

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CRI-2018-009-010328
[2019] NZHC 1797**

THE QUEEN

v

DARRIN RAY STEWART

Hearing: 26 July 2019

Appearances: M N Zarifeh and S Bicknell for Crown
A M S Williams and S McManus for Defendant

Judgment: 26 July 2019

SENTENCING NOTES OF DUNNINGHAM J

[1] Mr Stewart, you are here today for sentencing on a charge of manslaughter in that your dangerous driving caused the death of Alexia Noble-Hazelwood. You also face charges of failing to stop and ascertain injury, failing to remain stopped for an enforcement officer, and three charges of reckless driving causing injury to your passengers; Zachary Noble-Hazelwood, Angel Livingstone and Tristan Le Comte respectively.

[2] It is important that I go through the events of that evening so that they are there for the record. The events which give rise to these charges occurred on the night of 16 November 2018. You had been socialising with friends and had been drinking and smoking cannabis when you got into your Mitsubishi Diamante car to drive your friends around town at around 11.00 pm. When you stopped at a petrol station on

Linwood Avenue you noticed an unmarked police car. As you were unlicensed, you knew you should not have been driving and you asked one of your friends to swap seats with you. He refused. You then drove out of the petrol station onto Linwood Avenue where the police car indicated for you to stop by flashing its red and blue lights. You initially stopped the vehicle, but instead of pulling over to park in a safe position as directed by the constable, you accelerated away on Linwood Avenue and a short pursuit was initiated by the police constable.

[3] Because of the speed you were travelling at down Linwood Avenue you became airborne as you went over a speed hump and travelled onto the wrong side of the road. The police constable abandoned the pursuit at that stage because of the dangerous manner and speed at which you were driving. Witnesses estimate that you were travelling between 110 and 160 kilometres per hour.

[4] You continued onto Gloucester Street travelling at high speed. Your friends pleaded for you to stop and let them out. Even though the police car was no longer pursuing you, you refused. At the intersection of Gloucester Street and Stanmore Road traffic was stopped because the lights were red. However, you approached a parked car from behind, overtaking it on the left side and narrowly missing it, before proceeding through the intersection at high speed, just as the lights turned green.

[5] At the next set of lights, despite a red light signal in your direction, you went through it at high speed. You narrowly missed another car, which had commenced driving through the intersection on a green light. You continued on, but you began to lose control of your car as you approached Christchurch East School. The car went onto the wrong side of the road where it mounted the kerb and became airborne. You crashed through a metal fence and into the side of a building at the school. The force of the crash caused two of your unrestrained passengers to be thrown out of the car.

[6] One of the passengers was Alexia Noble-Hazelwood. She was found approximately 10 metres from the car. She had died instantly from her injuries. The second passenger thrown from the car, Tristan Le Comte, sustained a number of serious injuries including a broken leg, broken arm and a laceration to the head. Angel Livingston sustained bruising and burning to her chest from the seat belt and a

sore leg, while Zachary Noble-Hazelwood sustained an injured lower leg. After you freed yourself from the car you fled the crash scene. You were seen by a witness climbing over a fence and running through the Christchurch East School grounds.

[7] When your car was examined shortly after the crash, it was too badly damaged for a complete examination to take place. However, one tyre was found to be bald, three shock absorbers were leaking and the exhaust would not have passed a warrant. You had also cut out the seat belt from the side Mr Le Comte was sitting on to use as a dog lead in the days preceding the accident.

[8] As you have heard today, the consequences of your actions that night go well beyond the effects on the victims who were in your car that night. It has devastated whole families. It goes from the youngest members like Kandie Noble's children who have lost a favourite aunty, through to Yvonne Thomas, Tristan Le Comte's nana, who has had to watch her grandson's pain at learning of Alexia's death, and assist in nursing him through his serious injuries. They have all been seriously affected, as of course have you.

Purposes and principles of sentencing

[9] In sentencing you today, I must bear in mind the purpose and principles of the Sentencing Act. I can never impose a sentence that will compensate for the loss of a life. However, I must hold you accountable for harm done to your victims, and of course that includes the families of those you killed and injured. I must also promote in you a sense of responsibility for that harm. However, I must also impose a sentence that should assist in your rehabilitation and reintegration into the community. Importantly, too, I am required to impose the least restrictive sentence that is appropriate in the circumstances.

[10] In setting the sentence, I have to bear in mind the need for consistency in sentencing. That means I need to take into account the seriousness of this type of offence and to assess the gravity of your offending, including your level of blameworthiness, and compare that with other cases.

[11] Both the Crown and your lawyer have made submissions as to what the starting point should be having regard to the seriousness of the offending. The Crown points out that there are a number of aggravating features of your offending:

- (a) you were drinking and smoking cannabis before driving and you were visibly intoxicated. You admitted to the report writer that you had had 11 bottles of bourbon mixers beforehand and were “really drunk”;
- (b) there was some level of premeditation as you knew you should not have been driving but you chose to drive anyway. Indeed, when you first saw the police car you asked Mr Noble-Hazelwood to swap seats with you but you then continued to drive after being stopped by police;
- (c) you were an unlicensed driver;
- (d) you were seeking to avoid the police;
- (e) you drove at excessively great speeds;
- (f) you disregarded the warnings from fellow passengers. You acknowledged to Mr Metoui that Zac asked you to stop, but you told him to “shut the fuck up”;
- (g) this was a persistent and deliberate course of very bad driving. You were described as “driving like a bit of an idiot” and “speeding and swerving in and out of cars”, passing them unnecessarily as they were doing the speed limit. After you failed to stop for police you drove approximately two more kilometres in approximately two minutes, went through red lights and at times became airborne;
- (h) you were driving a poorly maintained vehicle;
- (i) your driving caused serious physical injuries; and, finally
- (j) you fled the scene at the end.

[12] Your lawyer, Mr Williams, accepts most of those factors as aggravating, although he takes issue with the suggestion that your offending was premeditated or that this could be described as a prolonged and persistent case of bad driving. He says rather it was a spur of the moment decision to flee, and the driving which followed was not prolonged. He also says I should not regard seeking to avoid police as an aggravating feature when it was the subject of a separate charge before this Court. However, if I am to sentence concurrently on the other charges as I propose to do, I must take this into account as an aggravating factor.

[13] Your lawyer also submitted that there were mitigating features of the offending, saying your culpability is reduced by your personal and psychological history. In that regard, he referred to your formal diagnosis of ADHD and the more informal diagnosis of what was described as foetal alcohol and drug syndrome in the report, saying that those factors should reduce the culpability of the offending. However, in my view, they are not mitigating factors which relate to the offending to reduce its seriousness. The way you drove with your friends as passengers made your car a lethal weapon. You did not care about the way you put yourself, your friends and the others on the road at risk.

[14] The Crown suggested a seven year starting point, while your lawyer suggested a six year starting point having regard to comparable cases.¹ I am not going to go through those cases, suffice to say I consider there are more aggravating features in this case than in the case of *Prince* which your lawyer relies on to suggest a starting point of only five years.² These additional features include you failing to stop for police and the very poor condition of the car, including the removal of a seatbelt. In my view, the starting point proposed by the Crown of seven years is appropriate, having regard to the numerous aggravating features in this case and the need to reflect the other charges which are represented by those aggravating features.

¹ *R v Mika* [2013] NZHC 2357; *Brook v R* [2010] NZCA 13; *R v Pomare* [2017] NZHC 3193; *Ormsby v R* [2013] NZCA 578; *R v Murcott* [2014] NZHC 971, *R v McGrath* [2014] NZHC 1583; and *R v Vanstone* HC Hamilton CRI-2010-068-603, 19 April 2011.

² *R v Prince* HC Wanganui CRI-2011-083-1775, 5 December 2011.

[15] I then have to consider whether the starting point for all your offending should be increased because of aggravating matters relating to you personally. You have two convictions for driving while disqualified, a conviction for driving a motor vehicle in a dangerous manner, a conviction for refusing a request for a blood specimen and, being under 20, for driving with excess blood alcohol. All these previous convictions are relevant to the seriousness of the offending and I consider an uplift of six months is appropriate.

[16] I then have to consider whether there are mitigating circumstances relating to you personally and to what extent they should reduce the starting point. To help me in that regard I have the detailed report of a psychologist, Mr Metoui, along with the Court's pre-sentence report. Your lawyer has pointed out that you have come from a difficult family background, and you do have a diagnosis of ADHD. Mr Metoui says your difficult upbringing has left you a relatively vulnerable young man who has always searched for a sense of belonging and been fearful of further rejection and abandonment. I accept this might explain why you agreed to drive your friends somewhere as they requested although, as I have said, it does not explain why you chose to drive as dangerously as you did. The psychologist also considered the possibility that you suffered from FASD, which could result in you being more psychologically vulnerable to poor decision-making and actions, although he did not consider that he could make a firm diagnosis on that count.

[17] One thing, though, which does shine through these reports, is your genuine remorse over what happened. Mr Metoui says you showed genuine shame, guilt, and remorse for all aspects of the offending and the harm you have caused to your victims. Indeed, he reports you said you were disgusted at yourself knowing you are the reason for a life being lost. He thought you would be highly motivated to engage in any rehabilitation offered to you and he said you were determined to repair the harm you had caused to all, insofar as you were able to.

[18] Those sentiments were reflected in the pre-sentence report that I have read. It talks about your genuine remorse over the death of Alexia and the loss of the friendship you had with Zac.

[19] I also accept that in your letter read to the Court today you have expressed genuine remorse, and your courage today to stand up and face Mr Gempton and provide the apology he sought, I thought showed, again, a degree of genuine remorse.

[20] I note, too, that you have been willing to participate in a restorative justice meeting, although none of the victims wished to participate. All in all, your genuine remorse warrants a discount in sentence above and beyond your guilty plea.

[21] I also accept that you were only 19 years old at the time of the offending. It is well recognised that youth should be taken into account in sentencing for a variety of reasons. These include the vulnerability of young people to outside pressures, the more crushing effect that a long sentence will have on young people, but particularly in this case, your greater capacity for rehabilitation where your offending behaviour has not become entrenched.³

[22] In my view, the combination of your youth, your vulnerability and your genuine remorse warrant a combined discount of close to 40 per cent. That would take your sentence to four years and eight months. I would then deduct a further 25 per cent for your guilty plea. That takes your sentence to three and a half years' imprisonment. Because the sentence for manslaughter takes account of the facts of the other charges, the sentences for those will be imposed as concurrent sentences.

[23] The Crown also seeks confiscation of your vehicle under s 128 of the Sentencing Act and disqualification from driving for a period of five years under s 124 of that Act. I consider both those orders are appropriate in the circumstances.

Sentence

[24] Mr Stewart would you please stand. Darrin Ray Stewart, on the charge of manslaughter, I sentence you to three years and six months' imprisonment.

[25] On each of the charges of reckless driving causing injury, I sentence you to 18 months' imprisonment to be served concurrently.

³ *Churchward v R* [2011] NZCA 531.

[26] On the charge of failing to stop and ascertain injury, I sentence you to 12 months' imprisonment also to be served concurrently.

[27] On the charge of failing to stop for an enforcement officer only a fine is available. I see little point in imposing one in the circumstances where you will be in prison, and on that charge you are convicted and discharged.

[28] You are disqualified from driving for a period of five years.

[29] Your Mitsubishi Diamante motor vehicle, registration EHD338, is confiscated.

Three strikes warning

[30] I must also deliver the three strikes warning.

First warning

[31] Given your conviction for manslaughter, you are now subject to the three strikes law. I am going to give you a warning of the consequences of another 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 offence 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.

[32] Mr Stewart, would you stand down.

Solicitors:
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