IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2022-004-001732
[2024] NZHC 114

THE KING

v

AMIGO JACOBI SINCLAIR-BEERE
AND
LANCE NIELSEN

Hearing:	8 February 2024
Appearances:	H Steele for Crown M Ryan and J Seaton for Defendant Sinclair-Beere L Cordwell and G Duff for Defendant Nielsen
Date:	8 February 2024

SENTENCING NOTES OF VENNING J

Solicitors:	Meredith Connell, Auckland
Counsel:	M Ryan/J Seaton, Auckland L Cordwell/G Duff, Auckland

[1] Amigo Jacobi Sinclair-Beere and Lance Nielsen, you are for sentence on charges of burglary and manslaughter. Following a jury trial in this Court you were found guilty of both charges. The maximum sentence for burglary is 10 years. The maximum sentence for manslaughter is life imprisonment.

[2] Your actions on 19 February 2022 caused the death of Joseph Tahana. At the time of his death Mr Tahana was 29 years old living in an apartment at St Paul Street, Central Auckland. He lived alone. He was a regular user and small-time dealer of cannabis. As is unfortunately the case of people who become involved in drug dealing he had come into contact with gangs. In the weeks prior to his death he was concerned about and for his safety.

[3] The evidence before the Court at trial involved a significant amount of CCTV footage which recorded your actions on the night. There were also relevant communications. From the verdicts the jury were satisfied beyond reasonable doubt that the two of you intended to unlawfully enter the St Paul Apartments and the Crown case was that was to rob Mr Tahana. You intended to steal the proceeds of his cannabis dealing. At 2.13 am Mr Sinclair-Beere you had texted another associate: "Can we just get cash, not bohe". The CCTV footage captures you, Mr Sinclair-Beere, obtaining entry to the ground floor of the apartments via a staircase at the side of the building before letting Mr Nielsen in through the front door.

[4] The CCTV footage goes on to show you then both getting into the lift at about 2.20 am. Mr Nielsen, you were seen to have a backpack. The pair of you then travelled to the 12th floor and used a metal object of some sort to break down the door in order to force entry into Mr Tahana's apartment. Your forcible entry left tool marks on the exterior of the front door. The door frame and door jamb were badly damaged.

[5] It took some time for you to break that door, which was a solid door, down and gain entry. Mr Tahana obviously heard your attempts to break into his apartment. He attempted to call a relative. When that was unsuccessful he sent a text message at 2.24 am which read: "I'm under attack". In fear of violence he then attempted to flee from you by climbing over his balcony. It appears he lowered himself over the balcony

and was holding on by his hands for a time but then ultimately fell 12 floors to his death.

[6] While the apartment itself was undisturbed and there was no forensic evidence of your presence in the apartment or on the balcony, you must have been aware that Mr Tahana fell to his death while you were there because at 2.25 am Mr Sinclair-Beere you sent a message to an associate: "Call asap" and just over a minute later sent a further message: "Bro, we need help". That was before you were seen shortly after that to exit the lift and leave the building. You then spent the next few hours at various addresses around Central Auckland. There was a further text message at 3.28 am: "Bro I think the person might've fallen off the building".[1]

[7] In sentencing you both the Court is required to have regard to the purposes and principles of the Sentencing Act 2002. The particularly relevant purposes are the need to hold you both accountable for the harm caused by your offending, which has ultimately led to the death of Mr Tahana. The sentence must promote in you a sense of responsibility for and acknowledgement of that harm and to denounce and to deter such conduct.

[8] The sentence must also provide for the interest of the victims of the offence and your offending. You have both heard this morning the moving victim impact statement read by Mr Tahana's whanau and you have heard of the effect that Mr Tahana's death has had on the members of his whanau. That impact is severe and ongoing.

[9] The particularly relevant principles in this case are the need to take account of the gravity of the offending, which has led to the death of another person, and your culpability for that. The Court must also take into account the seriousness of the offences as indicated in this case by the maximum penalties, and the need for the sentence that this Court imposes to be consistent with other sentences in comparable or like cases.

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[1] In the course of my sentencing notes I referred to this text as being at 2.28 am. Mr Steele drew my attention to the error which I have corrected in these notes.

[10] In the present case the least restrictive outcome is a sentence of imprisonment.

[11] Having regard to the purposes and principles and sentences imposed in similar cases the Crown submits a starting point of five years for each of you is appropriate. For you Mr Sinclair-Beere, Mr Ryan submits four years.

[12] For you Mr Nielsen, Mr Cordwell also submits the Court should take a start point of four years.

[13] There are a limited number of cases involving manslaughter of this nature where the actions of defendants have led to the death of another person. I refer to the particularly relevant ones. In the cases of *R v Marshall, R v Lucas and R v Te Tomo*,[2] which all arose from the same facts, the Court adopted starting points of between four and five years. The background to the offending in that case also involved drug dealing. The defendants intended to rip the deceased off. They set up a meeting intending to assault him and steal his methamphetamine. He was assaulted but managed to escape and run away. The victim hid but was found in a water course and he had drowned there. *R v Teo*[3] also involved drug offending. The defendant and the deceased had been smoking methamphetamine together but while driving the defendant asked for more methamphetamine and began feeling around the victim's leg. Fearing violence the victim opened the door and jumped out, and suffered head injuries and died. The Judge adopted a starting point of four years, 10 months. In *R v Irving*,[4] the offender and victim had a confrontation in a bar on the Auckland waterfront. The victim gave most of his valuables to his girlfriend for safekeeping. On leaving the bar the victim was confronted by the defendant. He attempted to get away by diving into the harbour and swam across to a ferry. The defendant continued to threaten the victim and forced him to hand over jewellery. When the victim tried to escape the defendant blocked his exit and the victim ultimately jumped back into the water and drowned. The Judge took a starting point of five years, six months' imprisonment.

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2 *R v Marshall* [2015] NZHC 2016; *R v Lucas* [2017] NZHC 651; and *R v Te Tomo* [2017] NZHC 1628.
3 *R v Teo* [2023] NZHC 700.
4 *R v Irving* [2023] NZHC 946.

[14] I do not consider the cases of *R v Liev*,[5] and *R v Sao*,[6] to be particularly helpful as the Judge in those cases took the kidnapping charge as the lead charge. I have also had regard to the other cases counsel have referred to.

[15] Mr Cordwell properly accepts the manslaughter charge is the appropriate lead charge and emphasised the particular circumstances of the present offending. He emphasised there was no physical violence in this case nor any evidence of any direct threats. Mr Ryan submits that but for *Teo*, the degree of foreseeability in your case is lower than the authorities mentioned.

[16] I accept that in relative terms this case is less serious than the case of *Irving*. There was no prolonged confrontation or repeated threats and obviously no evidence of direct violence. However, you both went to Mr Tahana's home in the early hours of the morning with the intention of robbing him. I do not consider it significant that the associated charge was burglary. The illegal act underlying the burglary was the intention you had to rob him. A degree of planning and premeditation was involved. You acted jointly to break into his, Mr Tahana's home, where he was entitled to feel safe. That is a serious aggravating factor on its own,[7] which is not present in other cases.

[17] The charge of manslaughter reflects you did not intend to kill Mr Tahana but the surrounding circumstances support an inference that you were prepared to use force to rob him if necessary. While the deceased's reaction in climbing over the balcony might be seen as extreme it was, as the jury found, caused by his fear of violence at your hands. It was the only realistic exit or way out for Mr Tahana, the only way to avoid intruders once that solid front door was broken down. All Mr Tahana would have known was that you were using sufficient force to break down his door and clearly intended to break into his apartment. He had reason to suspect violence, and to be very afraid of what might happen to him. The jury accepted that reasonable and responsible people in your position could reasonably have foreseen that Mr Tahana could react to the threat you posed by climbing over the balcony.

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5 *R v Liev* [2017] NZHC 2253 and *Liev v R* [2019] NZCA 242.
6 *R v Sao* [2017] NZHC 2253.
7 Sentencing Act 2002, s 9(1)(b).

[18] I agree there is no basis to distinguish between the two of you in terms of your responsibility and culpability for Mr Tahana's death. I take as a start point four years, six months for the manslaughter and I uplift that by six months for the burglary. A sentence of five years is required to reflect the culpability for both charges.

[19] I turn to your personal aggravating and mitigating factors.

[20] Mr Sinclair-Beere, you have more serious convictions for violence than Mr Nielsen. Your previous convictions involve presenting a firearm, and injuring with intent to injure, as well as previous burglary. Relevantly at the time of this offending you were on bail for a number of charges of theft and other charges of burglary. A six month uplift is appropriate to reflect those more serious previous convictions, particularly for violence and the fact this offending occurred whilst on Court bail.[8]

[21] Mr Nielsen, you do have previous convictions which disclose a propensity for burglary. I also note the offending was committed while you were apparently on Police bail for receiving property and driving while prohibited. Three months is the appropriate uplift in your case.

[22] Mr Sinclair-Beere, at the age of 32 you have a number of convictions in New Zealand. You were born in Auckland. Your mother was Niuean and Samoan while your father was English. You do not strongly identify with any particular culture.

[23] Mr Ryan has arranged for a s 27 report for you. He seeks a 15 per cent reduction for the personal matters set out in that report and a further five per cent for your prospects of rehabilitation and the steps you have taken towards rehabilitation. You say you were introduced to drugs at an early stage. Your mother dealt drugs. Your father was a drug user. You have been using drugs since you were approximately 14 years old. You had opportunities at school and attended Auckland Grammar but you were expelled from there for drug use. While you do not blame your mother for choices in life you also report experiencing violence at the hands of your parents. Both parents have now died. Despite the difficulties you were close to them and their deaths, particularly your mother's, has affected you.

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8 Sentencing Act 2002, s 9(1)(c).

[24] You have a partner with whom you have been in a relationship with for 16 or 17 years. You have a nine year old son. While you have worked as a furniture mover in the past at the time of the offending you were supported by a sickness benefit. In the application for an adjournment of the sentence you said and the Crown accepts you suffered a traumatic brain injury when you were young and suffer from ADHD. You have, as noted, prior criminal history.

[25] The s 27 report suggests you are remorseful. The Court has also received a letter from your sister which expresses your family support and explains your background. Your sister also says you are remorseful and that the offending is out of character. With respect that overlooks your previous convictions for serious violence that I have referred to. You have also written a letter to the Court which was presented this morning in which you express remorse. Mr Sinclair-Beere when I consider all matters in context I have to say I do not accept you are genuinely remorseful yet. The experienced probation officer notes that while you expressed remorse, you continue to deny your role in the offending. Genuine remorse requires an acceptance of responsibility for the offending and the effect it has had on the victim and his family. It requires more than just words. I do not consider you display such genuine remorse and I do not give you any credit for it.

[26] You say at the time of the offending you were influenced by the methamphetamine you had consumed. I note positively that you have attended and passed a number of courses to address your addiction and offending whilst on remand.

[27] Mr Sinclair-Beere, taking account of the factors in your favour from the reports, including your brain injury, your ADHD, and the other issues that I have mentioned, including prospects of rehabilitation, a discount of 12 per cent is available to you from the starting point.

[28] Mr Nielsen, while you were born in New Zealand you moved to Australia with your mother before you were six months old. You had lived your life there until you were deported to New Zealand in December 2018 because of your offending in Australia. While you left school early you undertook an apprenticeship and worked as what is known as a drainlayer in New Zealand and achieved the position of civil

foreman. On release from imprisonment there is the possibility of work in that area for you. You were effectively an only child and did not have a relationship with your father. You say you adhere to the Muslim faith. You have five children with three different mothers. Like Mr Sinclair-Beere, there is an opportunity for you to rehabilitate yourself on release from prison. You have the ability to gain employment.

[29] You have convictions for a variety of criminal offending in Australia, including driving offences, domestic violence, dishonesty and non-compliance. You obviously have issues with alcohol and drug use and as might be expected, you have anti-social friends and an unstructured lifestyle with a lack of support in New Zealand and I acknowledge the difficulty that creates. You have no family or support in New Zealand and inevitably found yourself associating with other deportees. You did however seek to downplay your culpability by suggesting that without the drugs you were using, you would not have been, as you expressed it, in the wrong place at the wrong time. Again you need to take responsibility for your actions.

[30] You do not accept the verdicts and you display no genuine remorse. In your case a discount of seven and a half per cent is appropriate to take account of the positive mitigating personal factors.

[31] Mr Sinclair-Beere and Mr Nielsen please stand. Mr Sinclair-Beere, on the charges of burglary and for the manslaughter of Joseph Tahana you are sentenced to four years, 10 months' imprisonment. Mr Nielsen, for burglary and the manslaughter of Joseph Tahana, you are also sentenced to four years, 10 months' imprisonment. Stand down.

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Venning J