

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

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

**CRI-2022-292-000575  
[2024] NZHC 182**

**THE KING**

**v**

**SOLDIER HUNTLEY**

Hearing: 15 February 2024

Counsel: Gareth Kayes and Charlotte Best for the Crown  
Jonathan Hudson for the Defendant

Judgment: 15 February 2024

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**SENTENCING NOTES OF MOORE J**

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## Introduction

[1] Soldier Huntley, at the age of 19, you appear for sentence for the murder of Taeao Ola,<sup>1</sup> and two charges of wounding Reupena Tomasi and Covette Tuaumu with intent to cause grievous bodily harm.<sup>2</sup>

[2] On 6 December 2023, I gave you a sentence indication.<sup>3</sup> Given the extensive material before me which included victim impact statements, a detailed cultural report and Oranga Tamariki records, I indicated that I had decided a sentence of life imprisonment would be manifestly unjust and that an appropriate end sentence was a determinate sentence of 16 years' imprisonment with a minimum period of imprisonment (MPI) of eight years. I indicated that if you pleaded guilty, the Court would order a pre-sentence report. However, I said that I considered that because I had read such a wealth of information about you it was unlikely that any pre-sentence report would materially change the conclusions reached in my indication.

[3] Through your counsel Mr Hudson, you accepted my indication on 14 December 2023. The next day you appeared before me for arraignment and pleaded guilty to all charges. I entered convictions and ordered a pre-sentence report. I have now read that report. As I expected and for reasons I will later develop, I do not consider that the contents of that report materially change my sentence indication which means I shall sentence you in accordance with that indication.

## Facts

[4] The facts of your offending are well known to you. They are contained in a summary of facts and you have agreed they are correct. That is the basis on which I shall sentence you. I set the facts out when I gave you the sentence indication. However, unless the Court gives permission to publish the contents of a sentence indication, the reasons are automatically suppressed. Furthermore, because sentencing is quintessentially a public function and must be conducted in open Court and may be

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<sup>1</sup> Crimes Act 1961, ss 167 and 172; maximum penalty life imprisonment.

<sup>2</sup> Section 188(1); maximum penalty 14 years' imprisonment.

<sup>3</sup> *R v Huntley* [2023] NZHC 3547.

reported, it is necessary for me, in this public forum, to repeat the facts. They are these.

[5] In the early hours of Sunday, 13 November 2022, approximately 50 people were gathered in a car park on Lady Fisher Place in East Tāmaki. They were celebrating Samoa's success in the Rugby League World Cup.

[6] Shortly before 4:00 am, you turned up in your car. A number of your associates arrived before you. You were armed with a 30-centimetre kitchen knife, with a blade of about half that length.

*Wounding with intent to cause GBH (first charge)*

[7] Having arrived at the car park, you got out of your car. Mr Tomasi and Mr Ola were already involved in a fight with a group associated with you. You joined in, approached Mr Tomasi and stabbed him in the abdomen. Mr Tomasi fell to the ground and retreated to a nearby car seeking help. You continued to challenge others in the car park, waving your knife around.

*Murder*

[8] At about this time, your co-defendants and more associates arrived in the car park. K, one of your co-defendants, was armed with a .22 calibre semi-automatic rifle.

[9] You approached Mr Ola and stabbed him once in the chest. This was the blow which killed him. The knife penetrated Mr Ola's heart. Mr Vaenuku, another of your co-defendants, ran towards Mr Ola. One of them kicked Mr Ola causing him to fall to the ground. Once on the ground, Mr Vaenuku and others kicked Mr Ola around the head and body. After this, and despite being fatally wounded, Mr Ola managed to regain his feet but collapsed shortly afterwards.

[10] You and K approached Mr Ola who by then was being helped by his brothers. You kicked Mr Ola once. K stomped on his head.

*Wounding with intent to cause GBH (second charge)*

[11] You then joined Mr Vaenuku and others who were attacking Mr Tuaumu. You reached over and stabbed Mr Tuaumu a number of times to his head, neck, shoulder and hands.

[12] You then returned to Mr Ola. By this time, he was unresponsive. You took out your phone and recorded yourself holding the knife in front of him. The wound to Mr Ola's upper abdomen was visible. On the recording, you can be heard saying:

Haha, this is what happens dox, you don't fuck around in the hood aye, this is what happens, Mate Ma'a, fucking Ota-Blue and shit.

[13] Next, K approached another victim, Paoa Afiue, who was still standing and asked him if any more Samoans wanted to fight. K then discharged a shot, hitting Mr Afiue in the leg. This was followed by a number of K's associates assaulting Mr Afiue, punching, kicking and stomping him in the head and body, continuing even after he lost consciousness. You approached Mr Afiue's body and took a photograph of him lying unconscious on the ground.

*Injuries*

[14] Mr Ola died at the scene as a direct result of the stab wound you inflicted.

[15] Mr Tomasi suffered a 10-centimetre wound to his stomach area.

[16] Mr Tuaumu received five stab wounds to his hands, one stab wound to his shoulder, a cut to the back of his head and bruising and swelling to his eyes.

[17] Mr Afiue's femur was broken as a result of the shot fired by K. He also suffered significant head trauma as a result of the punching, kicking and stomping he received.

*Search warrant*

[18] On 18 November 2022, five days after the incident, your home was searched by the Police. Your phone was located and analysed. Various images were located including the video of you holding the knife in front of Mr Ola's body and the

associated audio recording, two photographs of the bloodied knife, a photograph of Mr Afuie lying unconscious on the ground and, in the notes folder, the lyrics to a rap song written on 15 November 2022, two days after you killed Mr Ola, boasting of stabbing and killing a Samoan.

[19] Hidden behind a mattress, the Police found a knife consistent with that shown in the photographs.

[20] Your shoes were seized. An analysis of blood found on the instep of the left shoe was consistent with having come from Mr Tuaumu.

### **Sentence indication**

[21] My sentence indication reached an indicative end sentence because of all the information helpfully made available before me at the time. While I do not propose to read that out line by line, I will summarise as necessary what I said in that indication given the public nature of sentencing and given that it forms the sentence I am now to impose on you today.

### *Why life imprisonment would have been manifestly unjust?*

[22] As I said in my sentence indication, the law says that anyone who is convicted of murder must be sentenced to life imprisonment unless, given the circumstances of the offence and the offender, such a sentence would be manifestly unjust.<sup>4</sup> However, following a recent decision of the Court of Appeal in *Dickey v R* and a recent decision of the Supreme Court in *Van Hemert v R* it is now clear that the presumption in favour of life imprisonment may be displaced in situations where either the circumstances of the offending or the offender, render life imprisonment manifestly unjust.<sup>5</sup> That is, it is possible for an offender's circumstances to make life imprisonment a manifestly unjust sentence even if the circumstances of their offending tend towards life imprisonment.<sup>6</sup> It was my assessment that life imprisonment would be manifestly unjust in your case. That remains my assessment.

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<sup>4</sup> Sentencing Act 2002, s 102(1).

<sup>5</sup> *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405, at [195] and *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [60].

<sup>6</sup> *Van Hemert v R*, above n 5, at [59]. It is important to note that the Supreme Court said this was

[23] First, standing back and considering your offending as a whole, I was not persuaded to the required criminal standard that you intended to kill Mr Ola. Rather, I considered that you intended to cause him grievous bodily harm, that is really serious bodily harm, and that you were reckless as to whether Mr Ola died or not.

[24] Secondly, while I accepted that what you may have said and done over the days which followed was relevant, I also noted that it was far from clear that you knew Mr Ola was fatally injured and dying given he did not immediately drop to the ground after you stabbed him. He fell only after he was knocked to the ground, and then got up before collapsing. As such, I said that your insensitive and provocative comment at the scene that “this is what happens” needed to be viewed contextually, even though your offending was clearly very serious indeed. I cannot be sure that when you recorded those deeply offensive words you actually knew Mr Ola was dying.

[25] Thirdly, you were 17 at the time of this offending. What happened that night in Lady Fisher Place was mindless, poorly thought out and on any analysis, objectively irrational. All of these features are consistent with an immature and developing adolescent brain. As I said in my sentence indication, your attack was frenzied and lasted just a few minutes. Your stabbings happened in quick succession. Further, your thoughtless and deeply offensive actions afterwards, including the images you recorded on that fateful night, reflected a teenager’s inability to properly control higher-order executive mental functioning.

[26] I also considered that these neurological factors were exacerbated by your upbringing which was marred by violence, deprivation and neglect. As your fulsome cultural report set out and Oranga Tamariki records largely confirmed, your mother was addicted to methamphetamine and your father was largely absent from your life. You were assaulted in your home by gang members your mother brought back to your home. You witnessed a serious assault on your mother by your father, which led to him going to prison. You were placed with your grandfather where you were exposed to further violence. I also noted however that despite that appalling antisocial and violent background you had never been convicted of a criminal offence let alone

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possible where overwhelmingly mitigatory personal circumstances outweighed the circumstances of offending that tended towards life imprisonment.

stepped foot in prison. I considered imprisonment would be particularly harsh on you as a consequence of your childhood trauma and that an indeterminate sentence would be almost certainly extremely harmful both in terms of your psychological well-being and risk of recidivism.

[27] Despite your background circumstances and links to a street gang however, I noted that you have significant potential for rehabilitation. To your credit, you have completed a number of educational and vocational courses while on remand, including NCEA Level 2. You also have a young son.

[28] Weighing the circumstances of your offending and your personal circumstances, particularly your age, prospects of rehabilitation and profound social and cultural deprivation, I was satisfied that a sentence of life imprisonment with a MPI of 10 years would be manifestly unjust. I noted however, and note again, that this was a decision I did not come to lightly. Rather, it was one I considered was required because of the Court of Appeal's guidance in *Dickey*. And that is a case that is binding on me.

*The appropriate determinate starting point*

[29] Because I considered life imprisonment would be manifestly unjust, I proceeded to set a starting point to reach an appropriate end sentence. Although I found that none of the specified aggravating statutory factors under s 104 of the Sentencing Act 2002 were engaged, I still identified several aggravating factors.

[30] First, I said there was a moderate degree of premeditation. While I accepted you did not know Mr Ola, it was apparent you and your associates knew a large group would be gathering on Lady Fisher Place. By taking your knife and using it very shortly after you got out of your car, you plainly went there contemplating serious violence. To the extent there is any difference between the summary and what is recorded in the pre-sentence report on this point, I rely on the summary because that is what you agreed I should give the sentence indication on.

[31] Secondly, there was evidence your offending partly or wholly was committed because of hostility towards those with Samoan ethnicity. That conclusion was

supported by videos on your phone using terms such as “Mate Ma’a” (which broadly translates to “Die for Tonga” and is associated with the Tongan national rugby league team) and “Ota-Blue” (“Ota” being a reference to Ōtāhuhu and “Blu” being a term associated with the Crips gang or the Ōtāhuhu rugby league team, both of whom affiliate to the colour blue). It was also supported by the evidence of K approaching Mr Afuie asking him if any more Samoans wanted to fight, and the lyrics of the rap song referring to killing a Samoan.

[32] Thirdly, I observed there was a common link between you and your co-defendants, namely your membership or association with the Fitus street gang.

[33] And, lastly, I considered that your post-offending conduct exhibited a high degree of cruelty and callousness. After stabbing Mr Ola, you returned twice to him, first to kick him while he was on the ground and then to take a video as he lay unresponsive with his abdominal wound in plain view.

[34] Given those factors, I considered a finite starting point of 20 years’ imprisonment was appropriate for the charge of murder, and that a two year uplift was warranted for your wounding with intent to cause grievous bodily harm offending which, on its own, would have attracted a starting point in the region of seven years’ imprisonment.

#### *Adjustments for personal circumstances*

[35] In terms of adjustments for your personal circumstances, I accepted that, because you have no previous convictions, you had no personal aggravating factors which might justify an uplift to that starting point. However, I considered that you were entitled to the following discounts for certain mitigating factors.

[36] First, I said you were entitled to a 20 per cent discount for any guilty plea. I said this reflected that while your plea would not have been at the earliest possible date, there were still savings in not proceeding to trial for which you were entitled credit.



[37] Secondly, I considered a discount of 25 per cent appropriate to reflect your age and rehabilitative prospects. I set this acknowledging that a 20 per cent discount for youth was given to the defendant in *R v TH*<sup>7</sup> and that a 30 per cent discount for youth and rehabilitation was given to Ms Dickey in *Dickey*.<sup>8</sup>

[38] Thirdly, I considered that a discount of 15 per cent for the matters set out in your cultural report was warranted. I considered your upbringing to be broadly comparable to the defendant in *TH* who received the same discount,<sup>9</sup> but not as severe as that of Ms Epiha,<sup>10</sup> another of the appellants in *Dickey* who received a discount of 25 per cent.

[39] However, taking all these factors into account, that would have led to a determinate end sentence of eight years and 10 months' imprisonment. I did not consider, as it was necessary for me to, that this represented a proportionate response to the seriousness of your offending.

[40] As I said at the sentence indication, Mr Ola lost his life. The victim impact statements record the enormity of the loss suffered by Mr Ola's family and friends. I have carefully read the victim impact statements and listened to the two read out in open Court now just a few minutes ago. Before I move on, I want to say something about those who so loved and admired Mr Ola, and to acknowledge them.

[41] The first statement I heard was from Mr Evile Ola, Taeao Ola's father, courageously read out by his daughter, Taeoa Ola's sister, Ms Anna Tomasi Ola.

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<sup>7</sup> *R v TH* [2023] NZHC 630 at [36]. The defendant was a 20-year-old at the time who was disinhibited by the use of alcohol and nitrous oxide. The defendant stabbed the victim once in the chest with a knife, puncturing a lung. The sentencing Judge was satisfied the defendant took the knife intending to attack the victim with it, but that he could not be sure he intended to kill.

<sup>8</sup> *Dickey v R*, above n 5, at [208]. Ms Dickey was 16 years old at the time. She and her co-defendants lured the victim to a place where he could be assaulted. Ms Dickey was responsible for restraining the victim and holding him down while a co-defendant stabbed him. Ms Dickey believed the victim had committed a sexual offence against her when she was inebriated.

<sup>9</sup> *R v TH*, above n 7, at [27] and [35]. The defendant's upbringing was marred by his father's gang membership, his parent's methamphetamine addiction, domestic violence and physical abuse, and early cannabis and alcohol use. The sentencing Judge considered a 15 per cent discount justified for the defendant's deprived social background and for how his normalisation of violence and exposure to gang culture contributed to his offending.

<sup>10</sup> *Dickey v R*, above n 5, at [63]–[75] and [242]. Ms Epiha's father was president of a Mongrel Mob chapter and her mother was a drug addict. She was frequently subjected to severe violence from her father, in addition to suffering sexual and physical abuse at a young age. Furthermore, she began to abuse alcohol and drugs at a young age and left school at 13 without any qualifications.

Mr Ola's statement reveals his devastation. Taea Ola was a dedicated family man and a pillar of his community, with a talent and passion for rugby. As Mr Ola senior said, the impact and legacy he built within his sporting and church communities is reflected in the church members, teachers, students, rugby players, coaches and staff who came to pay their respects at his funeral.

[42] Because of your actions, happiness has now escaped everything Mr Ola senior does. As a consequence of your actions, he explains that he has resigned from his job, lost any desire to see his family in Samoa and that his health has suffered. Rightly, Mr Ola expresses concern for his grandson who will have to grow up without a father. As Mr Ola said, his grandson will one day ask him where his father is. That will be a distressing and difficult question to answer.

[43] The second victim impact statement was from Ms Serah Hasiata, Taea Ola's partner. It was not read out in Court. It is equally crushing. Ms Hasiata speaks of the pain of having to explain to her son that her father is now in heaven, and that he won't ever know his father because of what you did. As Ms Hasiata says, she and Taea had plans for their future which she has now had to let go of. With every family event she has to prepare herself emotionally, especially for her son. Her pain, pain you have caused, will last her a lifetime.

[44] The third I wish to mention is from Mr Tomasi, whose statement was read by the Crown and who you stabbed in the stomach that fateful evening. Mr Tomasi explains he was only able to go back to work in January last year because of his injuries. As a result of what happened to him, he is now reclusive.

[45] I need to acknowledge and publicly thank Mr Ola senior, his daughter Ms Anna Tomasi Ola, Ms Hasiata and Mr Tomasi for their courage and dignity.

[46] The loss suffered by Mr Ola's family and friends is incalculable and deeply profound. It will stay with them for ever. Plainly, Mr Ola was a young man with huge promise and talent who just happened to be in the wrong place at the wrong time and through absolutely no fault of his own was stabbed to death by you, a stranger. There was no provocation. There was nothing he did or anyone else did which might have

justified an assault of any kind, let alone a murderous one. Sometimes it is easy to forget when sentencing for murder that , at the centre of all this, is someone who has lost their life in tragic circumstances leaving a loving family bereft and wracked with inconsolable grief and bewilderment at such a cruel and senseless act as yours.

[47] In recognition of that, I considered it appropriate that your nominal end sentence be uplifted to one of 16 years' imprisonment, and that an MPI of 50 per cent, that is eight years' imprisonment, was appropriate. I said that the MPI was necessary to ensure the principles of accountability, denunciation, deterrence and protection of the community.<sup>11</sup> As I explained, that meant you would be required to serve at least eight years of your 16 year sentence, though there could be no certainty that even at that time you would be released. That would be for the Parole Board to decide.

[48] Finally, and as I explained at the start, I said that I considered it unlikely that there would be any other information furnished at sentencing which could lead me to reconsider the sentence I indicated. I said I doubted the pre-sentence report would materially change the conclusions reached in my indication.

### **Has anything changed?**

[49] The only remaining question for me today is whether the conclusions reached in my indication have materially changed in light of the pre-sentence report. As such, it is necessary to set out what it says.

[50] The pre-sentence report records your recollection of events in the lead up to your offending. It relays your account as being that you dropped some female friends off at the car park at Lady Fisher Place and that Mr Tomasi<sup>12</sup> stopped your vehicle as you tried to leave. Because Mr Tomasi's yelling "triggered" you, you retaliated by getting out of your car and stabbing him. You are recorded as explaining that this prompted Mr Ola to charge towards you. Significantly, it says that you stabbed Mr Ola in the chest given his size and the fact you had nowhere to retreat. You expressed

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<sup>11</sup> Sentencing Act 2002, s 86(2).

<sup>12</sup> Mr Huntley's pre-sentence report does not refer to Mr Tomasi directly but refers to stabbing a "first victim", who I infer to be Mr Tomasi.

some remorse for your offending. The report also says you acknowledge the impact your offending has had on your victims, particularly that of Mr Ola's family.

[51] As for your upbringing, the account captured in your report echoes much of the themes identified in your cultural report such as your mother's methamphetamine addiction, your lack of a relationship with your father, the poverty you experienced as part of your upbringing and your early exposure to violence. The report also notes that you are, yourself, of Samoan heritage, but that you strongly dissociate yourself from this because of the ill-treatment you experienced growing up, and the fact that your family treated you differently. It explains that you identify as being Tongan, and that you have a number of Tongan friends who took you in and treated you as family. In answer to a question of whether you would have responded differently if your victims were of a different nationality, you said that this likely would have been the case but that you felt "triggered" by the Samoan flags and the comments made by the first victim you encountered, Mr Tomasi.

[52] Finally, the report explains that you maintain sporadic contact with the mother of your young son and that you are not a member of any gang, although you are "associated" with the Fitus gang. It also says, however, that you are adamant your offending was not gang related, and was instead the result of your own actions.

[53] The pre-sentence report is helpful, but only insofar as it largely confirms the themes already identified in your upbringing by the other materials that were available to me at your sentence indication. Although informative because it reflects on how you see your offending, your account of your offending obviously differs in some respects from the agreed summary of facts to which you pleaded guilty. It is also your own, unchallenged account told through the writing of a third party. As I mentioned earlier, I am sentencing you on the agreed summary.

[54] In any event however, I do not consider anything in your account to the report writer materially alters my assessment of the appropriate finite starting point in your case. All of the aggravating features identified still apply given your account still shows a degree of premeditation through your possession of a knife and evidence of hostility to your victims because of their ethnicity. It also does not disturb the other

aggravating features of being linked to your co-defendants through your association to the Fitus street gang, or your conduct after your offending occurred.

[55] While the expressions of remorse you are said to have made are to your credit, and I acknowledge were repeated by Mr Hudson this morning, I do not consider they justify any discrete discount. Moreover, your prospects of rehabilitation are appropriately captured in the discount I indicated for your age.

[56] Most significant of all, however, is that the final assessment in my sentence indication was that the nominal end sentence I reached was not proportionate with your offending, and that it should be uplifted to a sentence of 16 years' imprisonment, with an MPI of eight years, to reflect your offending and, especially, your act of murder. Nothing in the pre-sentence report materially alters that assessment.

[57] As such, I consider my sentence indication should not be changed and I propose to sentence you in accordance with it.

### **Sentence**

[58] Mr Huntley, would you please stand for me to formally deliver sentence.

[59] Mr Huntley, for the murder of Taeao Ola, I sentence you to 16 years' imprisonment with a MPI of eight years.

[60] On each of the charges of wounding Mr Tomasi and Mr Tuaumu with intent to cause grievous bodily harm, I sentence you to seven years' imprisonment.

[61] All sentences are to be served concurrently.

### **Concluding remarks**

[62] Before I direct that you are to stand down, I want to say a few more words.

[63] What you did that night was an act of madness measured in just a minute or two, maybe less. The result is that the life of one young man, a life bursting with so

much promise, was snuffed out with all the dreadful consequences we have heard this morning.

[64] The law requires you to be accountable for that and I have sentenced you to 16 years' imprisonment and ordered you serve at least half of that. That sentence is the equivalent of nearly the whole of your life, given your age when you took Mr Ola's life. It is a heavy sentence, some might say even crushing, particularly for a young man of your age.

[65] Do not let it crush you. Do not waste your time in prison. Take whatever self-improvement courses and programmes as you can. The reports show you have potential and your recent successes in NCEA prove you have ability. You have insight. You now realise the enormity of what you did, and I accept that you are remorseful, regretful and genuinely sorry. Those emotions will not bring back Taeao Ola but they do serve to give some optimism that you can and will improve yourself so that when you are finally released, whenever that might be, you can re-join society as a positive and contributing citizen.

[66] You may now stand down.

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**Moore J**

*Solicitors:*  
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