mr Pukepuke was going to do once he left Rotorua in Mr Belmont's vehicle. I will therefore sentence Mr Pukepuke on the basis that he was alone in the vehicle after it left Rotorua. I will also sentence him on the basis that he took a firearm with him when he travelled to Rotorua having obtained that firearm without Mr Belmont's knowledge.

[13] Mr Belmont's vehicle was filmed in the main street of Te Puke at 4.20 pm before travelling on to Tauranga, where it was captured on CCTV at 4.39 pm. At 6.40 pm, Mr Belmont's vehicle was captured on CCTV turning left off Cameron Road and driving past the address where Mr Kuka was subsequently shot. The vehicle then travelled to the Pyes Pa area.

[14] Mr Pukepuke's cellphone began polling in the Pyes Pa rural area at 6.53 pm. It polled again in the same area at 7.21 pm and 8.14 pm. The Crown contended that during this period the vehicle travelled to the address where Mr Rewiri was staying at 76 Merrick Road, Pyes Pa. I am satisfied that this occurred, and, for reasons I shall shortly outline, that Mr Rewiri made arrangements at this point for Mr Pukepuke to have the use of another vehicle.

[15] Mr Belmont's vehicle remained in the Pyes Pa area until 8.20 pm, when it was captured on CCTV travelling towards Greerton through the Pyes Pa roundabout. At 8.22 pm, the vehicle travelled through the Greerton shopping centre and then along Cameron Road to Gate Pa. Mr Pukepuke's cellphone was polling in Gate Pa at 8.27 pm.

[16] At 8.32 pm, Mr Belmont's vehicle arrived at the Gate Pa shopping centre in the vicinity of the Marble Bar. At 8.38 pm, the vehicle was captured on CCTV leaving the area. The admitted facts record that Ms Harata Kiwi was present at the Marble Bar

at this time. She could not see the driver of Mr Belmont's vehicle but could see the passenger. This was an older man with a beard. She subsequently picked this person out of a photo montage the police showed her. The admitted facts record that on 21 February 2019 Ms Kiwi identified Mr Pukepuke from a photo montage.

[17] Whilst Mr Belmont's vehicle was at the Marble Bar a silver Ford Falcon AU model motor vehicle having the registration number CLZ 180 was also in the vicinity. That vehicle had previously been in the possession of Mr Kingi Tokona. A day or two earlier it had been damaged whilst another person, Mr Jose Matthews, was driving it. It appears there had been some discussion between Mr Tokona and Mr Wright about Mr Rewiri taking possession of the vehicle. At 6.13 pm on 11 February 2018 Mr Tokona had sent Mr Rewiri a text message asking whether he still wanted the vehicle. Mr Rewiri then called Mr Tokona at 8.08 pm and the Crown says that this led to Mr Belmont's vehicle travelling from the Merrick Road address to the Marble Bar a short time later.

[18] Mr Rewiri and Mr Wright were charged as parties to Mr Kuka's murder on the basis that they provided Mr Pukepuke with the vehicle that he used to travel to and from Mr Kuka's address. I consider the jury's verdicts reflect the fact that the jury could not be sure that Mr Rewiri and Mr Wright knew what Mr Pukepuke intended to do with the vehicle after he obtained it through their efforts.

[19] The Ford Falcon AU and Mr Belmont's vehicle then left the Marble Bar at 8.38 pm travelling in convoy. The two vehicles are then captured on CCTV travelling in convoy down Cameron Road towards Pyes Pa at 8.50 pm. From 8.54 pm until 9.10 pm, Mr Pukepuke's cellphone also polls in the Pyes Pa area. At 9.13 pm, both vehicles left the Pyes Pa area and travelled towards Welcome Bay, arriving at 9.18 pm. Mr Pukepuke's cellphone was polling in the Welcome Bay area between 9.18 pm and 9.34 pm. At this time, Mr Rewiri's cellphone is polling in the rural Pyes Pa area, suggesting he remained at his address in Merrick Road.

[20] The Crown contended that the two vehicles must have stopped in Welcome Bay Road and that Mr Wright handed over the Ford Falcon AU to Mr Pukepuke. At 9.52 pm, the Ford Falcon AU travelled from Welcome Bay Road to Courtney Road,

close to 18 Wilrose Place. It is captured on CCTV at 9.58 pm in that area and is then seen driving away from the area at 10.02 pm. The shooting of Mr Kuka occurred during the period between 9.58 pm and 10.02 pm. Another occupant of the address returned a short time after Mr Kuka had been shot and found Mr Kuka still alive but severely injured. He subsequently died at the scene.

[21] After leaving the address where Mr Kuka was shot the Ford Falcon AU then travelled along Fraser Street and down Oropi Road to State Highway 29A, arriving at 10.05 pm. It then entered Welcome Bay Road at 10.11 pm.

[22] At 10.36 pm, Mr Belmont's vehicle was seen on CCTV leaving Welcome Bay Road and travelling along State Highway 29A to Oropi Road. Just under an hour later, at 11.23 pm, Mr Belmont's vehicle was seen travelling from Pyes Pa back to Welcome Bay Road before travelling through Te Puke at 11.36 pm.

[23] At 12.30 am on 12 February 2018, a police officer stopped Mr Belmont travelling in his vehicle in Brent Road in Rotorua. Mr Pukepuke was not in the vehicle at this time. Mr Pukepuke's cellphone was polling in Rotorua at 1.13 am.

### *Findings*

[24] The central issue I am required to decide is whether the Crown has established beyond reasonable doubt that Mr Pukepuke killed Mr Kuka as a premeditated act by the Mongrel Mob in retribution for the fact that Mr Waite had been killed at the address some weeks earlier.

[25] Given the way in which events unfolded after Mr Waite's death I am satisfied beyond reasonable doubt that Mr Kuka was killed as a result of a decision by Mr Pukepuke to exact retribution on behalf of the Mongrel Mob for Mr Waite's death. It is probable, but I cannot be satisfied beyond reasonable doubt, that other more senior members of the gang encouraged or instructed Mr Pukepuke to carry out this act. Nor is it possible to be sure that Mr Pukepuke decided to shoot Mr Kuka as opposed to any other occupant of the Wilrose Place address even though Mr Kuka's name was on the list prepared by Mr Keepa. Rather, I am satisfied beyond reasonable doubt that Mr Pukepuke decided to travel to Tauranga to shoot an occupant of the address where

Mr Waite had been shot and killed. He did so as an act of retribution on the gang's behalf. The fact that Mr Pukepuke travelled to Tauranga prior to 11 February 2018 at a time when he and other members of the gang were asking questions about Mr Waite's shooting suggests he became interested in exacting retribution for Mr Waite's death from an early stage.

[26] I do not consider there is any reasonable possibility that Mr Pukepuke killed Mr Kuka spontaneously as a result of an argument or dispute that may have arisen shortly after he arrived at Mr Kuka's address on the evening of 11 February 2018. I reach this conclusion for several reasons.

[27] First, there is no evidence of any struggle having occurred at the address where Mr Kuka was shot. Secondly, Mr Pukepuke's journey from Rotorua to Tauranga to was clearly a pre-planned event. This involved him obtaining the vehicle from Mr Belmont in Rotorua and also a firearm.

[28] Thirdly, I accept the Crown's submission that if Mr Pukepuke had wished to meet with an occupant of Mr Kuka's address for any other purpose it is likely that he would have stopped at the address when he first drove past it in Mr Belmont's vehicle at 6.40 pm, shortly after arriving in Tauranga. Instead, he travelled to the Oropi area where I am satisfied the arrangements were made for him to be provided with an alternative vehicle. Mr Pukepuke undoubtedly considered this to be necessary because he did not wish to travel to Wilrose Place in Mr Belmont's vehicle due to its very distinctive appearance.

[29] Fourthly, the very narrow timeframe within which the shooting occurred is a matter of considerable significance. Less than four minutes elapsed between Mr Belmont's vehicle arriving at Mr Kuka's address and then departing. It is difficult to see how the two men would have had time during that period to become involved in some form of dispute that escalated to the point where it resulted in Mr Kuka being fatally wounded.

[30] I am therefore satisfied beyond reasonable doubt that Mr Pukepuke entered Mr Kuka's dwelling armed with a firearm and intending to shoot an occupant of that

address. This means he entered Mr Kuka's dwelling unlawfully or his presence there became unlawful once he produced the firearm and discharged it at Mr Kuka. I propose to sentence Mr Pukepuke on that basis.

[31] I direct that these findings are not to be distributed other than to counsel until after Mr Pukepuke has been sentenced on 14 December 2023.

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Lang J