

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

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

**CRI-2024-054-681
[2026] NZHC 982**

THE KING

v

TRE MATUA MCLEAN

Sentence hearing: 17 April 2026

Counsel: G J C Carter for Crown
OS Winter and D Goodlet for Defendant

Sentencing notes: 17 April 2026

SENTENCING NOTES OF GWYN J

Introduction

[1] Tre Matua McLean, a jury has found you guilty of murdering Damon O'Rourke on 20 January 2024.¹

[2] You appear today for sentencing for murder and on the charge of unlawful possession of a firearm that you pleaded guilty to at the start of the trial in August 2025.²

[3] It is now my role to make some sentencing remarks and deliver your sentence. I am going to read from a document. The sentencing process is complicated and it

¹ Crimes Act 1961, s 168; maximum penalty of life imprisonment.

² Arms Act 1983, s 45(1); maximum penalty of four years' imprisonment or \$5,000 fine.

may be difficult for you to follow the detail of everything I say this morning, but I will give a copy of the document to Mr Winter after this hearing, so he will be able to discuss it with you.

[4] Before I go any further I want to acknowledge those here in Court today, particularly Mr O'Rourke's family members and friends. I know this will be a difficult day for you. I will discuss the victim impact statements that were provided to the Court later in my sentencing remarks.

[5] I also want to acknowledge your whānau and friends, Mr McLean. I know this is a difficult day for them too.

[6] I am going to talk in some detail about the sentencing process, but for your sake, Mr McLean, I need to be clear at the outset. I am required by law to impose a sentence of life imprisonment for the crime of murder, unless it would be "manifestly unjust" (fundamentally unfair) to do so. As I will come to, there are no circumstances in your case that would make a sentence of life imprisonment manifestly unjust, so that is the sentence I will impose.³

[7] But that is not the only question I must decide. I must also decide how much of that life sentence you will have to serve before being eligible to apply for release on parole. That is known as the minimum period of imprisonment or MPI, and I will refer to it as the MPI. The Crown says the MPI should be 17 years, Mr Winter on your behalf suggests that an MPI of less than 17 years is appropriate.

[8] As you know, you are one of four defendants involved in the tragic events of 20 January 2024, in which Mr O'Rourke was robbed of methamphetamine and then shot in the head. Back in October last year I sentenced two of your co-defendants, Windsor Martin and Grayson Gray, on charges of aggravated robbery and I sentenced Jaedyn Lovejoy on the charge of manslaughter which the jury had found him guilty of.⁴

³ Sentencing Act 2002, s 102(1).

⁴ *R v Martin* [2025] NZHC 3245; *R v Gray* [2025] NZHC 3250; and *R v Lovejoy* [2025] NZHC 3270.

[9] Because sentencing is a public process it is important that I set out the detail of the offending that you have been found guilty of. Then I will talk about your personal circumstances, and refer to the victim impact statements we heard being read out at the earlier sentencing hearing in October.

[10] I will then discuss how I have arrived at the sentence I will impose.

Facts

[11] Mr McLean, I am now going to turn to the facts of the case.

[12] On Saturday 20 January 2024, Damon O'Rourke was living in a detached sleep-out in the suburb of Roslyn in Palmerston North.

[13] Both you and Windsor Martin knew that Mr O'Rourke was a methamphetamine dealer. The two of you planned the robbery of Mr O'Rourke that occurred that evening.

[14] Mr Martin knew Mr O'Rourke well. He had been in regular contact with him in the days leading up to 20 January. About mid-afternoon, Mr Martin went to Mr O'Rourke's address to purchase methamphetamine. He let you know that he had done so.

[15] You and Jaedyn Lovejoy were together that afternoon. The two of you were seen on CCTV footage getting out of Mr Lovejoy's car at Benbow Place; you both went into the house and came back out shortly later. Mr Lovejoy said you obtained methamphetamine there. You then drove back to your address in Highbury.

[16] From about 4.45 pm that day, you and Windsor Martin were calling and messaging each other.

[17] At 6.27 pm you messaged Mr Martin "have we gotta car to do it kuz". There were then two telephone calls between the two of you. We know that Mr Martin then called Mr O'Rourke at 6.47 pm. We know that you tried to call Grayson Gray, who had been recruited as the driver, at 6.48 pm.

[18] At 6.55 pm you messaged Mr Martin “on way cuz”. Mr Gray had collected you and Mr Lovejoy from Pembroke Street and you were on your way to collect Mr Martin from his address at Beaumont Place.

[19] From there Mr Gray drove you, Mr Martin and Mr Lovejoy in a car that he had borrowed from an associate. Mr Martin directed you to Coromandel Court and to Mr O’Rourke’s sleep-out, which was difficult to locate from the street.

[20] At about 7.10 pm that evening, the four of you arrived at Mr O’Rourke’s address. Mr Martin stayed in the car with Mr Gray. You and Mr Lovejoy left the car and made your way past the main dwelling to the sleep-out. You were wearing Nomad gang patches and you had a loaded, cutdown rifle on your person.

[21] You and Mr Lovejoy entered the sleep-out, you with the firearm, and confronted Mr O’Rourke, demanding that he hand over a quantity of methamphetamine. He was alone and unarmed, and he complied with your threats, but you weren’t satisfied with what he had given you. Mr Lovejoy searched for more methamphetamine, pulling open a set of drawers and rifling through its contents. You threatened Mr O’Rourke with the firearm.

[22] When Mr O’Rourke denied having any more methamphetamine, you discharged the firearm and shot him once in the right side of his head. In convicting you of murder, the jury found that you had intentionally pulled the trigger.

[23] Tragically, Mr O’Rourke died in the early hours of the next day at Palmerston North Hospital. The cause of his death was a traumatic brain injury inflicted by the shooting.

Victim impact statements

[24] You will have heard the victim impact statements from Mr O’Rourke’s family being read out on the day that the other defendants were sentenced. I do not wish to go through them again in any great detail, but I do want to mention something said by Mr O’Rourke’s younger brother Alex. He said that your brother is his best bro, and that you were his bro too. He says he has given you tattoos, spent hours with you, and

sat on jail calls with you. He considered you family. It is clear from his statement that you have not only robbed the O'Rourke family of their loved one, but they feel you have betrayed them. You have caused great harm and pain to Mr O'Rourke's whānau. As Mr O'Rourke's mother told us, their future is forever changed and they carry his loss every single day.

Personal circumstances

[25] I have received three reports – a pre-sentence report (PAC report) prepared by the Department of Corrections, dated 10 October 2025, a Hōkai Tapuwae report, dated 20 November 2025, and an independent psychological assessment report, prepared by Estelle Albert-Ubels and Hohepa Albert of Te Hurahi Rereke Services, in March 2026. As you know, this sentencing hearing was deferred to enable preparation of that third report.

[26] I will summarise what the reports say about you.

[27] Your pre-sentence report says that you are originally from Gisborne and you whakapapa to Ngāti Porou. You are close to your mother, and prior to your offending you spent time with her and your brother. You have a young son, with whom you want to reconnect, but you are unsure when that will take place. However, you remain in contact with the mother of your child and maintain a friendship with her. You report that you believe in God and pray frequently. You are interested in motor vehicles and would like to pursue this industry when you are released.

[28] You attended Feilding High School, but you were expelled in Year 10. After that, you found it easy to get “caught up in the system”. You have been a patched member of the Nomads gang for several years, and many people close to you are associated with the Nomads. You say that whether you are in prison or in the community, you will remain committed to the Nomads.

[29] The report assesses you as at moderate risk of harm from methamphetamine and cannabis use. You report using methamphetamine daily in the period leading up to the offending, which would have had an impact on your ability to make rational choices. You advise that you have been sober since being remanded in custody.

[30] You have seven previous convictions, relating to firearms, driving and violence, though none of these convictions are anywhere near as serious as the murder conviction you are being sentenced for today. The report assesses your risks of reoffending and of harm as high.

[31] You say that you “feel normal” despite having murdered someone, and that prison is now your home. You acknowledge that your actions have affected your mother and your son, but at the time the PAC report was prepared, the report writer said you did not appear to have any remorse for the victim nor his family.

[32] The Hōkai Tapuwae report covers some of the same information as the other two reports.

[33] The report describes you as “a man of few words”. One of the things that struck me in this report was how much you loved sport, and were good at it, as a child. The report also says you have kept up your fitness while in prison.

[34] The third report was prepared by Te Hurahi Rereke Services.

[35] The report records that you are the second of two children; your brother is 27 years old and you have two younger half-brothers who you saw when you were younger, but there has not been contact since then.

[36] The report notes, first, that you were reluctant to talk to the report writers, but they say that is because verbal communication has always been a struggle for you. They also spoke with members of your whānau to try and get a bigger picture of you. You told the report writers that they should go with what your mother said about you.

[37] You grew up going to the marae with your whānau and you are currently doing a Māori course in prison which you are enjoying. You shared your pepeha with the report writers.

[38] You told the report writers that school was always really hard for you and you left Feilding High School in year 10, when you were 14. You joined the Nomads when

you were 17 years old. As the PAC report also noted, the Nomads are important to you. It is clear that for you they have provided a sense of belonging and stability.

[39] You have used marijuana since you were 15 years old and methamphetamine since you were 18. You do not drink alcohol.

[40] You told the report writers that the continuing supports in your life are your mother, your stepdad Kyle (you said about Kyle that “he’s been all good”), your brother, and your grandparents on both sides of the family.

[41] You described your mother as having been your Mum and your Dad, your parents having broken up when you were little. Your mother talked to the report writers about the impact on you of your father leaving and how hard it was for you to be abandoned by him.

[42] Your mother also told the report writers about the effect on you of a friend dying, from synthetic marijuana poisoning, where you were about 14.

[43] One of the things that struck me in the report was that your mother said that growing up you were never violent in any way. She said “My heart doesn’t believe the charges [against you]”.

[44] The report writers also spoke with your maternal grandmother. She confirmed that you were always a very quiet and shy boy, but very helpful. She too spoke of her and your grandfather’s shock at you being found guilty of murder. She said it is not in your nature to kill or hurt. She says she and your grandfather will always be there for you.

[45] The report writers spoke with your uncle and aunt, who also talked of you being a normal little kid, but struggling to comprehend things as you got older and getting into trouble at school.

[46] The Te Hurahi Rereke report writers believe that you have an unidentified processing disorder or disability. They expect that if you were formally tested, you would be found to have an auditory verbal processing disorder (APD) and probably a

generalised anxiety disorder too. What that means, they say, is that while your ears hear the sounds perfectly well, your brain struggles to process, make sense of and interpret those sounds correctly. Your brain probably becomes overloaded. This disability affects all aspects of your daily functioning and they expect it would cause you to be in a constant state of anxiety and stress.

[47] Their opinion is that this processing disorder, combined with meth use, will have affected your brain functioning and made you very susceptible to interpersonal exploitation.

[48] That is consistent with the concerns your counsel, Mr Winter, noted with your mental health and cognitive functioning. While the PAC report said you showed no remorse, Mr Winter's earlier view was that it is not clear you have fully processed what happened on 20 January 2024 or what has happened in court since. This morning Mr Winter has conveyed your acknowledgement that you have committed a murder and should suffer the consequences.

[49] The Te Hurahi Rereke report makes a number of recommendations about your time in prison and when you come to transition out of prison. While that will be a matter for the Parole Board at the time, those recommendations are consistent with the Hōkai Tapuwae report too, and I think it is important to note the recommendations here:

- (a) First, while in prison you may feel less stressed if you were to be kept in protective custody.
- (b) When you transition out of prison, ideally you should have an extended period of home detention as part of your release plan, with support to develop new and different understandings about yourself and build a structured living plan.
- (c) Specialist psychological counselling and support would help you to gain an understanding of your disorder and develop positive and supportive coping skills for problem solving.

- (d) A speech language therapist may also be of great benefit to you.
- (e) While in prison it would be good if you were able to learn and develop your Māori culture from a taha Māori programme.
- (f) Finally, the report says you need support to develop understanding around the effects of substance use, and what your triggers are and then to learn age and socially appropriate coping skills.

Sentencing framework

[50] I am now going to describe the legal framework, principles and purposes that must guide this sentencing process.

Principles and purpose of sentencing

[51] The sentence I impose on you today must take into account the purposes and principles in the Sentencing Act 2002. The particular purposes of sentencing I think are relevant to you are:

- (a) to hold you accountable for the harm done to the victim, his family and the community by your offending;
- (b) to promote in you a sense of responsibility for, and an acknowledgment of, that harm;
- (c) to denounce what you did and to deter you from future offending and deters others who might act in a similar way; and
- (d) to protect the community.

[52] I must also consider the seriousness of the offending and your degree of culpability, or moral responsibility for it. I must also compare the type of offence with other types of offences, as well as other sentences where someone has committed a similar offence. That is especially important in a case like this, where I have to try to

ensure the sentences you and the other defendants receive are proportionate to your roles in the offending.

Murder

[53] I now turn to determine your appropriate sentence. The jury found you guilty of the murder of Mr O'Rourke. The sentence for murder is life imprisonment, unless it would be manifestly unjust to impose that sentence, given the circumstances of the offence and your particular circumstances.⁵

[54] As I have said, I am satisfied that it is not manifestly unjust to impose life imprisonment in your case. Your offending is very serious. You went into the sleep-out with an intention to rob Mr O'Rourke, you had a loaded firearm with you, and you shot him.

[55] I note that you are 23 years old, and you were just 21 when you committed the murder.⁶ After serving a long period of imprisonment, you would be subject to parole conditions for the rest of your life. When on parole, you would be at lifetime risk that you might be recalled back to prison. In some circumstances, that will be manifestly unjust for someone of your relative youth.

[56] But youth alone is not enough to justify departing from a sentence of life imprisonment for murder.⁷ Instead, the combined effect of mitigating factors, including youth, must outweigh the seriousness and culpability of the offending. While what you did may have had some connection to your youth and your methamphetamine use, I am not satisfied that those factors outweigh the seriousness of your offending. I conclude that a life sentence is necessary to give effect to the purposes and principles of sentencing.⁸

⁵ Sentencing Act, s 102.

⁶ The Court of Appeal has recently found in the case of *Dickey* that “[w]hen sentencing a young person for murder a court must always undertake a s 102 analysis, giving careful consideration to whether life imprisonment is manifestly unjust.”: *Dickey v R* [2023] NZCA 2 at [177].

⁷ *Lo v R* [2024] NZCA 359 at [40].

⁸ At [40].

[57] A sentence of life imprisonment does not mean that you will spend the rest of your life in prison. At some point in the future, you will meet with the Parole Board and they will consider whether you can be released, subject to conditions. When imposing a sentence of life imprisonment, I must make an order that you serve an MPI under the sentence, which is the period that must be served before you see the Parole Board to consider your release.⁹

[58] Because I am imposing a sentence of life imprisonment on a charge of murder, this MPI must be at least 10 years, but it can be longer.¹⁰ It must be the minimum term necessary to reflect the sentencing purposes of deterrence, denunciation, the need to hold you accountable for the offending and to protect the community from further offending.¹¹

[59] Because the murder occurred following the unlawful entry into Mr O'Rourke's sleep-out and for the purpose of robbing him, there is a presumption that you will serve an MPI of at least 17 years, unless it would be manifestly unjust to do so.¹² That means I have to proceed on the basis that I should impose an MPI of 17 years unless it would be manifestly unjust to do so.

[60] Figuring that out is a complicated exercise. It involves two steps:¹³

- (a) First, I have to put aside the presumption of 17 years, and I must identify the MPI I would ordinarily impose on you having regard to aggravating and mitigating factors and to other cases where similar offending has occurred.¹⁴

⁹ Sentencing Act, s 103(1).

¹⁰ Section 103(2).

¹¹ Section 103(2).

¹² Section 104(1A)(c) and (d). I note that Mr McLean was convicted of murder under s 168 of the Crimes Act, or "causing grievous bodily injury for the purpose of facilitating the commission of another serious offence." The Court of Appeal has found that s 104(1A)(d) applies even when the murder is committed under s 168 — see *R v Kee* [2011] NZCA 229 at [21]: "It is no answer, therefore, to submit that... only grievous bodily harm was intended and that the offending only amounted to murder because it was committed in the course of other serious offence. The whole point of s 104(1)(d) is to trigger the 17 year minimum where a murder is committed in the course of a serious offence."

¹³ *R v Williams* [2005] 2 NZLR 506 (CA).

¹⁴ Sentencing Act, s 103.

- (b) Second, if this exercise indicates that an MPI of less than 17 years is justified, then I must assess whether an MPI of 17 years or more would be manifestly excessive.

First step: What minimum term of imprisonment would be imposed but for the application of s 104?

[61] The following factors are aggravating factors of your offending:

- (a) you planned to rob Mr O'Rourke;
- (b) you took a gun with you for that purpose;
- (c) you entered the sleep-out where he lived, which was attached to the family home.

[62] In other cases involving a murder and a plan to rob someone, a starting point MPI of between 13 and 16 years has been adopted. Your offending is similar to a case called *Clarke*.¹⁵ In that case, three men went to an address and robbed a man of drugs and money. During the robbery, Mr Clarke shot the victim in the chest. The Court found that, if it were not for s 104, a starting point of 15 years' MPI would have been appropriate.

[63] The Crown says that, if it were not for s 104, an MPI of around 14 to 15 years would have been appropriate. Mr Winter, on your behalf, agrees with that.

[64] The facts of that case more clearly demonstrated that Mr Clarke intended to cause the victim's death, while you were convicted on the basis that you meant to cause grievous bodily harm and intended to pull the trigger. Balanced against that, you committed the murder in Mr O'Rourke's sleep-out, where he was entitled to feel safe, with his children nearby. The appropriate notional MPI, before making allowances for your personal circumstances, is a starting point of 15 years' MPI.

¹⁵ *Clarke v R* [2021] NZCA 151.

[65] I then need to consider your youth. Your youth is relevant to the assessment of an appropriate sentence, not because it excuses what you have done, but because it helps provide an insight into what brought you to that moment. As a 21-year-old, you lacked some level of maturity to assess the risks and potential consequences of your actions. The jury found that you intentionally pulled the trigger of the firearm in the sleep-out and that you meant to cause grievous bodily injury to Mr O'Rourke. But there is no indication that you went into the sleep-out planning for that to occur; by all accounts the shooting was impulsive, which would be consistent with what the report writers said about you having an undiagnosed auditory verbal processing disorder.

[66] If not for the presumption of a 17 year MPI, I would have been prepared to reduce that notional starting point of fifteen years, to take account of your youth and your APD, to reach an MPI of 14 years.

[67] I must also take into account the firearms offence to which you have pleaded guilty. There is a maximum penalty for that offence of four years, but I do not propose to add an uplift for that charge because it is so closely linked to the charge of murder.

[68] You have a number of previous convictions. The most serious of those is injuring with intent to injure. None of those previous offences were anywhere near as serious as this offence. That is consistent with what your whānau members said about you not really being a violent person by nature. I do not consider an increase to the MPI is necessary to reflect that previous offending.

Second step — Would it be manifestly unjust to impose a minimum term of 17 years' imprisonment?

[69] That brings me to the second step, which is whether, given I would otherwise have imposed an MPI of 14 years, an MPI of 17 years would be manifestly unjust. There is no scientific basis for me to determine that question. As the Court of Appeal said in *Williams*, one of the leading cases on this legal issue, “what level of disparity amounts to manifest injustice remains a matter of sound sentencing judgment that is not capable of precise determination.”¹⁶ In that case the Court also noted that cases

¹⁶ *Williams*, above n 13, at [68].

where a departure from the 17 year presumption is warranted will be exceptional, but need not be rare.¹⁷

[70] In *Clarke*, the difference between a notional MPI of 15 years and the statutory MPI of 17 years was “not sufficiently great to give rise to a manifest injustice.”¹⁸ In *Dodds*, the Judge considered that a 17 year MPI would be unjust for an offender who would otherwise have had an MPI of 12 years imposed.¹⁹ Very recently, one Judge has considered a 17 year MPI unjust for an offender who would otherwise have had an MPI of 13 years imposed,²⁰ whereas another Judge said it would not be unjust where she adopted a nominal MPI of 13 and a half years.²¹ Perhaps most relevantly, in *R v M*, a 17 year MPI was not considered manifestly unjust for a 21-year-old offender who would have otherwise received a 14 year MPI.²²

[71] I have given serious thought to your youth, and the effect an MPI of 17 years would have on you.²³ You would be in your late thirties before you would be eligible for parole, for offending committed when you were 21. But there is no automatic displacement of a 17-year minimum period on the basis of youth alone.²⁴

[72] Mr Winter acknowledges your acceptance of responsibility that you fired the fatal shot at the scene and that your offer to plead to manslaughter prior to trial is not a basis for finding a 17-year MPI manifestly unjust. You were convicted of murder, and even a guilty plea is not sufficient to establish a clear injustice.²⁵

[73] Mr Winter has urged me to take into account what the authors of the independent psychological report say is your likely Auditory Verbal Processing Disorder, which appears to have been undiagnosed but may account for your communication and behaviour issues. I accept what Ms Albert-Ubels and Mr Albert have to say about this. I can certainly speculate about the effect of that condition, and

¹⁷ At [67].

¹⁸ *Clarke*, above n 15, at [41].

¹⁹ *R v Dodds* [2024] NZHC 1419.

²⁰ *R v Richards* [2025] NZHC 3889 at [81] (for Mr Haenga).

²¹ *R v Faataape* [2025] NZHC 3774 at [93] (for Mr Ross).

²² *R v M* [2024] NZHC 2149.

²³ *R v Chankau* [2007] NZCA 587 at [26]; and *Churchward v R* [2011] NZCA 531 at [77(b)].

²⁴ *Churchward* at [76].

²⁵ *Frost v R* [2023] NZCA 294.

it not being recognised and treated. I can also speculate as to how any auditory processing difficulties, and general anxiety, might have influenced the way you acted in the sleep-out and how you came to pull the trigger. But the difficulty I have is that it is speculation on my part. The law requires “clearly demonstrable factors that withstand objective scrutiny”.²⁶

[74] This has been a difficult and finely-balanced decision, but given the relevant case law, the circumstances of your offending, and the need to protect the community and denounce your conduct, ultimately I am not satisfied that an MPI of 17 years would be manifestly unjust. I am therefore bound to impose it.

[75] Before I finish, I want to remind you of one thing you said to the writer of the Hōkai Tapuwae report. You said that, looking ahead, your goals are to get through sentencing, stay well in prison and eventually build a more settled, whānau-focused life with a closer connection to your son and your wider extended whānau. I know that you won’t be able to focus on this today, but Mr McLean, I hope you can hold on to those goals for the future and hold on to the fact that you do have strong aroha and support from your whānau.

Sentence

[76] Tre Matua McLean, please stand.

[77] On one charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 17 years.

[78] On the charge of unlawful possession of a firearm, I sentence you to six months’ imprisonment, to be served concurrently with the sentence of life imprisonment.

²⁶ *R v Williams*, above n 13, at [67].

[79] You may stand down.

Gwyn J