

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2022-004-3430
[2024] NZHC 1204**

THE KING

v

CHRISTIAN PETER ETEUATI

Hearing: 15 May 2024

Appearances: M Harborow and R Gibbs for the Crown
J-A Kincade KC and R McCausland for the Defendant

Judgment: 15 May 2024

**ORAL JUDGMENT OF GAULT J
(Disposition)**

Solicitors / Counsel:
Mr M Harborow and Ms R Gibbs, Meredith Connell, Office of the Crown Solicitor, Auckland
Ms J-A Kincade KC and Ms R McCausland, Barristers, Auckland

[1] Mr Eteuati, you appear in Court today for a disposition hearing to determine whether your detention in a hospital or secure facility is necessary.

[2] This disposition hearing follows my finding on 8 February 2024 that on a charge of murder,¹ it is proved that you stabbed Mr Tom Coombes causing his death, but that you are not criminally responsible on account of insanity.² You were acquitted of the criminal offence, but that did not mean you could go free. I ordered that inquiries be made to determine the most suitable method of dealing with you.³ In the meantime, you have stayed at the Mason Clinic.

[3] At the outset, I acknowledge the presence of the Coombes family and close friends. As I said in February, this is a tragic case. I will refer to your victim impact next, but first I will explain what happened.

Mr Eteuati's actions

[4] On Tuesday 24 May 2022 at about 6:06 pm, the victim, Tom Coombes – who you Mr Eteuati did not know – left the Auckland CBD by train departing from Britomart station. At about 6:32 pm, Tom arrived at the Baldwin Ave train station and left the train.

[5] Tom proceeded to walk towards his home address. As part of his normal routine, he listened to music through headphones while walking.

[6] At about 6:41 pm, Tom walked along New North Road and turned right onto Alberton Ave, Mount Albert. He proceeded to enter the Roy Clements Treeway, a scenic pathway that leads towards the Kerr-Taylor Park between Mt Albert and Sandringham.

[7] A raised wooden boardwalk, approximately one metre above the ground, runs through the pathway and is surrounded by weeds, shrubs, and trees. This boardwalk is approximately 900 metres long between the entrance on Alberton Ave, and

¹ Crimes Act 1961, ss 167 and 172. Maximum penalty of life imprisonment.

² *R v Eteuati* [2024] NZHC 117.

³ Criminal Procedure (Mentally Impaired Persons) Act 2003, s 23.

Haverstock Road, Sandringham. Roy Clements Treeway has no lighting throughout the entirety of the walk and, at the time Tom walked through it, the entire distance of the walkway was dark.

[8] Between 6:41 pm and 6:55 pm, you Mr Eteuati were in and around the Roy Clements Treeway. You were armed with a large knife, approximately 26 centimetres in length, with a 14 centimetre blade.

[9] Tom walked approximately 250 metres along the boardwalk in a south-easterly direction before he was confronted by you.

[10] You unleashed a vicious, frenzied, and unprovoked attack on Tom using the knife.

[11] Tom endeavoured to defend himself by raising his arms. This was ineffective as you overpowered him. You continued striking Tom with the knife.

[12] You caused 42 sharp force injuries to Tom, including injuries to his chest, neck, face, and head. One of the stabs to Tom's head penetrated his skull. The knife entered his brain. The attack caused significant blood loss.

[13] At some point during the confrontation, Tom fell onto the boardwalk and then off it onto the ground. Tom finally came to rest underneath the boardwalk. He died there.

[14] You left the scene along the boardwalk in a south-easterly direction towards your home address. Around this time, two members of the public were walking along the boardwalk heading in a north-western direction towards you. Due to the lack of lighting, they used a cell phone torch to navigate their way through the walkway. You heard these people, and to avoid being seen, you went off the boardwalk. You were not seen by these members of the public. You then continued to make your way towards your home.

[15] Still carrying the knife and with Tom's blood visible, you returned home. You barged into your younger brother's room and showed him the knife. You told him that the blood on you was a "person's blood, human blood". You changed clothing and concealed the knife in the centre console of your mother's vehicle, where you had been sleeping, before leaving the address. You then hid in a wastewater tunnel. You were located by Police on the evening of Saturday 28 May 2022, four days after the attack.

Victim impact

[16] A number of Tom's immediate family members and close friends have provided victim impact statements,⁴ which detail the effects of your actions. I have considered them all. Most have been read out today. The statements tell of the immense grief and sorrow you have caused, ending Tom's life in such a shocking and sudden way. The statements provide insight into the awful emotional, mental, and physical toll Tom's family and friends have suffered as a result of losing a young man who loved life, brought joy to many and had a bright future ahead of him.

[17] I thank Tom's family members for their courage, for giving me some insight into Tom's young life, his cycling and his photography, his kindness and his creativity, and for sharing the continued impact of his loss. I acknowledge your immeasurable grief. I know that whatever outcome I order today can in no way undo the harm done, nor answer all your questions, including as to how this could have happened. I do hope this hearing at least brings some closure on aspects of the process you have been through. I also acknowledge the grief and love of Tom's friends.

⁴ The provisions of the Victims' Rights Act 2002 relating to the use of victim impact statements apply where the Court is making an order under ss 24(1) or 25(1) of CPMIP in relation to a defendant who has been acquitted on account of insanity (that is a finding of act proven but not criminally responsible on account of insanity): Victims' Rights Act 2002, ss 21(1) and 22(1). Even so, given the purposes of a disposition hearing, I indicated to counsel that it was particularly important that the content of the victim impact statements are consistent with the purpose of such statements as set out in s 17AB of the Victims' Rights Act.

Applicable law on disposition

[18] Turning to the applicable law on disposition. Having ordered that inquiries be made to determine the most suitable method of dealing with you, and having received sufficient information on your condition from health assessors, I must now consider all the circumstances of the case, including the evidence of the health assessors, one of whom must be a psychiatrist, and determine whether your detention in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 is necessary.⁵ If that is unnecessary, I must consider alternative orders.⁶

[19] In determining whether it is necessary to make such an order, I must undertake a judicial assessment that is wider in some respects than the medical assessments made by health assessors. I must determine whether such an order is necessary in the interests of the public. The interests of the public in this context are twofold. First, there is a need to be protected from further offending by you. Secondly, the longer-term public interest, and one that you obviously share, is to ensure that you are managed and treated in a manner best calculated to achieve the ultimate goals of rehabilitation and reintegration into the community. Thus, I must take into account both the immediate and long-term risks that you pose, as well as the need to comprehensively manage and treat any medical and/or personality issues that you present. In this way the interests of the public will be properly protected.⁷

[20] This standard of an order being “necessary” in the interests of the public is a high threshold – meaning more than desirable – reflecting the serious consequences of such an order.⁸ As Mr Harborow, for the Crown, said, it is essentially a restrictive detention order.⁹ It has the highest level of oversight. The Minister of Health determines how long the order is to remain in force.¹⁰

⁵ Criminal Procedure (Mentally Impaired Persons) Act, s 24; *M (CA819/11) v R* [2012] NZCA 142 at [6]. The alternative of a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 is not applicable.

⁶ Criminal Procedure (Mentally Impaired Persons) Act, s 25.

⁷ *M (CA819/11) v R* [2012] NZCA 142 at [7]-[8].

⁸ At [17]; and *H (CA841/2012) v R* [2013] NZCA 628 at [13].

⁹ *M (CA819/11) v R* at [9].

¹⁰ Criminal Procedure (Mentally Impaired Persons) Act, s 33; *M (CA819/11) v R* [2012] NZCA 142 at [11].

Reports of health assessors

[21] I turn to the reports of the health assessors. Pursuant to my earlier order, I have received reports from Dr Pillai,¹¹ a consultant forensic psychiatrist, and Dr Ryan,¹² a consultant psychiatrist. In addition, Ms Kincade KC has provided a further report from Dr Immelman,¹³ a consultant psychiatrist engaged by defence counsel.

[22] Dr Pillai diagnosed you as having treatment resistant schizophrenia and a severe anti-social personality disorder, and also substantial substance abuse problems. Dr Pillai's earlier report said that you are at a very high risk of future violence without treatment targeting criminogenic factors and your mental illness. Dr Pillai said it is not clear that you will be responsive to such treatments. He said that you do not have an intellectual disability.

[23] Dr Pillai considered that your offending is of the most serious nature, and that you have a high propensity for violent offending based on mental illness, antisocial personality disorder, and deviant interests, that you need consistent and long-term specialist oversight of your clinical condition for the purposes of supervision and monitoring, as well as treatment. Dr Pillai said that special patient status would ensure that you remain under the long-term oversight of specialist mental health services with comprehensive attention to your care needs. Dr Pillai added that an alternative order¹⁴ would not appropriately account for the seriousness of your offence and would not enable the long-term monitoring and supervision of your treatment that is necessary for the safety of the community. On that basis, Dr Pillai's opinion is that a special patient order is appropriate such that you return to the Mason Clinic for ongoing care.

[24] Dr Ryan said that previous assessments and diagnostic formulations all support the finding that you suffer from treatment resistant schizophrenia, and that you also have a diagnosis of an anti-social personality disorder, and substance abuse disorders. She said that you have an abnormal state of mind of a continuous nature characterised by delusions and disorders of cognition, volition and perception and as a consequence

¹¹ Dated 29 February 2024.

¹² Dated 13 March 2024.

¹³ Dated 8 April 2024.

¹⁴ Under the Criminal Procedure (Mentally Impaired Persons) Act, s 25.

pose a risk to others. She considered you meet the statutory definition of mental disorder.¹⁵ Dr Ryan said that you carry a very high risk of future violence without treatment and that due to developmental difficulties your response to treatment remains guarded and needs to be established over time. This incomplete response to treatment to date further contributes to the high risk of future violence. Dr Ryan agrees you do not have an intellectual disability.

[25] Given your fatal actions, the risk of further violent offending given your major mental illness, antisocial personality disorder and deviant interests, Dr Ryan also considers that you need consistent and long-term specialist treatment, monitoring and rehabilitation. Special patient status would ensure that. She agrees that an alternative order¹⁶ would not appropriately account for the seriousness of your actions nor enable long-term monitoring and supervision of treatment necessary for the safety of the community. Dr Ryan also concludes that a special patient order is appropriate such that you return to the Mason Clinic for ongoing care.

[26] Dr Immelman has examined you seven times at the request of defence counsel, including since February. Dr Immelman notes that you have shown improvements in your mental state although this has been gradual. Dr Immelman agrees that you have the psychotic illness schizoaffective disorder – a chronic condition – and that the diagnosis of antisocial personality disorder has *prima facie* validity, but he suggested that using a further measure would be helpful. His use of that measure pointed towards the validity of the diagnosis of antisocial personality disorder. He also noted the historical substance abuse.

[27] Dr Immelman said that his examinations pointed unequivocally towards the need for a special patient order to be made in the interests of the public or any person or class of person who may be affected by the decision. He did not support an alternative order¹⁷ or immediate release.

¹⁵ Mental Health (Compulsory Assessment and Treatment) Act 1992, s 2.

¹⁶ Under the Criminal Procedure (Mentally Impaired Persons) Act, s 25.

¹⁷ Under the Criminal Procedure (Mentally Impaired Persons) Act, s 25.

[28] Therefore, each of these consultant psychiatrists recommends that you be detained as a special patient in a hospital for ongoing care.

Assessment

[29] My assessment. Mr Harborow submits that the factors identified in the reports strongly weigh in favour of a finding that the necessity threshold is met and that it is in the interests of the public that you be detained as a special patient. Ms Kincade responsibly does not seek to persuade the Court otherwise. Today she conveyed that, with some insight that you lacked in May 2022, you are sad and ashamed for what you did.

[30] Having considered all of the circumstances of the case and the evidence of the health assessor psychiatrists, I am satisfied that it is necessary in the interests of the public, and in your interests in the longer term, to make an order that you be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act. Such an order is necessary to protect the public from the high risk of further offending. It is also in the interests of the public and in your interests to ensure that you are managed and treated in a manner best calculated to achieve the ultimate goals of your rehabilitation and reintegration into the community. You need to be under the long-term oversight of specialist mental health services with comprehensive attention to your care needs.

Order

[31] Therefore, under s 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, I make an order that Mr Christian Eteuati be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Name suppression

[32] In relation to name suppression, further to the orders in my judgment of 8 February 2024, no application has been made for permanent name suppression. Accordingly, interim name suppression now lapses.

Gault J