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

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

**CRI-2025-092-5344
[2026] NZHC 2750**

THE KING

v

UEPA TUMAIALU

Hearing: 9 September 2026

Appearances: J N Cassidy for Crown
N R Williams and B C S Moyer for Mr Tumaialu

Date of sentence: 9 September 2026

SENTENCING NOTES OF JAGOSE J

Counsel/Solicitors:
N R Williams, Barrister, Auckland
B C S Moyer, Barrister, Auckland
Kayes Fletcher Walker, Manukau

[1] Mr Tumaialu, you come before me today for sentencing on your guilty plea to the charge of manslaughter of Ivan Fifita, who you stabbed in the course of a fight at Auckland's Ōtāhuhu on 29 June 2025.

[2] I offer the Court's condolence to Mr Fifita's survivors. I appreciate, Nathaniel, your representation of them done quite so well and quite so eloquently. I hear you.

[3] Mr Tumaialu, you were convicted accordingly of manslaughter. I now am to sentence you on your conviction, for which the maximum sentence is life imprisonment.¹ That maximum reflects "society's recognition of the sanctity of human life and its condemnation of anybody who wrongfully takes another life".² You killed Mr Fifita on the same day as new sentencing provisions came into effect,³ affecting any reduction for personal mitigating factors and making you subject to a first warning.

[4] In sentencing you, I must accept as proven all facts essential to your pleaded guilt.⁴ I also may accept as proved any facts agreed on between you and the Crown.⁵ Those are specified in the summary of facts to which you pleaded guilty, which I will outline shortly.

[5] I have read and listened to all that counsel have had to say, both for you and for the Crown. As you've heard, the Crown recommends a starting point of seven years' imprisonment, with roughly equal adjustments upwards for your criminal history and downwards for your guilty plea, and seeks you spend at least half your sentence without prospect of parole. Your counsel, Nick Williams, advocates for a starting point of no more than six years' imprisonment, uplifted by no more than four months for your criminal history. He additionally claims deductions of 35 per cent on account of your guilty plea and background to come to a sentence of four years and one month. He says no minimum period of imprisonment is required.

¹ Crimes Act 1961, s 177(1).

² *R v Cunnard* [2014] NZCA 138 at [16].

³ Sentencing (Reform) Amendment Act 2025.

⁴ Sentencing Act 2002, s 24(1)(b).

⁵ Section 24(1)(a).

[6] The lawyers' written submissions are detailed and lengthy. I have given them careful consideration. But I'm not going to recite them, because sentencing is an intense exercise of my own judgement. I am not bound by the lawyers' views; I have to come to my own decision. To meet sentencing's multiple purposes,⁶ I must satisfy myself of the appropriate sentence for the gravity (the seriousness) of your offending, including your culpability (your responsibility) for it.

Your offending

[7] I need first to cover off the background to your offending, to let people know the conduct for which I am sentencing you.

[8] On 29 June 2025, you and Mr Fifita were both living at an Ōtāhuhu boarding house. You both were aged in your early 30s: you, 31; Mr Fifita, 33.

[9] At about 7 pm that evening, you were both sitting outside on the property's deck—smoking, eating and talking to each other—on chairs on either side of a small table. You both left the deck on a couple of occasions—you leaving the property for about 25 minutes when you returned with a bag, from which Mr Fifita retrieved something—ultimately both of you returning shortly after 8 pm to continue in conversation. Your presence on the deck largely was captured by CCTV footage.

[10] At about 8.20 pm, Mr Fifita stood up. Then you did. The two of you faced each other and squared off in apparent confrontation. Mr Fifita threw a punch with his left fist which you blocked by grabbing it in your right hand while pushing him to the ground with your left hand. When Mr Fifita stood up, you lunged at him with both hands. Mr Fifita backed away with his arms up and swung at you with his left hand, which did not connect. You followed Mr Fifita's retreat to the edge of the deck where you were both obscured from CCTV coverage for a few seconds.

[11] After another resident put his head around the door to see what was going on, you both walked to the centre of the deck. At some point prior to that, you had stabbed Mr Fifita once with a knife.

⁶ Section 7: accountability, responsibility, victims' interests, reparation, denunciation, deterrence, community protection, rehabilitation and reintegration.

[12] The confrontation then continued with the two of you facing each other. Mr Fifita threw a chair and then a table at you, forcing you off the deck. You broke off one of the table's legs and carried it up onto the deck where you walked toward Mr Fifita, who threw your bag at you and picked up another piece of wood.

[13] At about 8.21 pm, you walked away from the deck where Mr Fifita sat down on a chair. You briefly left the property to return a couple of minutes later, at 8.24 pm, when you and Mr Fifita resumed your original positions seated on chairs at either side of the table. Mr Fifita swiped at you with a piece of wood. It did not connect with you and you did not react. You left the deck to return to your room at 8.27 pm.

[14] Shortly afterwards another resident came onto the deck to see Mr Fifita clutching his stomach, with blood coming out of his mouth and between his fingers. Mr Fifita told him he had been stabbed and to call an ambulance, which he did at 8.29 pm. At 8.30 pm, you left the property again.

[15] Police arrived at about 8.35 pm, by when Mr Fifita had collapsed to the deck. He died in hospital at about 11.30 pm that night. A forensic pathologist later confirmed his death was caused by a single stab wound, penetrating the left side of his liver through muscle tissue into his heart's aortic valve.

[16] On one or other of your departures from the property after stabbing Mr Fifita, you left the knife on a nearby driveway, where it was located by the occupier and provided to police on their next day's area canvass. Mr Fifita's DNA was located on the knife's blade. On your latter departure, you checked into a proximate hotel, where you stayed for the night, departing again on 30 June 2025, when you attended the Ōtāhuhu probation office where staff contacted police and you then were arrested.

Victim impact statement

[17] I have, and we have heard this morning, Mr Fifita's family's statement, explaining their experience of the emotional, psychological and financial impact of his death. It speaks of their overwhelming grief and unimaginable loss, both undiminished and amplified by the passage of time without him. They are traumatised by your decision to leave Mr Fifita injured and dying, without seeking help for him. Their

statement emphasises he was a cherished son and much-loved brother with an important role in his extended family, who they must now forever live without. Their statement helps me understand their view of your offending. And I encourage you to reflect on it also with an open mind, to inform you of their perspectives of the impact of your offending.

Personal circumstances

[18] I turn to consider your personal circumstances, so far as they are discernible from the material before me. You declined to participate in Corrections’ preparation of a pre-sentence report for me. You have not asked me to hear from anyone who knows of your background so far as it may relate to your offending, or on any resolution of issues between you and Mr Fifita’s survivors. I have read your affidavit filed in support of your application for bail in March this year—in which you outline your unstable background, affirmed by a statement from your brother—you saying you hope it “stays confidential”, and identifying your main motivation for change is to [Redacted]

[19] You were deported from Australia in 2019, after being sentenced there to 45 months’ imprisonment in 2013 at the age of 18 for intentionally causing serious injury in what the Judge said was a “clearly unnecessary” escalation of minor fisticuffs with that victim. Your youth criminal record there also recorded your violent offending.

[20] Your criminal record here commenced then with a variety of assault, property and traffic offending, for which you were sentenced to four months’ home detention in April 2020, and similarly again in 2021, for which you were sentenced to 16 months’ imprisonment. You were sentenced to 23 months’ imprisonment in September 2024 for serious family violence offending (also in breach of a protection order), in respect of which you breached bail. You were released in November 2024 on conditions for expiry in May this year. I note, as I said to counsel, your 2021 and 2024 sentences both related to circumstances involving the presence of cutting weapons, a knife and a machete.⁷

⁷ *Police v Tumaialu* [2021] NZDC 10759 at [5]; and *R v Tumaialu* [2024] NZDC 23821 at [4].

—*PAC report*

[21] Institutional information drawn on by Corrections’ pre-sentence report identifies you experienced a violent and sexually abusive childhood in New Zealand and then Australia where you spent some time homeless. You appear estranged from your own mother as well as [Redacted]. You previously indicated your gang connections, leading to your assault offending in September 2023. You reported your multi-substance abuse to self-medicate schizophrenia. You acknowledged your inability to control your violent behaviour, for which you blamed your mental health.

[22] Given the nature of your past and current offending—and your shared accommodation history, in which you are alleged to have been aggressive and violent to other residents to the point of eviction to the Ōtāhuhu address, and your lack of engagement with rehabilitation services on release—the report-writer assessed you at high risk of reoffending, noting also your “mental health concerns”. That writer queries if your violent history is attributable to some drug-induced psychosis.

—*other reports*

[23] I have 14 November 2025 and 25 March 2026 reports from a forensic court liaison nurse, both prepared for fitness purposes, who referred to a psychiatrist’s 23 January 2024 assessment you may have “a cluster B personality disorder, maladaptive responses to stress, and an unclear recent history of drug use”, which the psychiatrist’s assessment earlier this year described as “a background of personality disturbance”, although without any psychotic disorder. The nurse reported you had been diagnosed with a type of paranoid schizophrenia or drug-induced psychosis in 2021 and earlier polysubstance and opioid dependence.

[24] I also have another consultant psychiatrist’s 7 August 2026 report, also primarily for fitness purposes, derived from his review of institutional information and meetings with you and your family. From that information, while noting concerns about the integrity of the information obtained from you directly, the psychiatrist diagnosed you as having some unspecified psychotic disorder but with “no clear nexus” to your present offending. Rather, he attributes your fatal assault on Mr Fifita to your antisocial and narcissistic personality and your ‘problematic’ anger

management and impulsivity controls, likely exacerbated by your substance abuse, giving rise to your “most likely ... reduced capacity for sound judg[e]ment at least to some extent” in “respond[ing] adaptatively to interpersonal conflict”. So that’s the material I have before me.

Approach to sentencing

[25] I now explain how I will go about sentencing.

[26] The usual sentencing method involves two stages. First, I decide a starting point for the type of offending for which you are convicted. That involves identifying the aggravating and mitigating features of your offending.⁸ Then I take into account all aggravating and mitigating factors personal to you, all to be calculated as a percentage of the starting point.⁹ Last, I stand back to assess the appropriateness of that sentence in your individual circumstances.¹⁰

[27] The range of conduct manslaughter sentencing must encompass means sentences may not easily be reconcilable.¹¹ But “the more serious have attracted a starting point of ten years and above and most incorporate the aggravating feature of prior offending ...”.¹² Where that pattern is absent, and the death may “be properly characterised as an isolated event evidencing a momentary and uncharacteristic loss of control”, a lower starting point may be achieved.¹³ A number of cases at the low end of the range are “distinguishable on the basis that the offenders were suffering from varying degrees of mental impairment at the time of the offending”.¹⁴ In manslaughter cases of serious violence, such as your offending, application of sentencing guidelines relating to grievous bodily harm offending “is relevant and indeed of considerable assistance”.¹⁵

⁸ *R v Taueki* [2005] 3 NZLR 372 (CA).

⁹ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46]–[47].

¹⁰ *Berkland v R* [2022] NZSC 143 at [22] and [200], citing *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [38].

¹¹ *Everett v R* [2019] NZCA 68 at [20] and [24], referring to *R v Edwards* [2005] 2 NZLR 709 (CA) at [14] (citing *R v Leuta* [2002] 1 NZLR 215 (CA) at [49]–[59]).

¹² *Woodcock v R* [2010] NZCA 489 at [41].

¹³ At [41].

¹⁴ *Robinson v R* [2011] NZCA 479 at [12], referring to *R v Pene* [2010] NZCA 387; *R v Gordon* CA276/04, 16 November 2004; and *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411.

¹⁵ *Everett v R*, above n 11, at [24], referring to *R v Taueki* [2005] 3 NZLR 372 (CA) as endorsed by *R v Tai* [2010] NZCA 598 at [11] and *R v Jamieson* [2009] NZCA 555 at [34].

[28] In the end, my sentence is to reflect this community's repudiation of your crime, the sentence being "determined not on impulse or emotion but in terms of justice and deliberation".¹⁶ I must have regard for the statutory purposes and principles of sentencing.¹⁷ I must hold you accountable for your offending and for the harm you have caused.¹⁸ Your sentence should be sufficient to denounce your conduct,¹⁹ to deter you and others from committing such offences,²⁰ and to protect the community.²¹ I must consider the gravity and seriousness of your offending, and take into account its effect on its victims.²² The sentence must take into account the desirability of consistency in sentencing,²³ and anything in your circumstances as would make an otherwise appropriate sentence "disproportionately severe" in your case.²⁴ And last, I must impose the least restrictive outcome appropriate in the circumstances.²⁵

[29] These purposes and principles have no ranking.²⁶ My ultimate consideration is if "the sentence is a just one in all the circumstances", having regard to "the circumstances of the offence and offender against the applicable sentence purposes, principles and factors".²⁷

Starting point

[30] I begin with setting a starting point for your offending.

[31] I count four aggravating factors to your assault on Mr Fifita. They are:

- (a) first, its involvement of actual violence by actual use of a weapon;²⁸
- (b) next, resulting in Mr Fifita's death;²⁹

¹⁶ *R v Puru* [1984] 1 NZLR 248 (CA) at 249.

¹⁷ Sentencing Act, ss 7 and 8.

¹⁸ Section 7(1)(a).

¹⁹ Section 7(1)(e).

²⁰ Section 7(1)(f).

²¹ Section 7(1)(g).

²² Section 8(a), (b) and (f).

²³ Section 8(e).

²⁴ Section 8(h).

²⁵ Section 8(g).

²⁶ *Moses v R*, above n 9, at [4], citing *Hessell v R*, above n 10, at [37].

²⁷ At [49].

²⁸ Sentencing Act, s 9(1)(a).

²⁹ Section 9(1)(d).

(c) then, who was vulnerable to you as a fellow resident;³⁰ and

(d) last, the minor premeditation involved by your possession of the knife.³¹

[32] I recognise that particular combination of intentional harm to Mr Fifita arose in the context of a brief and mutual physical confrontation, which reduces the combination’s gravity below the most serious such offending.³² Nonetheless—as life-threatening violence, and here actually taking a life—neither can it be seen as among the least grave offending.³³ The guideline judgment’s band two applies, for a starting point in the range of five to ten years.³⁴

[33] I have had regard for starting points taken in other manslaughter cases involving one or two knife wounds inflicted in circumstances of at least mutual confrontation.³⁵ None sufficiently is identical to your circumstances to justify my choosing its sentence to apply to you. The circumstances of your offending are not materially different from those considered in *Hohua v R*,³⁶ in which the Court of Appeal observed “starting points between six and seven and a half years are usual”.³⁷

[34] The best I can say in your favour was the physical confrontation appears to have been begun by Mr Fifita, meaning your retaliation was provoked by him to a degree. I do not know if you resorted to the knife to escalate the fight, otherwise

³⁰ Section 9(1)(g).

³¹ Section 9(1)(i).

³² *R v Taueki*, above n 8, at [40].

³³ At [36].

³⁴ At [34].

³⁵ *F v R* [2026] NZCA 168 (starting point: five years); *R v W* [2025] NZHC 176 (six years); *Champion v R* [2024] NZCA 65 (five years and six months); *R v Richardson* [2024] NZHC 1795 (seven years and six months); *R v Te Heuheu* [2023] NZHC 506 (seven years); *Hohua v R* [2022] NZCA 550 (seven years and three months); *R v Pene* [2021] NZHC 3327 (seven years); *R v Davies* [2020] NZHC 903 (six years and six months); *R v McKenzie* [2019] NZHC 2976 (seven years); *R v Turipa-Wano* [2017] NZHC 1803 (nine years); *R v Skeen* [2016] NZHC 1904 (seven and a half years); *Wharerau v R* [2015] NZCA 299 (four years and six months); *R v Ariki* [2015] NZHC 3240 (eight years); *R v Hepi* [2015] NZHC 1449 (six years); *R v Day* [2014] NZHC 3412 (nine years); *R v Eastham* [2013] NZHC 2792 (seven years); *R v Wang* [2013] NZHC 2092 (four years and six months); *R v Olley* [2012] NZHC 40 (nine years); *R v Harris* HC Greymouth CRI-2009-018-901, 8 April 2011 (five years); *R v Emery* HC Auckland CRI-2008-092-1285, 13 February 2009 (five years and six months to six years); *R v Herewini* HC Rotorua CRI 2006-063-3151, 5 October 2007 (seven years and three months); *R v Edwardson* HC Rotorua CRI-2002-069-1101, 27 April 2007 (seven years).

³⁶ *Hohua v R*, above n 35 at [22]–[35].

³⁷ At [22].

impulsively or in your own defence. I make no assumption in those respects, but note it was a weapon you brought with you. In the minute or so of your confrontation, although after inflicting the fatal injury, I recognise also you retreated from the deck before you both then resumed your original positions in each other's company at the table. In that particular combination, I take a starting point of six years and six months.³⁸

Adjustment for personal factors

—aggravating factors

[35] Criminal history is relevant when it illuminates some aspect of an offender's "increased culpability" for the offending to be sentenced.³⁹ Your offending was committed while you were still subject to a sentence,⁴⁰ and is in continuation of your history of violent offending,⁴¹ illustrating those sentences have not been effective in reducing your propensity violently to offend.

[36] I therefore uplift my starting point by one month for the former, and three months for the latter. That brings me to six years and 10 months' imprisonment.

—mitigating factors

[37] Your guilty plea was entered on 22 April 2026 at a second callover, some six months before your scheduled trial and after disclosure of the pathologist's report establishing the cause of Mr Fifita's death and confirmation of your fitness to plead.

[38] As being after your first trial callover on 4 March 2026, the general rule is no more than a 10 percent reduction is available on that account.⁴² But I may apply a greater reduction up to 25 per cent.⁴³ A reduction for guilty pleas up to 25 per cent is afforded broadly on public policy grounds, as "a matter for particular inquiry rather than formalistic quantification".⁴⁴

³⁸ See also *Singh v R* [2026] NZCA 280 at [20]–[22].

³⁹ *W (CA105/2025) v R* [2025] NZCA 529 at [29].

⁴⁰ Sentencing Act, s 9(1)(c).

⁴¹ Section 9(1)(j).

⁴² Section 9H(1).

⁴³ Section 9I.

⁴⁴ *Hessell v R*, above n 10, at [75].

[39] Notwithstanding the general rule's 'formalistic quantification' in terms of milestones leading to trial, it also specifies up to a 25 per cent reduction is available when a guilty plea is entered "at the first reasonable opportunity";⁴⁵ "when an accused pleads as soon as he or she has had the opportunity to be informed of all implications of the plea".⁴⁶ I am entitled to consider when you received disclosure that helped enable you to plead fully and fairly.⁴⁷

[40] While completion of disclosure is not a necessary pre-condition for first reasonable opportunity to plead,⁴⁸ the implications of pleading guilty to manslaughter without medical evidence of the cause of death is not an informed opportunity. (Neither may it be while fitness to plead remains at large, although the veracity concerns in your case make that consideration difficult here.)

[41] The pathologist's evidence was not disclosed to you until after the case review hearing (but one month before the first trial callover). Thus trial's milestones are not directly material to determination of your first reasonable opportunity to plead. Your continued delay meant your guilty plea was not made as soon as your first reasonable opportunity by the next milestone being the first trial callover. But you pleaded guilty at the next.

[42] I will apply a 20 per cent reduction on account of your guilty plea.

[43] I will apply a 10 per cent reduction also on account of your background and mental health, which I recognise to reduce to some degree your culpability or responsibility for your offending.

[44] Together, those are 30 per cent reductions on my starting point, rounded up to 24 months.

⁴⁵ Sentencing Act, s 9H(1).

⁴⁶ *Hessell v R*, above n 10, at [75].

⁴⁷ Sentencing Act, s 9K(a).

⁴⁸ *Glassie v R* [2022] NZCA 556 at [45]–[46].

End point

[45] Together with my four-month uplift, that brings me to an end point of four years and ten months' imprisonment.

Minimum period of imprisonment

[46] As a sentence in excess of two years' imprisonment, you ordinarily would be required to serve at least one-third of it before being eligible for parole.⁴⁹

[47] If that period is too short for the particular sentencing purposes of accountability, denunciation, deterrence and community protection in your case, I may require you to serve up to two-thirds of your sentence before you would become eligible for parole.⁵⁰ The ultimate objective:⁵¹

... is to establish—by reference to any one or more of the factors identified in s 86(2)—whether release after one third of the sentence would constitute an insufficient response in the eyes of the community, so that an MPI is required to confer a degree of reality on the sentence and the overall outcome.

[48] In the particular circumstances of your admitted resort to your knife in the otherwise mutual confrontation with Mr Fifita, only the last of the factors in s 86(2) of the Sentencing Act 2002—community protection—might justify a minimum period of imprisonment.

[49] Your near five-year end sentence is 'real'. But any community protection required is better determined by the Parole Board, whose "paramount consideration" in deciding your release on expiry of the applicable non-parole period is "the safety of the community".⁵² I will not impose any minimum period of imprisonment.

Sentence

[50] Mr Tumaialu, please stand.

⁴⁹ Parole Act 2002, s 84(1).

⁵⁰ Sentencing Act, s 86(2) and (4).

⁵¹ *Kireka v R* [2024] NZCA 529 at [40], referring to *Ohlson v R* [2024] NZCA 268 at [14]–[15].

⁵² Parole Act 2002, s 7(1).

[51] On your conviction for the manslaughter of Ivan Fifita, I sentence you to four years and ten months' imprisonment.

[52] Given your conviction for manslaughter, you are now subject to the three strikes law.⁵³

[53] I am now going to give you your first warning about the consequences of another conviction for a qualifying offence. You will also be given a written notice outlining these consequences, which lists the "qualifying offences".

[54] If you are convicted of any qualifying offence other than murder committed after this warning, and the judge imposes a sentence of imprisonment of more than two years, then you will serve that sentence without parole or early release unless it would be manifestly unjust.

[55] If you are convicted of murder committed after this warning and the judge imposes a sentence of life imprisonment then, unless it would be manifestly unjust, the judge must sentence you to a minimum term of imprisonment. The minimum term of imprisonment will be at least 17 years if you plead not guilty, or at least 15 years if you plead guilty.

[56] Please stand down.

—Jagose J

⁵³ Sentencing Act, s 86K.