

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

**I TE KŌTI MATUA O AOTEAROA
TE TIHI-O-MARU ROHE**

**CRI-2018-076-000876
[2019] NZHC 1233**

THE QUEEN

v

WALTER JOHN GOSLING

Hearing: 31 May 2019
Appearances: H Bennett for Crown
C Eason for Defendant
Judgment: 31 May 2019

SENTENCING NOTES OF DUNNINGHAM J

[1] Mr Gosling as you know, you are here today to be sentenced because you have pleaded guilty to one charge of manslaughter and to one charge of excess blood alcohol causing injury. The Crown has advised it is not pursuing the alternative charge of driving with excess blood alcohol causing death and, just for the formalities, that charge is dismissed.

[2] The charges arise out of events that occurred on 19 February 2018 when you were at home in Temuka with two associates of yours from childhood, Ricky Foster and Troy Lowry. You consumed approximately half a bottle of rum that evening. At some point late in the evening you all decided to go for a drive in your Holden Commodore car, with you explaining afterwards that you wanted to show off your car

to them. Mr Lowry sat in the front passenger seat and Mr Foster in the rear seat. Mr Foster was not wearing a seat belt.

[3] You drove the three of you out of Temuka and on to the country roads. At the time it was raining and the road was wet and visibility was poor. At around 12.30 am you were driving along Factory Road near Winchester. As you neared the intersection with Bain Road you were driving at a speed of approximately 236 kilometres per hour. Immediately past the intersection there is a moderate right hand bend with a posted speed advisory of 75 kilometres per hour. At this point, you lost control of the car, sliding and crashing into a water race on the left hand side of the road. The vehicle rolled over several times before coming to rest in the water race facing the direction from which it had come. The vehicle finally stopped at a point approximately 72 metres from when it first impacted the water race. The deceased victim was ejected from the vehicle, either through the rear window or back door, at some point before it came to rest and his body was located some 25 metres from the vehicle and was submerged in the water.

[4] You received a fractured eye socket, lacerations and bruising. Mr Lowry received a broken arm, lacerations and bruising, while Mr Foster died from head injuries received during the crash. When your blood was analysed it showed there was 99 milligrams of alcohol per 100 millilitres of blood, which obviously exceeds the legal limit.

Approach to sentencing

[5] In sentencing you today, I am bound to take into account the purposes and principles of the Sentencing Act. Relevantly today, that means I must denounce your conduct and I must hold you accountable for what you did, but I must also provide for your rehabilitation and reintegration into society.

[6] In approaching this task, I have drawn assistance from both the pre-sentence report which was prepared in relation to you and from the victim impact statement provided by the Foster family. I say right now that no sentence that I can impose can ever make amends for the loss of Ricky's life. However, I am deeply aware of the immense sense of grief that the Foster family are suffering at losing their only son.

They are clearly devastated by that loss and I do not lose sight of that in sentencing you today.

[7] The pre-sentencing report explains you are someone who did have a pattern of offending in your youth. This was caused by alcohol and drug use and poor decision making. However, you had turned yourself around and settled down and become a family man, and that is to your credit. You have four young children and a supportive long term partner who has clearly been a source of strength to you as you have been dealing with the emotional fall-out of this accident.

[8] The pre-sentence report also explains that you are deeply remorseful for what has happened, and you are struggling to manage your guilt that you feel as a result of the accident. I accept that you are genuine in saying that if you could swap places with your victim, you would. That said, I agree with the report writer that you need to explore what prompted the decision to drink alcohol that night and revert to the poor decision-making of your youth, so this can never happen again.

[9] It is also to your credit that you were prepared to participate in the restorative justice process, although I know that for various reasons, that did not proceed. You have demonstrated empathy with your victims and a willingness to make amends.

Sentence

[10] Now with those comments in mind, I turn now to the sentencing process. As your lawyer will have explained to you, I need to establish a starting point for sentence based on the seriousness of the offending. I then need to take into account your personal circumstances and adjust the sentence to reflect positive or negative things about you personally (and I will refer to those as aggravating or mitigating features or factors), in order to come to the final sentence.

[11] In my view, the strongest aggravating feature of the offending was the grossly excessive speed, and that was aggravated by your alcohol consumption, and the fact that you engaged in persistent and deliberately risky driving. This was not an accident caused by a moment's inattention, but rather as Ms Bennett has submitted, this was boastful driving. It is also aggravated by the fact you did not ensure your passengers'

safety by making sure they were all wearing seat belts. In my view, there is a high level of culpability. I also take into account the tragic consequences of your driving and the effect it has had on the family of the victims. I particularly note Mr Foster's parents' victim impact statement, where they talk about the "black hole of grief" that is felt by their whole family following his death.

[12] In setting the starting point, I have had regard to the case of *R v Presland*, which involved excessive speed after consuming alcohol, as well as a breach of licence conditions, and which resulted in two fatalities and two serious injuries,¹ and there, the starting point was seven years' imprisonment. I have also had regard to the case *Gacitua v R*, which said that a starting point for one fatality where alcohol was an aggravating feature would be between six years and six years six months.² Another case I have referred to is *R v Holdem*, where the 37 year old defendant held a restricted licence, had consumed methamphetamine, cannabis, alcohol and tramadol in the 24 hours before the crash and was speeding and driving erratically on a rainy night.³ In his case, one passenger died and two had serious injuries. A starting point of six years' imprisonment was adopted.

[13] In my view, the *Holdem* case is similar to yours in terms of the seriousness of the offending. While the defendant in that case was more intoxicated and caused serious injuries to two people in addition to the fatality, in your case, I think the culpability of the driving was slightly higher because of your reckless speed. Having regard to those cases, I consider a starting point of six years and three months' imprisonment is appropriate.

[14] I would uplift that sentence by three months to reflect your prior drink driving offending. You do have three previous drink driving offences, the last of which attracted a prison sentence, although I do accept that this was more than nine years ago. However, I cannot ignore that in sentencing you.

¹ *R v Presland* [2015] NZHC 1203.

² *Gacitua v R* [2013] NZCA 234.

³ *R v Holdem* [2018] NZHC 1739.

[15] In terms of mitigating factors, I accept that you have already expressed genuine remorse, both at the time of the crash and in your police interview. That remorse is also reflected in the pre-sentence report. I am also taking into account your willingness to participate in the restorative justice process and to make amends in any way that would be meaningful for the family. I accept Mr Eason's written submissions that the mitigating factors in s 10(c) and (d) of the Sentencing Act are both engaged. For these reasons, I am going to reduce the sentence by eight months to reflect those factors.

[16] The remaining factor I have to take into account is your entitlement to a discount for a guilty plea. I am satisfied that you took full responsibility for your offending at the first reasonable opportunity and you are entitled to a full 25 per cent discount. That would bring your final sentence to one of four years four months and two weeks' imprisonment.

[17] Mr Gosling I am going to ask you to stand now so I can pass sentence. On the charge of manslaughter, I impose a sentence of four years four months and two weeks' imprisonment. I impose a sentence of two years' imprisonment on the charge of driving with excess blood alcohol causing injury, and that is to be served concurrently, which means at the same time as the sentence for manslaughter. I also impose a period of two years disqualification from driving and I order you to pay reparation for the cost of the blood alcohol analysis fees in the sum of \$109.25.

Addendum

[18] Mr Gosling, I am sorry to have done this to you, but as you probably had explained to you, there was an oversight this morning and I failed to read you your first strike warning which is a natural consequence of your conviction for manslaughter, so I have to attend to that now.

[19] So you are now subject to the three strikes law and I am going to give you a warning of the consequences of another, what is defined as a serious violence conviction. You will also be given a written notice which contains a list of these 'serious violent offences'.

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

[20] As I said, you will get that in writing shortly. Once again, apologies for having to bring you back on what I know would have been a stressful day.

Solicitors:
Gresson Dorman, Timaru
Colin Eason, Barrister, Christchurch