**INTERIM ORDER PROHIBITING PUBLICATION OF NAME AND IDENTIFYING DETAILS OF DEFENDANT SEE MINUTE OF 1 DECEMBER 2023**

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

**I TE KŌTI MATUA O AOTEAROA**
**TE WHANGANUI-A-TARA ROHE**

**CRI-2023-296-031**
**[2024] NZHC 576**

**THE KING**

v

**M**

Hearing: 15 March 2024

Appearances: S A H Bishop for the Crown
L M Sziranyi for the Defendant

Sentencing notes: 18 March 2024

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**SENTENCING NOTES OF GRICE J**

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## Introduction

[1] [Redacted], you are aged 16, turning 17 in just a few weeks. On 4 April 2023 you were convicted of the attempted murder[1] of [victim] in the Youth Court following a Judge-alone trial in that Court.[2] You are now to be sentenced in this Court.

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1 Crimes Act 1961, s 173. The maximum sentence is 14 years' imprisonment.
2 *Police v MM* [2022] NZYC 209.

**The offending**

[2] Sentencing in this court is a public exercise so I explain the details of the offending that has led up to this and also to the principles and the basis of my final sentencing.

[3] [Redacted], in May of 2022, you had just turned 15. Your relationship of 18 months had ended. The victim also aged 15 at the time, until then had been a friend of yours. He had started up a relationship with your former girlfriend. He had spoken to you about this, however, you were unhappy and you set out to kill him. You made Google searches for information on matters which later featured in your offending.

[4] You told a friend that you wanted to hurt the victim at school the next day and you arrived at school with a knife. Your older brother discovered the knife, and you were sent home from school.

[5] Shortly after you tried to arrange a fight with the victim using a friend's messaging profile. The victim said he would not enter the fight and you messaged him through your friend's account saying that you would go to his house with a weapon.

[6] That night you did go to the victim's address. You took a machete and wore clothing that was apparently intended to disguise your identity. You called out to the victim, who was confronted by you when he was leaving. You swung the machete at the victim several times, causing the following injuries:

(a) A 10 cm cut to his chest that splintered off a five cm shard of rib and injured his left costal artery in two locations and punctured his lung.

(b) A 20 cm cut to his right forearm, exposing and injuring several muscles and tendons in his forearm.

(c) Three minor cuts to his forehead.

[7] The attack ended when the victim's parents intervened and his father confiscated the machete and you ran.

[8] The victim required emergency surgery to his torso and plastic surgery to his arm.

[9] You were arrested on 16 May 2022 in Palmerston North and charged with wounding with intent to cause grievous bodily harm. You admitted that charge however, you denied attempted murder when that charge was laid. The Police proceeded with the attempted murder charge and you were subsequently convicted in the Youth Court.

**Submissions**

[10] I will now summarise the submissions that the Crown and your lawyers have made. I have read their written submissions filed in advance of this hearing and considered their oral arguments made in Court today. The submissions address what your sentence should be and whether I should make an order for final name suppression.[3] The suppression application has now been adjourned to a different date so I will deal with that later.

*For the Crown*

[11] For the Crown, Ms Bishop notes there are two reports by mental health experts – one of the experts unfortunately did not have the judge's decision finding the charges proven against you.

[12] In terms of what the length of your sentence should be, the Crown refers to three comparator cases:

(a) In *R v McRae*,[4] Mr McRae pleaded guilty to the attempted murder of his stepmother when he was aged 16. He had stabbed her 15 times with

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3 As directed in *R v [Redacted]* HC Wellington CRI-2023-296-031, 1 December 2023 (Minute of La Hood J).

4 *R v McRae* [2017] NZHC 1881.

a 15 cm kitchen knife when she was holding her infant child. One month earlier, he had sent a text to a friend about imagining killing his whole family and had searched the internet for the "best place to stab and kill" and he made preparations the day before. A psychiatrist who assessed Mr McRae the day before the attempted murder found he displayed no signs of mental illness. Following the offending, he was assessed as being at high risk of further serious violent offending and requiring psychiatric oversight. The High Court adopted a starting point of 11 years' imprisonment and arrived at an end point of six years and seven months' imprisonment.

(b) In *R v Taipari*,[5] Mr Taipari pleaded guilty to wounding with intent to cause grievous bodily harm during a trial for attempted murder. When he was aged 16, he had accompanied his brother to the victim's home where a friend of the victim had wanted to fight with two samurai swords. Mr Taipari had struck the victim across the face with a flat edge of the sword, fracturing his jaw, then striking him on the side of his head with the sword and leaving the sword embedded. The High Court adopted a starting point of 10 years' imprisonment, arriving at an end sentence of six years and nine months' imprisonment.

(c) In *Police v EGO*,[6] a 15-year-old girl was charged with the attempted murder of a woman that her 30-year-old boyfriend knew. An altercation had taken place at the victim's house. The defendant then went home to collect a kitchen knife with an 18 cm blade and returned to the victim's address, stabbing her in the lower back. The District Court adopted a starting point of seven years' imprisonment, arriving at an end point of three years and six months' imprisonment.[7]

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5 *R v Taipari* [2014] NZHC 577.

6 *Police v EGO* DC Wanganui CRI-2005-283-75, 15 May 2006 (sentencing notes of Judge Callinicos).

7 Following a guilty plea to a substituted charge of grievous bodily harm.

[13] The Crown submits there are three aggravating factors in this case, with two being significantly aggravating, and therefore this offending is at the upper end of band two of *Taueki*.

(a) The attempted murder was premeditated. You made Google searches in the days preceding the incident showing an intention to kill the victim. You told another person of your plan to kill the victim in advance and you were preparing to put your plan into effect.

(b) The victim sustained serious injuries to his chest, ribs, artery, lung and arm. He required emergency and plastic surgeries. I will refer to the victim impact statement which I heard this morning, shortly.

(c) Use of a weapon. You used a large machete.

[14] The Crown submits there are no mitigating features of this offending. *Taueki* which is a case which gives a court general guidance for levels of seriousness in these types of case indicates that provocation can be a mitigating factor, but this is only in circumstances where serious provocation remains an operative cause of the offender's violence. No such provocation occurred here. Your unhappiness about the victim's relationship is due to your own difficulties, nothing the victim did.

[15] Taking into account those aggravating factors, the Crown submits a starting point of between nine and 10 years' imprisonment is appropriate.

[16] As to the aggravating and mitigating factors in your case and personal circumstances, the Crown submits you should not be given credit for prior good character. Although you had no criminal or Youth Court record at the time of the offending, which was before the attempted murder decision was proven, a charge of strangulation based on events earlier related to your former girlfriend was proven against you.

[17] The Crown submits that any credit applied for remorse should be tempered by your tendency to downplay the seriousness of your offending. You initially were

unable to express remorse or regret. Almost two years on, you have now matured and written a letter of apology to the victim. In interviews with mental health experts you have accepted responsibility for the incident and expressed remorse, although you maintain you had no intention to kill the victim. However that mental element was proven in the Youth Court.

[18] The Crown submits credit for youth should be approximately 15 per cent. You were 15 at the time of the attempted murder. At that age, you were less neurologically developed than an adult offender, so your offending should not be treated exactly the same.[8]

[19] Credit is due, the Crown acknowledges. for your rehabilitative efforts It suggests in the region of 15 per cent. The Crown acknowledges that you appear to have matured since the attempted murder, but the evidence is that you will need focused continued support and therapy to keep on the good path that you are on, particularly in preparation for future relationships.

[20] The Crown notes that you were originally bailed to your mother's address but you were remanded to a youth residence following breaches of your bail. At that youth residence, you told a worker that you planned to finish what you started upon your release from prison.

[21] You were later given electronically monitored (EM) bail to your mother's address and have complied with the conditions. The Crown submits that your time spent in youth residence and on electronically monitored bail should be recognised but not on a month-for-month basis.

*For the defendant*

[22] Now I turn to the submissions made by Ms Sziranyi on your behalf. She submits that an end sentence of imprisonment would undo the progress you have made in the time since the offending and therefore I should arrive at a sentence of home

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8 *Churchward v R* [2011] NZCA 531, (2011) CRNZ 446 at [77] and [80]; and *R v Ormsby-Turner* [2023] NZCA 601 [69]–[71].

detention or community detention, coupled with intensive supervision and special conditions to support your progress and address the risk to the community. A combination of intensive supervision and home detention is not available to me, so I keep that in mind.

[23] Your counsel accepted that three aggravating factors are present:

(a) Premeditation, which your counsel says is to a limited extent given you planned the incident aged 15.

(b) Serious injuries were caused, although your counsel understands the victim has made a full physical recovery.

(c) Use of a weapon, the machete, is an aggravating factor.

[24] Considering those aggravating factors, counsel submits your offending falls at the lowest end of band two of *Taueki* and submits there are critical differences between the comparator cases referred to by the Crown and your offending:

(a) In *R v McRae*, the defendant was 18 months older than you at the time of the offending. He stabbed his stepmother 15 times while she was holding her 14-month-old baby. Counsel says this violence is more serious than yours. In addition, the additional aggravating factor of attacking the head is not present here and unlike yourself, the defendant there lacked insight and rehabilitative prospects.

(b) In *R v Taipari*, the defendant was one year older than you at the time. The offending took place in a group context and involved significant attacks on the head. This case fell at the upper end of band two of *Taueki*. Counsel submits this case is of limited assistance for assessing your offending given the more serious level of violence there.

(c) In *R v EGO*, the defendant admitted to a charge of wounding with intent to cause grievous bodily harm. In that case, an additional aggravating

factor was present because the defendant intruded into the victim's home.

[25] Counsel submits the appropriate starting point is therefore five years' imprisonment.

[26] Ms Sziranyi submits you should be treated as a first time offender because this charge is the first time you have appeared in the adult jurisdiction. You have no criminal or traffic history, although you have previously been arrested for family violence offending. Counsel submits you should receive a credit of 15 per cent for your prior good character, future potential, and the way you have conducted yourself over the past two years.

[27] Defence counsel also submits that you are genuinely remorseful. You wrote a letter of apology your most recent psychiatric reports assess you as showing remorse. You have been on EM bail without incident for 13 months. You have sent a letter of apology to the victim and have not been able to apologise in person only because he did not attend the family group conference that he was invited to. Counsel says you should receive a discount for remorse but does not suggest quantification for this discount.

[28] Your counsel submits that a discount for your youth at the time of the offending should be approximately 30 percent. You had just recently turned 15 at the time of the offending. Counsel refers to *Martin v R*[9] where the 14- or 15-year-old defendant was given a 50 per cent discount for youth and *W v R*[10] where the 15-year-old defendant was given a 30 per cent discount for youth.

[29] Counsel points to your efforts towards rehabilitation. You have obtained NCEA level one and are working towards level two. Counsel submits you should receive a 30 per cent credit for this rehabilitation progress.

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9 *Martin v R* [2015] NZCA 533.
10 *W (CA722/2021) v R* [2022] NZCA 442.

[30] A further submission is made that you should also receive credit given you have already spent time "in custody" by way of the youth justice residence here you spent seven months and the 13 months you have spent on EM bail. Counsel says this time should be recognised on a month-for-month basis.

**Relevant law**

*Purpose of sentencing*

[31] I now come to the relevant law for sentencing and both counsel have outlined those in their submissions. Under s 7 of the Sentencing Act 2002, I am required to consider the following purposes are most relevant to your sentencing: holding you accountable, denouncing your conduct, deterring you from committing the same or a similar offending in future, and assisting in your rehabilitation.

*Approach to sentencing*

[32] The approach to sentencing is a two-step process.[11] In the first step, I will calculate the starting point incorporating the aggravating and mitigating factors of the offence, considering consistency between this offending and similar offending.

[33] At the second step, I will adjust the starting point to incorporate the aggravating and mitigating factors personal to you, including any guilty plea discount which of course is not available here. The end sentence should reflect the totality of the offending and, barring other considerations, be the least restrictive outcome that is appropriate in the circumstances.

*Attempted murder*

[34] There is no tariff case on sentencing for attempted murder. However, the Court of Appeal has previously indicated that the guideline judgment for serious violent offending, *R v Taueki* may be used for attempted murder sentencing.[12] Both counsel have referred to that case.

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11 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46].

12 *Marsters v R* [2011] NZCA 505. See also *R v Kamal* [2014] NZHC 698; *R v Vaioleti* [2013] NZHC 3358; *R v Smith* HC Christchurch, CRI-2010-009-10435, 4 November 2011.

[35] *Taueki* sets out four bands of offending to indicate different levels of seriousness. In band one, the term of imprisonment ranges from three to six years. In band two, between five and 10 years. And in band three, between nine and 14 years.

[36] These bands are a guide only. The High Court has previously said, including in youth sentencings of this nature, that longer sentences are often imposed for attempted murder than serious violent offending given the intention to kill is required to prove the charge.[13]

*Victim impact statements*

[37] Importantly today, I have heard from the victim through Mr Taylor who read the Victim Impact Statement. It is fundamentally important to sentencing that members of the community who are the victims of, and affected by, offending may speak about its impact on their lives. I thank the victim for his impact statement in this case.

[38] While the physical effects have faded, the mental effects have not. The victim says that although his body has recovered from his injuries, he lacks strength and stamina. He is embarrassed by his scars. He recounts the exhausting process of going to numerous medical appointments after his plastic surgery on his arm. Throughout his surgeries and owing to his ongoing fear of the school environment, he missed one year of learning and therefore has been set back considerably.

[39] The victim says he sees people differently now. If he sees your qualities in someone, he struggles to trust them. Before the offending, he was outgoing and loud. Now, he is anxious and feels the need to be sheltered to protect his safety. He is haunted by the memory of the night you made an attempt on his life.

[40] His life's passion is martial arts and he wants to engage in this sport both casually and competitively. Although he said after recovering from the surgeries, he is not so confident in this area due to his injuries. He feels more vulnerable. But he

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[13] *Police v McRae* [2017] NZHC 1881 at [21]. See also *R v Craw* HC Auckland CRI-2005-057-000018, 7 June 2006 at [1], referred to in *R v Pengelly* [2013] NZHC 527 at [53].

has a vision for the future. Despite being fearful about putting that into place nevertheless, he is moving forward.

[41] The victim wishes for you to receive a sentence of imprisonment.

*Stage one: starting point*

[42] The first stage in sentencing is calculating a starting point, taking into account the factors relevant to the offending.

[43] I accept that there are three aggravating factors of this offending. First, it was premeditated. You went to [the victim's] home intending to kill him, after telling others of your plan and having a previous plan thwarted. Second, the victim suffered very serious injuries to his muscles, skin, essential organs and even had part of his rib bone removed in the attack. He had to undergo serious surgeries. Finally, you used a weapon. You brought a machete with a large blade to [the victim's] home and used this against him in repeated swings, until his parents stopped you.

[44] *Taueki* suggests that offending with two or three aggravating factors falls in band two. With three aggravating factors, your offending falls at the higher end of band two and certainly not at the lower end. However, *Taueki* only provides guidance, I have considered the gravity of your offending independent of *Taueki* and its bands as well. I have also considered the comparator cases referred to by both parties. In my view, your offending was less serious than that in *R v McRae* and *R v Taipari*, referred to by the Crown, because of the factors to which I have referred as raised by Ms Sziranyi in her submissions. I consider *Police v EGO* involved similar levels of premeditation and occurred in a similar context of attacking a partner and former partner's friend. Although I note *EGO* did not involve a charge of attempted murder.[14]

[45] However, standing back and considering the comparator cases and the issues that I have outlined, I agree with the Crown that this is not at the lower end of *Taueki* and that a sentence of substantially more than five years is appropriate. However, I do

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[14] The defendant in that case entered a guilty plea to a substituted charge of grievous bodily harm.

not consider it is at the upper end of the nine and ten years as suggested by the Crown. I conclude seven years' imprisonment is an appropriate starting point.

*Stage two: adjustments*

[46] The second step in sentencing is deciding whether I should make any adjustments, both uplifts and discounts, to the starting point to reflect the factors personal to you as the offender, in order to arrive at the end sentence.

Aggravating factors

[47] Neither party has identified aggravating factors personal to you, and I accept there are none in this case.

Mitigating factors

[48] I consider there are three main mitigating factors personal to you although they are quite complex and nuanced: youth, rehabilitative prospects, and time spent in the youth justice residence and on EM bail are all relevant in my view.

[49] I am satisfied that your youth is a significant mitigating factor. Ms Sziranyi carefully took me through the Youth Court decision as to why the Judge had transferred you to the High Court for sentencing. She submitted that it was not made with imprisonment in mind, but rather the ability of the High Court to better put in place measures to manage the risk and to support your rehabilitation, but also to recognise your youth.

[50] I accept that when the offending occurred, you were very young, having only just turned 15 when your neurological development is incomplete. It is generally accepted based on sound research that young people are higher risk-takers than adults and have less judgment skills. You were immature at that age, and have developed since. You had not developed the skills to cope with your emotions and control your impulses; you reacted with violence. Long sentences of imprisonment tend to be more devastating to young people than adults, and young people have higher amenability to rehabilitation treatment, that means the results are often better. We have seen that here. That is not to excuse your serious offending or discredit the harm the victim has

experienced. However, the Court of Appeal has recognised the difference between youth and adult offenders through sentence discounts.[15] Last year, the Court said in *Ormsby-Turner*:[16]

> … A normal 16-year-old, however, is not an adult. It is now well recognised that there are age-related neurological differences between young people and adults.
>
> Youth discounts also recognise that young people may be more vulnerable or susceptible to negative influences and outside pressures and have greater difficulty regulating their behaviour and impulses. …
>
> Youth discounts also recognise that young people have greater capacity for rehabilitation.

[51] That is directly relevant to your case and is an important issue raised by the medical experts in this case. Both point to the lack of maturation in your thinking that led to this event. Dr Nev Trainor one of the independent mental health experts who prepared a report to assist me in sentencing emphasised that imprisonment may have more pronounced adverse effects on young persons. It will exacerbate the risks of recidivism and also affect their psychological wellbeing. A term of imprisonment is likely to lead to less productive futures in adulthood.

[52] The assessment of an appropriate discount for youth, as Ms Bishop indicated is nuanced and complex. In this case, there are issues of not only your young age but also rehabilitation prospects and the way that risks have clearly been lessened due to the support you have had, prosocial whanau and therapy you have received. In this case, I consider that, you having just turned 15 at the time, a discount of 30 per cent is appropriate for your youth.

[53] Now aged 16 years old, you have your life ahead of you. You are working with your paternal grandmother, a prosocial influence, to help you finish school. You have expressed wanting to go on to more education after that. You are working with psychiatrists and counsellors and have recently shown good insight into your offending. Given one of the purposes of sentencing is to support your rehabilitation, that is an important factor here, and that is separate from the discount for youth.

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15 See for example *Churchward v R*, above n 8; and *R v Ormsby-Turner*, above n 8.
16 *R v Ormsby-Turner*, above n 8, at [68], [69] and [71] (footnotes omitted).

[54] Therefore, taking into account those factors and the comments by the medical experts in relation to risk and rehabilitation and the progress over the past year, I propose applying a 30 per cent discount for your rehabilitative prospects.

[55] However, I do not consider that any discreet discount should be applied for good character. I accept the submission of the Crown that you have now been convicted of a serious offence of strangulation which occurred before the events giving rise to this, although related to the factual matrix. I do not consider any discount for remorse is appropriate.

[56] While you recently have shown remorse and written a letter of apology, I consider the evidence before me does not support a discrete discount for remorse and I accept the Crown's submissions in that respect.

[57] Some recognition should be given for the seven-and-a-half months you spent at the youth justice residence and the 13 months you have spent on EM bail. I agree with the Crown that this recognition should not be on a month-for-month basis. Nevertheless, I exercise my discretion and in all the circumstances consider that an appropriate reduction of eight months on the final sentence would be justified by the time spent on EM bail and in the residential facility.[17]

*Sentence calculation*

[58] Taking the starting point of seven years' imprisonment, the reductions amount to 60 per cent together with a discrete period [of 8 months] for custodial and related conditions[18] since the offence. That brings the end sentence to 23.9 months' imprisonment, taking a holistic approach.. This sentence is less than 24 months. Therefore home detention becomes an available sentence.[19]

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17 The Court has a discretion to take the impact of presentence detention on an offender into account: *Wharrie v R* [2019] NZHC 633 at [36]–[38].

18 Ten months referred to but error in transcript but final sentence reflects 8 months reduction which is referred to in [57].

19 Sentencing Act 2002, s 15A(1)(b).

*Home detention*

[59] In this case, I am satisfied that home detention should be imposed instead of a short sentence of imprisonment. In reaching this conclusion, I have had particular regard to the PAC report provided by the Department of Corrections. The report says that you have excellent prosocial support in the community and good compliance with EM bail. Home detention will enable you to remain in the community, supported by your family, and to access rehabilitative interventions including departmental psychologists who will assist you to address your offending-related factors including those related to relationships and violence. While on home detention, you can access education or other training. And the conditions will be set out as in the PAC report.

[60] The medical experts both indicated in their reports that the insight you had developed over the last few years and the effect of the prosocial environment and support you have received have had remarkable effects. Realistically that would evaporate if you were imprisoned, and I accept your counsel's submissions in relation to that. I also note the predictions of Dr Trainor about the likely effect of imprisonment which are particularly sobering. You are at a crossroads in your life and have options that would not be available if imprisonment were imposed.

[61] I bear in mind that home detention is a serious penalty – it is just below imprisonment in the hierarchy of sentencing and imposes considerable restrictions on you.

[62] Home detention sentences are generally for a period of time of half of what would have been served in prison.[20] I consider the appropriate course is a sentence of 12 months' home detention, the maximum period available.[21]

**Conclusion**

[63] I impose a sentence of 12 months' home detention to be served at the address given and on the special conditions set out in the PAC report, and that includes non-association with the victim and your former girlfriend and importantly no drugs or

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20 *R v Bisschop* [2008] NZCA 229 at [18]–[19].
21 Sentencing Act, s 80A(3).

alcohol. The counselling will be as directed as well as treatment and educational training. Given the emphasis in the reports on ongoing support and therapy to assist with your rehabilitation, they are particularly important. The details of the conditions are set out in the PAC report and I impose those. The post-detention conditions recommended will apply after 12 months.

[64] The interim name suppression continues in force until the application for final name suppression is heard on 29 April 2024.

Grice J

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