IN THE HIGH COURT OF NEW ZEALAND
WHANGANUI REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHANGANUI ROHE

CRI-2018-083-001041
[2019] NZHC 2364

THE QUEEN

v

CONRAD GRAY

Hearing:	19 September 2019
Counsel:	C B Wilkinson-Smith and R N Benic for Crown N Bourke for Defendant
Sentencing:	19 September 2019

SENTENCING OF COOKE J

---

[1] Mr Gray you have pleaded guilty to the charge of the manslaughter of Daniel Gooch.[1] You do so following my sentencing indication of 9 July 2019. In that sentencing indication I indicated a sentence of two years and nine months' imprisonment for your offending. I told you there was potential for that sentence to be lower given personal factors of the kind to be addressed in formal reports. I have since received a pre-sentence report, a cultural report, and have also had the benefit of submissions from the Crown and your counsel on those matters.

Summary of offending

[2] I begin by addressing matters I have already considered in the sentencing indication. On 19 April 2018 you were drinking alcohol with your younger brother at

[1] Crimes Act 1961, ss 171 and 177, maximum penalty life imprisonment.

a residential address in Whanganui, where you resided with two male flatmates, including Mr Gooch. The residence is operated by the Grace Foundation, a charitable trust providing accommodation and services to marginalised members of the community. Mr Gooch was also drinking alcohol and there is evidence that he, as well as you have alcohol related issues. At some point during that night, you became involved in an argument with him that evolved into a physical altercation, resulting in the breaking of a window. You struck him in the left eye, causing his glasses to break. He received a laceration to his forehead above his left eye. Mr Gooch then left the address.

[3] At around 2 am you then met up again with Mr Gooch on the footpath of a nearby residential area. It was raining. Another physical altercation ensued. Mr Gooch struck out at you, and you responded by forcefully shoving him, causing him to fall backwards and to strike his head on a galvanised pole about 70 cm in height. He momentarily got back to his feet before collapsing onto the road. You then left him there lying unconscious on the road.

[4] Mr Gooch was found about an hour later by a member of the public and taken to hospital. He was diagnosed with hypothermia and had a skull fracture and life-threatening brain bleed. He underwent surgery but eventually died a few weeks later. The post-mortem attributed the cause of death to blunt force trauma to his head.

[5] In the days following the assault, you then generated a series of fictitious Facebook messages between you and your brother that deflected responsibility for the assault towards him. Those messages were later discovered by police.

[6] When spoken to by police, you denied assaulting Mr Gooch.

[7] The fact that you have killed Mr Gooch has obviously had a major impact on his family. I have received and taken into account a victim impact statement provided by his sister in that context. I acknowledge the perspective she has provided, and thank her for it. I am aware that Mr Gooch's mother and former partner are also present today.

Starting point

[8] There is no tariff case for manslaughter. In manslaughter cases where death results from a single punch, a starting point in the range of three to four years imprisonment is usually adopted.[2] But the charge may attract a higher starting point in the range of five to six years where the blow carries extreme force and serious injury is a foreseeable outcome, or where the violence is in the context of past domestic abuse.[3] The Crown have referred to a number of single punch cases where the starting point has been between three and a half and six years' imprisonment including *Murray v R,*[4] *Blackler v R*,[5] and *Everett v R*.[6]

[9] Of the cases Mr Wilkinson-Smith referred to the most relevant to me seems to be *R v Paku*.[7] Mr Paku and the victim had been drinking at a nightclub. The victim's friend had a conversation with Mr Paku about whether he could knock the victim down. After leaving the club the defendant went up to confront the victim and an associate. Mr Paku then pushed the victim causing him to fall to the ground and hit his head, causing his death. Justice Venning identified that the offending had tragic consequences,[8] and there was an element of provocation, but held that the push was an act of aggression that was not "a lesser act of violence than a punch in all the circumstances".[9] He adopted a starting point of three years' imprisonment, with an end sentence of two years and four months' imprisonment.

[10] I have accepted the submissions of Mr Bourke that the present case is in a different category from most of the authorities referred to by the Crown, primarily

---

2 For example, see *R v Sagatea* HC Auckland CRI-2009-092-17953, 20 May 2010; *R v Bryenton* HC Auckland CRI-2009-004-3080, 7 April 2009; *R v Efeso* HC Auckland CRI-2008-092-7925, 24 October 2008; *R v Carmichael* HC Tauranga CRI-2007-070-2603, 6 September 2007; *R v Schimanski* HC Hamilton CRI-2006-068-215, 12 December 2006; *R v Paku* HC Hamilton CRI-2005-019-6408, 7 September 2006; *R v Cassidy* HC New Plymouth T2/03, 10 July 2003; *R v Tutahi* HC Wellington T4724/01, 26 April 2002; and *R v Roker* CA 358/92, 18 February 1998.

3 *Murray v R* [2013] NZCA 177 at [9]. See also *Everett v R* [2019] NZCA 68, where a starting point of seven years' six months imprisonment adopted in light of the domestic context, the victim's vulnerability, and the defendant's callous disregard for her condition, post assault.

4 *Murray v R*, above n 3.

5 *Blackler v R* [2019] NZCA 232.

6 *Everett v R* [2019] NZCA 68. There are other cases of this kind including *Palmer v R* [2016] NZCA 541*, Kepu v R* [2011] NZCA 104*,* and *R v Efeso* HC Auckland CRI-2008-092-7925, 24 October 2008.

7 *R v Paku*, HC Hamilton, CRI-2005-019-6408, 7 September 2006.

8 At [9].

9 At [16].

because you did not punch the victim but pushed him over. That materially changes the nature of the offending in this case, as the foreseeability of serious injury or death is less evident than it is in the case of a single punch. In those circumstances I accept that apart from *Paku* the other comparable cases are those identified in Mr Bourke's submissions, including the following:

(a) *R v Hetaraka*:[10] Mr Hetaraka intervened in a domestic dispute, which the Judge described as motivated by good intentions. The victim then racially abused him and Mr Hetaraka thought he was going to be hit, so he punched him with a short jab to his head. The victim fell and hit his head on the pavement, knocking him unconscious. Others called an ambulance, and whilst he regained consciousness he died a few weeks later. Justice Ellis indicated that the case was not the same as other single punch cases, as the defendant did not intend to punch hard or intend any real harm. She said that it was "… a matter of very bad luck — for him and for you — that he fell as he did".[11] The starting point was two years' imprisonment.

(b) *R v Steen*:[12] Mr Steen and the victim had both spent the night at a night shelter. They began to argue later at a drop-in centre run by the Salvation Army. During the argument Mr Steen struck the victim twice in the head. He fell and struck his head on the asphalt. Others came to the victim's assistance but the victim died from his head injuries. Justice Harrison described the events as a "tragic accident" and that Mr Steen was "unfortunate".[13] A starting point of two and a half years was adopted.

(c) *Mouat v R*:[14] This case involved a volatile domestic relationship where Mr Mouat already had a protection order against Mrs Mouat. Mr Mouat came home intoxicated and Mrs Mouat tried to make him

---

10 *R v Hetaraka* [2015] NZHC 2631.
11 At [24].
12 *R v Steen*, HC Hamilton, 26 June 2004.
13 At [8].
14 *Mouat v R* [2017] NZCA 603.

leave the house. When Mr Mouat was trying to re-enter the house Mrs Mouat pushed him, and he fell backwards off the porch striking his head. Mrs Mouat called an ambulance, he was taken to hospital but he died 10 days later. The High Court had adopted a starting point of 22 months' imprisonment, and imposed an ultimate sentence of 11 months' imprisonment. The Court of Appeal accepted the culpability was at the very lower end, but said that 11 months was equally at the lower end of manslaughter sentences. The Court rejected the submission that culpability was purely negligent as Mrs Mouat had deliberately pushed her husband. The appeal was dismissed.[15]

[11] It seems to me that the cases of *Paku, Hetaraka, Steen* and *Mouat* provide the best guidance. I consider a starting point of three years' imprisonment is appropriate. It seems to me that it is in the higher range of these cases because of two factors:

(a) You had already assaulted Mr Gooch earlier that evening. This suggests that the later assault was not entirely spontaneous, and the later confrontation may have had a degree of intent even if the ultimate outcome did not.

(b) Secondly, you left Mr Gooch lying unconscious on the road in the early hours of the morning, on an empty residential street. He was left there in the rain for about an hour before a member of the public found him and called for help. Even though the cause of death was the blow to the head, you should have appreciated the likelihood of his condition worsening without medical attention, and the possibility he would not be found for several hours. Related to this is that you actively avoided responsibility after the fact. You not only attempted to deflect

---

[15] Counsel also referred to other cases where lower starting points have been adopted including *R v King* [2012] NZHC 3072 where a bouncer had put the victim in a choke hold, carried him out of the bar and dropped him on the pavement causing his head to hit the concrete, causing death (starting point two years), *R v Timu*, Unreported HC Auckland, T031152 2 September 2003 where Mr Timu hit his friend in the head causing him to fall over a strike his head from which he died (with an ultimate end sentence of 18 months), and *R v Nepia* [2019] NZHC 1932 where the defendant punched and killed a homeless person after their dogs engaged in a fight (starting point three years 6 months).

responsibility but attempted to transfer responsibility to an otherwise innocent third party.

[12] But the assault was still a push rather than a punch. This carries a lesser degree of serious violence than a forceful punch aimed at the head. The conduct was similar in character to the push in *Paku*, and more serious than the conduct involving punching in *Steen*. Whilst it is not suggested you pursued the defendant as in *Paku*, the fact you abandoned him after he was knocked out carries similar implications.

[13] Ultimately the fact that this was only a push, means that the case is still similar in kind to those addressed above. As with those cases the death of the victim can be seen as unlucky for both Mr Gooch and you. It has a significantly different quality than other single punch manslaughter cases.

Personal aggravating and mitigating factors

[14] You have just turned 35 years of age. You have 61 previous convictions, including 34 sentences of imprisonment. Your criminal history is primarily concerned with dishonesty related offences such as theft and burglary. You do not have a strong history of violent offending, with one conviction of aggravated assault in 2010 and assault with a weapon in 2007. These both resulted in sentences of imprisonment. The offence was also committed while you were on bail for charges of obstructing a police officer and breaching Court release conditions. In my view, an uplift of three months to take into account previous offending and offending whilst on bail is warranted.

[15] I have the advantage of a cultural report from the Honourable Chester Borrows. There is now a fuller appreciation of how the systemic deprivation of Māori is relevant to offending. That has been explained by Justice Whata in *Solicitor-General v Heta*.[16] Your background is a further illustration of such a case.

[16] Your whanau background is characterised by abuse and neglect and pervasive social disadvantage. Your mother was extremely young when she had you, and you

---

16 *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241.

were removed from her care and raised by a whāngai mother. After you whāngai father died you and your sister lived with his grandparents. That home was violent and abusive. Alcohol abuse was frequent. You were later placed in foster and then state care, where you experienced physical and sexual abuse. It was then that you turned to alcohol and drugs and became homeless. You began burgling houses as a means of survival and entered a youth justice facility at age 13–14. A 2015 Corrections psychological report recorded that your poor childhood experiences resulted in the development of anti-social beliefs and values which have persisted into adulthood. You have since reconnected with your biological family, but they also suffer from cultural deprivation, including addiction issues and active gang involvement. You say that, with the present offending, you feel you have let your iwi down and hope to restore your mana in the future.

[17] Inter-generational Māori deprivation is clearly a contributing factor to your offending. I consider a discount to reflect this background is warranted.

[18] The pre-sentence report also records your ongoing difficulties with alcohol abuse, but that you have expressed a willingness to engage in treatment for this harmful drinking. The report writer also notes your struggle with depression and attention deficit disorder. You have not received treatment or support for these issues since his youth due to difficulties communicating with others and adequately engaging with the services.

[19] You have expressed remorse for this offending. You have indicated a desire to engage in restorative justice processes to explain and apologise to Mr Gooch's family, although the family have understandably declined to participate in the process.

[20] Mr Wilkinson-Smith on behalf of the Crown has responsibly accepted that these factors warrant a discount for remorse, personal circumstances, and cultural deprivation. Taking those factors collectively he suggests a 20 per cent overall discount. Your counsel suggests a 25 per cent discount. I note that in *Heta* the Court indicated that discounts for cultural factors can be as high as 30 per cent, and that recently in *R v Nepia* the Court applied an overall 25 per cent discount for personal

mitigating factors in a case that has some parallels.[17] There are some differences from those cases, however. In particular your expression of remorse needs to be considered in light of the fact that you left Mr Gooch on that night unattended, which in my view qualifies your more recent expression of remorse.

[21] Overall I consider a discount of a total of approximately 20 per cent for personal mitigating factors is appropriate in your case. I also accept there should be a reduction of one month's imprisonment in light of the two months you spent on electronically monitored bail. You are also entitled to a discount for your guilty plea. Your trial was due to start only two weeks before you asked for a sentencing indication. I accept Mr Bourke's submission, however, that a guilty plea might have been considered earlier but for the time commitments of your former counsel. In those circumstances a percentage deduction for a guilty plea of approximately 15 per cent is appropriate.

[22] I do not think an MPI is necessary in this case.

Result

[23] Mr Gray, whilst I accept that there are particular circumstances relevant to your offending, your manslaughter of Daniel Gooch was still a very serious offence and resulted in his death. There are nevertheless compelling personal and cultural factors that affect the end sentence which is appropriate in your case. On the charge of manslaughter I sentence you to imprisonment for two years and one month.

[24] Please stand down.

Cooke J

Solicitors:
Wilkinson-Smith Lawyers, Whanganui for Crown
Bourke Law, New Plymouth for Defendant

---

17 *R v Nepia*, above n 15.