IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA194/2018
[2019] NZCA 68

BETWEEN	KEVIN LESLIE EVERETT Appellant
AND	THE QUEEN Respondent

Hearing:	8 November 2018
Court:	Kós P, Lang and Moore JJ
Counsel:	D M Goodlet for Appellant J C Pike QC for Respondent
Judgment:	26 March 2019 at 9.30 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Kós P)

[1] Yet another tragic domestic violence case in which physical abuse meted out by the male ends in death of the female partner.

[2] Mr Everett and Ms Hart were a couple of mature years. For the last three of those years they had been in a relationship. Both suffered from alcoholism. The relationship was volatile. Mr Everett was prone to hitting Ms Hart. The converse did not apply. On Sunday 12 February 2017, Ms Hart died from serious head injuries.

These were the result of Mr Everett striking her with his fists, possibly in combination with her then falling and hitting her head on a hard object.

[3] Charged with manslaughter, Mr Everett pleaded not guilty. But a jury in the High Court at Auckland convicted him. Jagose J sentenced him to a term of seven years and six months' imprisonment, with a minimum period of imprisonment of three years and nine months'.[1] Mr Everett appeals sentence only.

Facts

[4] Mr Everett and Ms Hart had been in a relationship for approximately three years. Mr Everett was 65 years of age; Ms Hart 53 years. They lived together in a small flat adjoining a rural property north of Auckland occupied by their landlords, a Ms Travis and a Mr Rush.

[5] Mr Everett and Ms Hart suffered from alcoholism. The relationship was unhappy and volatile. Ms Hart was reclusive. She rarely left the house. She was often intoxicated and incapacitated. She had access to some funds, which she provided to Mr Everett. She was dependent on him to go out to obtain food and alcohol, and to prepare meals. He was in employment, and generally returned home from work via the pub in an intoxicated state. There were frequent heated, noisy arguments between the couple.

[6] In the weeks leading up to Ms Hart's death these arguments, and physical violence meted out by Mr Everett, escalated. He admitted in a police interview that he had slapped Ms Hart's head, but said it was "not [a] full on bash session". The Crown pathologist gave evidence of an apparent instance of traumatic head injury some two weeks prior to her death.

[7] Mr Rush's evidence was that the arguments had become more abusive in the weeks preceding Ms Hart's death — "fights … rather than just yelling and screaming". Mr Everett had told him Ms Hart was "worthless" and "a waste of space". He hoped

---

1 *R v Everett* [2018] NZHC 468. Minimum period of imprisonment is referred to as "MPI" in this judgment.

"she'd drop dead". In his police interview he said he found the relationship "extremely frustrating" and described it as "like basically living with a dog that continues to bark".

[8] A child visiting the property on Friday 10 February 2017 saw a physical fight between the two. Mr Everett was standing, bending over Ms Hart and thrusting his open hand towards her head. Ms Hart yelled, "let me alone". The child spoke to Ms Travis about what she had seen. Ms Travis had developed a habit of checking on Ms Hart after the more violent arguments between the couple. She visited Ms Hart at about midday on Saturday 11 February 2017. She said she "looked absolutely terrible" and asked if she was okay. Ms Hart said she was not and had a really bad headache. Ms Travis's evidence was that Ms Hart had "really red eyes" with a face that "looked puffed up more than normal".

[9] At 7 pm that evening Ms Travis visited Ms Hart again. She said Ms Hart "looked like she was in agony". Ms Hart said she was "feeling completely awful". Ms Travis took her back to her house. Ms Hart identified lumps on her head where she had been hit. Ms Travis wanted Ms Hart to stay overnight with her and visit a doctor in the morning. But Ms Hart wanted to return to the flat, and Mr Rush helped her back there at about 10.30 pm.

[10] Ms Travis and Mr Rush heard nothing further that night. The next day, Sunday 12 February 2017, Mr Everett left the flat to go fishing. Ms Travis and Mr Rush became concerned at the absence of sound or signs of movement. Mr Everett returned from fishing, along with one of his friends. He opened the windows of the flat. As a result Ms Travis heard some "loud gurgling" coming from Ms Hart's bedroom, but thought it was her snoring. Mr Everett subsequently told the police that he had "never heard [Ms Hart] snore like that before".

[11] Ms Travis then heard Mr Everett swearing and "yelling and screaming at [Ms Hart] to shut up". On the pretext of returning a bracelet that Ms Hart had left at the house, Ms Travis knocked on the door and asked Mr Everett if she could speak to Ms Hart to return the bracelet. Mr Everett told Ms Travis she could but that Ms Hart was non-responsive, "comatose". Ms Travis went into the bedroom. She said in

evidence, "I've never really ever seen anyone look like that and breathe like that before ... it just looked like the whole person was already gone".

[12] Ms Travis told Mr Everett that an ambulance needed to be called immediately. Mr Everett said she should give it "an hour or so" and that Ms Hart would be okay. Ms Travis said she did not think Ms Hart had even five minutes. Mr Everett then said, "If she dies, she dies". He tried to delay Ms Travis' departure from the flat. As soon as she could leave she called an ambulance.

[13] Ambulance personnel assessed Ms Hart to be in a critical condition, with the lowest physical categorisation before death. The evidence of the police and ambulance personnel was that Mr Everett was "very calm" and not "too bothered about what was happening in the house". He did not enquire after Ms Hart's wellbeing even after being told her condition could be life threatening.

[14] Ms Hart was taken to hospital. Emergency brain surgery was undertaken, but she died. As the Judge noted, implicit in the verdict of the jury was that Mr Everett must have punched or hit Ms Hart's head intentionally.[2]

Sentence imposed

[15] The sentence of seven years and six months' imprisonment was constructed by the Judge in an orthodox fashion. First, considering the offending itself, the forensic evidence could not support more than evaluation of a single application of force ultimately causing death. That is, a "one punch" manslaughter involving an attack to the head. That might have justified a sentence of five years and six months' imprisonment.[3] But the offending was aggravated by the domestic context, Ms Hart's vulnerability and Mr Everett's callous disregard for her condition, post-assault.[4] That produced a starting point of seven years and six months' imprisonment.[5]

---

2 At [21].
3 At [51].
4 At [52]–[54].
5 At [55].

[16] Secondly, the Judge turned to aggravating or mitigating considerations concerning Mr Everett himself, rather than the offending. Neither the Crown nor the defence submitted any adjustment should be made under this heading. The Judge noted the absence of remorse and acceptance of responsibility. The sentence therefore remained seven years and six months' imprisonment.

Domestic violence causing death

[17] In *Solicitor General v Hutchison,* this Court observed that family violence has become one of the scourges of New Zealand society.[6] The Prime Minister's Chief Science Adviser has identified intimate partner violence as the leading cause of female homicide death in New Zealand and the most common type of violence that New Zealand women experience.[7]

[18] The most recent source of New Zealand statistical data on this subject is contained in the 2017 report of the Family Violence Death Review Committee.[8] It aggregates statistical evidence from 2009 to 2015.[9] In that period:[10]

(a) Of a total 486 homicides and related events, there were 91 IPV death events, with 92 deceased women and men (approximately 19 per cent of all homicides). Sixty-three were women (68 per cent) and 29 were men (32 per cent), despite men making up 64 per cent of total homicide victims between 2009 and 2015.

(b) It follows that within the nominated period, approximately 36 per cent of female homicides and related events were the result of IPV.

---

6 *Solicitor General v Hutchison* [2018] NZCA 162, [2018] 3 NZLR 420 (CA) at [27].

7 Professor Julie Gerrard *Every 4 minutes: A discussion paper on preventing family violence in New Zealand* (Office of the Prime Minister's Chief Science Adviser, 6 November 2016) at [5] and [77], citing H. Stöckl, K. Devries, A. Rotstein et al "The global prevalence of intimate partner homicide: a systematic review" (2013) 382 The Lancet 859-65. In this judgment we refer to intimate partner violence as "IPV".

8 Family Violence Death Review Committee *Fifth Report: January 2014 to December 2015* (Health Quality & Safety Commission, June 2017).

9 These numbers include recorded homicide statistics on murder, manslaughter and infanticide offences. 2015 homicide numbers were not yet stable at the time of publication because investigations were continuing.

10 Family Violence Clearinghouse *Data Summary: Family Violence Deaths June 2017* (June 2017) at 4.

Seventy offenders were men (76 per cent) and 22 were women (24 per cent).

(c) In the 83 IPV death events involving a recorded history of abuse, 82 women (99 per cent) were primary victims abused by their male partner. One man (one per cent) was a primary victim abused by his female partner. In 16 IPV death events (19 per cent) the offender was also the primary victim of abuse. All of these offenders were female.

[19] In *Hutchison* we observed that family homes are places where the occupants are entitled to feel, and be, safe.[11] We observed that co-occupation as a family unit involves a social contract of mutual care and nurture. And that it also involves inherent vulnerability to opportunistic breach of that social contract by the use of physical violence — given that the victim cannot realistically lock the door against a co-occupant.

[20] It may also be observed that often only simple fortuity lies between an act of violence resulting in a charge of wounding (or injuring) with intent to cause grievous bodily harm or instead a charge of manslaughter.[12] Manslaughter essentially is the causing of death by an unlawful act where the defendant neither intends death nor apprehends death to be a likely consequence of their acts. It encompasses homicide across a wide range of circumstances, including reckless conduct, and impulsive acts of violence (including cases falling short of self-defence), causing death.[13]

[21] "One punch" manslaughters are essentially s 188 or 189 wounding or injuring cases, sometimes with the unintended consequence of GBH, and invariably the unintended consequence of death. Sentence starting points in such cases typically are of the order of five to six years.[14]

[22] Our present concern is whether sentencing in domestic violence cases for (1) wounding or injuring with intent to cause GBH and (2) manslaughter following

---

11 *Hutchinson,* above n 6, at [27].
12 In this judgment we refer to grievous bodily harm as "GBH".
13 Crimes Act 1961, ss 160(2) and 171.
14 For example, *R v Pene* [2010] NZCA 387; and *Murray v R* [2013] NZCA 177.

the infliction of GBH are readily reconcilable. The maximum sentence for injuring with GBH intent is 10 years, wounding with GBH intent 14 years, and manslaughter, life imprisonment.[15] Death following the deliberate infliction of GBH is and must be a seriously aggravating factor in sentencing.[16]

[23] We attach to this judgment a table of domestic violence sentencing at appellate level in the two categories we have discussed: wounding or injuring with intent to cause GBH, and manslaughter following the infliction of GBH. This appeal is not the case in which to seek to lay down more prescriptive guidance, but we venture to suggest that there are difficulties reconciling sentencing levels in these two broad categories. As we noted earlier, death following the deliberate infliction of GBH must be a seriously aggravating factor in sentencing. However, if common fact patterns produce similar sentencing starting points whether or not death ensues, something is likely to be wrong. Either some manslaughter sentencing is too low, or some GBH sentencing is too high.

[24] The cause of the difficulty is explicable on several levels. One is that the wide range of circumstances in which manslaughter occurs has dissuaded this Court from issuing a guideline judgment on manslaughter sentencing.[17] On the other hand, GBH offending has a highly structured sentencing guideline judgment in *R v Taueki.*[18] It involves a series of bands delineating the seriousness of the offending, and some fourteen individual aggravating factors. In an attempt to achieve some greater consistency of sentencing between GBH offending and manslaughter resulting from GBH offending, this Court has observed that, in cases where the manslaughter involves serious violence, *Taueki* is relevant and indeed of considerable assistance.[19]

---

15 Crimes Act 1961, ss 189(1), 188(1) and 177(1).
16 *R v Tai* [2010] NZCA 598 at [12].
17 *R v Edwards* [2005] 2 NZLR 709 (CA) at [14]; citing *R v Leuta* [2002] 1 NZLR 215 (CA) at [49]–[59].
18 *R v Taueki* [2005] 3 NZLR 372 (CA).
19 *R v Tai*, above n 16, at [11]; and *R v Jamieson* [2009] NZCA 555 at [34].

[25] In *R v Tai* Chambers J observed:[20]

> In those manslaughter cases where *Taueki* is relevant, the sentencing Judge effectively has a choice. He or she can assess the offender's culpability by reference to, among other things, comparable manslaughter sentencings. Another approach is to consider the matter in *Taueki* terms, making an appropriate adjustment for the fact that the consequence of the serious violence has been not just serious injury but death itself. A counsel of perfection perhaps would be to utilise both approaches, each providing a check on the other. In these reasons, we have tried to assess Mr Tai's offending on both bases.

[26] Subsequent authority has suggested a cautious approach should be taken to applying *Taueki* in a manslaughter case.[21] In *Murray v R* this Court suggested that translation of *Taueki* sentencing principles to manslaughter cases may be awkward, and that an analysis of comparable cases "may often be the best guide".[22] That was a "one punch" manslaughter appeal. It may readily be acknowledged that in a case of that kind considerable caution must be taken in applying *Taueki* principles.[23] But the point should not be lost sight of that GBH offending under ss 188 and 189 may also be impulsive in nature, so long as really serious harm is an intended consequence. *Taueki* applies in such cases also, with premeditation simply aggravating the offender's culpability.[24]

[27] In *Ioata v R* this Court confirmed the appropriateness of the "counsel of perfection" suggested in *Tai* — a twin consideration of comparable manslaughter sentencing and *Taueki* principles — in a manslaughter case involving GBH offending resulting in death.[25] We think that admonition correct. In manslaughter cases founded upon GBH offending — where really serious injury is an intended consequence — that twin approach is desirable if (1) manslaughter sentencing is properly to reflect the additional and significant aggravation of death ensuing from GBH, and (2) GBH offending is not, in turn, to be over-sentenced.

---

20 *R v Tai,* above n 16, at [12].
21 *Murray v R*, above n 14, at [20].
22 At [27].
23 See also *Turi v R* [2014] NZCA 254 at [17]–[18].
24 *R v Taueki*, above n 18, at [31].
25 *Ioata v R* [2013] NZCA 235 at [25] and [28] – a case involving a fight, rather than simply "one punch".

[28] It need hardly be said that many manslaughter cases in a domestic setting involve prolonged physical violence in a context where really serious harm is an entirely foreseeable consequence. This was just such a case.

Manslaughter starting point

[29] The Judge adopted a starting point of seven years, six months' imprisonment.

Submissions

[30] Ms Goodlet accepted that the facts of the offending placed the culpability of Mr Everett at a higher level than a one punch manslaughter case. But she said that this was not a case in which serious violence was intended, and not a case involving extreme violence. The fact of prior violence in the relationship, and the vulnerability of Ms Hart, were aggravating circumstances. So too the failure of Mr Everett to seek assistance for her after his assault on 11 February 2017.

[31] Ms Goodlet submitted that a starting point of five and a half years' imprisonment was appropriate, but that the uplift of two years (which the Judge had allowed for the domestic context, Ms Hart's vulnerability and Mr Everett's disregard for her condition) was inappropriate.[26]

Analysis

[32] For a sentence appeal to succeed we must be satisfied that there is an error in the sentence and that a different sentence should be imposed.[27] In *Tutakangahau v R* this Court held that the appellant must show that error was a material one.[28] The focus of the Court's attention is on the end sentence rather than the exact methodology.[29] This Court will not ordinarily interfere unless the end sentence is outside the available range.[30]

---

26 See [15] above.
27 Criminal Procedure Act 2011, s 250.
28 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [26]–[27], [30].
29 *D (CA197/2014) v R* [2014] NZCA 373 at [18].
30 *Tutakangahau v R*, above n 28, at [36].

[33] We will apply the dual analytical approach taken in *R v Tai.*

[34] First, we consider sentencing levels in comparable manslaughter cases. Those most relevant are *R v Ruru*, *R v Hetherington*, *R v Kengike* and *Ferris-Bromley v R*.[31] All these appeals are set out in the attached table, in their appropriate location based on sentence starting point. It is clear in this case that Ms Hart was the subject of repeated, if not necessarily protracted violence at the hands of Mr Everett. Subject to that qualification, the facts are not dissimilar to those in *R v Ruru*, where an eight year starting point was considered stern but within range. A distinctive degree of callousness in Mr Everett's response to Ms Hart's predicament takes the case within the sphere of *Kengike* and *Ferris-Bromley*. In those cases starting points of 10 and 11 years were adopted, having regard also to an established history of violence among other factors. By no means in this company can the Judge's starting point of seven years six months be described as beyond the available range.

[35] In contrast to those cases, the submission for Mr Everett was that while his offending was more serious than a one punch manslaughter case, a starting point equivalent to such offending should nonetheless be adopted. The proposition need only be stated to be rejected out of hand.

[36] Secondly, we will assess what the starting point would have been under *R v Taueki*, had the injuries inflicted been non-fatal and instead amounted only to wounding with intent to cause GBH.[32] Inevitably the analysis is not a perfect comparison: the offences have somewhat different mens rea requirements and it requires a temporary suspension of reality in relation to the outcome of the GBH offending. But an impression emerges.

[37] In terms of the *R v Taueki* methodology, four aggravating factors are present at least to a moderate degree.[33] First, serious injury (the injury, just short of death, must be characterised as the most serious of injuries; the fact of death itself further aggravates the offending). Secondly, the offending involved attacks to the head.

---

31 *R v Ruru* CA371/01, 12 February 2002; *R v Hetherington* CA28/02, 20 June 2002; *R v Kengike* [2008] NZCA 32; and *Ferris-Bromley v R* [2017] NZCA 115.

32 Crimes Act 1961, s 188(1).

33 *R v Taueki*, above n 18, at [31].

Thirdly, Ms Hart was vulnerable, initially owing to her substance abuse and long-term reliance on Mr Everett (which reliance he was plainly cognisant of). As the assaults become more serious and prolonged, she was rendered increasingly more vulnerable. Fourthly, and as recognised recently by this Court in *Hutchison*, the domestic component of the offending seriously aggravates the offending.

[38] Offending with three or more aggravating features where the combination of aggravating features is particularly grave ordinarily falls within band three, with a starting point of nine to 14 years.[34] On the basis of the examples given by the Court in *Taueki*, a starting point on the border between bands two and three (nine to 10 years' imprisonment) would be appropriate. Band three posits a domestic assault committed by a partner involving the infliction of serious and lasting injury (which in this case Ms Hart would likely have suffered even short of death).[35] Given the ongoing pattern of behaviour, the callousness demonstrated by the defendant and this Court's recent rearticulation of the seriousness of the domestic setting, the present offending sits above that example. But for the absence of a weapon, the band three "serious domestic assault" example may well have been appropriate.[36] A starting point in the region of nine to 10 years would therefore have been in range had Ms Hart not died and the sentence was instead for an offence of wounding with intent to cause GBH. This analysis also rather makes the point made earlier about the apparent inconsistency of sentencing levels for GBH offending and manslaughter based upon a GBH offence.

[39] By all these lights the starting point here was a lenient one. By no means was it manifestly excessive.

Minimum period of imprisonment

[40] We turn now to whether an MPI should have been imposed.

---

34 At [34] and [40].
35 At [39].
36 At [41].

Submissions

[41] Ms Goodlet submitted that the Court was wrong to consider the minimum non-parole period under s 84(1) of the Parole Act 2002 was insufficient to hold the offender accountable, denounce the conduct and deter the offender or protect the community. An MPI was not appropriate pursuant to s 86 of the Parole Act. Other manslaughter cases involving an MPI were of a different nature and involved a higher level of culpability.[37] This was not a case of "unusual callousness" and a denial of responsibility by Mr Everett did not increase community risk thereby deserving an imposition of a minimum period.

Analysis

[42] The particular callousness displayed by Mr Everett, his denial of responsibility and his lack of remorse make early release under s 84(1) of the Parole Act inappropriate and insufficient in terms of accountability, denunciation and deterrence. We are not persuaded that the Judge erred in the MPI he therefore imposed.

Result

[43] The appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

[37] Ms Goodlet referred to *R v Taylor* [2016] NZHC 649; *R v Kengike*, above n 31, and *R v Tulisi* [2013] NZHC 3342.

Appendix: manslaughter and GBH decisions[38]

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
Manslaughter: *Shailer v R*:[39] V, three years old, was placed in D1 and D2's care. Over two months they became increasingly violent towards V culminating in D1 stomping on V's abdomen and stomach. Ds' children saw. The next day it was obvious V needed medical attention, but none was sought until it was much too late for V to be saved. When medical staff were eventually called, D1 initially lied about the origin of the injuries V had suffered.	Extreme, prolonged violence; attacks to the head; vulnerability; cruelty and callousness; breach of trust; witnessed by other children. D1: inflicted fatal injuries).	None.	D1 and D2: Life.	None.	D1 and D2: guilty pleas. D1: good mother to own children; prospects of rehabilitation.	D1 and D2: 17 years (MPIs of 9 years).
Manslaughter: *Woodcock v R*:[40] D embarked on a course of increasing violence against his three-month-old daughter, V. V had suffered numerous injuries including rib fractures, a haemorrhage in a chest wall, torn upper frenulum in her mouth, and bruising to the jaw and neck. The fatal injury was a four-centimetre skull fracture likely caused by a sudden impact to the back the head.	Degree of force; sustained course of violence; vulnerability; related violent offending; position of trust; failure to seek medical assistance.	None.	12 years and 6 months (including 18-month uplift for earlier violence and neglect).	None.	Age; previous good character.	12 years.

38 "V" is shorthand for victim, "C" "complainant" and "D" "defendant". The aggravating and mitigating factors listed are those identified or endorsed by this Court. In all cases there is a domestic relationship between the victim and defendant, whether by way of partner, child or as caretaker.

39 *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629.

40 *Woodcock v R* [2010] NZCA 489.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
Manslaughter: *R v Tipene*:[41] D1, V's mother, and D2, D1's partner, engaged in systematic abuse of six-year-old V. V had suffered some 23 injuries to various parts of her body. V had also suffered three serious brain injuries, one as early as six months before death, another only two–three hours before death. Death was caused by lack of oxygen to the brain likely occasioned by serious head trauma. D1 took responsibility for the fatal injuries and was subsequently convicted of manslaughter.	Prolonged and cruel.	None.	12 years.	None.	Guilty plea; personal circumstances	8 years.
GBH: *Rikihana v R*:[42] C took D's car to a party without D's knowledge. The car was stolen while C was at the party. When C returned home, D became angry and hit C on the head with a lump of wood and an axe handle. D kicked and punched C. She was rendered unconscious in a pool of blood on the floor. Long-term serious injuries resulted.	Extreme violence; use of weapons; attacking the head; serious injuries inflicted.	None.	12 years.	Prior offences; D on parole at time of offending.	D sought medical assistance.	12 years and 6 months (MPI of 40 per cent).

41 *R v Tipene* [2001] 2 NZLR 577 (CA). In increasing the sentence, this Court made little reference to aggravating and mitigating factors, instead comparing this case to other similar offending.

42 *Rikihana v R* [2010] NZCA 405.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
GBH: *Muliipu v R*:[43] C and D were in a relationship. Several incidents. Most significant involved D dragging C out from Women's Refuge, taking her to Hastings, locking her in a wardrobe, beating her for several hours, driving a knife down through her left eyebrow penetrating the eyeball then beating her for some hours (eye ultimately removed).	Serious prolonged and unprovoked violence; very serious injury; attack to the head; use of a weapon; domestic setting.	None.	11 years.	Previous convictions.	None.	13 years (MPI of 7 years).
Manslaughter: *Ferris-Bromley v R*:[44] V and D cohabited. D pulled V from the bed, threw her to the floor and punched her head, back and abdomen with great force. V lost consciousness and stopped breathing. In the weeks immediately before V's death D inflicted significant injuries including an attack causing an acute subdural haemorrhage and extensive bruising.	Related, earlier violence; serious, unprovoked violence; attack to the head; domestic setting.	None.	11 years (including a 2-year uplift for the related violence).	None.	Remorse; early guilty plea.	7 years and 10 months (MPI of 50 per cent).
GBH: *R v Savelio*:[45] C1 and D had been in a relationship. They separated and C1 became involved with C2. At 2.30 am D, drunk, went to C1's home. C2 was there also. D, after attempting to force his way inside, attacked both C1 and C2 with knives. D punched, kicked and stomped on C1.	Use of lethal weapons (knives); extreme violence; unlawful entry into dwelling at night; vulnerability of complainants; premeditation.	None.	10 years and 6 months.	D on bail at time of offending; offending in breach of protection order.	Early guilty pleas; remorse; strong family support; previous good character.	8 years (MPI of 50 per cent).

43 *Muliipu v R* [2013] NZCA 257.
44 *Ferris-Bromley v R* [2017] NZCA 115.
45 *R v Savelio* [2007] NZCA 333.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
Manslaughter: *R v Kengike*:[46] V and D had been in a 10-year relationship. D had a history of violence against V. A violent exchange broke out between them one evening. The following night D followed V home. The following day V was found unconscious in her bed having suffered: bruising to the face, jaw, neck and head; two subdural haemorrhages caused by impact to the head; a boot print on her abdomen; fractured eye socket; and soft tissue injuries around the neck. V died three days later. D had left town and sought no medical assistance for V.	Sustained violence; V's vulnerability given relative size to D; failure to give assistance.	None.	10 years.	Relevant prior convictions; and on bail at time of offending.	Guilty plea.	8 years (MPI of 4 years).
Manslaughter: *R v Wright*:[47] V was D's eight-month-old son. D suffered from a disorder that caused her to feign her child's sickness to garner sympathetic responses. She had non-fatally smothered V on 10 occasions. The eleventh occasion D smothered V was fatal. There were also instances of D administering V crushed up Diazepam pills.	None identified by this Court, but the repetitive and extended nature of offending must have been significant.	Mental and emotional disorders.	10 years.	None.	Guilty plea together with cooperation with authorities.	4 years.

46 *R v Kengike* [2008] NZCA 32.
47 *R v Wright* [2001] 3 NZLR 22 (CA).

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
GBH: *Kaio v R*:[48] C and D had separated. C went to D's house to collect some items. C stayed the night. D found a message on C's phone that angered him. He confronted C, dragged her by her hair, punched her in the side of the head (she became unconscious). D dragged C to the lounge and wrapped a phone cord around her throat. C was hospitalised.	Vulnerable complainant; prolonged violence; serious injuries inflicted.	Mental condition at time of offending.	9 years.	None.	Guilty plea; genuine remorse; mental condition.	6 years.
Manslaughter: *R v Hetherington*:[49] V and D had been in a 9-year de facto relationship. V returned home intoxicated one evening. An argument ensued. Neighbours heard items being smashed and several skin-on-skin blows. D inflicted a series of punches on V while she lay on the ground. When police arrived V was lying unconscious on the grounds. V died the following morning. V had also suffered additional head injuries 10–15 days before death, and had been assaulted 19 days before death.	Blows to the head; sustained violence; fatal injuries inflicted some time after other serious violence against the same partner.	None.	9 years.	On parole at time of offending.	None.	9 years.[50]

48 *Kaio v R* [2012] NZCA 168.

49 *R v Hetherington* CA28/02, 20 June 2002.

50 Neither Court separated out offender and offending related aggravating factors. So the starting point and end sentence reflect an amalgam of both.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
Manslaughter: *R v Ruru*:[51] V and D had been in a de facto relationship for 20 years. D had previously been violent towards V. At a party D became physically abusive towards V. Later they returned home. D became violent again and pushed V outside, locking the door. V was let in, further attacks followed. V eventually lost consciousness. Help was only sought the following morning by their son. V was dead on medical staff's arrival.	Violent and sustained assault; long history of violence against V.	None.	8 years.	None.	Guilty plea.	7 years.
GBH: *Griffiths v R*:[52] C and D were in a relationship. Of the numerous incidents, the most serious involved D forcing C to put a kitchen sponge in her mouth to stop her making noise and deliberately splashed boiling water over her abdomen and legs.	Sustained and callous offending; serious injury with ongoing consequences; failure to obtain medical assistance for some time.	None.	8 years.	Previous convictions (6-month uplift).	Guilty plea; remorse.	7 years and 6 months (MPI of 50 per cent).

51 *R v Ruru* CA371/01, 12 February 2002.
52 *Griffiths v R* [2011] NZCA 102.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
GBH: *Kauwhata v R*:[53] C left D five weeks earlier. C went to D's house to borrow some items. D invited C inside. Without warning D grabbed C's hair from behind, pulled her head back and punched her in the face. C fell to the floor. D had a knife (12 inches long). Said he would slit C's throat. D stabbed C in the chest and attempted to stab her in the neck.	Premeditated; use of a weapon.	None.	7 years.	Not dealt with on appeal (trial judge apparently noted breach of protection order as aggravating the offence).	Guilty plea.	4 years and 8 months.
GBH: *Rautahi v R*:[54] C and D, previously married, had separated. There were two incidents, the more serious involved D going to C's home. C answered the door. D was agitated and angry. D grabbed C and urged her into the master bedroom. There was an argument between D and his son. D sent his son away from the house. D remained in the house with C, punched her head using both fists, struck her with a piece of firewood, and threatened to kill her.	Premeditation; use of a weapon; serious wounds; serious violence; attacking the head.	None.	5 years and 6 months.	Previous convictions.	None.	6 years.

53 *Kauwhata v R* [2010] NZCA 451.
54 *Rautahi v R* [2011] NZCA 351.

Case	Starting point for the offending			Factors personal to offender		Final sentence
	Aggravating	**Mitigating**	**SP**	**Aggravating**	**Mitigating**	
Manslaughter: *R v Pene*:[55] V was 13 months old. D was his foster mother. D had become abusive towards V. Separately to the fatal injury, which involved hitting V several times hard on the head and shaking him, V suffered abrasions and bruising and suffered an historical fracture to an arm bone.	Offending against a baby; series of assaults over two-month period before death.	None.	5 years.	None.	Personal circumstances; guilty plea; discount for time spent on home detention and community work completed.	2 years 3 months.
Manslaughter: *Woods v R*:[56] V and D had been in a 10-year relationship. It had become mutually violent. Driving home together, D became violent, punching her in the face. On arrival, V hid. After a time they began arguing again. They moved to the kitchen. D grabbed a knife and, with no recollection of doing so, stabbed V twice, one wound fatally penetrating V's heart.	Use of weapon.	None.	4 years and 9 months.	None.	Remorse; prior violence in the relationship; guilty plea.	4 years.

55 *R v Pene* [2010] NZCA 387.
56 *Woods v R* [2011] NZCA 573.