

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

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

**CRI-2019-009-10217
[2020] NZHC 2995**

THE QUEEN

v

DARYL PRICE

Hearing: 12 November 2020
Appearances: S R D D Bicknell for Crown
J J McCall for Defendant
Judgment: 12 November 2020

SENTENCING REMARKS OF OSBORNE J

This judgment was delivered by me on 12 November 2020 at 12.12 pm

Registrar/Deputy Registrar
Date:

Introduction

[1] Mr Price, I am going to ask you to remain seated. Towards the end of the remarks I make, we will reach a point where I need to ask you to stand and I will do that when we come to it. On 31st July 2020, I provided you with a sentence indication on charges of manslaughter and of driving with excess blood alcohol (third or subsequent offence). You accepted the sentence indication of five and a half years' imprisonment and pleaded guilty. You are now before the Court for sentence.

[2] The sentence indication which I gave set out the facts of your offending and my analysis of the appropriate starting point in full, and I am directing that a copy of those sentence indication remarks be provided to the Department of Corrections so that the Department has those as well as these Sentencing Remarks when considering your position. However, it is appropriate that I repeat some of that detail in Court today given the importance of this sentencing occasion. I will then turn to consider the personal factors that may justify either an uplift or a discount to the starting point before, as I am required to do, reaching an end sentence.

Facts of the offending

[3] On Queen's Birthday weekend in 2019, you were 41 years old. You were in Christchurch to compete in an indoor cricket tournament. In the afternoon of Sunday 2 June, you and your team mates went to a bar to socialise before the tournament prizegiving. You stayed at that bar for about one and a half hours. You drank three or four stubbies of beer.

[4] Your team mates offered you a lift to the prizegiving at Robbies Riccarton. They were concerned about how much you had had to drink. You refused the lift. You drove yourself to Robbies, arriving late and explaining that you had lost your way. You purchased beer from the bar. At that point you started to become obnoxious and loud, and you were refused further service from the bar.

[5] Your team had won a cup, which was then filled with a jug of beer bought by a team mate. All of the team, including you, drank from that cup. You then picked up a team mate's second jug of beer and drank the entire litre in one go. You also drank

three quarters of a large bottle of Heineken that a team mate did not want to finish. You tried to start a fight with someone while playing a game of pool with team mates.

[6] One of your team mates, worried about you, stayed with you for 45 minutes or thereabouts. When you said you needed to get home to Fairlie, he told you not to drive. Another team mate offered you a bed for the night and a lift back to your vehicle in the morning, which you declined. You left the bar, followed by a team mate. You fell over in the carpark and had to be helped up by him. Upon reaching your vehicle, you sat in the driver's seat and smoked a substance out of a pipe. You then became aggressive, saying you needed to go home, at which point your team mate tried to take your car keys from you. Instead you started the vehicle, you reversed into a temporary cyclone fence, and drove out of the carpark, narrowly avoiding other parked cars.

[7] You drove through and out of the city. Near Sandy Knolls Road, you drove onto the opposite side of the road for a period. Tragically, at that point Tai Dixon was driving on her way to work at Christchurch Hospital, where she worked as a midwife. Your car was coming directly at her. She attempted to move her vehicle over to avoid the collision, but the two vehicles collided head on. Mrs Dixon died at the scene.

[8] Toxicology results showed your blood alcohol level was 183 mg of alcohol per 100 ml of blood. You had both cannabis and methamphetamine in your system. The crash investigation report opined that you were drowsy and unaware you were travelling in the wrong lane until just before the collision.

Victim impact statements

[9] I acknowledge Tai Dixon's family and those of them present in Court today and observing us from a great distance. Nine in all have read their victim impact statements, or in the case of the youngsters, had them read. That is an extremely difficult thing to do. I am grateful to them for their assistance in enabling me to understand who Tai was, and how this loss has affected them.

[10] These things I know from what her family have told me. Tai was a compassionate, loving and generous person. She was a key part of a loving extended family. Her vocation as a midwife reflected her caring, sociable nature, such that she

could bring herself to seek out underprivileged members of society to care for. She was, in short, a truly remarkable person, a loving, caring person, suited to the midwifery career that she had embraced, a person who we have been told gave the best hugs and advice. Her husband, Scott, has understandably spoken of Tai as “my world and my soulmate”, and described how devastating her death has been for him and their two young daughters, Iona and Lucia. Tai’s daughters are now growing up and will grow up without their mother. These are children who, as Iona has explained to us, yearn for the back-rubs and the snuggles that they used to get from their Mum before going to sleep. Tai’s father, Bernard, described the news of her death as “a bullet to my heart”. The rest of Tai’s family, including her sisters and brother, spoke of the devastating impact of the loss on them, emotionally, mentally, physically. These are inevitable harms of what you did. The impact in this case, however, has been even greater than may have been seen in many previous cases. This is a family, as you have heard, whose lives in varying degrees been been diminished, whose enjoyment of life has been irretrievably debased, whose lives have been thrown out of balance. And with the many family members who live overseas and have had to travel to New Zealand, and in one case, been caught up in New Zealand, but more recently to travel through quarantine requirements, these have been huge events — for the funeral and for this court process.

[11] I have to take into account the effect of your crime on your victims when imposing sentence, and I will be doing so. But I acknowledge that no sentence will remotely come close to redressing the loss that Tai’s family and friends have been suffering and will suffer.

Purposes and principles of sentencing

[12] Mr Price, in sentencing you today I have to have regard to the relevant purposes and principles of sentencing under ss 7 and 8 of the Sentencing Act 2002. Those purposes, as you have heard counsel discuss, include accountability, denunciation, deterrence and rehabilitation. I must consider protection of the community and must aim to achieve consistency between your sentence and other sentences for similar offending.

Starting point

[13] In my sentence indication, you will recall, I set out the aggravating features of your offending and these are:

- (a) first, your excessive consumption of alcohol;
- (b) secondly, your consumption of drugs;
- (c) thirdly, your deliberate decision to drive while you must have been aware of the significant level of your impairment, and you must have been disregarding your friends' warnings that you should not drive;
- (d) fourthly, the length of time (nearly half an hour) and the distance (23 km) over which you elected to drive while impaired;
- (e) fifthly, the fact that your vehicle was unwarranted (albeit in good condition); and
- (f) sixthly, the harm suffered by Mrs Dixon's family.

[14] There are no mitigating factors relating to your offending. In accordance with my sentence indication, I adopt a starting point of six years' imprisonment.

Personal factors

[15] The next step is to take into account any matters relating to you personally that may justify increasing or reducing the starting point. I have had the benefit of a pre-sentence report to assist me in that exercise. I have also had the benefit attached to Mr McCall's submissions of a report from your counsellor.

Previous convictions

[16] You have a history of convictions, non-compliance and infringement offences relating to driving. As I set out in my sentencing indication, I uplift the starting point by six months for those matters.

Remorse

[17] The pre-sentence report describes you in these terms as presenting as genuine in your distress and your offerings of remorse. It is reported that you became emotional when discussing your offending with the report writer, saying that you thought about Mrs Dixon and her family every day. It is difficult in what has been written about you — both by the report writer and by your counsellor — to determine to what extent your sense of remorse sits aside from the distress which you speak of and which has arisen out of your sense that your actions have impacted severely on your own well-being and that of your family. Based simply on your statements, your expressions of distress and remorse, I could not find you entitled to any discount for remorse.

[18] Mr McCall, on your behalf, refers to two matters however which he suggests point to a tangible degree of remorse. First, your proposal to make some financial amends if and when your relationship property entitlements put you in funds to do so. You have referred to a possible fund of \$20,000. I would not be justified in placing emphasis on that possibility as it is just that — a possibility. I will say something more about that when I come to discuss shortly the concept of a reparation order. Secondly, Mr McCall referred me to an arrangement that you have tried to put in place to meet with one of Mrs Dixon's family members after the sentencing, as an occasion akin to a restorative justice meeting.

[19] But against those matters understandably identified by Mr McCall, there is the historical record of your response to what you did 17 months ago. Your driving that night was patently criminal conduct over a sustained period and distance. Yet you demonstrated no remorse in a lengthy period until your guilty plea. Mr McCall referred me to the point earlier this year when he became briefed in relation to your case and I accept, as he has indicated to me, that at that point, you may have expressed remorse to him and that may have been passed on to the Crown, but it is also the situation that at that point, there appears to have been a discussion between defence and Crown as to whether manslaughter was the appropriate charge, or you should be offered a lesser charge. Manslaughter was always the appropriate charge. It was for you to decide whether to plead to that charge or not. It was for you to find ways of

expressing tangibly remorse. As we have heard, the family heard no such expressions of remorse until you finally pleaded guilty to manslaughter. Mrs Dixon's family have cogently pointed to the circumstances which indicate to them your lack of remorse. I find myself in agreement with their conclusion that your unwillingness sustained over some 12 months to face the consequence of your actions indicated a lack of true remorse.

[20] Ms Bicknell, for the Crown, of course, has made a similar submission, which I also accept.

[21] I will therefore not allow any separate discount for remorse. I recognise that the arrangement you were prepared to enter into with a member of Mrs Dixon's family indicates at least a step towards your potential rehabilitation that you were prepared to envisage — I will bring that into account when I come to discuss your prospects of rehabilitation shortly but I note my understanding that in the circumstances that apply here, that meeting probably cannot be facilitated.

Background and rehabilitation

[22] The pre-sentence report states that, around eight years of age, you were struck by a car and suffered a significant head injury. Following the accident your academic performance reduced; you had difficulty reading and writing, you developed substance abuse issues at the age of 13, with alcohol being a particular issue. You left school at 15.

[23] Mr Price, it appears that you have somewhat come full circle. The car crash that caused you the injury back in your youth to some extent can be tracked through to your difficulties at school, your substance abuse, and finally to the sort of offending that resulted in the driving that you undertook last year. I accept that there may be some link between those things in your youth and what has most recently happened but I consider it proper to assess any potential credit alongside your engagement with rehabilitation. That is quite simply because your substance abuse is something that you have to take personal responsibility for.

[24] The report writer assesses you as being a low to moderate risk of reoffending generally, but notes that the risk would be escalated by a relapse into alcohol use. You have a proven difficulty in moderating your behaviour when under the influence of alcohol. You have a self-confessed short fuse when intoxicated and from what you said to the report writer, it is clear you are fully aware that you have issues when you drink. You told the report writer that in the months prior to your offending you had stopped drinking completely, having already moderated your drinking to a “couple of beers after work”. You have indicated that your drinking at Queen’s Birthday last year marked your first drinking of that much alcohol for maybe about eight years. The way you conducted yourself that night, Queen’s Birthday last year, involving the aggressive reactions to your team mates’ interventions to save you from yourself, points strongly to issues of both entitlement and anger management.

[25] You have since been attending counselling sessions. I have read the letter carefully from your counsellor which says that you have been working hard on personal development and decision-making. Your counsellor notes very positively your engagement with him, although I note the report lacks any direct reference to alcohol, your relationship with alcohol, and any steps you have taken with regard to alcohol. Similarly it does not name your anger management. It does not name your entitlement issues. You told the pre-sentence report writer that you were willing to undertake any recommended treatments and engage with any available reintegration opportunities. You said, “I want to be a better person in the future, for my kids. I don’t want this to ever happen again”. That, Mr Price, is a commitment by which others will measure you in years to come.

[26] Mr Price, I hope for both your sake and that of the wider community that your desire to rehabilitate is genuine. Your substance abuse may well have stemmed from those events in your childhood but you are now a 42 year old man. Your criminal history indicates that between 2003 and 2012, that is between the ages of 25 and 34, your involvement with alcohol caused you to offend on four separate occasions, two of them involving drink driving. In other words, seriously selfish behaviour which you were subsequently to repeat in 2019 with the disastrous outcome that’s before us. Your abuse of alcohol and other drugs has caused the death of an innocent woman. It was incumbent upon you previously and now all the more to address each and every

one of your issues. I do acknowledge that, through counselling, you appear to have taken positive steps in that direction. I recognise also, as I have said previously, that the arrangement you are prepared to put in place to have a meeting with a family member is a positive step towards rehabilitation, although I recognise that it cannot be fulfilled at this point.

[27] For your personal background and for your prospects of rehabilitation, I will allow a discount of four months' imprisonment, that is approximately five per cent.

Guilty plea

[28] As I indicated to you at the sentence indication, I will allow a further 15 per cent discount for your guilty plea, late though it was.

[29] When I take into account all those factors, that brings the end sentence to five years and two months' imprisonment.

Minimum period of imprisonment

[30] As you have heard, if a court sentences an offender to a determinate sentence, that is a sentence with a specified term, of more than two years' imprisonment, it may impose a minimum period of imprisonment (MPI) if it is satisfied that the ordinary non-parole period would be insufficient to meet the principles and the purposes of sentencing. In your case, on the sentence I am imposing, you would be eligible to apply for parole after serving one third of your sentence, so after close to one year and eight months.

[31] Ms Bicknell for the Crown has submitted that an MPI is appropriate here due to the number of aggravating features and your appalling driving history. She says that the standard non-parole period would be insufficient to achieve the purposes of accountability, denunciation, deterrence and protection of the community. She seeks an MPI of at least 50 per cent. She observed that at the time of your offending you were 41 years old, which may be contrasted with other cases of motor manslaughter with which this Court has dealt where the defendants were younger men.

[32] Mr McCall, for you, submitted that the purposes of sentencing have already been met through your recognition to the report writer and the counsellor of your needs, what you need to do, and through the imposition of a lengthy term of imprisonment.

[33] The aggravating features of your offending are substantial. This type of offending does require a high level of deterrence and denunciation — protection of the community is vital. I consider all those matters are insufficiently met through the statutory non-parole period (even having regard to the impact that Mrs Dixon's death has had on you and your family also). I accept that an MPI is necessary. I consider it should be set at 50 per cent of the five years and two months, in other words set at two years and seven months.

Disqualification

[34] On the charge of driving with excess blood alcohol, third or subsequent offence, I am required to disqualify you from holding a driver's licence for more than one year.¹ In addition, the Sentencing Act provides that, on the charge of manslaughter, the Court may fix any period of disqualification which it thinks fit.²

[35] It is incumbent on the courts to keep dangerous drivers off the road for as long as reasonably possible.³ You have proved yourself to be a dangerous driver. I do take into account the need for you to rehabilitate and reintegrate into the community, which will likely be hindered by an unduly long period of disqualification. I will impose a period of disqualification of four years, to commence upon your release from imprisonment.

Reparation order

[36] Under s 32 Sentencing Act, the Court may impose a sentence of reparation in circumstances such as arise in your case. That is because emotional harm has been suffered by victims and in some cases there is loss consequential on the harm suffered.

¹ Land Transport Act 1998, s 56(4).

² Sentencing Act 2002, s 125(2).

³ *Hitchens v R* CA380/03, 25 March 2004 at [10].

[37] Your proposal to pay \$20,000 if and when that becomes available from relationship property division could be made the subject of a reparation sentence. But the authorities establish that I should not make such an order unless I have a reasonable measure of confidence that the payment of reparation is able to be made.⁴ The information available as to your property entitlements does not permit such confidence.

Sentence

[38] Would you please stand, Mr Price.

[39] On the charge of manslaughter, I impose a sentence of five years and two months' imprisonment. You are to serve a minimum period of imprisonment of two years and seven months.

[40] On the charge of driving with excess blood alcohol (third or subsequent offence), I impose a sentence of one year's imprisonment. That sentence is to be served concurrently (that is at the same time as the other sentence).

[41] I also impose a period of four years' disqualification from your holding or obtaining a driver's licence — that period is to commence upon your release from imprisonment.

[42] I am now going to just have to ask you to be seated again for a moment because with a manslaughter conviction, I must read you a strikes warning, so would you just be seated, please.

Strikes warning

[43] Given your conviction for manslaughter, you are now subject to the three strikes law. I am going to give you a warning as to the consequences of another serious violence conviction. You will also be given a written notice which contains a list of the "serious violent offences" and Mr McCall will no doubt take you through that.

⁴ *R v Creek* CA199/06, 17 August 2006; and *R v Pender* [2007] NZCA 465 at [15].

[44] The warning is this:

- (a) If you are convicted of any one or more serious violent offence other than murder committed after this warning, and if a Judge imposes a sentence of imprisonment, then you will serve that period of imprisonment, that sentence without parole or early release.
- (b) If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment without parole unless it would be manifestly unjust to do so. In that event the Judge must sentence you to a minimum term of imprisonment.

[45] Mr Price, please stand down.

Osborne J

Solicitors:
Crown Solicitor, Christchurch
Papprells, Christchurch