

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

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

**CRI-2024-004-4716
[2025] NZHC 3536**

THE KING

v

ASHIK ALI

Hearing: 20 November 2025

Appearances: C Antenen and L Seybold for Crown
R M Mansfield KC and H Smith for Defendant

Sentence: 20 November 2025

SENTENCING REMARKS OF LANG J

This judgment was delivered by Justice Lang
On 20 November 2025
Registrar/Deputy Registrar

Date:.....

Solicitors/counsel:
Meredith Connell, Office of the Crown Solicitor, Auckland
R M Mansfield KC, Auckland

[1] Mr Ali you appear for sentence having pleaded guilty to a charge of manslaughter.¹ The maximum penalty for that offence is life imprisonment.²

[2] The charge against you was laid under s 156 of the Crimes Act 1961. Amongst other things this section imposes a legal duty on persons who operate things that, in the absence of precaution or care, may endanger human life. The duty is to take reasonable precautions against, and to take reasonable care to avoid, danger. Persons who fail to meet this duty will be criminally responsible for omitting without lawful cause to discharge the duty.

Background

[3] You have pleaded guilty on the basis of an agreed summary of facts. This records that you were the director, majority shareholder and operator of a company that owned and operated trucks in the commercial transport sector. The company supplied trucks and drivers as a subcontractor to other trucking firms, operating principally in the roading infrastructure sector.

[4] On 21 November 2017, your company purchased an Isuzu truck. The truck was stopped and examined by the Community Vehicle Safety Team (CVST) on 30 January 2018. It was issued with a non-operational order, or “pink sticker” at that time due to defects the inspection revealed. This had the effect of cancelling the vehicle’s certificate of fitness (COF) with immediate effect and prohibiting the truck from being in service until it had obtained a new COF.

[5] On 21 May 2019, the truck was inspected by a Vehicle Safety Officer. This established that the brakes were in a dangerous condition and the vehicle should not have been in service because it was still subject to the pink sticker issued in 2018.

[6] In 2020 the New Zealand Transport Agency/Waka Kotahi contacted your company after it received advice from the police that they were concerned the company was not maintaining its vehicles to a safe standard. Then, in July 2020, the company’s trucks were inspected by NZTA and found not to be up to COF standard.

¹ Crimes Act 1961, s 156.

² Section 177.

The company was directed that it needed to obtain new COF's for the trucks in its fleet every three months.

[7] In August 2020 you told the NZTA that you had taken the Isuzu truck for a COF inspection to have the brakes checked and to determine whether it had any other defects. You said you were in the process of having the defects fixed and would send the NZTA photographs once this process was complete.

[8] On 9 March 2021, the police stopped the truck again and required it to undergo a roadside inspection. It was still subject to the pink sticker issued in January 2018 and should not have been on the road. The inspection identified serious safety defects. These included a cracked right-hand wheel, loose wheel nuts, the second axle differential was leaking oil, there was an air leak behind the cab which posed a risk to the braking and suspension systems, the batteries were not secure, a brake light was not working and the bushes on a tipper arm were worn. The police officer who examined the truck described its overall safety appearance as being very bad.

[9] The defects revealed by the inspection resulted in the police issuing a non-operation order against the truck. Green stickers were placed over the certificate of fitness label on the windscreen and on the rear of the truck. The driver of the truck was given a written direction that the truck could only be used for the purpose of travelling by a direct route to a place where it could be repaired and then inspected for a new certificate of fitness. This meant the truck was not permitted to be used for any commercial purpose. The company was also issued with an infringement notice due to the unsafe condition of the truck.

[10] Later in March 2021, you advised the NZTA that you would not be repairing the truck and would not be using it again.

[11] However, on 27 January 2022, the Isuzu truck was registered in your name and given new registration plates. The reason given for the change of registration plates was that the original plates had been stolen. You subsequently arranged for the truck to be modified by attaching a roller spreader to the rear of the vehicle. No steps were taken at this time to address the outstanding defects or to obtain a certificate of fitness.

[12] The registration of the truck lapsed on 8 May 2022. The last COF had been issued on 9 December 2019.

[13] The series of events that gave rise to the present charge began on 7 May 2024. On that date, your company was subcontracted to assist in carrying out road servicing work on a suburban street at night. Your company was to provide two chip sealing trucks and two drivers for the site works. You were the driver of one of the trucks that attended at the site where the resurfacing work was to take place. You drove the Isuzu truck that was still subject to the non-operation order issued on 9 March 2021. The non-operation sticker had been partially removed from its position on top of the certificate of fitness. On this occasion you were sent away from the site because the site foreman discovered that the roller spreader on the rear of the vehicle was not working properly. You returned to the site later that night in a truck owned by the head contractor.

[14] On the following day, you worked for 12 hours at a resurfacing site in Wellsford, this time using another vehicle belonging to your company. You then changed trucks. At approximately 8.00 pm you drove the truck that was the subject of the non-operation order to a yard in Penrose, where you collected a load of chip seal. You then drove the vehicle to the site you had attended the previous evening when you were sent away because the roller spreader was not working. The total weight of the truck, including the load of metal it was carrying, was approximately 20.5 tons.

[15] When you arrived at the site, you parked the vehicle at the top of an incline whilst waiting for the road surfacing work to begin. At about 10.15 pm, three employees of the head contractor, including Mr Jonathan Walters, were in the process of cutting a line in the asphalt using a concrete cutter saw. They were working approximately 40 metres downhill from where you had parked your vehicle. I infer that these persons were wearing ear protectors to deaden the noise made by the saw.

[16] Without warning, the brakes on your vehicle failed. I accept that this is likely to have been caused, as your counsel submits, by a gradual loss of pressure in the braking system. The truck began travelling backwards down the hill towards the men cutting the asphalt. They did not hear or see the vehicle heading towards them and

one of them, Mr Walters, was knocked to the ground by the left corner of the vehicle. The dual rear wheels of the truck ran over and crushed his legs. The truck's front wheel then ran over his pelvis.

[17] As the truck was travelling down the hill, you were attempting to regain control of it. It zigzagged across both lanes of the road, narrowly avoiding other workers and their vehicles. Eventually it mounted the footpath and collided with two lamp posts and a tree before coming to rest. By that stage it had travelled approximately 400 metres from the point where it had run over Mr Walters.

[18] The collisions with the lamp posts and tree resulted in the truck sustaining damage. This included the entire windscreen being dislodged from the vehicle and landing on the road. One of the road workers then spoke to you and asked whether you were injured. You told him you were "okay" and that you would "park up and come back". You then left the scene of the incident and drove directly to your company's business premises in Papatoetoe. Before leaving the scene, you did not stop to ascertain whether anyone had been injured as the vehicle travelled down the hill. I accept that you did not know that Mr Walters had been injured by the runaway truck. However, this did not relieve you from your obligation as a motorist to ensure that nobody had been injured in the incident.

[19] You then drove to a hospital where you sought treatment for an injured arm. The police found you there and spoke to you about the incident. You subsequently discharged yourself without having been seen by a doctor. You say that no doctors were available to treat you.

[20] On the following day, the police subjected the truck to a thorough mechanical inspection. The same defects as had been identified at the inspection on 9 March 2021 were again identified.

[21] Mr Walters underwent surgery to his legs and pelvis in an effort to address the injuries he received in the incident. This resulted in the amputation of his right leg above the knee and reconstruction of his left leg and pelvis. Sadly, however, he died

on 10 May 2024 as a result of the injuries he sustained when he was run over by the truck.

[22] You told the police that you had been waiting at the top of the hill at the construction site for approximately two hours when you went to start the vehicle. You said it rolled backwards and you were unable to stop it. You tried to press the brake and clutch but found that nothing would work.

Starting point

[23] The first stage of the sentencing process is to set the starting point for the sentence to be imposed on you. This reflects the aggravating and mitigating factors inherent in the offending but does not take into account any factors that are personal to you.

[24] There is no tariff, or guideline, judgment of the higher appellate courts to assist in setting the starting point for the sentence to be imposed on you. This is because the offence of manslaughter can be committed in a large number of different ways. Ordinarily it is necessary to have regard to comparable cases to fix an appropriate starting point. However, other cases involving vehicular manslaughter generally involve the offender driving a vehicle or boat in a dangerous manner and killing somebody in doing so. That is not the case here because the manner in which you drove the truck did not cause Mr Walters' death. Rather, your offending occurred because you drove it when you knew it was not safe to drive and you should not be driving it for that reason.

[25] The Crown submits that a starting point of around five years imprisonment is appropriate and has cited several cases to support this submission.³ None of those cases is directly comparable to your case because the offending in each occurred in quite different factual circumstances. I note, however, that the starting point selected for the offending in those cases ranged between three years six months and five years imprisonment.

³ *R v Bennett* CA457/03, 23 September 2004]; *R v Wira* [2025] NZHC 3148; *R v Kahlon* [2025] NZHC 350; *R v Tomasi* HC Wellington T255/97, 3 July 1998 and *R v Taukava* [2018] NZHC 2290.

[26] Your counsel, Mr Mansfield, relies on observations made by Williams J in *R v T*, in which the Judge distinguished between what he called “sins of commission” and “sins of omission”.⁴ The former concern the commission of an act that causes death or injury whilst the latter concerns a death that is caused by a failure to act in a particular way. Your offending falls within that category.

[27] Mr Mansfield relies on two cases that he says are more comparable to your offending than those cited by the Crown. The first of these is *R v Potts*,⁵ in which two defendants were found guilty on a charge of manslaughter based on allegations that they breached their legal duty to take reasonable care in relation to maintenance work carried out on a helicopter. This resulted in the death of the pilot when it crashed shortly after the vehicle was serviced.

[28] One of the defendants had failed to adequately inspect the helicopter following service work that was carried out on it and therefore did not identify the fact that parts had been installed incorrectly. The defendant subsequently certified the helicopter for release to service. The parts that had been wrongly installed caused the tail rotor drive shaft to fail, resulting in the pilot losing control of the helicopter. The sentencing Judge characterised the inspection of the newly installed parts as grossly inadequate. The two defendants in that case were each sentenced to 300 hours community work and ordered to pay significant sums by way of reparation.

[29] The second case referred to by Mr Mansfield is *R v Parson*.⁶ The defendant in that case pleaded guilty to a charge of manslaughter after failing to carry out test procedures before undertaking hang gliding flights with a passenger. One of these was to ensure the passenger’s harness was securely attached to the frame. It subsequently transpired that the harness was not securely attached and the passenger in the hang glider fell to her death. The Judge sentenced the defendant in that case to 350 hours community work.

⁴ *R v T* [2017] NZHC 1835 at [41].

⁵ *R v Potts & Anor* HC Nelson CRI-2006-042-002896, 2 May 2008.

⁶ *R v Parson* HC Christchurch, CRI-2003-025-4488, 4 June 2004.

[30] Based on these cases, and distinguishing the cases referred to by the Crown, Mr Mansfield submits that a sentence of home detention or a combination of community-based sentences is the appropriate sentencing outcome in your case.

[31] I regard your offending as significantly more serious than that in the cases your counsel relies upon. This was not a one-off incident. You knew that your vehicle had issues with the braking system and you had told the NZTA you were not going to repair it and would not use it again. You also knew that the truck had been subject to two non-operation orders, the first of which had been issued on 30 January 2018. You told the NZTA in March 2021 that you would not be using it again. Despite this advice, you obtained new registration plates for the truck in January 2022 and then arranged for it to be modified through the addition of a roller spreader. This was obviously done because you had decided the truck would be used in the future for road construction work. There can be no other explanation for the fact that you modified the vehicle in that way.

[32] You were therefore prepared to use the vehicle in circumstances where you knew you should not be using it and that it was unsafe both for the driver of the vehicle and those in the vicinity. It is obviously a tragedy that Mr Walters died as a result of your offending. However, you can consider yourself fortunate that nobody else was killed or hurt as a result of your actions.

[33] I accept Mr Mansfield's submission that your actions may be characterised as reckless in the sense that it was not intentional but involved the taking of a known risk. However, the circumstances in which you modified and then used the vehicle after telling the NZTA you would not do so lead me to characterise your recklessness as being gross. Your explanation that you were driven to offend by financial need or desperation does not mitigate the offending in any way at all. Your company's business may have been under financial pressure but this did not justify your decision to use the vehicle and thereby place others in the vicinity at risk.

[34] I therefore accept the Crown's submission that your actions fell well short of what would be expected of a reasonable person in your position. The consequence of all this was, sadly, the death of a person who was a completely innocent party and who

could not have anticipated the events that led to him being struck by your vehicle. As the victim impact statements you have heard read today demonstrate graphically, his death has had catastrophic consequences for his family and workmates. It was a needless death and one that only you had in your power to avoid.

[35] In the present case the sentencing purposes that are to the forefront are therefore the need to denounce your conduct, to deter others who may be tempted to act in a similar way in the future and to hold you accountable for your offending. Taking those factors into account I select a starting point of four years imprisonment.

Aggravating factors

[36] You have some previous convictions but the Crown accepts these have no relevance in the present context. I therefore do not add an uplift to reflect the previous convictions.

Mitigating factors

Guilty plea

[37] You were scheduled to stand trial during the week of 4 August 2025. You entered a guilty plea to the charge on 31 July 2025, two working days prior to the commencement of the trial.

[38] As part of the resolution process the Crown agreed to withdraw a charge of failing to stop to ascertain injury. However, I agree with the Crown that this would have had no material impact on the sentence you are to receive. This is because the fact that you left the scene without checking to see whether anybody was injured is an aggravating factor of the offending to which you have pleaded guilty.

[39] I accept, however, that your guilty plea is worthy of discrete recognition for three reasons. First, your counsel has explained the reasons why the plea was not entered until shortly before the beginning of the trial. Secondly, your plea demonstrates your acceptance of responsibility for the offending that led to Mr Walters' death. Thirdly, you saved his whanau and work colleagues the added trauma of reliving their loved one's death through the trial process. I therefore propose

to allow a discount of eight months, or approximately 15 per cent, to reflect your guilty plea.

Other mitigating factors

[40] I also accept that the events giving rise to charge and the criminal process itself, have had significant effects on you. The injuries you suffered in the incident have also meant that you have abandoned your involvement in the trucking industry. I note that you face several challenges that are described in a psychological report that has been tendered for sentencing purposes. It is likely that these factors will present ongoing challenges to you in the future.

[41] As the Crown accepts, you have expressed remorse both for your offending and the effect that it has had on Mr Walters and his family. You have also engaged in rehabilitative efforts designed to improve your decision-making in the future.

[42] In addition, you have saved the sum of \$20,000 to enable you to make reparation to Mr Walters' family for the emotional harm they have suffered. Obviously no monetary sum can compensate Mr Walters' family for the loss they have suffered. However, you are entitled to recognition for the fact that you are prepared to make a tangible contribution towards their loss. I propose to add a further discount of seven months, or just under 15 per cent, to reflect these factors.

Sentence

[43] On the charge of manslaughter you are sentenced to three years imprisonment.

[44] I make an order under s 32(1)(b) of the Sentencing Act 2002 that you are to make a payment in the sum of \$20,000 to Mr Walters' family by way of reparation for the emotional harm you have caused. It will be for the family to determine how those funds should be allocated.