

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE PAPAIOEA ROHE**

**CRI-2024-054-1662
[2025] NZHC 4052**

THE KING

v

WAAKA TAHURI DAVIS

Hearing: 17 December 2025

Counsel: A M Barham and G J C Carter for Crown
W R Hawkins and S S Pohiva for Defendant

Sentencing: 17 December 2025

Reissued: 19 December 2025

SENTENCING NOTES OF RADICH J

Introduction

[1] Waaka Tahuri Davis, you appear for sentencing today after you pleaded guilty to the murder of Aaliyah Phillips Wilson.¹

Approach to sentencing

[2] The main purpose in sentencing you today, under the Sentencing Act 2002, is to hold you accountable for the harm that you have caused by your offending; to promote in you a sense of responsibility for, and acknowledgement of, that harm; to denounce your conduct and deter others from acting similarly; and to assist in your

¹ Crimes Act 1961, ss 167(c) and 172—maximum penalty of life imprisonment.

rehabilitation and reintegration into society.² I must consider the gravity of your offending and the degree of your culpability. Your sentence must be consistent with the sentences imposed in other reasonably similar cases,³ and I should impose the least restrictive sentence that is appropriate in the circumstances.⁴

[3] To determine the appropriate sentence for you, I must take two steps:⁵

- (a) the first is to calculate a starting point, incorporating adjustments for aggravating and mitigating factors of your offending; and
- (b) the second is to incorporate all of those aggravating and mitigating factors that are personal to you.

[4] The maximum penalty for murder is life imprisonment.

Victim impact statements

[5] Before I go on to discuss the sentence in more detail, I acknowledge the victims of your offending. Aaliyah's parents, grandmother, and the caregiver of her two younger sisters have given victim impact statements that outline the effect that her loss has had on each of them, and the important place she had in each of their lives. Each statement highlights the kind and caring person Aaliyah was. She was loved deeply by her whānau. The emotional toll that her death has caused has been overwhelming for them.

[6] Aaliyah's mother has described the crippling anxiety, the depression and the deep sadness that the loss of her daughter has caused. The pain that she is experiencing is overwhelming.

[7] Aaliyah's father has described the profound effects that Aaliyah's loss have had on him; causing him to struggle with everyday life.

² Sentencing Act 2002, s 7.

³ Section 8(a) and (e).

⁴ Section 8(g).

⁵ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46].

[8] The caregiver for Aaliyah's younger sisters has, on their behalf, described the ways in which the worlds of these young girls have been shattered; the ways in which their personalities have changed through the heartbreak they continue to experience.

[9] Aaliyah's grandmother has spoken of the love and the kindness that Aaliyah spread amongst those around her. She has described the hole in her heart that has been created; a hole that cannot be filled.

Offending

[10] I need now to explain what happened at around midnight on 17 July 2024. Because the summary of facts is relatively sparse, I include further background information from evidential material mentioned in the Crown's submissions and not disputed in the submissions for you in response. .

[11] You and Anthony Gabolinscy were friends previously as you were both members of the Mongrel Mob gang. On 1 July 2024, Mr Gabolinscy was released from prison on electronically monitored bail to the address of his sister on Featherston Street in Palmerston North. From this point on, you were a regular visitor to the Featherston Street address, spending time with Mr Gabolinscy.

[12] Eventually, you wore out your welcome at this address, both by frustrating Mr Gabolinscy's sister who complained to Mr Gabolinscy that she was not used to having people in her space and had to tiptoe around her own home as you would spend all day there, and due to your inappropriate advances on Mr Gabolinscy's partner at the time. This all culminated in you being asked to leave the address on 8 July 2024.

[13] You left the address, but returned the following night to break windows in the house, before you were chased from the property by Mr Gabolinscy who set off a fire extinguisher in the course of encouraging you to leave.

[14] It appears also that you were angered by Mr Gabolinscy for other reasons.

[15] On the night of 17 July 2024, you arrived at the house of another person where you asked her for a ride. While at the house you waited in her bedroom and took

selfies on your phone of yourself wearing a balaclava, a large poncho-type jacket, and pointing a single barrel shotgun directly at the camera. You arrived at that house with a branded black duffle bag and left with the same bag, having stored the poncho, balaclava and firearm in it. You were driven by the occupant of that house to Featherston Street and you were dropped off outside the house at which Mr Gabolinsey and his sister were living, at around 11.20 pm.

[16] Between 11.52 pm and 12.06 am that night, you approached the Featherston Street address wearing the poncho and balaclava and carrying a shotgun, while the occupant of that address, Mr Gabolinsey's sister, was retrieving something from her car. She spotted you, and ran back into the house and attempted to close the door to prevent you from coming inside. You followed her and forced your way into the address behind her. Mr Gabolinsey, Aaliyah and another person were sitting on the couch in the living room, socialising. A fourth person was sitting in a chair next to the couch.

[17] Once inside, you immediately raised your firearm and called out to Mr Gabolinsey using his nickname "Gabbodog". You then fired a single shot from the shotgun across the couch, which travelled over the heads of two other people sitting there but struck Aaliyah in the head, killing her.

[18] In reaction to the discharge of the shotgun, Mr Gabolinsey grabbed and lifted his own shotgun in your direction and discharged it. He missed, hitting the top of the door frame. You then ran from the address, stashed your shotgun in a duffle bag down the nearby driveway, and left the area on foot.

[19] The fact and extent of culpability in a case like this where the malice in a killing is transferred is not reduced because of that transferral. Transferred malice is where a person seeks to kill one person and accidentally kills another.

Setting the minimum period of imprisonment

[20] I will consider now what the minimum period of imprisonment, or MPI, should be. An MPI is the minimum period of time you will be required to be in prison before you are eligible for parole. The law requires that I impose an MPI of at least 17 years

if one or more of the aggravating factors set out in s 104 of the Sentencing Act apply to the murder, unless that would be manifestly unjust. There are three steps I will follow:⁶

- (a) First, I will determine a “notional” MPI.
- (b) Secondly, I will determine whether any of the aggravating factors under s 104 are engaged.
- (c) Thirdly, if I have determined that one or more of those factors is engaged, and if the notional MPI have determined is less than 17 years, I will consider whether an MPI of 17 years would be manifestly unjust.

Notional MPI

[21] The Crown submits that the appropriate notional MPI on the charge of murder here is at least 17 years’ imprisonment. It refers to cases including *R v Clayton*,⁷ *R v Wallace*,⁸ *Worrell v R*,⁹ *R v McHugh*¹⁰ and *R v Tahitahi*.¹¹

[22] Mr Hawkins, your counsel, submits that the MPI should be 12–13 years. He refers to cases including those mentioned by the Crown but also *R v Moala*,¹² *R v Afamasaga*¹³ and *R v Te Tomo*¹⁴

[23] I see the relevant factors of your offending – which go to your culpability for Ms Wilson’s murder – to be as follows:

- (a) First, your unlawful entry into a dwelling place to commit the murder. Although you had previously been allowed into the Featherston Street property, you were no longer welcome, as was made clear by

⁶ *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 at [25].

⁷ *R v Clayton* HC Wellington CRI-2006-054-557, 22 June 2007.

⁸ *R v Wallace* HC Wellington CRI-2008-085-002981, 20 February 2009.

⁹ *Worrell v R* [2011] NZCA 63.

¹⁰ *R v McHugh* [2015] NZHC 2389.

¹¹ *R v Tahitahi* [2024] NZHC 2284.

¹² *R v Moala*, HC Auckland CRI-2006-092-000461, 12 December 2007.

¹³ *R v Afamasaga* [2014] NZHC 2142.

¹⁴ *R v Te Tomo* [2015] NZHC 2671.

Mr Gabolinscy on 8 July. This factor is only reinforced by Mr Gabolinscy's sister attempting, during your offending, to close the door to prevent you from coming inside. You forced your way in.

- (b) The second factor is your use of a weapon, namely a shotgun, in circumstances where the use of this weapon significantly increased the risk to those present.
- (c) The third factor is the extent of the loss and harm you caused. You took the life of a completely innocent person and caused devastating harm to her family and friends, as outlined in the victim impact statements.
- (d) The fourth factor is the significant level of predetermination and planning apparent in the lead up to the murder. Your predetermination and your planning for the offending includes the fact you wore a face covering and poncho in an attempt to hide your identity, and you asked to be dropped off across the street from the target address.

[24] Your personal circumstances are relevant also. Generally speaking, personal circumstances can help to explain events that have led to, or caused, offending. I have had the benefit of reading a pre-sentence report that was prepared by Corrections in early December. And I have read, also, a report prepared for you under s 27 of the Sentencing Act by Dr Alvina Edwards in July 2021 and a psychological report prepared by Jackie St Clair, a clinical psychologist, in December 2021.

[25] The reports explain that, when you were three, you were left in the care of your grandparents. They raised you. You described them as being strict but said that you abided by their rules and that you got on with them – particularly with your grandfather. But you explained to Dr Edwards in 2021 that your grandparents could not cope and that you needed to leave their place ultimately. You did not know your sister but you lived with your brother for a time. You lived what can be described as a nomadic life. You did not settle easily and you did not have connections with wider whānau. Dr Edwards referred to you as surviving on the streets, as being a wanderer and as having been influenced by this unsettled way of life.

[26] While you say that you fell in with the wrong crowd at school, which resulted in you being suspended and excluded from year 10, you did finish school, and you are to be commended for that and for the successful further training that you then undertook. You had your first taste of alcohol, it is reported, at 13 and began using drugs at 15. Your use of cannabis and methamphetamine began through your association with friends, rather than through having been exposed to criminal offending or substance abuse at a young age.

[27] You are of Ngāti Kahungunu, a proud people, but you are culturally disconnected from your people and from Te Ao Māori. You do not appear to have any connections to relevant whānau or communities.

[28] While, unfortunately, there has been a range of negative influences on your upbringing, it could not be said that the factors that I have mentioned made a causative contribution to your offending here.

[29] Dr Edwards refers to colonisation and to the process and impact of urbanisation on Māori being the possible root cause of your present-day struggles.

[30] It can sometimes be said that deep-grained systemic factors of those kinds can be such as to enable a causal connection to offending to be made which, in turn, is something that may be taken into account in the process of sentencing.¹⁵ However, I cannot see any sufficient connection between your background, troubled though it has been, and this particular offending.

[31] I turn to consider whether or not you have shown remorse. You told the Corrections report writer that just because you show nothing does not mean that deep down you are not apologetic or remorseful. You said that you could have sorted it out (meaning presumably your dispute with Mr Gabolinscy) in a different way, and that you were disturbed about killing Ms Wilson and the way you did and about the impact her death has had on her family. However, you have also seemed to place some blame on Ms Wilson's family for allowing her to associate with certain people. And there are also the comments that you are said to have made that you felt "righteous about

¹⁵ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [108].

what you did”. I agree with the Crown that any remorse you have is as a result of killing the wrong person, not for your actual actions and intentions themselves.

[32] You have a relatively substantial criminal history which includes violent offending, but nothing that comes close to the seriousness of the offending for which you are being sentenced today. Accordingly, an uplift for previous convictions is not required here.

[33] There is also your guilty plea. You entered the plea at the very last available opportunity – on the morning on which your jury trial was to commence – in the face of strong Crown evidence. However, I acknowledge that the guilty plea still brought savings that should be recognised, not just to the justice system, but due to the fact that witnesses did not need to take the time to give, or experience the stress in giving, evidence.

[34] With these aggravating and mitigating factors in mind, and having regard to the cases to which counsel have referred, as well as to some others, I see the appropriate notional MPI for your offending as being 16 years’ imprisonment.

[35] In my view, the case that has the most in common with your offending is *R v McHugh*, despite the fact that that case did not concern transferred malice (seeking to kill one person and accidentally killing another) as was the case here.

[36] In *McHugh*, the defendant broke into a home with the intention of robbing its occupants of drugs and money. He wore a disguise, entered the home through a window, and fired a shot at one of the victims, which missed. Mr McHugh then demanded drugs and money and, when one victim challenged him saying effectively “are you really going to point that gun at us”, he turned to face that victim, mimicked what he said and shot him in the head. He made another demand for drugs, with which the other victim complied, and then fled the address. As is the case with your offending, the aggravating factors included premeditation, use of a disguise, entry to the home at night, and firing a fatal shot. Additional factors in that case were the taking of money and drugs and the firing of the other non-fatal shot.¹⁶

¹⁶ *McHugh*, above n 10, at [32].

[37] In that case, the Court said that, even apart from the existence of s 104, a sentence would have been imposed at, or very close to, 17 years.¹⁷

[38] The Crown has referred to several cases that involved transferred malice. In some cases, the offending differs to such a degree as to offer little help here. For example, in one case the offender tried to kill certain persons through arson but ended up killing another.¹⁸ In another case, intentional reckless driving led the offender into the path of a car but caused the death of the driver of a second car.¹⁹

[39] *R v Wallace* is a case that is comparable in some ways.²⁰ It involved the accidental killing of a two-year-old in a home after the offender shot at Black Power members on the front lawn of the property. Arguably in that case the offending was less serious as the offenders were unaware that there was a child in the house and given that the bullet travelled through a wooden pallet, through the front window of the home and through a sofa before hitting the child. The lead offenders there received MPIs of 15 years. Here, by way of contrast, you saw that there were multiple people in the room sitting close together and made the choice to shoot at close range with a shotgun in any event.

[40] Mr Hawkins makes the point that it is difficult to find a case with similar facts to the present case. The cases he has referred to²¹ all involve rival gang shootings. MPIs of between 10 and 14 years were imposed in those cases. However, the circumstances in those cases were not, as I see it, at the same level of seriousness as is the case here. They did not include the unlawful entry, they did not include the same level of pre-determination and they did not include the extreme reckless nature of your actions, as I have described them, and all three involved reactionary mutual gang rivalry altercations.

¹⁷ The Crown has made reference to the relatively small range of transferred malice cases in New Zealand.

¹⁸ *R v Clayton*, above n 7.

¹⁹ *Worrell v R*, above n 9.

²⁰ *R v Wallace*, above n 8.

²¹ *R v Moala*, above n 12; *R v Afamasaga*, above n 13 and *R v Te Tomo*, above n 14.

[41] In all of the circumstances, an MPI of 16 years is appropriate here, incorporating the fact that you are entitled to a small reduction for your late guilty plea.²²

Is s 104 engaged?

[42] Having assessed the appropriate notional MPI for your offending, I turn now to consider whether s 104 of the Act is engaged. If one or more of the aggravating factors listed in the section are present, I must impose an MPI of at least 17 years unless doing so would cause manifest injustice. The purpose of s 104 is to ensure that defendants who commit murders in circumstances of the type described in the section cannot be released for a lengthy period of time. The Crown says that there are three aggravating factors that are present, namely that the murder involved calculated or lengthy planning,²³ that it involved the unlawful entry into or presence in a dwelling place,²⁴ and that it is a case of transferred malice which amounts to an “exceptional circumstance” for the purposes of s 104.²⁵

[43] Mr Hawkins has said, on your behalf, that s 104 is not engaged here. In terms of the factors that might be relevant, he submitted that the murder did not involve calculated planning but, rather, was impulsive and reactionary to an issue between you and Mr Gabolinscy. He submitted that, while the murder occurred in Mr Gabolinscy’s house, you and Mr Gabolinscy were known to each other. And he has submitted that there are no other exceptional circumstances.

[44] I agree that s 104 is engaged because you entered the home at Featherston Street unlawfully, as I have explained earlier. I do not agree that the transferred malice that is apparent here can be said to be an “exceptional circumstance”. In other cases, the point has been made that the exceptional circumstances threshold in s 104 is generally reached where “the circumstances are so horrendous or repugnant as to

²² More limited discounts for guilty pleas are to be applied to the minimum term in murder cases for a number of reasons including the legislative policy in s 104, which is intended to limit credits that can be given for mitigating factors, the more limited statutory criteria in s 104 and the relativities between minimum terms for murders to which s 104 applies and minimum terms for other murders – see, for example, *Malik v R* [2015] NZCA 597.

²³ Sentencing Act, s 104(1A)(b).

²⁴ Section 104(1A)(c).

²⁵ Section 104(1A)(j).

justify additional denunciation”.²⁶ While it adds to the tragedy that Ms Wilson was not your intended target, I do not consider that means that circumstances that are “so horrendous or repugnant” are present. Examples of exceptional circumstances have, in other cases, included desecrating a victim’s body, burning to death an unconscious victim, and gunning down an innocent bystander because they were witness.²⁷ That kind of level is not reached here.

[45] I referred earlier to the level of planning and predetermination that was apparent in the lead-up to the murder. You clearly put some degree of thought into the murder, given your adoption of a face covering and large poncho to hide your identity, and given that you arranged to be dropped off across the street from the Featherston Street address. But that in my view does not reach the level of “calculated” or “lengthy” required for the s 104 factor to be engaged.

[46] Despite these other circumstances not being made out, only one of the circumstances in s 104 need apply and that is the case here. Your entry into the house was clearly unlawful.

Would an MPI of 17 years’ imprisonment be manifestly unjust?

[47] Because the notional MPI I have reached is less than 17 years, I must now consider whether there is anything that would make an MPI of 17 years manifestly unjust. The threshold for manifest injustice is very high. The 17-year-old MPI is not to be departed from lightly because the Court is bound to give effect to the legislative policy behind that section. As such, the presence of mitigating factors which might normally justify some reduction in a sentence will rarely displace the presumption. Manifest injustice will tend to be the exception rather than the rule. For manifest injustice to be made out, the case must be one that “falls outside the scope of the legislative policy that murders with specified features are sufficiently serious to justify” a term of at least 17 years.²⁸

²⁶ *R v Parson* [1996] 3 NZLR 129 (CA) at 131.

²⁷ See *R v Gosnell* [2013] NZHC 1313; *R v Kumar* [2015] NZHC 954; and *R v Tapaevalu* [2019] NZHC 1867.

²⁸ See *R v Williams* [2005] 2 NZLR 506 (CA) at [66] and [67].

[48] I cannot see any injustice here. I accept that only one of the factors under s 104 is made out, but I do not consider that it is peripheral to your offending. Rather, it was integral to it. You forced your way into the house with your face covered and your gun raised. That, quite clearly in my view, brings your offending within s 104.

[49] Mr Davis, the findings I have made are such that I am left with no discretion. I must sentence you to life imprisonment with an MPI under s 104 of the Sentencing Act.

Sentence

[50] Please stand now, Mr Davis.

[51] I sentence you to a sentence of imprisonment for life with a minimum period of imprisonment of 17 years for the murder of Aaliyah Phillips Wilson.

[52] I also make an order under s 69 of the Arms Act 1983 that the two firearms recovered at the scene of the offending, together with the ammunition located with them, are to be forfeited to the Crown.

[53] And finally, I make an order under s 205 of the Criminal Procedure Act 2011 forbidding publication of any reference to or submission regarding the evidential matter raised by the Crown.

[54] Mr Davis, you may stand down now.

Radich J

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