IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-092-476
[2025] NZHC 4039

THE KING

v

CHAELIM JOHN McCARTHY

Hearing:	17 December 2025
Appearances:	C P Howard and K F R Karpik for Crown R M Mansfield KC and S I Mills for Defendant
Sentence:	17 December 2025

SENTENCING NOTES OF O'GORMAN J

Solicitors/Counsel:
Kayes Fletcher Walker Ltd, Auckland
R M Mansfield KC, Auckland
S I Mills, Rotorua

Introduction

[1] Mr McCarthy, you are for sentence today, having been found guilty by a jury of murdering Jaymis Faletolu and wounding [the surviving victim] with reckless disregard.[1] You are also for sentence on charges of unlawful possession of a firearm and unlawful possession of explosives,[2] to which you pleaded guilty at the start of trial.

[2] Before I begin my sentencing remarks, I acknowledge the presence of members of Mr Faletolu's family, and [the surviving victim]'s family here today. We have heard moving statements on behalf of the families, which I will return to shortly. For now, I extend to them the heartfelt sympathy of the Court.

[3] When a person is convicted of murder, they must be sentenced to life imprisonment unless a sentence of life imprisonment would be manifestly unjust.[3] If life imprisonment is imposed, a minimum period of imprisonment, or MPI, must then be set. An MPI is the time that must be served in prison before you are eligible to be considered for parole.

[4] The Crown submits that a life sentence of imprisonment should be imposed and there are no circumstances that would make that sentence manifestly unjust. The Crown also takes the position that an MPI of 14.5 years is appropriate, made up of:

(a) a 13 and a half year starting point for the murder of Mr Faletolu;

(b) a two year uplift for the wounding of [the surviving victim] and the Arms Act charges; and

(c) a one year reduction for your youth.

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1 Crimes Act 1961, ss 167 and 172; s 188(2).
2 Arms Act 1983, s 45.
3 Sentencing Act 2002, s 102(1).

[5] In contrast, your counsel submits that manifest injustice would arise with a sentence of life imprisonment, and that I should instead impose a sentence of 16 years' imprisonment with an MPI of six and a half years (40 per cent), based on:

(a) a starting point of 20 years' imprisonment;

(b) no uplift for the firearm charge;

(c) a 30 per cent reduction for youth, prior good character, prospects of rehabilitation and a 15 per cent reduction for background and deprivation factors;

(d) the end result is a sentence of 11 years' imprisonment, but this needs to be adjusted back up to an end result of 16 years' imprisonment to reflect the gravity of the murder (if your deductions were held constant, this implies an actual starting point of 29 years' imprisonment).

Summary of offending

[6] I begin by describing the facts of your offending, so the public is aware of the basis on which I am sentencing you.

[7] At the time of the offending, you were 19 years of age. Prior to these events you had no criminal record.

[8] You were part of a group of friends that went by the name "Southbound". You often met up with those friends outside of work hours, to focus on boxing and fitness. However, the Southbound group also had ongoing problems of violent conflict with another group of people from Kelston. On one occasion an attack by the Kelston group had injured you and put a friend in hospital. This led to you wanting to carry a gun, so you could protect yourself and hold your own in any confrontation. Whether it was bravado or not, you discussed with your friends that you were willing to use a gun to shoot someone in the legs. That said, there is no evidence that you had ever fired a gun before these events.

[9] You had not generally been drinking during the year, but you were looking forward to making an exception for New Year's Eve. During the morning of 31 December 2023, you took photographs of yourself holding the firearm and wearing a balaclava. Text messages indicate you thought there might be a clash with the Kelston group at some point that night, which explains why you had a firearm wrapped in a bandana in the back of your car.

[10] However, the party you attended was a small gathering with family members and close friends of the person that invited you. Given that you left the gun in the car, you apparently did not expect trouble at that Addington Avenue address. You arrived with a friend at approximately 11.19 pm.

[11] The atmosphere at the party was relaxed with everyone having a good time, sitting around chatting, listening to music, drinking, and dancing. By 2.33 am, you were thinking about moving on from that party and had texted a friend to ask whether you could join him elsewhere.

[12] At 2.56 am, the victims Jaymis Faletolu and [the surviving victim] arrived at Addington Avenue in a green Lexus and parked across the road. These two were part of your own wider friend group, but you were not focused on their arrival at the party or their movements once there. You were inside the garage at the party.

[13] Without any warning, at approximately 3.12 am, [two assailants] stormed into the garage uninvited and began assaulting the guests. You were injured during the fight, with two of your teeth broken, and a bloodied ear from your earring being ripped out. Within the space of less than two minutes [the assailants] ran off.

[14] You did not know those assailants, but you assumed they were part of the Kelston group. You followed down the driveway and grabbed the gun from the back of your car. You then walked down the road towards a vehicle that had backed onto the grass verge and was undertaking a turning manoeuvre. You believed the occupants were part of the attacking group. You did not realise that [the surviving victim] was driving and Mr Faletolu was the passenger.

[15] From only metres away, you lifted the pistol grip shotgun to chest level and fired once. The shotgun pellets went through the partially open driver's window of the green Lexus and struck [the surviving victim] and Mr Faletolu in their heads and upper bodies.

[16] The jury rejected your assertion that you were only aiming a warning shot at the bonnet area of the car. The jury accepted that you did not actually intend to kill the occupants, but found that you consciously ran that risk, because of where you aimed. They found you had reckless intent to cause bodily injury knowing that death could result. After firing, you lingered around the vehicle to assess the damage. At the very least, you realised no-one in the vehicle was moving.

[17] Within the space of three minutes, you returned to your car and fled the scene, with your friend driving. You provided him with the address in West Auckland to lie low. During that journey you admitted that you thought you recognised the green Lexus vehicle and were worried you had shot the wrong people. But you put those thoughts out of your mind and convinced yourself the victims must have been the ones who assaulted you, so they deserved it.

[18] When you got to your destination, you kept drinking and were still intoxicated when you exchanged a string of texts with another friend on the morning of 1 January 2024 including messages saying, "They chose the gangsta life Homie" and "They wanna be gangsta we showed em that life". At that point you did not know that anyone had died, but you must have considered it was a possibility. Nevertheless, from around 8.09 am there are videos of you laughing and generally in good spirits.

[19] Mr Faletolu was pronounced dead at 2.20 pm on 1 January 2024.

[20] After you returned home later that afternoon you learnt that one person had died, and that the victims were your friends. Your behaviour then changed dramatically. By then you had sobered up and you understood the gravity of what you had done. You became withdrawn and remained isolated in your room.

[21] [The surviving victim] sustained a traumatic brain injury and underwent emergency surgery to remove his eye and portions of his skull. Initially, he was paralysed on the left side of his body and unable to communicate clearly.

[22] In the police search conducted at your home on 17 January 2024, they located in your car boot the firearm cut up into pieces, along with 14 rounds of ammunition. You co-operated in that search and by providing a police interview.

[23] Meanwhile, [the surviving victim] spent some eight weeks in hospital, followed by a three-month intensive inpatient rehabilitation programme. [The surviving victim]'s recovery since then has been arduous. In February 2025, he underwent neuroplastic surgery to have a custom-built skull bone inserted. More recently, he has been fitted for a prosthetic eye.

Pre-sentence and expert reports

[24] The pre-sentence report observes that you had no prior convictions. The report writer interviewed you on 22 September 2025. You said you are planning to appeal the conviction, because you maintain you left the scene believing you had only shot the car, not any people.

[25] You rely on two reports submitted for sentencing purposes:

(a) A report dated 13 December 2025 by Dr Andrew Immelman, consultant psychiatrist.

(b) A cultural report prepared by Mr Patrick Mendes, who works alongside Dr Immelman and assists in providing material from a Te Ao Māori perspective.

[26] The report of Dr Immelman outlines a history of deprivation arising from your mother and siblings leaving for Australia when you were five years old, alleged emotional and physical abuse from a stepmother, sexual abuse trauma (the details of which remain undisclosed), and the fact you were often left to your own devices during your formative years because your father worked long hours. Dr Immelman says your

late adolescent age and susceptibility to peer pressure, combined with that personal history, made you especially prone to impulsivity and poor decision-making. In his opinion, this may have manifested in hypervigilance and a dissociative response to stress, exacerbated in this instance by intoxication. He says you clinically present as someone with severe complex post-traumatic stress disorder. You would benefit from therapy and have high motivation to engage in rehabilitation.

[27] The cultural report of Mr Mendes is designed to assist the Court to understand your past mamae (hurt and pain) and strengths in your whānau. You are a Māori and Samoan tamatāne of Ngāti Porou, Ngāpuhi, and Irish and Samoan whakapapa. The report acknowledges your relationship with your mother was adversely affected when she left for Australia, and your father's long working hours were detrimental. You now have the tautoko of both your maternal and paternal whānau, who want to help you through this. You expressed the hope of undertaking hohourongo (a conflict process) with the victims' whānau, and intend to participate in other programmes to reengage with traditional Māori values and restore and maintain whanaungatanga.

Victim impact statements

[28] I have read the impact statements from members of the victims' families, two of which have been read in Court:

(a) Jaymis's mother described how painful and shattering the loss of Jaymis has been for everyone in his family, leaving his parents and siblings struggling to find a way through their grief and to move forward with life.

(b) Jaymis's father is struggling to process the pain and find purpose in life. This has harmed his relationship with his youngest son and with other family and friends. No sentence will bring back Jaymis or heal the loss of his son, who was kind, respectful and had a life full of promise.

(c) Jaymis's aunt explained the toll taken on the wider family, and the unbearable pain and financial burdens of trying to come to terms with Jaymis's sudden and senseless murder. He was a loving, cheeky and

caring person full of ambitions and goals that will now never be achieved. That leaves a permanent and heartbreaking void suffered by each family member, which mars even special occasions.

(d) [The surviving victim]'s mother described the horrifying process of learning her son was in critical condition, and then trying to put on a brave face to support him through the devastating impacts, multiple surgeries and lengthy rehabilitation pathway that will still leave [the surviving victim] permanently suffering for the rest of his life. This has had a severe and irreparable physical, emotional and financial impact on [the surviving victim] and his family.

[29] I acknowledge how difficult the Court process has been for these victims. Hearing about and reliving the events that had such a catastrophic impact on your lives is extremely hard, especially when the actions were unprovoked by the two victims, making the outcome even more senseless and the injustice profound. I admire the bravery of each one of the victims in sharing information with the Court about how the offending has affected them.

Purposes and principles of sentencing

[30] The Sentencing Act sets out various purposes of sentencing,[4] and the principles that the Court must take into account.[5]

[31] In sentencing you, I seek to hold you accountable for the immeasurable harm that you have caused by ending Mr Faletolu's life, including the immense loss suffered by his family and friends, and for the terrible injuries you caused to [the surviving victim], the consequences of which he will suffer for the rest of his life. The purposes of the sentence I impose today are to denounce your conduct, promote in you a sense of responsibility, deter you and others from committing similar offending, and protect the community from you.

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4 Sentencing Act, s 7.
5 Section 8.

[32] I am required to take into account the gravity of your offending, the general desirability of consistency with sentencings in similar cases, the victim impact statements, your personal circumstances and background, and I must impose the least restrictive outcome that is appropriate in the circumstances.

Framework for sentencing — s 102

[33] Section 102 of the Sentencing Act contains a presumption of life imprisonment in sentencing for murder unless the circumstances of the offence and the offender would render such a sentence manifestly unjust.[6] The presumption of a sentence of life imprisonment for murder recognises the sanctity accorded to human life in our society, and our community's abhorrence of the crime of murder.[7]

[34] A sentence of life imprisonment would mean that you must remain in prison throughout your life unless and until the Parole Board releases you into the community on parole, after the expiry of the minimum non-parole period set by the Court. If you were to be granted parole, you may only remain in the community so long as you comply with your parole conditions and do not reoffend. The sentence of life imprisonment would mean that you would always remain liable to be recalled to prison to complete your sentence.

[35] The Court may determine that a sentence of life imprisonment would be manifestly unjust, having regard to the circumstances of the offence and the offender. Those relevant circumstances may include that young persons aged 18 to 25 tend to have poor impulse control and difficulty in regulating emotions.[8] When sentencing a young person for murder, the Court must always give a "careful consideration" to whether life imprisonment is manifestly unjust — that is because young persons may present with a combination of mitigating circumstances relevant to the offending and personal mitigating factors that together are capable of establishing manifest injustice.[9]

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6 Section 102. The legislative background for this provision is summarised in *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [28]–[34].

7 *R v Williams* [2005] 2 NZLR 506 (CA) at [57].

8 *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [78], [86] and [177]; and *Frost v R* [2023] NZCA 294 at [99]–[100].

9 *Dickey v R*, above n 8, at [177].

[36] In *Kriel v R,* the Court of Appeal confirmed that the fact of youth alone cannot displace the presumption of life imprisonment.[10] Other factors that may combine with youth to render life imprisonment manifestly unjust include "profound social disadvantages" and "significant cognitive limitations".[11]

[37] In *Simpson v R*, the Court of Appeal upheld a sentence of life imprisonment with an MPI of 10 years for Mr Simpson who was 21 at the time of offending, had suffered some social deprivation and possessed the weapon as a precautionary measure. This did not justify a finite sentence because his culpability was assessed to be higher than other cases in which young persons had been sentenced to finite sentences of imprisonment for murder, including the fact that Mr Simpson was the aggressor and displayed little hesitation using the loaded weapon against a retreating and unarmed person.[12]

[38] On the other hand, in *R v Ronaki* the defendant JB was 17 years old at the time of the murder. He was sentenced to 17 years' imprisonment with an MPI of seven years, after La Hood J considered the offender's age, trauma, prospects of rehabilitation, and the particular features of a life sentence that contribute to the manifest injustice for a young offender.[13]

[39] Your counsel relies on the following factors as together rendering a sentence of life imprisonment manifestly unjust in this case:

(a) The jury's convictions can only be reconciled with a finding of reckless homicide, so the gravity is lower than other cases of deliberate murder.

(b) You had poor impulse control and acted in a retaliatory manner without pausing or thinking rationally, not only because you were 19 years of age, but also because you were still in shock from serious assault

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10 *Kriel v R* [2024] NZCA 45 at [102], citing *Dickey*, above n 8, at [169].
11 *Kriel v R*, above n 10, at [104].
12 *Simpson v R* [2025] NZCA 201 at [113]–[115], citing *Dickey v R*, above n 8, at [203], [221]–[227] and [237]–[245]; *R v Yu* [2023] NZHC 1391 at [88]; *R v TH* [2023] NZHC 630 at [26]–[31]; *M (CA434/2022) v R* [2023] NZCA 319 at [95]–[101]; *R v Huntley* [2024] NZHC 182 at [25]−[28]; and *R v Simeon* [2021] NZHC 1371 at [18]–[30].
13 *R v Ronaki* [2024] NZHC 3019 at [53].

injuries, and intoxication may have exacerbated impulsivity and stress responses arising from your personal background. In Dr Immelman's opinion, this may have manifested in hypervigilance and a dissociative response to stress, exacerbated by intoxication. He says you clinically present as someone with severe complex post-traumatic stress disorder.

(c) Your counsel says your behaviour during the aftermath needs to be understood in context — you did not realise the harm done and were drunkenly in self-denial and trying to act with youthful bravado.

(d) And a life sentence will do more damage than achieve anything positive. It would crush hope and imbed antisocial traits that are not currently present and can be prevented. He submits that a finite sentence is sufficient to provide deterrence, to support rehabilitation and to protect the community.

[40] After carefully considering these factors, and comparing your situation to other recent cases of murder by youths, I accept that the imposition of a life sentence imprisonment would be manifestly unjust in this case.

[41] Crown relies on *Te Tomo v R*[14] and *R v Tinei*[15] as justifying a life sentence rather than a finite sentence, but I distinguish those cases:

(a) *Te Tomo* involved gang fighting in which Mr Te Tomo and his associate initiated the violence[16] and escalated matters by introducing an unloaded sawn-off slug gun, then swords, then a loaded .22 calibre gun. There was no imminent threat to any of Mr Te Tomo's friends, and no one was being "beaten up or hit".[17] Far from being impulsive and spontaneous, Mr Te Tomo's actions demonstrated a significant degree

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14 *Te Tomo v R* [2025] NZCA 295: A 17-year-old received a life sentence and an MPI of 10 years and six months. The Supreme Court declined leave to appeal in *Te Tomo v R* [2025] NZSC 143.

15 *R v Tinei* [2021] NZHC 556: Both defendants received life sentences, with Mr Tapusoa (27 years) given an MPI of 13 years and one month and Mr Tinei (25 years) an MPI of 11 years and four months.

16 *Te Tomo v R*, above n 14, at [24(a)].

17 At [24(d)].

of deliberation, persistence, and commitment on his part.[18] The doctor's assessment did not confirm any neurological deficits or evidence of cognitive impairment.[19]

(b) In *Tinei*, the defendants were 25 and 27 years old. That case involved a rivalry between two gangs, one that wore red and the other blue. After two prior encounters with the victim that day (interrupted by others approaching), they drove up to the victim for a third time because he was wearing blue. The victim was neither aggressive nor provocative. Mr Tinei was the driver. From 1.5 metres away Mr Tapusoa pointed a firearm out the passenger window of the car and shot the victim three times. The victim fell to the ground and was pronounced dead at the scene. It was common ground that a life sentence was required.

[42] In this case, I consider that a life sentence would be manifestly unjust, because a finite sentence of 17 years and six months' imprisonment is the least restrictive outcome that is appropriate in the circumstances, to achieve the purposes and principles of sentencing,[20] to account for your personal mitigating circumstances, and to seek consistency with analogous cases.[21] In particular:

(a) You did not premeditate this shooting, nor did you deliberately kill the car occupants. Rather, this was a reckless murder. That lesser culpability has been considered a relevant factor for imposing a finite sentence in other youth murder cases.[22] Reckless murder still requires a very long period of imprisonment.

(b) At 19 years of age, the stage of your brain development already made you more likely to make impulsive, risky decisions without mature thought. These events unfolded very quickly, in a particularly stressful situation of a violent assault against you during which your lack of

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18 At [25].
19 At [28].
20 Sentencing Act, s 8(g).
21 Section 8(e).
22 *R v Simeon*, above n 12, at [18]; *R v TH*, above n 12, at [24]; and *R v Huntley* above n 12, at [23].

impulse control was exacerbated by intoxication. While not a mitigating factor,[23] intoxication is a further explanatory context for Dr Immelman's view that you may have suffered a dissociative stress response, to which you were vulnerable because of your personal background and past trauma. These are cognitive limitations that affected you in that moment far beyond the fact of youth alone.

(c) The level of deprivation in your upbringing is not as extensive as other cases, because you had a prosocial father and generally supportive whānau. You had not been in trouble before, and this behaviour cannot be reconciled with your personality as described by those who know you. This indicates that the behaviour was aberrational, and you have strong prospects of rehabilitation, so it would be counterproductive to crush hope and unnecessarily prolong the pathway to reintegration into the community.

(d) Given that the starting point for murder is life imprisonment, it seems artificial to refer to a nominal starting point of a finite sentence, then apply standard reductions for mitigating factors of youth and deprivation, then uplift the result back to a finite sentence of sufficient length to reflect the serious nature of murder.[24] This disconnects the end result from the calculations,[25] and implies a starting point that differs from the one specified.[26]

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23 Section 9(3) requires that the court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol.

24 For example in *Dickey v R*, above n 8, the Court of Appeal at [235] nominated a starting point of 20 years' imprisonment, then stated provisional deductions of 25 per cent for deprivation and 25 per cent for youth, then 20 per cent for a guilty plea, producing six years' imprisonment, which was then increased back to 13 years' imprisonment to achieve a proportionate response (implying either a starting point of more than 43 years, or deductions capped at 35 per cent).

25 *R v TH*, above n 12, at [38]; and *R v Huntley*, above n 12, at [47].

26 *R v D and P* [2024] NZHC 2118 at [39]–[41] and [49] and Appendix 1; see also *R v Ronaki,* above n 13, at [58], adopting a starting point of 38 years' imprisonment based on the implied figures of other cases.

(e) Comparing your situation with other cases where finite sentences were imposed for youth murder, I consider an implied starting point of 27 years is appropriate for the totality of the offending[27] (involving a single discharge of an unlicensed firearm killing one and wounding another), with deductions of 25 per cent for youth, prior good character, and prospects of rehabilitation[28] and 10 per cent for background and deprivation factors,[29] resulting in a finite sentence of 17 years and six months.

Minimum period of imprisonment

[43] A minimum period of imprisonment, or MPI, is the time that you must serve before you are eligible for parole.

[44] Under s 103 of the Sentencing Act, if the standard sentence of life imprisonment for murder is imposed, then the MPI may not be less than 10 years, and it must be the MPI that the Court considers necessary to satisfy all or any of the following purposes:[30]

(a) holding the offender accountable for the harm done to the victims and the community by the offending;

(b) denouncing the conduct in which the offender was involved;

(c) deterring the offender or other persons from committing the same or a similar offence; and

(d) protecting the community from the offender.

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27 *R v D and P*, above n 26. Appendix lists cases showing implied starting points between 21 and 43 years.

28 *R v D and P*, above n 26. Appendix lists cases showing the youth and rehabilitation discounts tend to range from 20–30 per cent.

29 This is lower than other cases where deprivation was more pronounced (such as drug dependence and extreme poverty with family criminality).

30 Sentencing Act, s 103(2).

[45] When a finite sentence is imposed, the MPI must be what best achieves the purposes and principles of sentencing,[31] at a level between one third[32] and two thirds of the full term of the sentence,[33] but not more than 10 years.[34]

[46] Taking into account other similar cases,[35] I consider that an MPI of 50 per cent of the finite sentence is appropriate, resulting in an MPI of eight years and nine months. I consider this sufficiently denounces your conduct, seeks to promote in you a sense of responsibility, deters you and others from committing similar offending, and protects the community from you.

Conclusion

[47] Mr McCarthy, would you please stand.

[48] For your crime of murdering Mr Faletolu, I sentence you to a finite sentence of 17 years and six months. You are to serve eight years and nine months as a minimum period of imprisonment.

[49] For your crime of wounding [the surviving victim] with reckless disregard, I sentence you to two years' imprisonment.[36]

[50] For the charges of unlawful possession of a firearm and unlawful possession of explosives, I sentence you to 15 months' imprisonment.[37]

[51] All sentences are to be served concurrently so that means, in practical terms, it is the finite sentence of 17 years and six months with an MPI of eight years and nine months which you will be required to serve.

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31 Sections 7 and 8.
32 Section 86(2) and Parole Act 2002, s 84(1).
33 Sentencing Act, s 86(2) and 86(4)(a).
34 Section 86(4)(b).
35 *Dickey v R*, above n 8, 50 per cent (x2) and 53.8 per cent; *R v Yu*, above n 12, 53.3 per cent; *R v Huntley*, above n 12, 50 per cent; *R v TH*, above n 12, 41.6 per cent; and *M (CA434/2022) v R*, above n 12, 39.4 per cent.
36 Having regard to the principles discussed in *Daley v R* [2025] NZHC 3150.
37 Having regard to the principles discussed in *Campbell v R* [2022] NZCA 579 at [19] and *Tewhiu v Police* [2025] NZHC 3601 at [26].

[52] I also make an order for the destruction of the firearm and ammunition.

[53] You may stand down.

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O'Gorman J