

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

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

**CRI-2023-004-001892
[2024] NZHC 3691**

THE KING

v

WHITNEY JADE IRAIA-BURGESS

Hearing: 5 December 2024
Appearances: B Tantrum and R Benic for Crown
M Ryan for Defendant
Sentenced: 5 December 2024

SENTENCING NOTES OF VENNING J

Solicitors: Meredith Connell, Auckland
Counsel: M Ryan, Auckland

[1] Whitney Iraia-Burgess you are for sentence having pleaded guilty to a charge of manslaughter. The maximum penalty for manslaughter is life imprisonment.

[2] You were to be sentenced on the basis of the summary of facts you pleaded guilty to. However, in reports prepared for the purposes of sentencing, you disclosed a narrative in which you said that the victim Mr Otess had attempted to rape you and that you were acting in self-defence when you slashed his arm and stabbed him. As a result, a disputed fact hearing was held. You prepared an affidavit for the purposes of that exercise and were cross-examined. In that affidavit you went so far as to say Mr Otess had actually raped you. The Crown provided a number of witness statements in response and two of the Crown witnesses, Mr Mong and Mr Maru, gave evidence and were cross-examined by Mr Ryan. The Court was also able to view the CCTV footage which confirmed the background to your initial contact with Mr Otess. It also provided further evidence of the actions at the time you inflicted the fatal wounds on Mr Otess in the car park.

[3] Following the disputed fact hearing I indicated I was sure, satisfied beyond reasonable doubt that Mr Otess had not raped or attempted to rape you and that you were not acting to defend yourself or responding to a rape or attempted rape when you slashed and stabbed him. At the most there was an argument between you and Mr Otess about money, which led to a physical altercation which took place mainly outside the car. It was a relatively brief altercation and mainly limited to pushing and shoving and grabbing at each other until you used the knife you had brought with you to slash and stab Mr Otess. Your response to the physical altercation between you and Mr Otess was not reasonable in the circumstances. I proceed to sentence you based on those findings.

[4] The background which led to your offending is your work as a sex worker. At about 4.20 am on Sunday, 12 March 2023 you were standing under a light outside a gate to the Cordis Hotel on Liverpool Street. The victim, Daniel Otess, saw you and stopped his car just past where you were standing. You gestured to him to reverse up which he did. You had a short conversation through the car window. You then collected your gear and got into his car. You got into his car on the basis you were going to provide him with sexual services. Mr Otess drove to a Mobil petrol station

on Karangahape Road where he purchased a twin pack of condoms and withdrew \$100 cash before returning to the car. He also went to Ponsonby and dropped off a leaf blower to a property there, a task apparently related to his occupation as a cleaner before continuing on to Symonds Street where he went to the car park you directed him to.

[5] At 4.41 am, Mr Otess parked the car in the car park which was accessed off Street. Two or three minutes later you both got out of the rear passenger door of the car. There was a physical altercation between you and Mr Otess. I have found that it was at this point you used the knife you had with you to slash and stab Mr Otess several times around his head, shoulder and arm area. Mr Otess suffered a number of injuries. As a result of the attack, he began bleeding heavily from the laceration to his forehead and from a deep wound to his left forearm that had severed an artery. You fled up the stairs through an undercover car park and away from the scene. I find you took the money, the \$100 with you.

[6] Mr Otess went around the front of his car to the driver's door area apparently in an attempt to get back into the car and seek help, but due to the massive blood loss from the wound to his left forearm he collapsed on the ground and died next to it.

[7] The post-mortem disclosed five sharp force injuries: the lethal one to the front left of the arm, which had struck major blood vessels; and four others, including on his left cheek, forehead, front of the left shoulder, and front of the right wrist. Finally, he had blunt force injuries to his nose and surrounding areas. The cause of death was the injury, the slashing to his left arm.

[8] In fixing the appropriate sentence for your offending the Court is required to take into account the relevant purposes and principles of the Sentencing Act 2002. The sentence must hold you accountable for the consequences of your offending, the harm done to the victim, Mr Otess, and his family, who are victims also and to other people affected by your actions. The sentence must promote in you a sense of responsibility for that harm. It should also denounce and deter such actions. The taking of a life in such a senseless way must be condemned. The Court also has to consider your rehabilitation and reintegration into society at the conclusion of your sentence.

[9] As to relevant principles the Court is directed to take into account the gravity of the offending, and particularly your culpability. The Court must take into account the information it has concerning the effect on the victims of the offending. You have heard from the victim impact reports the terrible impact and effect your offending has had on Mr Otess' family and indeed from the victim impact reports I have seen, the impact it has had on others who came upon the scene. The long-lasting effect of your offending on Mr Otess' family in particular should be very apparent to you now. Other relevant principles include the general desirability of consistency with sentencing levels in similar cases, while recognising that each case of manslaughter must turn on its own facts. That is particularly so with manslaughter sentencing given there is no tariff for such offending. Sentencing must be fact specific.

[10] The Crown referred to four manslaughter cases involving the intentional use of a knife or a bladed weapon. In *R v Richardson*,¹ Ms Richardson was in a relationship with the deceased Mr Hemi. They argued, and yelled abuse at each other as they moved up and down a street. Ms Richardson had refused to give the keys to their car to Mr Hemi. Mr Hemi eventually got the keys and got into the driver's seat of the car. Ms Richardson got in the back seat, then stabbed him once to the neck at the base of his skull. She then left. Mr Hemi fell out of the car yelling, "I'm bleeding out". Ms Richardson yelled for someone to call an ambulance before doing so herself. The Court considered the use of a knife to attack the back of Mr Hemi's neck and in doing so, to target a vulnerable aspect of his body was particularly aggravating and adopted a starting point of seven and a half years' imprisonment.

[11] In *R v Edwardson*,² Ms Edwardson was only 16 years old. She had been drinking in Turangi with friends. The deceased had previously been out celebrating her own 16th birthday. All parties had been drinking and there was an altercation between the two groups, which escalated. The deceased punched Ms Edwardson to the face and she punched back. At some stage of the fight Ms Edwardson got a small knife she had been carrying, extended the blade, held it in her right hand with the blade pointing along her wrist and as the deceased advanced towards her she stabbed her in the neck. The Court adopted a starting point of seven years' imprisonment.

¹ *R v Richardson* [2024] NZHC 1795.

² *R v Edwardson* HC Rotorua CRI-2006-069-1101, 27 April 2007.

[12] In *Champion v R*,³ Mr Champion was involved in a road rage incident and mistakenly believed the victim's son had been driving the other vehicle. He had an exchange with the victim's partner. The victim and his son walked over to Mr Champion's house to confront him. Mr Champion saw them coming and armed himself with a kitchen knife. There was a heated argument, during which Mr Champion swung the knife at them. The brother of the victim and a woman also arrived at the scene. Mr Champion was backed up to the house. The victim swung a broom at Mr Champion and the victim's son threw a terracotta pot at Mr Champion who then lunged out two or three times with the knife killing the victim. The Court of Appeal upheld a starting point of five and a half years finding it to be within the available range.

[13] In *R v Iraia*,⁴ Ms Iraia was 19 years old. The victim, her uncle, was 27 years old. He had had an argument with her aunt. Ms Iraia responded by picking up a knife and looking for her uncle's new partner. When he went to follow her, she stabbed out at him, catching his chest. The Court accepted it was an impulsive act and she had just lunged once with the knife. The Court took a starting point of four years, six months' imprisonment.

[14] On the basis of the above authorities the Crown submit a starting point in the range of six to seven years in your case is appropriate.

[15] In addition to the above cases, Mr Ryan has referred to the cases of *R v Harnwell* and *Wharerau v R*.⁵ Mr Harnwell went to a property to recover a drug debt. He and the victim had a difficult relationship. Mr Harnwell believed the victim had shot at him a few days earlier. The victim arrived at the address unexpectedly. Mr Harnwell hid while the victim was there. The victim repeatedly threatened harm to Mr Harnwell, who at some stage was given or obtained a kitchen knife. Ultimately the two confronted each other. Mr Harnwell wounded the victim with a knife, first by cutting him around the eye and then stabbing him to the chest. The trial Judge considered the jury had rejected self-defence because the force used by Mr Harnwell

³ *Champion v R* [2024] NZCA 65.

⁴ *R v Iraia* [2020] NZHC 1084.

⁵ *R v Harnwell* [2021] NZHC 3409; and *Wharerau v R* [2015] NZCA 299.

was unreasonable. Taking the view that Mr Harnwell was acting to defend himself the Judge took a starting point of five and a half years' imprisonment.

[16] In *Wharerau v R*, Ms Wharerau was in a relationship with the victim for six months. During the relationship there had been low-level violence between them. On the day in issue there was an argument. The victim slapped Ms Wharerau about the face and in return she punched him on the back. The victim then broke her phone. She then went to the kitchen, grabbed a knife off the kitchen bench and swung it in the victim's direction in an attempt to scare him away, but the knife stabbed him in the chest. Ms Wharerau then went to the neighbours to call for help and supported him until an ambulance arrived. The Court of Appeal upheld a starting point of four and a half years' imprisonment.

[17] On the basis of the additional authorities Mr Ryan referred to, and relying on your affidavit evidence, Mr Ryan initially argued for a starting point of four and a half years' imprisonment. In arguing for that, he submitted, on the basis of your instructions, that Mr Otess had raped you or at least tried to rape you and that you were acting in self-defence, but that you accepted the force used was not reasonable. Following the disputed fact hearing, I have rejected that aspect of your evidence. I have found that the victim, Mr Otess, did not rape you and nor did he attempt to rape you. As noted, I have found that at the most there was a physical confrontation between the two of you while you were both standing outside his car and you responded to that by attacking Mr Otess with the knife and inflicting the fatal blows.

[18] Mr Ryan acknowledged those findings and in his oral submissions has accepted the starting point would be affected and argued for a starting point of five to five and a half years.

[19] As I stand back and consider the findings I have made, the circumstances of your killing of Mr Otess and the above authorities, I consider the circumstances of your offending supports a starting point of six years.

[20] I test the matter by reference to the Court of Appeal judgment in *R v Taueki*.⁶ Several factors put your current offending in the mid to high range of band 2 of that case. Obviously, there was serious injury. The incident was fatal. There was use of a weapon, and an attack to the head, even though that was not the fatal blow. While I do not accept the Crown submission there was premeditation as such, the fact that you were carrying a weapon, and were prepared to use it in the way you did is also an aggravating factor.

[21] I then turn to your personal aggravating and mitigating factors. You have a number of previous convictions but as yet none for serious violence. However, I do note that you have previously been convicted of offences relating to the unlawful possession of a knife in 2018 and a knife and/or a meat cleaver in 2016. A modest uplift of three months for your propensity to carry knives is appropriate. It is that propensity which has led to the tragic end in this case.

[22] I then turn to your personal mitigating factors. There is a comprehensive report from the pre-sentence report writer in the Provision of Advice to Courts (PAC) report. It is supplemented by the psychological and Alcohol and Drug Assessment reports that Mr Ryan has arranged to be filed on your behalf. I also have material from the Grace Foundation and your own letter that you wrote to the Court.

[23] You are now 33 years old. Your life has been a tragic one. You were apparently abandoned by your mother very shortly after birth. For the first five years of your life you lived in the care of parental figures, neither of whom were biological. You were apparently raised by your stepfather and stepmother. You have had a turbulent childhood and a youth with no solid foundation or support. You were a victim of physical and sexual abuse from caregivers and from strangers as well. Your family moved regularly. You went to 13 different schools.

[24] At 15 you became pregnant and lived in a supportive facility until you were 18. You became pregnant again at the age of 19 but were abandoned by your partner at the time and were forced to give up the child. You apparently got into sex work to pay debts that your second partner left you with. Several of your subsequent

⁶ *R v Taueki* [2005] 3 NZLR 372.

relationships have been violent. You became involved in the use and manufacturing of methamphetamine and became pregnant again. However, you were able to get your own place and for a time had care of your children. Your daughter, who is now 17 or so and lives with an aunt, is aware of your circumstances and is supportive of you. The father of your young son has facilitated visits so that you can see him. While you first worked as a sex worker from about 20, for a time you avoided such work. But you returned to it over the last few years to try to make ends meet. You say and there are certificates to suggest that you have been sober now for approximately 18 months and prior to being remanded in custody were engaged in a 12 month after care programme with community Alcohol and Drug Services (CADS). The ACC reports before the Court suggest that you suffer from PTSD because of your background.

[25] I accept that in the circumstances a reduction of 15 per cent is appropriate for your personal circumstances. I accept your background and the abuse you have suffered has been a causative factor in the way you acted and responded in this case. I also allow a further reduction of seven and a half per cent for the positive efforts you have made to address your issues and to acknowledge that despite your past, there is still a prospect of rehabilitation in the future with appropriate support. However, given your attempt to minimise your offending and worse, to blame the victim and to affect his good name in relation to your offending, I make no allowance for remorse. Your comments about regret are not genuine remorse. You continue to seek to excuse your actions without accepting full responsibility for them.

[26] Taking account of when the guilty plea to manslaughter was entered and the strong Crown case for manslaughter on the facts, included as captured on CCTV, I allow a credit of 20 per cent for your guilty plea.

[27] Applying those credits of 42½ per cent to the adjusted start point of six years, three months leads to an adjusted sentence of three years, seven months. Finally, I note you spent 14 months on EM bail. However, I also note that you breached your bail on two occasions, the last of which led to your being returned to custody. I consider in the circumstances a further allowance of four months to be appropriate.

[28] Ms Iraia-Burgess please stand. For the manslaughter of Daniel Otess, you are sentenced to imprisonment for three years, three months.

[29] Stand down.

Venning J