

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

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

**CRI-2021-092-009340
[2026] NZHC 2055**

THE KING

v

LASALOSI VAITOHI

Hearing: 16 July 2026

Appearances: G Kayes and S Arnerich for Crown
Defendant self-represented
S Wimsett KC as Standby Counsel assisted by B Osborne

Judgment: 16 July 2026

SENTENCING NOTES OF TRACEY WALKER J

*This judgment was delivered by me on 16 July 2026 at 11.22 am
pursuant to s 341 of the Criminal Procedure Act 2011*

Registrar/Deputy Registrar

.....

Solicitors/Counsel:
S Wimsett KC, Barrister, Auckland
Kayes Fletcher Walker, Crown Solicitor Manukau

[1] Mr Vaitohi is for sentence, having pleaded guilty to the murder of 75-year-old Peter Rasmussen. Mr Vaitohi was brought into the courtroom from the cells at the commencement of the hearing but chose to leave within a few minutes. I adjourned the sentencing so that Mr Wimsett could speak to him in the cells. The upshot of that discussion is that Mr Vaitohi wished to stay in the cells rather than be present in court. I have directed that the sentencing proceed despite s 123 of the Criminal Procedure Act 2011. My reasons are recorded in an oral direction which will be appended to these sentencing remarks.

[2] Mr Rasmussen died after being shot at his home on 22 August 2021. Mr Vaitohi was not the shooter. At the time of the shooting, he was serving a sentence of imprisonment. He was a high-ranking member of a faction of the Crips gang. From custody, he planned an attack on Mr Rasmussen's grandson. The reasons were retribution and to deter others from using stand-over tactics against his gang.

[3] Mr Vaitohi is self-represented. He has declined to speak to counsel appointed by the Court as standby counsel to ensure fairness in the sentencing process, and when I say he has declined to speak, I mean in relation to submissions on this sentencing. He has also refused to meaningfully engage in any pre-sentence report preparation. Nonetheless, standby counsel Mr Wimsett KC, has made written and oral submissions advancing the arguments that his own lawyer would have made on his behalf.

Offending

[4] I begin by describing the offending in more detail. Peter Rasmussen lived at an address in Ōtāhuhu. His grandson, a member of the Killer Beez, was serving a sentence of community detention at that address. On 15 August 2021, the grandson and an associate, among others, were responsible for a "stand-over" of one of Mr Vaitohi's co-defendants (whom for fair trial reasons I will call co-defendant 3), resulting in the robbery of methamphetamine.

[5] While in prison, between 17 and 22 August 2021, Mr Vaitohi and various members of his gang discussed seeking retribution against those responsible. Mr Vaitohi, along with others, planned an attack on Mr Rasmussen's grandson.

[6] One of his co-defendants provided the Rasmussen address to Mr Vaitohi. He instructed co-defendant 3 to tell “*the boys*” to visit the house the next day. Mr Vaitohi was told that the grandparents lived there and said he did not care.

[7] On 19 and 20 August 2021, Mr Vaitohi told various associates that the grandson and his girlfriend were responsible for the stand-over. There was discussion about the precise location of “*grandpa’s house*” and the need to “*send a search party out*” for the grandson.

[8] On 20 August 2021, Mr Vaitohi called co-defendant 2, who told him that they had been searching for the girlfriend. Co-defendant 2 offered to go to the address the following morning but said that he did not have a firearm. Mr Vaitohi asked if co-defendant 2 and another gang member would be willing to take a firearm and “*thing the house up*” and “*see if you can get him too*”. By him, Mr Vaitohi was referring to the grandson. Co-defendant 2 agreed. It was agreed that Mr Vaitohi would source a firearm and co-defendant 2 would hold it.

[9] Shortly afterwards, Mr Vaitohi spoke to another associate about sourcing a firearm. He said that he was not concerned about it being at the “*grandpa’s house*” saying, “*I can get the boys to go wait for the morning and just wait till he comes out and just thing him right there... It give [sic] us a chance to test out our soldiers. Test out our soldiers at the same time as teaching the world a lesson.*”

[10] Mr Vaitohi continued his discussions about sourcing a firearm. He directed co-defendant 2 to see co-defendant 1, who would organise a firearm. Later that morning, Mr Vaitohi directed co-defendant 2 to “*go do that thing*” but to wait until the following day or day after because a car hadn’t been sourced yet. Mr Vaitohi told co-defendant 2 to “*get*” the grandson and, if he wasn’t there, “*just thing up, you know, the whole api (house).*”

[11] On 21 August 2021, Mr Vaitohi had various calls to discuss a firearm and the plan.

[12] At 12.54 am on 22 August 2021, Mr Vaitohi called an associate to discuss sourcing a firearm. That associate told him that a firearm would only be provided for a “187”. The term “187” comes from 187 of the California Penal Code and defines the crime of murder. “187” has been used by gangs throughout the United States and elsewhere as a synonym for murder.

[13] Mr Vaitohi said in response, “*Yeah we need this one*”.

[14] Between 11.27 am and 2.08 pm on 22 August 2021, co-defendant 1 and co-defendant 2 exchanged messages. Co-defendant 2 was tasked with obtaining a “*whip*” (being a car). Co-defendant 1 was responsible for obtaining the firearm.

[15] At about 12.44 pm, co-defendant 1 went to an address in Manurewa and collected a shotgun from a third party.

[16] At about 2.30 pm, co-defendant 2 arranged to collect a Ford Falcon from an associate.

[17] At 2.52 pm, co-defendant 2 drove the Ford Falcon to co-defendant 1’s house, leaving that house at around 4 pm. There were three occupants in the car.

[18] At 4.56 pm, Mr Vaitohi called co-defendant 1 who told him to call him back in three hours. He said that he was “*just on that faiva (movie/job) now... I’m just gonna kill my phone.*”

[19] At about 4.58 pm, they drove into the driveway at the address in Ōtāhuhu and parked close to the main entrance of the house.

[20] Mr Rasmussen came to a side door. Co-defendant 1 presented the shotgun at Mr Rasmussen and discharged it. Mr Rasmussen was struck in the right leg. While bleeding heavily, Mr Rasmussen moved himself from the front door to the kitchen area where he lay dying.

[21] Just two minutes later, the car with the same occupants reversed out of the driveway and drove back to co-defendant 1’s address.

[22] A police patrol car conducting area enquiries saw the Ford Falcon driving on Botany Road. At that time, Police knew nothing of the homicide but the vehicle was the same make and model as had been used in an unrelated incident the night before. Police followed the car to the driveway of co-defendant 1's address.

[23] Once stopped at the address, two police officers saw one occupant get out of the driver's seat and walk into the house.

[24] Co-defendant 1 then approached the police car. A second male got out of the car and went inside.

[25] Police spoke with co-defendant 1. There was no mention of the shooting. Police took no further action.

[26] A few days later, on 24 August 2021, Mr Vaitohi and co-defendant 1 discussed the storage of the firearm at co-defendant 1's address.

Sentence of life imprisonment

[27] When an offender is convicted of murder, the Court is required to impose a sentence of life imprisonment unless that would be manifestly unjust.¹ There can be no dispute that Mr Vaitohi must be sentenced to life imprisonment.² That will be the sentence I impose on him today.

[28] The issue I must decide is the minimum term of imprisonment Mr Vaitohi will be required to serve before being eligible for parole. It is the period which Mr Vaitohi must serve before it becomes the task of the Parole Board to decide when, and on what conditions, he should be released from prison. Once released, Mr Vaitohi will remain on parole (subject to being recalled to prison) for the rest of his life.

[29] The minimum term must be at least 10 years and must reflect the period this Court considers necessary to satisfy the purposes of sentencing.³ Those purposes and

¹ Sentencing Act 2002, s 102(1) and Crimes Act 1961, s 172(a).

² Section 102(1).

³ Section 103(2).

principles are the need to hold Mr Vaitohi accountable for the significant harm to the victim, the victim's family and the community by his offending, the need to denounce his conduct, the need to deter him and others from committing similar offences and the need to protect the community from him.

[30] In certain circumstances, s 104(1) of the Sentencing Act 2002 requires the Court to make an order imposing a minimum term of imprisonment of at least 17 years where any of the circumstances listed in that section apply, unless this Court is satisfied it would be manifestly unjust to do so.

[31] One of those circumstances is where the murder involved calculated or lengthy planning by Mr Vaitohi.⁴ To engage this provision the offending must have a heightened degree of planning.⁵ The Crown argues that this provision applies in Mr Vaitohi's case and Standby Counsel responsibly and properly does not argue otherwise. I am easily satisfied that this factor applies.

[32] The reason I say that it applies, is that although Mr Vaitohi's planning was unsophisticated, he planned the murder of Mr Rasmussen's grandson over five days from 18 August 2021. He specifically discussed sourcing a firearm, the need to seek retribution, identifying exactly where the grandson lived, and the logistics of sourcing a firearm and car. The exchange of messages between Mr Vaitohi and others while in custody is chilling. He understood the target of retribution lived with his grandparents and Mr Vaitohi made it clear when told that a firearm would only be provided for a "187", a slang term for murder, "*Yeah we need this one.*" He was unphased by the fact that others, including the elderly victim, lived at the same property. He simply did not care. All he seemed to care about was the perceived loss of face and stamping his authority by making it clear that no-one can cross his gang without deadly consequence.

[33] In addition, I am easily satisfied that the circumstances of Mr Vaitohi's offending are similar to other murders which the courts have found trigger s 104(1A)(b).

⁴ Section 104(1A)(b).

⁵ *Winders v R* [2018] NZCA 277, [2019] 2 NZLR 305 at [68].

[34] As I consider the section is engaged, a minimum period of at least 17 years' imprisonment is required for the murder unless it can otherwise be said to be manifestly unjust. To test that outcome, the Court is required to consider the minimum period of imprisonment that would be appropriate for the offending in the event that section was not engaged, to determine if the minimum non-parole period of 17 years or more would be manifestly unjust in all the circumstances of this offending.⁶ This requires consideration of the notional minimum period of imprisonment that would apply, having regard to the considerations under s 103 of the Act.

[35] I must first consider Mr Vaitohi's degree of culpability compared to other cases of murder to determine the length of a minimum term of imprisonment, that is, a minimum term if s 104 was set aside. This is because of the need to avoid manifest injustice. I must consider, in the ordinary way, relevant aggravating factors and circumstances to arrive at a minimum term necessary to hold Mr Vaitohi accountable. This may include those set out in s 104, as well as any mitigating factors.⁷ It also requires me to compare the circumstances and culpability of Mr Vaitohi's offending with the minimum terms of imprisonment imposed in other similar cases.

[36] If that assessment results in a minimum period of 17 years or more, then the minimum period must reflect that assessment.⁸

[37] If, however, that first assessment indicates a lesser minimum period is justified, then I must stand back and consider whether imposing a minimum period of 17 years would be manifestly unjust. Part of that assessment requires a determination of whether Mr Vaitohi's offending is of a type to which Parliament intended s 104(1) to apply.

[38] If, after that enquiry, I find that a minimum period of 17 years would be manifestly unjust, then that period must be set at whatever this Court considers is justified.

⁶ *R v Williams* [2005] 2 NZLR 506 (CA).

⁷ *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 affirming the approach taken in *R v Williams* [2005] 2 NZLR 506 (CA).

⁸ *R v Harrison* [2016] NZCA 381, [2016] 2 NZLR 602 at [41].

First step – notional minimum period of imprisonment

[39] The Crown and standby counsel, Mr Wimsett, have helpfully referred to other cases to assist the Court’s assessment.⁹ They take a different view as to what the appropriate minimum period should be but for s 104. The Crown says the appropriate period would be one of 16–17 years’ imprisonment. Mr Wimsett says the appropriate period is 12–14 years.

[40] The Crown considers that *Pandey-Johnson v R*, in which a minimum period of imprisonment of 18 years’ imprisonment was upheld by the Court of Appeal, is particularly helpful as a comparison.¹⁰ In that case the defendants were gang members who planned to incapacitate the victim after their illicit business dealings soured. The plan to drug the victim failed so instead he was attacked with a claw hammer while asleep. Mr Pandey-Johnson was not present when the victim was killed but had ordered the attack. Section 104 applied because of significant premeditation and a high level of callousness. The planning was against the backdrop of the offenders being part of a drug-dealing gang. It was not sophisticated, but the Court of Appeal agreed that it was calculated.

[41] I accept Mr Wimsett’s submission that there was a higher level of brutality and callous action in disposing of the victim afterwards, in which Mr Pandey-Johnson was directly involved. But the degree of seriousness was not significantly worse than Mr Vaitohi’s case in my view, for reasons I will come to shortly.

[42] Mr Wimsett contends the most useful comparative case is *Afamasaga v R* and that a minimum period of imprisonment in the range of 12–14 years strikes the proper balance for Mr Vaitohi’s offending. In that case, Mr Afamasaga shot and killed the victim during a gang confrontation. He was the instigator of the plan. The motive was also retribution for having lost face in front of a rival gang. The original plan was abandoned because there were children at the victim’s house. In the end, the victim himself drove to the rival’s house to confront the occupants. Mr Afamasaga was present and shot the victim as he approached the house.

⁹ *R v Pukepuke* [2023] NZHC 3700; *Pandey-Johnson v R* [2012] NZCA 595; *Winders v R* [2018] NZCA 277, [2019] 2 NZLR 305 at [68].

¹⁰ *Pandey-Johnson v R* [2012] NZCA 595.

[43] This Court found that s 104(1A)(b) did not apply because only very preparatory steps had been taken and the shooting was ultimately the result of a hasty makeshift plan. There was a real likelihood that the plan for retribution would not have been carried out and tensions between the group may have dissipated but for the victim arriving at the house. The minimum period imposed for Mr Afamasaga was 14 years' imprisonment.

[44] Mr Wimsett submits that Mr Vaitohi's culpability and role was a combination of that of Mr Afamasaga and one of his associates, also a high-ranking gang member who encouraged and guided the offenders but was not present at the time. He emphasises on Mr Vaitohi's behalf that, although a high ranking member of the gang encouraging the shooting, he was not the shooter and not present. Mr Wimsett suggests therefore that a lesser sentence is required because there was lesser culpability or degree of involvement.

[45] Acknowledging that no two cases are identical, I have carefully considered the materiality of the differences between the offending in the cases presented to me and Mr Vaitohi's offending. I have concluded that the level of premeditation and planning and more importantly, Mr Vaitohi's role in it, means that his offending is much more serious than that of Mr Afamasaga. There was nothing opportune about the shooting of Mr Rasmussen. It was the result of Mr Vaitohi's direction to his associates, knowing of the real risk that someone would be killed in the retaliatory action. Neither do I accept that there should be any distinction between Mr Vaitohi's actions and those of the individual wielding the shotgun given the materiality of his encouragement and facilitation. Any distinction loses potency when Mr Vaitohi was clearly instrumental in, if not the orchestrator of these events.

[46] In addition, there are other aggravating features. Mr Vaitohi organised the shooting while serving a prison sentence. It was an organised "hit" in retribution for an earlier stand-over connected with methamphetamine dealing. Mr Rasmussen was a 75-year-old innocent victim standing at the threshold of his home. Adding to the culpability of the offending itself, Mr Vaitohi's personal circumstances aggravate the overall gravity of his conduct and increase the minimum period needed to meet the purposes I have already identified. He has an extensive history of violent offending.

While he did not engage in the interviews by a pre-sentence report writer, a report was compiled. That records that Mr Vaitohi has offended every year from 2006 to 2018, receiving a sentence of imprisonment in 2018 for aggravated robbery, among other offences. He has more than 60 convictions in his history. He is currently serving a sentence for violent offending committed while in custody. While I do not take that into account in setting the minimum period for the murder of Mr Rasmussen, the picture presented is consistent and very troubling. In short, the public needs to be protected from Mr Vaitohi.

[47] That track record combined with Mr Vaitohi's calculated and callous directions to associates over whom he likely exercised influence as a high-ranking member of the gang lead to the conclusion that, independently of s 104 of the Act, the minimum period of imprisonment necessary for the purposes I have already set out approximates to at least 16 years before any mitigating factors are considered.

[48] I must turn to allowances for mitigating features. These have a lesser role in murder sentencing because of the seriousness of the offending which remains the Court's focus.¹¹

[49] As noted, standby counsel endeavoured to interview Mr Vaitohi in custody for the purpose, among other things, of identifying other mitigating factors. He refused to meaningfully engage with a pre-sentence report writer or writers. That means that he has not allowed any personal mitigating features to be identified. There are, in those reports, indications of attempts by the prison service to encourage engagement with psychologists in custody which have not been taken up.

[50] This morning at the hearing I have also been presented with an email from Mr Vaitohi's mother, explaining some of the background and the childhood that Mr Vaitohi endured. It is predictably sad and there were predictably issues which may have contributed to this offending, but the information is sparse.

[51] But Mr Vaitohi has pleaded guilty and a guilty plea, depending on when it is made, is a mitigating factor even if the Crown is still required to proceed with the trial

¹¹ *Frost v R* [2023] NZCA 294 at [41].

of Mr Vaitohi's co-defendants. There remains value in the acknowledgement that Mr Vaitohi committed the crime with which he has been charged.

[52] Some procedural context is needed to understand how this factor should be factored in, particularly once s 104 is engaged.

[53] Mr Vaitohi first appeared on 17 December 2021. He entered a not guilty plea in late January 2022. His first trial date with his co-defendants was set for 14 August 2023 but was aborted on the Friday of the first week for reasons unrelated to Mr Vaitohi. The second trial date commenced in March 2025, but the jury was unable to reach verdicts. The jury was discharged in early April 2025. Toward the conclusion of that trial Mr Vaitohi indicated a desire to plead guilty. The guilty plea was not formally entered at that time for various proper reasons.

[54] A new trial date was set for 24 August 2026. Mr Vaitohi repeated his indication that he wished to plead guilty on 15 April 2026. That plea was entered finally on 13 May 2026, following discussions with standby counsel, appointed no doubt to ensure that Mr Vaitohi understood the implications of changing his plea.

[55] That means that Mr Vaitohi's guilty plea was more than four years after first appearance and after a completed trial in which verdicts were not reached. The Crown suggests that a guilty plea allowance of five per cent would be appropriate if s 104 of the Act does not apply. Mr Wimsett suggests an allowance of between five to 10 per cent would ordinarily result to reflect that acceptance of responsibility. Balancing the timing against the value of a guilty plea more generally, I would have allowed, at the very most, a nine month deduction for guilty plea.

[56] That leads to a final notional sentence, if s 104 does not apply, of around 15 years and three months.

Second step

[57] However, having determined that s 104 applies, I must now turn to the question of whether a minimum period of imprisonment of 17 years would be manifestly unjust in all the circumstances.

[58] Any injustice must be clearly demonstrated before the Court may exercise its sentencing discretion to impose a sentence below 17 years.¹²

[59] Mr Wimsett contends that this Court should consider the fact that Mr Vaitohi is incarcerated in the Prisoners of Extreme Risk Unit (PERU). He has spent about 18 months in that unit due to his security classification. It cannot be known whether there is any likelihood of his classification being changed to the extent he might be moved into the maximum-security unit rather than in PERU. Mr Wimsett submits that, as a consequence, the custodial sentence is very much harsher than a typical sentence of imprisonment. He argues further that it is not uncommon for the Court to award a credit for the experience an individual may have in prison, citing the accepted principle that for foreign nationals isolated from family and by language barriers, a sentencing judge may exercise his or her discretion to treat such a factor as mitigating because it makes the sentence harder to bear.¹³

[60] Mr Wimsett also refers to the Report of the Ombudsman in 2024 regarding PERU, including the conditions recorded in that report and the Ombudsman's recommendation that the Department of Corrections cease the operation of PERU without delay.¹⁴

[61] Mr Wimsett also refers to at least one case in which this Court has allowed deduction to acknowledge the fact that a defendant has been violently assaulted in prison by members of a gang in retaliation and then placed in a segregated unit for his safety.¹⁵ The Court in that case acknowledged that the threat of harm and impact of segregation within the prison would make imprisonment disproportionately severe compared with those who serve their sentence with others.¹⁶

[62] The Crown says that, in this case, these matters cannot be appropriately taken into account. I pause to note that this morning Mr Vaitohi presented, through standby counsel, a 23-page handwritten letter in which he recounted issues he has both with

¹² *R v Williams*, above n 6, at [66].

¹³ *Zhang v R* [2019] NZCA 507 at [163].

¹⁴ Peter Boshier *Report of an examination of the Prisoners of Extreme Risk Unit under the Crimes of Torture Act 1989* (17 December 2024).

¹⁵ *R v RHB* [2012] NZHC 2879.

¹⁶ At [16].

the process of this criminal case and issues he has in custody. I have only had a brief opportunity to review that letter but in my view, it does not address factors relevant to sentencing.

[63] I am not satisfied that the arguments about particular custodial arrangements in Mr Vaitohi's case can be taken into consideration or that the principles referred to in the cases cited by Mr Wimsett are truly analogous. A much more granular and subtle analysis is required. Those cases involve intrinsic characteristics of an offender in the case of foreign nationals or matters outside the control of the offender. Incarceration in PERU arises from different considerations resulting from a security classification. There is no connection between Mr Vaitohi's offending and the reported conditions on which standby counsel relies. Nor in the absence of evidence am I able to make any findings about those conditions in the past, at present or speculate about future treatment.

[64] In short, I cannot be satisfied that any past treatment or conditions, even if established, would make a sentence disproportionately severe.

[65] I conclude that the high threshold required to show that it would be "manifestly unjust" to sentence Mr Vaitohi to a minimum period of 17 years' imprisonment is not reached in this case. I am satisfied that the circumstances of his offending are precisely the sort of circumstances which Parliament intended the section to apply to. The operation of s 104 therefore requires that I sentence Mr Vaitohi to a minimum period of imprisonment of 17 years.

Sentence

[66] I will now formally hand down that sentence.

[67] On the charge of murder of Peter Rasmussen, Mr Vaitohi is sentenced to life imprisonment and ordered to serve a minimum term of 17 years.

[68] That concludes my formal sentencing remarks.

Suppression

[69] I reiterate that for fair trial reasons, the fact of Mr Vaitohi's guilty plea, his conviction, the submissions counsel made today at sentencing, my remarks and outcome are suppressed. They may not be published on social media or anywhere until the commencement of the trial of Mr Vaitohi's co-defendants, or further order of this Court.

.....
Tracey Walker J

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

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

CRI-2021-092-009340

THE KING

v

LASALOSI VAITOHI

Hearing: 16 July 2026

Appearances: G Kayes and S Arnerich for Crown
Defendant self-represented
S Wimsett KC as Standby Counsel assisted by B Osborne

Minute: 16 July 2026

MINUTE/DIRECTION OF TRACEY WALKER J

Solicitors/Counsel:
S Wimsett KC, Barrister, Auckland
Kayes Fletcher Walker, Crown Solicitor Manukau

[1] Before we proceed with the formal sentencing, I intend to explain what has just transpired so that all can understand it.

[2] As you know, Mr Vaitohi is for sentence before me this morning for murder. He was brought to the court precinct for that purpose. He entered the courtroom but chose to leave within a few minutes of Crown counsel's address. Mr Wimsett spoke with him in the cells, Mr Wimsett is standby counsel.

[3] Mr Wimsett spoke with him in the cells and conveyed to the Court that Mr Vaitohi does not wish to be present in the courtroom because it will take too long. I convened a chambers hearing with counsel to discuss how to proceed. I also reviewed other cases in which similar circumstances have arisen.

[4] I now direct that the sentencing will continue without Mr Vaitohi being present in the courtroom in the dock and my reasons briefly are these.

[5] Section 123 of the Criminal Procedure Act 2011 states that a Court must not sentence a defendant for a category 2, 3, or 4 offence in his absence. But that section is for the defendant's benefit and is designed to ensure that defendants have an opportunity to have input into the sentencing process.

[6] I am satisfied that Mr Vaitohi has had that opportunity to have input into the sentencing process and has voluntarily declined to do so.

[7] Experienced standby counsel, a King's Counsel, has filed submissions advancing the arguments in Mr Vaitohi's favour in writing, and he is also present at the hearing today. I requested Mr Wimsett to ask for an acknowledgement from Mr Vaitohi that the sentencing proceed without him being present in court and whether he is prepared to return to the court at the time when I actually hand down the sentence.

[8] I am told that Mr Vaitohi acknowledges that settlement will proceed and has no wish to attend at any stage.

[9] I do not consider in all those circumstances where Mr Vaitohi is present in the precinct of the Court and may appear in the Court if he so wishes, means that he is absent for the purposes of the section in the Act.

[10] Mr Vaitohi entered the dock at the formal start of the process and then voluntarily withdrew. This Court has authority to have him brought to the Court by force; I am not prepared to do that for the sake of court officials, security officers and for the sake of Mr Vaitohi himself.

[11] I intend therefore to proceed to hear submissions from counsel and to deliver sentence in his absence from the courtroom, but with his presence within the Court precinct and I direct that he remains in the Court precinct until such time as he knows the sentence I have handed down, or will hand down, and the reasons for it before he leaves the court precinct.

[12] I am satisfied that his interests are protected and certainly not prejudiced by this course.

.....
Tracey Walker J