

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE

CRI-2023-027-000469
[2024] NZHC 853

THE KING

v

TERRANCE LOWE KIRO

Hearing: 23 April 2024
Appearances: R Annandale, A J Goodwin for the Crown
C Cull KC for the Terrance Lowe Kiro
Judgment: 23 April 2024

SENTENCING NOTES OF WHATA J

Solicitors:
Marsden, Woods, Inskip, Smith, (MWIS), Whangarei

C Cull, Kaikohe | KeriKeri

[1] Mr Kiro you have pleaded guilty to one charge of manslaughter, one charge of burglary, and two charges of aggravated assault. I must now sentence you for this offending.

The victims

[2] Before I do so, I want to acknowledge the victims of your offending, including the deceased, Linda Woods, her whānau, her hapu and her friends. I know she was a much-loved mother, grandmother and whanaunga. The victim impact statements are testament to this. She raised her six children as a solo mum, and she has a special relationship with all of her whānau and especially her mokopuna. They speak of her in glowing terms. She was beautiful, she was caring, she was loving, and she would help anyone. She was the rock and voice of reason for her whānau. To lose her, especially in the way she died, is extremely painful for you all, and indeed shattering.

[3] Some of you were witness to what happened. You have the added trauma of this. While it will be no solace to you whatsoever, such was her mana, that even though very ill, she tried to protect her whānau, a point powerfully made by her daughters. I wish to acknowledge also the words of forgiveness expressed in the victim impact statements. This too is a testament to the mana of your mother and of your whānau.

[4] Nothing I say in this sentence will remedy your loss. But I hope you know that I have listened carefully to what you have had to say and that I have done the best I can to understand your loss.

[5] Koia ka tino nui te aroha ki a koutou te whānau o te whaea Linda. Nā reira, tēnā koutou, tēnā koutou, tēnā koutou.

Facts of offending

[6] Mr Kiro, I turn now to the facts of your offending. You may be seated if you wish. I will ask you to stand at the end.

[7] Linda Woods lived in Kaikohe with her daughter Ana, two of her granddaughters, Aaliyah and Quanesha, and one of her great granddaughters. Mr Kiro, you lived on the same street, but you were not known to them.

[8] On 1 June 2023, you went to Linda's home at about 11.40 pm. You arrived on foot. You took a white plastic chair from the deck and placed it underneath an insecure window at the rear of the property. You removed your shoes and left them nearby. The window was slightly ajar, you stood on the white chair, opened the window further and climbed in.

[9] You went through the window into a bedroom occupied by the three-year-old great grand-daughter of Linda Woods. You left that bedroom and walked through the house to the bedroom where her mother was asleep.

[10] Around this time Aaliyah noticed the insecure window and went to secure it. When she shut the window, she saw the white plastic chair was out of place. She checked the closet of the room to make sure no one was in there. She then went outside and returned the chair to its usual place on the deck. She checked to see whether the doors and their van were locked.

[11] She then went to her sister's room to check on her. Her sister was still asleep, as she turned to leave the room, she noticed you lying on the floor positioned like you were playing "heads down tails up". You were looking down at the ground trying to be as still as possible.

[12] She then confronted you calling out to alert the other occupants of the house. She tackled and bear hugged you trying to stop you from moving. The struggle moved through the house to the area just outside the front door. During the struggle your shorts came off.

[13] Linda and Ana had come out of their rooms and joined the struggle. As Ana and Aaliyah were attempting to restrain you, Linda was between you and the door. You pushed and pulled your way to the door assaulting each of them in the process of

attempting to flee. Quanesha was also present; she took a video and some pictures on her phone. She also called the police.

[14] Linda was a dialysis patient and had a permanent line inserted into her internal jugular allowing access to her regular treatments. Amid the struggle the access ports were damaged and became disconnected causing Linda to lose a large amount of blood in a very short period.

[15] When Linda collapsed, her granddaughter Aaliyah let go of you and tried to help her grandmother. You quickly left the property, leaving your shorts and shoes behind. DNA from the shorts matched your DNA profile.

[16] Sadly, Linda died at the scene.

Mr Kiro

[17] I will now speak about you Mr Kiro. I have had the benefit of a PAC report and a s 27 report. You are of Ngā Puhi, with whakapapa links to Awarua and Waimā. You are 53. You were born in Auckland in 1970 and you were brought up in South Auckland until 1993. The immediate effect of this is that you and your whānau were disconnected from your Māoritanga. This brought whakamā to the whole family, especially your father. While in later years you moved with your parents to Kaikohe, that sense of disconnection and whakamā remained especially for your father.

[18] You have several siblings, including whāngai. Your whānau were not well off and often struggled to put food on the table. You gravitated to drugs at a young age, taking up glue sniffing at primary school. This continued into High School alongside smoking cannabis and drinking copious amounts of alcohol. You got into crime about this time to fund this habit, doing snatch and grab jobs or robbing shops. You left school when you were in third form.

[19] At about 18 you started to turn your life around, got a job and a girlfriend. But that did not last. Your relationship ended after about two years, and you have not been able to hold down a steady job since. You have not had another close intimate relationship, and you were devastated to learn, several months after she was born that

you had a daughter from this relationship but could not have a connection with her. This is a source of considerable sadness for you.

[20] I understand from one of your sisters that you had a close yet complex relationship with your parents. You cared for your father until his passing in 1996, which was traumatic for you. You continued to live with your mother and cared for her, turning down opportunities to travel and live in Australia where some of your whānau reside. Your sister also says that you were brought up to feel obliged to care for your mother and this has had a major impact on you emotionally. Your brother-in-law also says that much of your work goes without the credit you deserve, including work over many years at the local marae.

[21] Overall, Mr Kiro, your life is marked by disconnection from your culture and the associated whakamā, the absence of intimate relationships and ongoing social isolation in part borne from your commitment to care for your now 80-year-old mother.

[22] I also note for completeness that you have three previous convictions. The most recent is from 2006 for one charge of male assaults female (manually). Your other previous convictions are for shoplifting (under \$500) and possession of cannabis in 2004 and 1988 respectively.

[23] Finally, I note that you have expressed unqualified remorse for what has happened. This is noted in both the PAC report and the s 27 report. You have also offered to participate in a restorative justice process, but this was declined by the victim's whānau. This is not meant to sound like a criticism of the victim's whānau. Their reaction is entirely understandable. However, the fact you were prepared to engage in restorative justice is something I must take into account.

Sentencing Approach

[24] I am now going to describe the legal frame, principles and purposes that must guide my sentencing.

[25] I must take into account the purposes and principles of sentencing outlined in ss 7 and 8 of the Sentencing Act 2002. There is a need to denounce the offending and to hold you accountable for the harm that you have caused. The sentence I will impose is intended to promote a sense of responsibility in you for that harm. There must be deterrence, both against future offending by you and against others who might act similarly. I must consider the protection of the public, together with your rehabilitation.

[26] The sentence I impose on you must be consistent in kind and in length with those imposed on others who have offended in a similar way. I must consider the gravity of your offending and your culpability. I must also take into account any circumstances that might make an otherwise appropriate sentence disproportionately severe.

[27] In fixing sentence, I will take the following steps:

- (a) First, I will identify what is called a **starting point** term of imprisonment for your offending. I will refer to other sentences for similar offending for guidance.
- (b) Second, I will then look to your personal circumstances and decide whether there are any personal factors that require an uplift or increase of your sentence or require a discount so as to best achieve the purposes and principles of sentencing.
- (c) Finally, I will apply a discount for your guilty plea to arrive at an end sentence for you.

Starting point

[28] Turning then to a starting point for a sentence of imprisonment. The lead offence is manslaughter. Manslaughter simply refers to the fact you caused Linda's death. It should not be confused with murder as that requires murderous intent. There is no suggestion that you intended to murder the victim.

[29] The Crown submits a starting point of six years six months to seven years six months' imprisonment is appropriate because of:

- (a) The unlawful entry into a dwelling place by you.¹
- (b) You were motivated by sexual intent.
- (c) Linda was assaulted by you and died because you were trying to avoid identification or flee.
- (d) There was actual or threatened violence.²
- (e) Each of the victims were vulnerable:³ they were asleep in a place where they should have been safe and secure; they were smaller than you, and Linda was elderly and ill.
- (f) You assaulted two other victims who suffered the trauma of having to watch their mother and grandmother die.
- (g) Linda's death had a significant impact on her whānau and friends.

[30] The Crown also says your offending is what is called a "fright response manslaughter". These occur when victims find themselves in a situation where they are unexpectedly confronted or threatened and react with a flight or fight response that leads to their death. The Crown refers to three cases of this type: *R v Sinclair-Beere*,⁴ *R v Irving*⁵ and *R v Teo*.⁶

[31] In *R v Sinclair-Beere*,⁷ the victim, in fear of violence from intruders, attempted to flee by climbing over his balcony, but he fell 12 floors to his death. A starting point

¹ Section 9(1)(b).

² Section 9(1)(a).

³ Section 9(1)(g).

⁴ *R v Sinclair-Beere* [2024] NZHC 114.

⁵ *R v Irving* [2023] NZHC 946.

⁶ *R v Teo* [2023] NZHC 700.

⁷ Above n 4.

of four years six months' imprisonment was adopted for the manslaughter but then uplifted six months was applied for the burglary.

[32] In *R v Irving*,⁸ Mr Irving confronted the victim who ran away and dived into the water of the harbour. Mr Irving followed the victim and threatened him when he got out of the water. The victim jumped back into the water and drowned. A starting point of five years six months' imprisonment was adopted.

[33] In *R v Teo*,⁹ Mr Teo and the victim were in a car together. Mr Teo asked the victim for some methamphetamine. The victim said he did not have any. Mr Teo then reached across, while he was driving, and patted the victim's left pocket. The victim, afraid of violence, opened the door of the moving van and jumped out landing headfirst on the road. Mr Teo drove away without checking in on the victim. A starting point of four years 10 months' imprisonment was adopted.

[34] The Crown submits that your offending is worse because, unlike those cases, your case involved sexual intent, actual physical confrontation and assault, in a family home late at night with elderly and other vulnerable people present, including a child.

[35] I turn now to the submissions of your counsel, Ms Cull KC. She submits that while the death occurred in circumstances where you were unlawfully on the property for the purpose of carrying out a burglary, the level of actual violence was very low. She says that the cases referred to by the Crown involved different factual scenarios, but still provide a useful reference point, with starting points of four to five years.

[36] Coming then to my assessment; I approach your offending as a connected series of offences, using the manslaughter as the lead charge as suggested by the Crown.

[37] Your offending involved a late-night burglary of a family home. A home occupied by an elderly ill woman, a middle-aged woman, two young women and a child. This, by itself, is serious offending.

⁸ Above n 5.

⁹ Above n 6.

[38] You have admitted to having a sexual intent. I take this to mean you entered the home for the purposes of sexual gratification. This is clearly a matter of concern and a seriously aggravating factor. But it is important to note that you have not been charged for sexual offending or for indecency. It is therefore an aggravating background fact only.

[39] I infer from the summary of facts that you had observed the occupants of the house and knew who was there, given that you lived down the street, given your object of sexual gratification, and given that you were able to identify a point of access. So, there is an element of premeditation.

[40] You did not intend to seriously harm anyone, but there was always risk of danger and confrontation with a burglary of a family home. There were also multiple victims of your offending. While the assaults were relatively minor, the fact of your presence in the home by itself would have been very threatening and traumatic for the family, who rallied together to confront you.

[41] In this regard, I therefore agree with the Crown that this was a case of a “fright response manslaughter”. It does not have the overt threats and intimidation present in either the *Sinclair-Beere* or *Irving* cases, but the threat presented by you late at night in the home would have been terrifying for the family, especially with a child and elderly woman in the house.

[42] That you did not in fact act violently in the home or utter any threats is however a mitigating factor.

[43] Overall, I consider your offending to be materially worse in kind than the cases cited by the Crown, because it occurred in a family home for the purpose of sexual gratification with multiple victims. A strong deterrent sentence is necessary. But it is

also important to acknowledge that starting points in the seven – year range usually involve serious physical violence not present here.¹⁰

[44] In the result, I therefore consider that a starting point of six years and six months, comprising five years for the manslaughter and uplifted 18 months for the burglary and the assaults is appropriate.

[45] There are no aggravating factors personal to you that warrant a further uplift in this sentence.

[46] I turn then to examine any personal factors that warrant a discount.

[47] First, you are clearly very remorseful. The PAC report notes that you were quick to accept full responsibility for your offending and that you are struggling to deal with the harm you have done. This remorse is also noted in the s 27 report and in your counsel’s submissions. To my mind you are in a deep state of whakamā. I also understand that you do not shy away from the need to account for what you have done, and you also offered to engage in restorative justice. Given this I consider a five per cent discount for genuine remorse and attempt at restorative justice is warranted.¹¹

[48] Second, I have considered your background, and while you had a tough upbringing, perhaps tougher than many, I do not consider it was causative of your offending. But I do accept that your offending was totally out of character for you. Indeed, you have dedicated the last 26 years to caring for your mother it appears alone. There is mana in discharging the obligation of care for our old people. While you do not have an unblemished record, you deserve credit for this. I therefore afford you a further five per cent discount.¹²

¹⁰ See *R v Kiria Te Poono* [2022] NZHC 3416 and *Pokai v R* CA/860, 7 August 2014 for examples of manslaughter where starting points of seven and eight years were adopted in circumstances involving serious physical violence. See also *R v Ruru* CA371/01, 12 February 2002; and *Blackler v R* [2019] NZCA 232 as examples of circumstances where starting points of six to eight years were upheld on appeal even when the victims had underlying medical conditions because their death was caused by prolonged violence.

¹¹ For a discussion of the significance of remorse and the link to public safety see *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [84]; see also *Senior v Police* (2000) 18 CRNZ 340 at [21].

¹² *Manawaiti v R* [2013] NZCA 88 at [18]-[19].

[49] Third, I consider that you are a strong candidate for rehabilitation. The factors just mentioned by me – your acceptance of responsibility, and your deep sense of duty to whānau – give me real confidence that you can free yourself of this whakamā and return safely to your community.¹³ For this potential, I afford you a further 10 per cent discount.¹⁴

[50] Finally, I consider that a 25 per cent discount for a guilty plea is appropriate as both counsel agree.

[51] Because of this, from a starting point of six years and six months or 78 months, I apply a cumulative discount of 20 per cent or 15.6 months for personal mitigating factors and a further discount of 25 per cent or 19.5 months for guilty plea, arriving at an end sentence of 43 months or three years seven months.¹⁵

[52] Mr Kiro, I know this will be a long sentence for you and your whānau, and particularly difficult for your elderly mother. But it is necessary I think to help you lift the whakamā and help you to restore your mana and the mana of your whānau.

[53] Before I conclude I return to the whānau of the victim, I know this sentence will not bring you any relief from this hara, but I hope it is part of the journey for you to find a place of balance or kua ea.

[54] Mr Kiro please stand:

- (a) On the charge of manslaughter, I impose a sentence of imprisonment of three years seven months. This is the lead sentence.
- (b) On the charge of burglary, I impose a sentence of two years imprisonment to be served concurrently with the lead sentence.

¹³ *Van Hemert v R*, above n 11, at [84].

¹⁴ For example of rehabilitation discount *see Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [159]–[162].

¹⁵ When reading this passage in open Court I referred to 19.1 months and I did not refer to the figure of 43 months, but correctly referred to the end sentence of three years seven months.

- (c) On the charges of aggravated assault, I impose a sentence of 6 months imprisonment, each to be served concurrently with the lead sentence.

You may stand down.

Whata J