

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

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

**CRI-2023-088-002887  
[2025] NZHC 3892**

**THE KING**

**v**

**BENJAMIN GABRIEL  
WILLIAM JOSEPH MAKOARE**

Hearing: 11 December 2025

Appearances: S S McMullan and H Brown for Crown  
A Bloem and A Dermer for Defendant Gabriel  
T M Cooper KC and A J Holland for Defendant Makoare

Sentence: 11 December 2025

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**SENTENCING REMARKS OF LANG J**

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Solicitors/counsel:  
Meredith Connell, Office of the Crown Solicitor, Auckland  
Bloem Law/N Manning, Auckland  
T M Cooper KC/A J Holland, Barrister, Auckland

[1] Mr Gabriel and Mr Makoare, you appear for sentence having been found guilty by a jury of the crime of manslaughter.<sup>1</sup> The jury acquitted you on a charge of murder.

[2] The maximum penalty for the offence of manslaughter is life imprisonment.<sup>2</sup> It is common ground, however, that you should receive finite sentences rather than the indeterminate sentence of life imprisonment. The issue I need to determine is how long the sentences should be.

### **The offending**

[3] I propose to sentence you on the facts as I find them to be, having presided over your trial. I am conscious that in reaching factual findings I cannot make any findings that would be contrary to the reasoning by which the jury reached their verdicts.

[4] Your offending occurred after the two of you and three other persons went to a rural address at approximately 11.30 pm on 5 November 2023. You did so because you believed Mr Samuel Curle was likely to be staying at the address overnight. A short time after you arrived at the address, you both became involved in a short but extremely violent assault on Mr Curle. This left him with unsurvivable brain injuries.

[5] All five of the persons who went to the address that night were charged with murder. At the end of the Crown case I discharged your three co-defendants on the charge of murder and directed that the jury was only to consider the lesser charge of manslaughter against them. The jury were unable to reach agreement regarding the involvement of one of your co-defendants, Mr Terrence McFarland. However, they found his two sons not guilty of manslaughter. The Crown has now elected not to seek a re-trial for Mr McFarland. The present sentencing exercise therefore brings all matters in this proceeding to a conclusion.

[6] The offending has its genesis in the fact that you are both patched members of the Head Hunters motorcycle gang. Mr Gabriel, on the morning of 5 November 2023, you travelled from your home address in Whangārei to the gang's clubhouse in

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<sup>1</sup> Crimes Act 1961, s 171.

<sup>2</sup> Section 177.

West Auckland. You did so because you were rostered to perform guard duty at the address that day.

[7] During the morning, you received a message from a person referred to during the trial as “Hobbit”. He was making enquiries as to whether a person called “Samdog” was a patched member of the gang. This person had arrived at “Hobbit’s” address and endeavoured to obtain drugs from the occupants of the address by using stand-over tactics. Whilst doing so, he was wearing a hoodie bearing Head Hunters gang insignia. He was accompanied by the then partner of [redacted], who was also a patched member of the Head Hunters.

[8] Mr Gabriel, you then set about making enquiries as to who this person might be. You first sent out a text message to a group of younger members or associates of the gang to see whether they knew who “Samdog” was. You also contacted Mr Makoare, who began making his own enquiries to see whether the person wearing the hoodie was a member of the gang. Mr Makoare, you told the jury that you felt it was your responsibility as a patched member of the gang to find out how “Samdog” had come into possession of the hoodie. You said you had spoken to [redacted] about the issue and he didn’t seem particularly interested in it. There were several conversations and text message exchanges between the two of you during the course of the day. I have no doubt that these related to the issue of the hoodie that “Samdog” had been wearing.

[9] Mr Makoare, at about 5.30 pm you went to the clubhouse and spoke to Mr Gabriel, who was still there on guard duty. You remained at the clubhouse until shortly before 7.00 pm. The Crown suggested to the jury, and I accept, that you both discussed the issue of the person called “Samdog” wearing the Head Hunters’ hoodie whilst you were together at the clubhouse.

[10] Mr Gabriel, you finished guard duty at the clubhouse at approximately 7.00 pm. You then travelled to Mr Terrence McFarland’s address in West Auckland. A short time later, the person called “Hobbit” arrived and spoke to you and Mr McFarland about the issue of “Samdog” wearing the hoodie belonging to the gang.

[11] A short time after that, [redacted] arrived. You and Mr McFarland then spoke to him about how the person called “Samdog” could have been wearing this hoodie. He maintained that “Samdog” had stolen the hoodie from him. You and Mr McFarland did not believe this explanation because [redacted] partner had accompanied “Samdog” when he went to “Hobbit’s” address. You both no doubt believed that [redacted] girlfriend must have given the hoodie to “Samdog” and that he had not stolen it as [redacted] claimed.

[12] During the evening of 5 November 2023, you, Mr Makoare, became involved in a three-way telephone conversation with “Samdog”, who was discovered to be Mr Samuel Curle. This had been organised by a third party. You asked Mr Curle if he still had the sweatshirt and you told him to return it to [redacted] if he did. A short time later you sent a text message to [redacted] telling him that the hoodie was going to be returned to his address. You told [redacted] that when this occurred, he should “grab” the person who returned it.

[13] Mr Makoare, at about 10.30 pm you received information that the person called “Samdog” was staying at the address to which you later went. You told Mr Gabriel where “Samdog” could be found and he asked you to come along with him when he went to the address to pick up or retrieve the hoodie. You both also wanted to find out how “Samdog” had come into possession of it.

[14] I am satisfied that by this stage you had also both decided that “Samdog” should be physically beaten because he had worn a hoodie bearing the gang’s insignia whilst conducting stand-over tactics. You considered this to be an affront or insult to the gang.

[15] Mr Makoare, you then travelled to Mr McFarland’s address. Mr Gabriel was still there at that time. A short time later both of you travelled to the address where you believed “Samdog” was staying. You travelled to the address in two vehicles, and were accompanied by Mr McFarland and his two sons. Your vehicles were captured on several CCTV cameras as they travelled to and from the address. The jury’s verdicts in relation to Mr McFarland’s sons obviously suggests the jury were not convinced that they were party to the plan to administer a physical beating to the

person called “Samdog”. The jury could not reach agreement regarding Mr Terrence McFarland’s participation in the plan.

[16] When you arrived at the address all five of you went to the front door. Mr Terrence McFarland knocked on the door and spoke to the female occupant. He asked her to have Sam come to the door.

[17] Mr Curle came to the door of the address and you, Mr Gabriel, immediately punched him in the face. However, you denied that you and Mr Makoare had agreed before you went to the address that you would both administer Mr Curle a physical beating for wearing the hoodie. Instead, your evidence was that you spontaneously jabbed him in the face with your left hand when he came to the door. You said you did so only because you recognised him as a person who had been involved in a relationship with your former partner. You said that you then administered what you described as a “push kick”. This left Mr Curle sitting upright on the floor of the entrance foyer. You then accepted that you stomped on Mr Curle on three occasions. These were directed to his legs and not his head.

[18] I do not accept your evidence on these issues. I am satisfied beyond reasonable doubt that you intended to attack Mr Curle as soon as he came to the door. That is exactly what happened. I am also satisfied that you initially struck him a powerful blow to the face that caused him to fall backwards onto the floor. On this point I rely on the evidence given by Mr Terrence McFarland because I consider it to be reliable.

[19] I am also satisfied that you then forcefully kicked Mr Curle and that this caused him to be knocked flat on his back on the floor. Mr McFarland said that he also saw some further stomping or kicking by you but could not clearly see what part of Mr Curle’s body you struck because his view of events was obscured by your body.

[20] At that point you, Mr Makoare, joined in. You said that you were going to the assistance of Mr Gabriel. I do not accept this explanation because Mr Gabriel needed no assistance in what he was doing to Mr Curle. Rather, you joined in because you had agreed with Mr Gabriel that you would both attack Mr Curle when you finally confronted him.

[21] You accepted that you stomped on Mr Curle on three occasions. One of the Crown witnesses, [redacted], also said that you were stomping on him. You said you stomped on his chest area, his neck and his face. I am left unsure as to whether these admissions accurately describe what you did but I give you the benefit of the doubt on that issue.

[22] The attack ended after approximately 20 seconds when Mr Terrence McFarland intervened and told you both in forceful terms to stop. You were only at the address for a matter of minutes before all five of the group left to return to your respective home addresses.

[23] Mr Makoare, you said in evidence that you had never given any thought to the prospect that what you were doing may lead to Mr Curle's death. You acknowledged that Mr Curle was unconscious and making snoring noises when the attack ended. However, you said that you believed that he would wake up feeling a bit groggy and would then be fine.

[24] You, too, denied having been party to any plan to commit serious violence on Mr Curle. You said you travelled there to retrieve the sweatshirt and talk to "Samdog" about where he had got it from. It is noteworthy, however, that you conceded in cross-examination that you intended to beat him "maybe a little bit, but not seriously harm him."

[25] Sadly, Mr Curle sustained serious head injuries as a result of the attack. The occupants of the address enlisted the aid of others to get him medical assistance but he was critically injured. He was in the intensive care unit on life support for approximately three weeks and ultimately died on 26 November 2023.

[26] You have heard today the devastating effects your offending has had not only for Mr Curle but also his family and friends. They have suffered the agony of losing a loved member of their family who was senselessly beaten to death for doing no more than wearing a Head Hunters sweatshirt. That should never have happened.

## **Starting point**

[27] There is no tariff, or guideline, judgment of the higher appellate courts to assist in selecting the starting point for the sentence to be imposed on a charge of manslaughter. This is because that crime can be committed in so many different ways. In order to fix an appropriate starting point, it is first necessary to identify the aggravating features inherent in the offending. It is then necessary to look at the starting points adopted in other comparable cases.

[28] The Crown alleged that you were both guilty either as principals or as parties under s 66(2) of the Crimes Act 1961. It contended you both delivered blows to Mr Curle's head that contributed to his death. In the alternative, the Crown contended that the fatal assault occurred as you were carrying out your plan to administer a serious beating to Mr Curle.

[29] It is obviously not possible to ascertain the basis on which the jury reached their verdicts. I am satisfied that you both delivered blows that could have contributed to Mr Curle's death. However, I am equally satisfied that you were also both parties to a plan to attack him in a violent way and that he sustained his fatal injuries as you both carried out that plan. I do not consider it matters how the jury concluded you were guilty of manslaughter. Further, I consider you are equally culpable regardless of the route by which the jury reached its verdicts.

[30] As the Crown points out, your offending has several aggravating features. First, it involved a premeditated attack on a person who was in no position to resist. You are big men and he was physically small in comparison. Secondly, it involved two attackers, both of whom inflicted blows on the victim including blows to his head. Thirdly, it involved the entry into a private dwelling at night in circumstances where the occupants had the right to feel safe. Fourthly, the offending was gang-related in that you were endeavouring to punish Mr Curle for using a hoodie adorned with gang insignia.

[31] Taking these factors into account, the Crown has cited three authorities in support of its submission that a starting point of around nine years imprisonment is

appropriate.<sup>3</sup> Your counsel both contend that a starting point of seven to seven and a half years imprisonment is appropriate and have also cited cases that they say support this.<sup>4</sup> However, this submission is based on their argument that I should treat the attack on Mr Curle as a spontaneous event and that this was not a premeditated attack on him. I have rejected that submission.

[32] As always, the circumstances of the cases counsel have cited differ from the facts in the present case. Given the aggravating factors I have identified I propose to adopt a starting point of eight and a half years imprisonment.

### **Aggravating factors**

[33] You both have reasonably extensive criminal records that include convictions for offending involving violence. In your case, Mr Gabriel, many of your most recent convictions relate to offending that has occurred in a family violence and not a gang-related context. I therefore do not propose to apply an uplift to reflect your previous convictions.

[34] Mr Makoare, you have previous convictions for offending but again much of this has been committed in a family violence context. Your most significant previous conviction is for aggravated robbery. You received a sentence of five years eight months imprisonment on that charge on 16 September 2016. Again, that type of offending is plainly different from that giving rise to the present charge. I therefore do not intend to apply an uplift to reflect your previous convictions.

[35] However, at the time of the present offending you were still subject to a sentence of intensive supervision that had been imposed on 31 July 2023 when you were sentenced on several charges, including two charges of common assault. It is obviously a matter of concern that you became involved in the present offending whilst

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<sup>3</sup> *R v Edwards* [2022] NZHC 2209; *R v Telefoni* [2021] NZHC 3295; *R v Jamieson* [2009] NZCA 555.

<sup>4</sup> *R v Tai* [2010] NZCA 598; *R v Burke* [2021] NZHC 136; *R v Renata* [2022] NZHC 2745; *R v Kinghazel* [2017] NZHC 2825; *R v Kapea* HC Hamilton CRI-2009-019-10579, 22 February 2011; *R v Tavita* [2022] NZHC 2841; *R v Clarke* HC Rotorua, CRI-2009-270-000073, 29 May 2009.



you were still serving that sentence. I propose to add an uplift of three months to reflect that factor.

### **Mitigating factors**

#### *Offers to plead guilty to manslaughter*

[36] As the Crown acknowledges, you are both entitled to credit for the fact that, through your counsel, you offered to plead guilty to a charge of manslaughter. Mr Gabriel, you offered to plead guilty to that charge on 12 November 2024, approximately ten months before your trial was scheduled to begin and 11 months after you were first charged. Mr Makoare, you offered to plead guilty to manslaughter on 10 March 2025, approximately six months before the commencement of the trial and one year three months after your arrest.

[37] The Crown submits that, had it accepted your offers when you made them, you would have been entitled to discounts of 10 to 15 per cent to reflect guilty pleas. Mr Gabriel, your counsel says that a discount of around 15 per cent would have been available had the plea been accepted at that time. Mr Makoare, your counsel submits that a full discount of 25 per cent should be applied to reflect the fact that you made your offer at a time when the disclosure process had not yet been completed.

[38] It is not surprising that the Crown did not accept your offers. The circumstances of your offending meant that it was appropriate for a jury, and not the Crown, to determine where your culpability lay. However, you are entitled to credit for accepting responsibility for the type of offending on which you were ultimately convicted. Guilty pleas prior to trial would also have saved the witnesses and the State the effort, inconvenience and cost involved in a lengthy criminal trial. They would also have spared Mr Curle's family the trauma of attending a hearing in which the circumstances that led to their loved one's death were examined in great detail.

[39] I propose to allow you both a discount of 20 per cent to reflect your offers to plead guilty to manslaughter. This reduces the starting point by 20 months, or one year eight months. It does not reduce the uplift I have applied to reflect the fact that

Mr Makaore committed the present offence whilst serving a sentence of intensive supervision.

*Mr Gabriel — other mitigating factors*

Remorse

[40] Mr Gabriel, your counsel contends that you should be given a discount of approximately five per cent to reflect remorse. At trial you told the jury that you embarrassed yourself and that you were really ashamed at what happened. However, you made these observations in relation to telephone discussions after the incident in which you effectively boasted to an associate about what you had done to Mr Curle. I also consider the evidence you gave at the trial amounted to an effort to minimise your role in the offending.

[41] You have now expressed remorse to the writer of the pre-sentence report and to a psychologist who has prepared a report for sentencing purposes. However, the writer of the pre-sentence report was unable to conclude that your remorse was genuine. You have also written a letter in which you express remorse. However, I consider this to be too little too late. I am only prepared to give you a limited discount for remorse. I apply a discount of two months to reflect that factor.

Personal circumstances

[42] Mr Gabriel, your offending was driven in large part by your staunch support for the Head Hunters gang, of which you remain a committed patched member. Although you have addressed a history of substance abuse, this was not a factor in the present offending. However, I accept that difficulties in your home environment may well have caused you to form a bond with the McFarland family and, through them, the Head Hunters gang. Your early exposure to violence in the home environment may also have normalised the use of violence for you. I therefore propose to apply a discount of five months to reflect those factors.

[43] These discounts reduce the sentence to one of six years three months imprisonment.

*Mr Makoare — other mitigating factors*

Remorse

[44] Mr Makoare, like Mr Gabriel, you are also a long-term committed patched member of the Head Hunters gang. However, I accept that the evidence you gave during the trial made it clear that you are genuinely remorseful for your offending. This is reflected also in the material prepared for sentencing. You also appear to have been able to overcome long-standing drug addiction issues, although drugs were not a factor in the present offending. I propose to make an allowance of seven months to reflect those factors.

[45] This reduces the sentence to one of six years six months imprisonment in your case.

**Minimum term of imprisonment**

[46] In any case, the Crown contends that I should make an order under s 86 of the Sentencing Act 2002 prohibiting you from applying for parole until you have served one-half of your sentence. Ordinarily you would be entitled to apply for parole after serving one-third of your sentence.

[47] The Court may make an order under s 86 when the usual parole provisions are not sufficient to reflect the sentencing principles of denunciation, deterrence, the need to hold the offender accountable and the need to protect the community from future offending.<sup>5</sup> The Crown contends that all four factors are engaged in both your cases. It points out that your pre-sentence reports suggest you are both at moderate to high risk of re-offending given your continued commitment to the Head Hunters gang.

[48] Ordinarily you would both be eligible to apply for parole after serving just over two years of your sentences. You have both been in custody since your arrest in December 2023 and this means you will soon be eligible to apply for parole. Had there been a realistic chance that you would be granted parole immediately I would have had no hesitation in making the orders sought by the Crown.

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<sup>5</sup> Sentencing Act 2002, s 86(2).

[49] However, you both have numerous convictions for breaching sentences and orders imposed by the courts. In addition, the nature of the present offending and your assessed future risk mean that the parole authorities will take a very cautious approach to the issue of parole. They will not allow you to be released into the community until you have taken such rehabilitative steps as are available to you in prison to reduce your future risk. This may well require you both to serve the whole of your sentences.

[50] Up until now you have been on remand and rehabilitative programmes have not been available to you. Any order requiring you to serve a minimum term of imprisonment would further delay your access to such programmes. I therefore consider a minimum term of imprisonment may delay and hinder your future prospects of rehabilitation. For this reason I decline to make the orders that the Crown seeks.

### **Sentence**

[51] Both stand now please.

[52] Mr Gabriel, on the charge of manslaughter you are sentenced to six years three months imprisonment. Mr Makoare, you are sentenced to six years six months imprisonment.

[53] Stand down.

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Lang J