IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2019-092-1067
[2020] NZHC 1983

THE QUEEN

v

KAREN ANNE RUDDELLE

Hearing:	7 August 2020
Appearances:	Y V Yelavich for the Crown S D Cassidy for K A Ruddelle
Date of sentence:	7 August 2020

SENTENCING BY PALMER J
(with redactions)

Counsel/Solicitors:
S D Cassidy, Barrister, Auckland
Kayes Fletcher Walker, Crown Solicitor, Manukau

Introduction

[1] Ms Karen Ruddelle, of Ngāti Mahuta and Ngāti Maniapoto, is aged 58. In the early hours of 14 November 2018, she stabbed her partner, Mr Joseph Ngapera, killing him. She was charged with murder. On 20 February 2020, she was acquitted of murder but found guilty of manslaughter by a majority of the jury, 11 to one, and convicted. Her sentencing has been delayed due to the COVID-19 pandemic, to enable family members of Ms Ruddelle and Mr Ngapera to attend the sentencing as you have today. Ms Ruddelle was remanded on bail before the trial and, since her conviction, has been on bail and electronically monitored (EM) bail with a 24-hour curfew, apart from attending church services. I sentence her today.

Approach to sentencing

[2] Sentencing is conducted for the purposes, and according to the principles, set out in ss 7 and 8 of the Sentencing Act 2002 (the Act). In this case, I have particular regard to the purposes of holding Ms Ruddelle accountable for the harm she caused to Mr Ngapera and the community; promoting in her a sense of responsibility for, and acknowledgement of, that harm; providing for the interests of the victims of this offence, including Mr Ngapera's whānau; denouncing Ms Ruddelle's conduct; deterring similar future offending; and assisting in her rehabilitation and reintegration to society.

[3] In terms of principles I take into account in particular: the gravity of the offending and the degree of Ms Ruddelle's culpability; the desirability of consistency of sentences for similar offending; the effect of the offending on the victims; Ms Ruddelle's personal, whānau and cultural background; and I impose the least restrictive outcome that is appropriate in the circumstances as I am required to do.

What happened?

[4] First, I outline the facts of the offending.

The relationship as the context for the offending

[5] In order to assess Ms Ruddelle's culpability in offending, I need to consider the evidence of her relationship with Mr Ngapera, including evidence given by two experts in the trial. The jury would have taken this evidence into account in reaching their verdicts. But because it is relevant to Ms Ruddelle's culpability, I also need take it into account in sentencing.

[6] Ms Ruddelle's upbringing in Māngere in the 1970s was turbulent. Her evidence at trial was that her parents drank and fought a lot.[1] She said, as the eldest of six children, she was groomed by her mother to always ring the police when that happened. She saw violence between her parents from the age of seven. She looked after her brothers and sisters from the age of nine until she went to high school. That included when her parents had parties and she had to protect her siblings from potential harm from those who were intoxicated and violent. Her parents separated when she was around 11 years old. She left school after what we now call year 10 to get a job to help support the family. She gave a good portion of her pay to help her mother.

[7] When she was 19, Ms Ruddelle had her first child. She got married when she was 23, to a man with whom she had four children, one of whom died from cot death; and she had one miscarriage. They drank a lot and he abused her. She got a non-molestation order against him but she was afraid of what he would do to her if she called the police. She used alcohol to help cope with stress. He physically abused her children, who were removed from Ms Ruddelle's care by Child, Youth and Family Services. He was eventually imprisoned for kicking her hard enough to cause spinal damage. She applied for dissolution of the marriage. He died in 1996. In fact, four of her five partners have died. She then had another relationship for 17 years with a man with whom she had two children. They also drank a lot together. They separated for a while, and he was verbally violent after abusing alcohol, though he was not physically violent to her. He died in 2013. Ms Ruddelle began her relationship with Mr Ngapera in 2015.

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1 Notes of Evidence (NOE) 257/18.

[8] Mr Ngapera had experienced the customary practice of whāngai, coming under the care of his uncle from an early age. Mr Ngapera moved to Australia when he was 16 and returned to New Zealand in his 30s. At times, before he met Ms Ruddelle, he was homeless. He still slept rough sometimes after that. Ms Ruddelle and Mr Ngapera began their relationship in April 2015. She says their souls connected. It is clear they loved each other. She says he confided in her, including about violence in his early life. He was on medication for mood swings and depression.

[9] Mr Ngapera also had a history of perpetrating family violence himself, with previous partners, in incidents often involving alcohol. There was evidence at trial of him slapping former partners. In March 2013, he was convicted of male assaults female for pushing his then partner into a wall while drinking and arguing at home. In March 2015, he was convicted of threatening to kill another partner after drinking at home. This pattern continued in Mr Ngapera's relationship with Ms Ruddelle. A report prepared by Professor Denise Wilson, which I discuss in detail later, suggests Mr Ngapera had two sides: a lovable generous man with a neat appearance, good hygiene; but who could become "ugly", intimidating and jealous if he was drinking or "fucked off".

[10] Ms Ruddelle loved Mr Ngapera and believed her support would help him. But she was afraid of his physical violence. Ms Ruddelle gave evidence in court that he punched her daughter in the face after she stole Ms Ruddelle's bankcard. Ms Ruddelle would try to shield her children, especially her youngest son, from exposure to violence. She did not want him to go through what her older boys had, being abused by her partner and being removed from her care. She said Mr Ngapera was jealous of her children and she did not tell her children nor her sisters what was really going on.

[11] Corrections has a record of 80 incidents of family violence involving Ms Ruddelle but there is little detail available about these. From 2015 to 2018 there were 16 Police callouts by Ms Ruddelle, usually after she and Mr Ngapera had been arguing. Alcohol was involved on several occasions. The callouts included:

(a) three callouts in July and October 2015 and February 2016 when she said he threatened to kill her;

(b) two callouts in September 2016 and March 2017 when she said he threatened to seriously injure her; and

(c) one callout in July 2016 when she said he told her he had been convicted of murder in Australia (though he had not been).

[12] At trial Ms Ruddelle said that before the callout in November 2015, Mr Ngapera strangled her with both hands and, on another occasion in 2016 or 2017, he punched her in the head. There is robust academic research that strangulation is a "red flag" for the potential of severe abuse and fatality from intimate partner violence.[2]

[13] In July 2016 Ms Ruddelle applied for a protection order against Mr Ngapera, for her and her then 11-year-old son. She sought help from Women's Refuge. I have seen a Women's Refuge Risk Assessment from July 2016 in which Ms Ruddelle expressed her fear that Mr Ngapera would really harm her or murder her. This was available to the parties before trial though not adduced as evidence on instruction by Ms Ruddelle. It mentioned that he strangled her on "many occasions", abused her on a regular basis and his physical abuse was escalating. It assessed her as at extremely high risk due to Mr Ngapera's past, though that was partly based on the understanding he had been imprisoned in Australia for murder, which he had not been. Ms Ruddelle obtained a secret emergency alarm which, when pressed, was supposed to lead the Police to the address immediately; but she said that when she tried to use it, that did not happen.

[14] Around February 2017, Ms Ruddelle gave up drinking and committed to going to church. I have a letter from a friend of hers from the Manurewa Baptist Church indicating their support for her. In March 2017 Mr Ngapera was convicted of contravening the protection order after being verbally abusive to her, chasing her around the car and threatening to "bottle" her at 5.30 am while he was heavily intoxicated. Mr Ngapera attended the Victory Outreach rehabilitation centre for three or four months. But there was another police callout by Ms Ruddelle in November 2017 after an argument. She declined to make a statement. In early 2018, Mr Ngapera

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[2] Denise Wilson, *Karen Anne Ruddelle: Section 27 Sentencing Act 2002 – Cultural Report* (Cultural Report) at 15.

was apparently sentenced to home detention. In September 2018, Ms Ruddelle applied to discharge the protection order. She said it was getting in the way of their relationship growing, he resented it and she felt bad about it. Within two weeks she called the police because she felt threatened by Mr Ngapera's behaviour after arriving home around 5.30 am after a night drinking at a bar.

[15] In October 2018, Ms Ruddelle's aunty, who she was close to, died. She re-engaged with Mr Ngapera and started drinking alcohol again, though not enough to get intoxicated, she said in evidence.[3] Sometimes when she and Mr Ngapera were out drinking at a bar, he would signal her to return to his side, especially if she was talking to another man. Ms Ruddelle's evidence was that Mr Ngapera was a jealous man.[4]

[16] During the trial, Ms Rachel Smith gave expert evidence about general patterns of ongoing cumulative social entrapment of women experiencing intimate partner violence; entrapment in an ongoing pattern of harm with inadequate safety options. She gave evidence of how overall patterns of coercive control, not just physical violence, can play out in a variety of ways across the lives of these women. She emphasised that victims of intimate partner violence experience their partner's abuse as cumulative, so you cannot look at their response only in a certain moment because intimate partner violence is a form of abuse that takes effect over time.[5] Ms Smith noted that victims often have "heightened sensitivity" to when situations are becoming seriously dangerous because of their long experience of abuse, comparing this sensitivity to experienced drivers scanning for potential hazards on the road.[6] She noted a general pattern in offending by women who are primary victims of family violence, in a study from 2009 to 2015:[7]

> …, most of those women were inside the home, they were trapped in the kitchen, they were responding to an ongoing assault and they may pick up a knife and they use one or two stab wounds and they don't harm children, they don't commit suicide afterwards, it's actively defending themselves.

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3 NOE 315/23-30.
4 NOE 316/6.
5 NOE 401/15-16.
6 NOE 402/12-20.
7 NOE 411/9-14, citing Family Violence Death Review Committee *Fifth Report: January 2014 to December 2015* (Health Quality and Safety Commission, February 2016).

[17] Dr Alison Towns' evidence at trial was that social entrapment can lead women to stay in a violent relationship because they believe if they support and love the man he will change.[8] Her evidence was there can be cultural pressure on Māori women, in particular, to nurture and look after people with whom they are or have been in relationships.[9] Under cross-examination, Ms Ruddelle accepted that it was her choice to stay in the relationship and she was not reliant on Mr Ngapera for money, so she was not trapped.[10] Dr Towns' opinion was that Ms Ruddelle had experienced social entrapment, and that her experiences are consistent with those of victims of family violence.[11] She also gave her opinion that, due to her lifetime of trauma, Ms Ruddelle's reaction to a threat did not come from a "rational part of the brain".[12]

[18] Since the trial, I have also received a report by Professor Denise Wilson under s 27 of the Act. She is a Professor in Māori Health, Co-Director of Taupua Waiora Māori Research Centre, Associate Dean at the Auckland University of Technology, Deputy Chair of the Family Violence Prevention Expert Advisory Group and was a member and Deputy Chair of the Family Violence Death Review Committee for six years. She interviewed Ms Ruddelle. The information in her report is also reflected in my remarks today, except for new specific allegations against Mr Ngapera. She emphasises the complexities of Ms Ruddelle's situation: caring for and needing connection with Mr Ngapera while fearing Mr Ngapera and being protective of her children. Ms Ruddelle repeatedly sought help against violence in her life but that had led to a short term response at best and removal of her children at worst, when she was not able to protect them.[13] Professor Wilson considers Ms Ruddelle's experiences from a young age of witnessing violence and alcohol abuse, and being forced to assume parental responsibilities, cemented her assumption of responsibility to care for and protect those at risk of harm, including Mr Ngapera.[14] Her report reinforces the conclusions of Dr Towns regarding coercive control and social entrapment.

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8 NOE 489/2-4.
9 NOE 465/28-30.
10 NOE 341/5-7.
11 NOE 468/29-30.
12 NOE 470/13-17.
13 Cultural Report, above n 2, at 9.
14 At 12.

The events of 13 and 14 November 2018

[19] Now I come to what happened on 13 and 14 November 2018. On Tuesday 13 November 2018, Mr Ngapera was apparently assaulted by someone. He was limping. He said he had his car stolen. Ms Ruddelle did not believe that because, she said, "who'd steal the car from him?".[15] In any case, he and Ms Ruddelle spent the evening at the Crates 'N Cues Bar in Manurewa, South Auckland. They were both drinking there though neither of them appears to have been particularly drunk when they left. Ms Ruddelle's nephew dropped them home after the bar closed around 2.45 am on Wednesday 14 November 2018. There was some more drinking. And in the dining room, Joseph set the table so they could have something to eat.

[20] Sometime between 4 am and 4.50 am, Mr Ngapera and Ms Ruddelle got into an argument in the dining room. He was angry. Ms Ruddelle told the Police he stood up from his chair and "came at her like he always did".[16] She knew it was escalating and that she was "going to get a hiding".[17] She yelled out for help from her adult son who was sleeping in the house.[18] But her younger, 14-year-old son came into the room instead, and pushed Mr Ngapera in the chest. Ms Ruddelle picked up from the table a large knife, with a 19 cm blade. She stabbed Mr Ngapera in the chest. She pulled the knife out and stabbed him again. One of the stab wounds was 16 cm deep in a downwards trajectory, required significant force and penetrated his heart, killing him. The other, close by, was 9 cm deep. Ms Ruddelle's younger son fetched her adult son who called 111 and tried to revive Mr Ngapera. Ms Ruddelle was audibly upset in the background of the call.

[21] The jury found Ms Ruddelle not guilty of murder but they did not acquit Ms Ruddelle on the basis that she acted in self-defence or defence of her son. They were sure she did not consciously run the risk that Mr Ngapera would die as a result of her actions or that she did not know her actions were likely to cause his death or they were sure she did not intend to cause him bodily injury that was more than minor in nature. But the jury did find Ms Ruddelle guilty of manslaughter. So they were sure

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15 NOE 318/12.
16 NOE 240/13, 241/2.
17 NOE 328/23-34.
18 NOE 328/23-329/11.

she intended to stab Mr Ngapera and they were sure the stabbing was likely to cause more than trivial harm to him.

[22] Mr Ngapera, known as Joseph or Joey to his whānau, is dead. He is the primary victim of what happened on 14 November 2018. His whānau are also victims and I have victim impact statements from three, who read them in court today:

(a) Pride Ngapera is married to Joey's eldest brother. She says he was very much a big part of the whānau's lives growing up, amongst the fruit trees in the garden at Māngere and on school holidays together including in the Hokianga. They would gather around Joey while he sang and played the guitar. She says Joey's remaining son, who lives in Australia, will never get the chance to know his father more. Pride says her family feels unforgiving right now and that no one deserves to die in the horrendous way Joey died. She says she is unhappy with Karen being portrayed at the trial as the victim and Joey as the villain. She says they all loved Joey unconditionally. He was whānau.

(b) Joseph was close to his sister Ngaire. She says he would ring her and say "happy birthday sister" every year when she turned the same age he was, but she will never hear his voice again. She says, at the time Joseph died, her father was planning a big family get together for him which is now all for nothing. She says listening at the trial it sounded like her brother was the defendant and Karen was the victim. She says it will be a relief to both families when this is over.

(c) Joseph's father, John, was shocked and at first did not believe Joseph had really died. He carries the pain of Joseph's loneliness and things not going well for Joseph over the years. John's brother and his wife have also died. Another of John's sons, Alec, died of cancer after Joseph died. So did one of Joseph's sons, Clinton. There is a world of hurt here, which John is coping with using te taha wairua and working with his church and on his marae. He feels the loss of his son.

Starting point

[23] Ms Ruddelle, after going through the facts of the offending, the first step in sentencing is to set a term of imprisonment as the starting point, reflecting the gravity of the offending.[19] This allows for, but is not solely determined by, consistency with other sentences for similar offending.

Submissions

[24] Ms Yelavich, for the Crown, submits the starting point should be in the vicinity of five years' imprisonment. She submits the aggravating features of the offending were extreme violence, use of a weapon and the profound effect on Mr Ngapera's family. She accepted Mr Ngapera had previously been violent towards you but submits:

(a) the last occasion of physical violence was in March 2017;

(b) you applied to discharge the protection order;

(c) there was only one Police callout in 2018;

(d) Mr Ngapera had never been intentionally violent towards your son;

(e) Mr Ngapera was unarmed, limping and not actually physically violent towards you on 14 November 2018;

(f) whereas you were intoxicated and angry with him; and

(g) you had other options available to you.

[25] Ms Yelavich canvasses other cases in detail. She submits the offending is most similar in gravity to, but more serious than, that in *Woods* where the starting point was four years and nine months.[20] She submits the offending is more serious than in cases where the starting point was four years and nine months or less and similar but slightly

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19 *R v Taueki* [2005] 3 NZLR 372 (CA) at [8].
20 *R v Woods* [2011] NZCA 573.

less in seriousness to a case where the starting point was five and a half years. Ms Yelavich submits this case should not be considered a case of excessive force in self-defence but, at most an implied threat to you but not your son. If it is excessive self-defence, she submits it was a grossly disproportionate overreaction, informed by your intoxication and anger as much as by the implied threat which was to you and not your son. She submits the location of the wound, the number of blows inflicted and amount of force used are relevant. She accepts violence by the deceased may reduce culpability. But she submits the two stab wounds were not instinctive and I should have regard to the lack of actual physical violence at the time of the offending.

[26] Mr Cassidy, on your behalf, accepts the offending involved extreme violence, a weapon was used and the effect on the victims could not be any more significant. But he submits we are all products of our environment. He submits Mr Ngapera contributed to the escalation in violence, you initially responded defensively but, when your youngest son pushed Mr Ngapera, you picked up the knife and used it to protect your son. He distinguishes the other cases on the basis that you did not appear to be as actively involved in a violent confrontation leading to the stabbing and he relies on Dr Towns' evidence that you were not using the rational thought processing part of the brain. He submits the jury's verdict is consistent with a finding that you used excessive force in acting defensively to protect someone more vulnerable than yourself, one of your children. Mr Cassidy submits an appropriate starting point is between three years, six months and four years' imprisonment. From that, in terms of the approach I adopt, he submits there should be a discount of up to 25 per cent for the direct link between the factors Dr Towns identified as indicating social entrapment and your offending. This would mean a starting point of between two years and 10 months and three years' imprisonment.

Setting the starting point

[27] There is no guideline judgment for the offence of manslaughter. The circumstances of manslaughter offences are very diverse. I consider the context of family violence is an integral feature of the offending here. And, contrary to the Crown's submissions, I consider the jury did see this as a case of excessive self-

defence. That is clear from a question they asked during their deliberations and I consider it was available to them on the evidence.[21]

[28] I consider the aggravating factors of the offending here are the obviously serious nature of the violence, with its consequence of the death of Mr Ngapera and consequential effects on his whānau, and the use of a weapon. I identify three mitigating factors of the offending:

(a) First, I consider the evidence is that you acted impulsively and instinctively, in the circumstances you perceived them to be at the time. I do not accept that two stabs in quick succession cannot be instinctive. I consider it was here. I agree that you suffered, consciously or unconsciously, from a moderate degree of social entrapment in the sense in which the experts have used that term. That affects culpability in that it explains why you remained in the relationship and were in the position you were in. It also means that the culpability of your actions needs to be viewed in the context of the violent nature of your relationship with Mr Ngapera. And I consider the evidence indicates you did have heightened sensitivity to whether and when the situation was becoming dangerous, conditioned by your past experiences of Mr Ngapera's actions. I do not accept, on the basis of the evidence at trial, that he was vulnerable that night.

(b) Second, the history of Mr Ngapera's violence and threats to you had been serious and ongoing for three and a half years. He was the primary aggressor in the relationship. His conduct, that night and in the past, led directly to your actions. I do not consider the Crown's identification of the last occasion of actual violence or Police callout or discharge of the protection order mitigates the threat that you reasonably would have perceived in these circumstances. I do not accept the evidence establishes that you were particularly intoxicated or angry that evening. On the basis of the evidence at trial, I consider it was reasonable for

[21] *R v Ruddelle* HC Auckland CRI-2019-092-1067, 20 February 2020 (Bench Note No 9) at [14].

you to have expected Mr Ngapera to be about to inflict violence on you or your son. While, in theory, there were other options available to you, as counsel for the Crown submitted, I consider it is understandable you stayed in the room, in the circumstances. This is related to the third mitigating factor.

(c) I accept you were substantially motivated by an urge to protect your son. Obviously, the jury regarded inflicting the two stab wounds as too excessive to sustain the defence of self-defence or defence of another. It can fairly be seen to have been disproportionate, though perhaps not grossly disproportionate as the Crown submits. There is no evidence Mr Ngapera had severely assaulted your son before. But there is also no evidence that your son had inserted himself into an argument between the two of you before, particularly one that seemed about to get physical. Based on your previous experiences of Mr Ngapera's behaviour, I consider you could reasonably have expected him to inflict violence on your son, after your son pushed him. "Nobody pushes Joseph like that without him getting angry about it", you said at trial.[22] That violence could reasonably have been expected to be severe, as you said you feared. This is also a mitigating factor regarding your offending.

[29] I do have regard to the other cases of excessive self-defence causing manslaughter in family violence contexts because these are features of the offending which go to its seriousness and to culpability.[23] I note the Crown agrees with this approach. But in making these comparisons I note it is important not to replicate any previous misconceptions about family violence and to focus on the offending in the context of the relationship, rather than based only on the latest specific incident.[24]

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22 NOE 330/22-25.

23 *R v Rakete* [2013] NZHC 1230 at [28]-[29].

24 Julia Tolmie "Defending Battered Defendants on Homicide Charges in New Zealand: The Impact of Abolishing the Partial Defences to Murder" [2015] NZ L Rev 649 at 675–677. Law Commission *Understanding Family Violence: Reforming the Criminal Law Relating to Homicide* (NZLC R139, 2016) at [11.24].

[30] I have reviewed 13 cases of manslaughter committed by women against the person who subjected them to a pattern of family violence. That includes the cases referred to by counsel. The starting points of terms of imprisonment adopted in the cases range from three years' to five years and six months' imprisonment. But there are several problems in making comparisons:

(a) One problem is that the cases take different approaches to whether a context of family violence is part of the circumstances of the offending or a factor which justifies a separate discount for the circumstances of the offender.

(b) Another problem is that the cases take different approaches to the extent to which social entrapment is explicitly taken into account in relation to culpability at all. That makes it difficult to compare culpability across the cases. Consistent with the expert evidence, I do not consider it right to judge culpability only by reference to the details of the specific incident giving rise to the charges, irrespective of the longer-term context of the relationships.

(c) But even apart from all that, the starting points in these cases are not particularly consistent, making it difficult to find a starting point that aligns with all of them.

(d) And, importantly here, none of the other cases involved offending motivated by the desire to protect a child.

[31] In particular, I do not accept that the offending here is most similar to that in *Woods*. The specific act of stabbing was similar and there was physical violence in the course of a sustained argument in several locations, but Ms Woods opened a drawer to get out the knife to stab her partner. And there is no suggestion she was acting instinctively to protect a child. The Court of Appeal, in 2011, was focussed primarily on the discount for a guilty plea.[25] It did not consider issues of social

[25] At [19].

entrapment or, except in passing, the context of the relationship. I will not go through all of the other cases. But I have considered them.

[32] I consider your offending is comparable to that in *R v Rose* and *R v Waa* where the starting points were three years and nine months' imprisonment.[26] In the first of those, there was a four-year violent relationship and the stabbing, on the left side of the back, was preceded by actual physical violence as the Crown submits, and was held to be excessive self-defence. In the second, the relationship of sustained physical and sexual abuse lasted 35 years, there was physical violence and threats on the night of the killing, and the judge had extensive context about Ms Waa's circumstances. Those cases involved actual violence on the night of the offending which did not have the chance to eventuate here. But it could have done and I accord significant weight to the fact you were acting instinctively to defend your son, informed by the context of your experience of Mr Ngapera's actions in the past. I do consider your offending was more serious than that in *R v Rakete,* where the victim fell, hitting his head on a kitchen bench after being struck in the head.[27] A starting point of imprisonment of three years' was adopted there. But, as I say, the offending across all of these cases is difficult to compare.

[33] Standing back and assessing your culpability in light of the cases as well as the evidence and other information available to me, and my assessment of the aggravating and mitigating factors, I consider a starting point of **three years and six months'** imprisonment is appropriate.

Adjustments

[34] Having set a starting point, I now adjust it for your personal circumstances. What I say is based on the evidence at trial, the parties' submissions, a pre-sentence report by the Department of Corrections, and Professor Wilson's report. I found Professor Wilson's report very helpful and impressive. It is detailed, comprehensive, informative and supported by references to robust academic literature. I was disappointed in the quality of the Department of Corrections' first pre-sentence report.

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26 *R v Rose* [2017] NZHC 1488; *R v Waa* [2018] NZHC 1028.
27 *R v Rakete*, above n 23.

It was a two-page once-over lightly report recommending imprisonment. A subsequent letter dated 9 June 2020 made four corrections that you pointed out. However, when I raised concerns that the report omitted to explore aspects I had asked to be explored, the Probation Officer accepted responsibility and provided a much improved report this week.

Exploration of a plea

[35] First, I consider your offer to resolve the case against you. Ms Yelavich submits any discount for your offer to try to resolve the proceedings with a plea to manslaughter should be no more than five per cent, because it was made 10 and a half months after the charge of murder was filed and was not a commitment to plead guilty. She maintains the Crown was entitled to prosecute for murder.

[36] Mr Cassidy submits your offer was conditional but genuine. He outlines the history of his advice that manslaughter was a likely verdict, an earlier informal approach about the possibility of accepting a plea to manslaughter, the Crown waiting for and then objecting to defence expert reports, and the Crown's position that it would not accept a plea to manslaughter and so saw no benefit to a sentence indication being sought. He submits a five to 10 per cent discount should be available for the offer to resolve the proceedings along the lines of the ultimate outcome.

[37] I consider the point relevant to sentence is that you instructed your counsel to try to resolve the matter with a plea of guilty to manslaughter. I accept Ms Yelavich's submission that there was sufficient evidence for the Crown proceeding with the murder charge. But the Crown was aware of the presence of your son as an eyewitness from the time of a constable talking to him that night. The constable's notes tended to support your defence.[28] Your instructions to explore a guilty plea turned out to be justified. If the Crown had been willing to explore a sentence indication to facilitate it, a guilty plea may well have been forthcoming. In retrospect, the time and public expense of the two-week trial may have been saved. I consider that justifies a discount in sentence of **four months, or a bit under 10 per cent.**

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[28] *R v Ruddelle* HC Auckland CRI-2019-092-1067, 11 February 2020 (Bench Note No 2) at [6].

Ms Ruddelle's background

[38] Now I consider your personal circumstances and background. I do not give you a discount in your sentence for your experience of Mr Ngapera's and others' violence or your social entrapment. I took that into account as part of the offending and to do it again would be double-counting. But I do take into account your personal and cultural background and circumstances otherwise, including the other information in Professor Wilson's report.

[39] Professor Wilson notes that your abuse at a young age had a negative effect on your cultural connections, which are now mainly through churches with Māori membership.[29] She considers you are an intelligent woman, a conclusion with which I agree, having heard your testimony at trial. But you have experienced a lifetime pattern of cumulative harm, beginning with exposure to violence and alcohol at an early age and a series of violent relationships.[30] Professor Wilson considers your life story undoubtedly heightened your susceptibility to violence and alcohol.

[40] Ms Yelavich submits a discount in the vicinity of 15 per cent is appropriate for your past, including previous violence and cultural factors. Mr Cassidy submits Professor Wilson has identified a number of factors that led to your disassociation from Māori culture and that, consequently, you were dispossessed of critical values and protective factors associated with close connection with your whānau and community. He relies on *Solicitor-General v Heta* in submitting a discount of up to 15 per cent may be available for this.[31]

[41] I agree that Professor Wilson's report portrays a compelling picture of the social and cultural disadvantage you have suffered, which many Māori have systemically suffered. Not only were your circumstances of social entrapment relevant to your culpability of your offending, but your exposure to the preconditions of that, through a life of alcohol and violence, was systemically mandated by the social dynamics of New Zealand society. As the High Court held in *Heta* drawing on Australian precedents, courts are required to take into account in sentencing decisions

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29 Cultural Report, above n 2, at 8-9.
30 At 17-18.
31 *Solicitor-General v Heta* [2018] NZHC 2453; [2019] 2 NZLR 241.

all material facts, including those facts which exist only by reason of the offender's membership of a particular, systemically disadvantaged, group.[32] The Court in *Heta* considered a discount of up to 30 per cent could be available for such factors. I agree that a discount in sentence of **eight months**, a bit less than 20 per cent, is justified here.

Remorse

[42] Ms Yelavich submits a discount of up to five per cent is available for your remorse. Mr Cassidy does not take issue with that. Professor Wilson reports that you want to be accountable to the Ngapera whānau for your actions, and to apologise. You are keen to engage in restorative justice. Through Huakina Social Services, you have engaged in counselling and referral to other relevant services.[33] You have also completed an eight-week programme with the Hope Unlimited Trust. You have whānau support, particularly from your children.

[43] Ms Ruddelle you have been willing to engage in a restorative justice process. You addressed the court, and Mr Ngapera's whānau today in court expressing your struggle with guilt and blame for what you did. You took responsibility for your actions which brought despair upon them. You apologised. Mr Ngapera's whānau is not ready for a restorative justice process, at the moment. But perhaps something will be possible in the future for that. No discount is available.

[44] I accept you loved Mr Ngapera and are sincerely remorseful about what you have done. That was evident at trial, as I said in granting bail. It is clear in Professor Wilson's report. I have no doubt that you are very unlikely to ever do anything like this again. I consider a discount of **four months,** or just under 10 per cent, is appropriate for remorse.

Bail

[45] Ms Yelavich submits you are entitled to a discount in the vicinity of two months for the four and a half months you have spent on electronically monitored bail (EM

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32 At [43]-[49].
33 Cultural Report at 8-9.

bail) since 19 March 2020. Mr Cassidy submits I am also able to take into account the period of bail spent on 24-hour curfew, on the basis it reflects the reality that your liberty has been curbed.

[46] I have considered the factors required under s 9(3A) of the Act. I agree you are entitled to a discount for being on EM bail. But before that, and after the conviction, you were on bail with a 24-hour curfew, which has the same effect other than the electronic monitoring. There have been no suggestions you breached the conditions of either form of bail. So you have been confined to your home since conviction on 21 February 2020, or five and a half months. I consider that justifies a discount of **three months'** imprisonment.

Other factors

[47] No uplifts were suggested by either counsel.

Totality assessment

[48] The adjustments mean the adjusted starting point is **23 months' imprisonment**. This is, just, within the range in which a sentence of home detention of up to 12 months could be imposed. Failing to consider that as an option would be a material error in sentencing.[34]

[49] Ms Yelavich, for the Crown, submits the end sentence should not come within the range that home detention can be considered. She submits a sentence of home detention would not meet the purposes and principles of sentencing, having regard to the gravity of this offending, which involved a deliberate act and the loss of a human life. She submits the sentence must be one of imprisonment. Mr Cassidy submits I should admit you to home detention. He submits there have been no issues as to administration of bail and you have demonstrated willingness and ability to comply.

[50] Section 15A of the Act provides that a court may only impose a sentence of home detention if it would otherwise sentence the offender to a sentence of

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[34] *Fairbrother v R* [2013] NZCA 340 at [27]; *Papa v Police* [2019] NZHC 1309 at [10]; *Pahulu v Police* [2020] NZHC 153 at [42].

imprisonment of 24 months or less. If an offender is sentenced to imprisonment for less than two years, they must be released after they have served half of their sentence. So a sentence of home detention is usually made equivalent to half of the term to which an offender would be sentenced to imprisonment. Home detention is the second most restrictive sentence that can be imposed, after imprisonment. The Court of Appeal has previously noted that a sentence of home detention holds offenders accountable and sends "a signal of deterrence"[35], it "is a significant sentence in its own right"[36], and "carries with it in considerable measure, the principles of deterrence and denunciation".[37] Home detention requires confinement within the house and compliance with the instructions of a probation officer.

[51] As I said in granting you bail on conviction, compliance with its conditions could help to demonstrate suitability for home detention. You have not breached your conditions of bail. As I also said at the bail hearing, I do not consider you pose a risk to the safety of others. I take into account the fact that you are caring for your son at home. I consider imprisonment is likely to impede your rehabilitation or reintegration into society. I do not see imprisonment achieving the purposes and principles of sentencing, or balancing the harm done, here. Irrespective of where you live, you will have to live for the rest of your life with guilt and whakamā that, although you did not intend to do so, you killed the man you loved.

[52] Standing back and examining the totality of your offending, I consider a sentence of home detention is the least restrictive outcome that is appropriate in the circumstances. Section 8(g) requires that this is the sentence I must impose therefore.

Sentence

[53] Ms Ruddelle, please stand. I sentence you to **11 months and two weeks'** home detention, on standard conditions, for your conviction of manslaughter.

Palmer J

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35 *R v Osman* [2010] NZCA 199 at [24]-[25].
36 *Fairbrother v R,* above n 34, at [28].
37 *R v Iosefa* [2008] NZCA 453 at [41].