

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

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

**CRI-2018-044-003288  
[2019] NZHC 3146**

**THE QUEEN**

v

**AARON JAMES ARCHER**

Hearing: 2 December 2019  
Counsel: B Dickey for Crown  
R Mansfield and B Kirkpatrick for Defendant  
Sentence: 2 December 2019

---

**SENTENCING NOTES OF WHATA J**

---

Solicitors: Meredith Connell, Auckland

[1] Mr Archer, you appear for sentencing having been found guilty of one charge of manslaughter. Manslaughter carries a maximum sentence of life imprisonment. My sentencing will be in five parts. First, I will set out the facts of your offending. Second, I will describe your personal circumstances. Third, I will refer to a statement made by one of the victims of your offending. Fourth, I will set out my assessment of the sentence that should be imposed on you. Fifth, and finally, I will impose sentence.

## **Facts**

[2] On 22 August 2018, Aria Roberts, a two-year-old, was left in your care while her mother went to the shop. While Aria was in your care, you either struck Aria's head or caused her head to be struck with such force that it caused a catastrophic brain injury. It appears Aria fell immediately into unconsciousness. You tried to revive her without success. You called her mother. I have a recording of that call. You were clearly very distressed at what had occurred.

[3] On Aria's mother's return to your home, assistance was sought from neighbours who also immediately tried to revive Aria. Ambulance services were called, and they soon arrived on the scene. They too tried to revive Aria. But it quickly became clear that Aria was beyond help.

[4] Your explanation at the time of the incident and subsequently was that you had been swinging Aria around, she slipped from your grip and she struck the wall. The jury clearly did not believe this. The jury must have found that you struck Aria or caused her head to be struck, but that you did not intend to kill her and were not reckless as to whether death would follow.

[5] For completeness, while there was evidence that Aria had multiple bruises to her head, I do not find that you caused any other injury to Aria. On the contrary, I find that this was a single act of violence.

## **Personal circumstances**

[6] I turn then to talk about your personal circumstances. I have the benefit of a PAC report, and a cultural report prepared by Ms Shelley Turner pursuant to s 27 of the Sentencing Act.

[7] Mr Archer, you are 31 years old. You identify as Pākehā. You had a very difficult and unstable upbringing. Your parents separated before you were born. Drugs and crime appear to have been features of your upbringing. Both your mother and your father suffered with drug addiction. Your father was imprisoned on at least two occasions during your youth for serious crime. On this, your father has written a note to me confirming both his drug use and his time in prison. Your mother also spent a year on remand when you were ten. School was difficult for you. You attended a residential behavioural school which provided specialist education and residential care for children who have severe and challenging behavioural issues. Your education ended in about the fourth form. You also self-report as having ADHD and dyslexia, but you sold your ADHD medication for money. You also report having seen your father assaulting your mother at least on one occasion.

[8] You have brothers, but you are not close to them. Recently, however, you have connected with an aunty and this has been very positive for you. I note at this point that she has written a letter of support and she says you witnessed so much violent behaviour when you were young that you thought it was normal.

[9] You are the father of three children from two different mothers. The two children from your first relationship have been removed by Oranga Tamariki. You separated from your second partner some time ago, but you have seen your daughter recently. You had a third relationship which lasted for some time, before you commenced your relationship with the victim's mother.

[10] You have been a drug user for some time, having been introduced to drugs by your parents. You regularly consume cannabis and it appears consumed cannabis on the day of the offending.

[11] The s 27 report also identifies potential linkages between your background and the offending. I will make my own assessment of those linkages later. One aspect requiring comment, however, is Ms Turner's reference to you having made a bad choice when deciding to swing Ariaah around. This reference suggests to me that you continue to persist with your explanation of the offending. But, critically, the jury did not accept that explanation and I will come back to the significance of that later also.

[12] The PAC report refers to a discussion about your criminal history and that you advised that in the past you had a violent streak, but you had completed an anger management course. In that regard you have three convictions for family violence and common assault. I also note that since the present offending, you have completed various programmes, including alcohol and drug programmes and a life skills programme.

[13] Finally, I refer to your letter to me. You state that you wish you could undo what happened that night. You say you have taken responsibility for Ariaah's death from the beginning, as hard as you have found that to accept. You state you will always be sorry and filled with regret for the pain you have caused to the victim's mother and her family. You say the events of that night will always be with you, and that you would never purposefully harm a child. You note that you cared for your youngest daughter for a period of four months because her mother could not. You also refer to your concerns about what this charge could mean for your daughter and your ability to spend time with her.

[14] You state you have thought about rebuilding your life, referring to a job you worked previously in Paihia as a kitchen assistant. You note you have stayed away from drugs and alcohol while in prison and are glad to have been sober for 14 months. You say you plan on staying sober and continuing to get help from the programmes available to you in prison to gain life and employment skills. You express a desire to get help and return to society to be a father for your daughter.

### **Victim Impact statement**

[15] I now refer to the victim impact statement. Ariaah's maternal grandmother has submitted that statement. In it she says it is impossible to put into words what she and

her family have suffered since Ariaiah's death. She says it has affected her emotional and mental health and her sleep, and states that the resulting anxiety has had far-reaching negative impacts on her life. She says some of her relationships have been ruined beyond repair and her business has also suffered. She says there is nothing that could atone for or in any way compensate for Ariaiah's death, but she believes that you and Ariaiah's loved ones have already been served with a life sentence.

### **Assessment**

[16] I turn now to my assessment of your sentence. In fixing sentence, I must have regard to the purposes and principles of sentencing. In this regard, the sentence must be such as to deter you and others from repeating it, the offending that is. The sentence must clearly denounce your actions, make you accountable for them and look to protect the public. I must carefully weigh the gravity of your offending and the harm it has caused. I must also consider your rehabilitation.

[17] In fixing sentence, I will firstly identify a starting point for a term of imprisonment. This must reflect the gravity of your offending and I will also take into account starting points adopted in other cases. I will then consider whether you should be afforded a discount for personal factors. This will result in an end sentence of imprisonment. As the Crown seeks a minimum period of imprisonment, I will address this also.

[18] Turning to starting point, there are three clearly aggravating factors. Ariaiah was an utterly vulnerable child; Ariaiah's head was struck; and with brutal, catastrophic force.

[19] In this regard, I disagree with the submission of your counsel that this is not a case of extreme violence. There was, in my view, clear evidence supporting an inference, as I have said, of catastrophic blunt force injury to a small girl's head. I accept, however, that you acted immediately to resuscitate Ariaiah and took steps to get help for her. While that was to be expected, it is important to acknowledge the steps you took to save her. This is a mitigating factor of the offending.

[20] I have been referred to several cases involving the manslaughter of young children. The starting point must reflect the very strong need for denunciation and deterrence of offending of this kind. Broadly, the starting points for similar offending are in the range of eight to ten years. The starting points in *Donnelly*<sup>1</sup> and *Ikamanu*<sup>2</sup> involving similar though not identical facts, including mitigating factors, provide a more precise range, that is, of nine and eight years respectively. There are child manslaughter cases where a starting of ten years and higher has been adopted, but these tend to involve multiple acts of violence.

[21] I have come to the view therefore that a starting point of eight years six months should be adopted. It is higher than *Ikamanu*. But I am satisfied that on the facts of the present offending, which resulted in a catastrophic brain injury to a young child, a starting point of eight years six months is necessary to properly reflect the gravity of the offending and to meet the sentencing purposes and principles.

[22] I do not uplift the sentence for your prior family violence offending. I accept there is a marked difference between your prior offending and the present offending. It does, however, suggest additional caution is needed when assessing your needs and capacity to rehabilitate, and it means there can be no discount for good character and it bears on whether I should impose a minimum period of imprisonment.

#### *Personal circumstances*

[23] I turn then to your discount for personal circumstances. I accept that there is an indirect linkage between your very difficult and, at times, violent upbringing, your propensity for domestic violence and your offending. You were not given the tools to manage your anger and worse, your main role model, your father, was himself prone to violence. It also appears you have had longstanding behavioural issues associated, in part, with your ADHD and dyslexia. All of this is relevant in terms of your relative culpability. It is also relevant in terms of your capacity to rehabilitate. Your evident problems with anger management and violence can be addressed through therapeutic intervention. It appears you have already taken positive steps to improve yourself.

---

<sup>1</sup> *R v Donnelly* [2011] NZCA 443.

<sup>2</sup> *Ikamanu v R* [2013] NZCA 510.

You also have broader whānau support. You father and your aunty have expressed a strong desire to stand by you and to help you. There is strong reason for hope. I also accept that you feel horrible about what happened, and it will have a lifelong impact on you. I think there is little, if any, real prospect of you repeating offending of this kind.

[24] However, I am mindful that, contrary to your counsel's submission, you still do not appear to fully accept that you intentionally harmed Ariaiah. Rather, it appears to me that you still hold to the view that Ariaiah's death was a terrible accident. It was not. Because of this, I am not able to proceed as if you accept full responsibility for her death. So that means deterrence and making you accountable for the harm you have caused must be carefully weighed in assessing an appropriate discount for personal factors. It bears on whether you should receive, and in what quantum, a separate discount for remorse.

[25] In this regard, before fixing a discount, I want to comment on your counsel's submission that you should receive a combined discount of 30 per cent for your acknowledgement of guilt, the seeking of assistance, the offer of resolution, and remorse and for personal circumstances. That was too ambitious. It does not sufficiently recognise that the linkage between your deprived background and the offending is not direct and/or that your acceptance of guilt is qualified. This qualified acceptance of guilt then also bears on your capacity to fully rehabilitate and the discount that might otherwise be given for remorse.

[26] I note also that in *Ikamanu*, the Court allowed a further 20 per cent discount because of the formal offer of a guilty plea to manslaughter, together with a 12.5 per cent discount for personal circumstances. But there was no formal offer in your case, which I think is needed to justify a discount of that level. The offer in *Ikamanu* was also given at an early stage in that case, as distinct from here where an informal offer appears to have been given at a relatively late stage.

[27] Overall, therefore, I am of the view that I should discount the starting point by 15 per cent to take into account the factors I have just mentioned, including, your deprived background, your capacity for rehabilitation, the steps you have taken to

rehabilitate, for your acknowledgement from the outset that you were responsible for Ariaiah's death and for your qualified remorse.

[28] In the result, I fix sentence at seven years three months, comprising a starting point of eight years six months, less a discount of 15 per cent or 15 months, resulting in an end sentence of 87 months or seven years three months.

### **MPI**

[29] I turn then to minimum period of imprisonment (MPI). I am guided here by the observations made by the Court of Appeal in *Ikamanu*. The facts of the offending there and here are comparable as I have said. Like *Ikamanu*, an MPI of 50 per cent is necessary to hold you accountable for the harm to the victim, to denounce your conduct, to deter you or others from committing the same offence and to protect the community. I am fortified in this view given your propensity to domestic violence.

[30] Mr Archer, please stand. On the charge of manslaughter, I sentence you to a term of imprisonment of seven years and three months. You must serve a minimum period of 50 per cent of that sentence. Now, please be seated, Mr Archer, as I need to hear from counsel on the suppression issue.