

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2018-088-200
[2018] NZHC 3205**

THE QUEEN

v

PATRICK DENNIS TARAWA

Hearing: 6 December 2018

Appearances: RB Annandale and K McNeil for Crown
W McKean and J Tulloch for Defendant

Sentence: 6 December 2018

SENTENCING NOTES OF TOOGOOD J

Introduction

[1] Patrick Dennis Tarawa: you appear for sentence on one charge of manslaughter,¹ having pleaded guilty following acceptance of a sentence indication given on 26 October 2018.

[2] I acknowledge, first, the presence of Mr Vujcich's family and I thank them, as Mr McKean has done, for their contribution to this sentencing process. I understand how difficult this is for them. I understand how difficult it has been and how difficult it will be to come to terms with what happened to a much-loved family member; but I am grateful to them for the contribution they have made, and particularly, David, I thank you for your expressions of hope for Mr Tarawa and his rehabilitation. I am grateful to you for that.

[3] I did indicate at the sentence indication hearing what I considered to be the value of restorative justice. I, too respect the Vujcich family's decision not to participate in that process; that was entirely a matter for you and I understand the reasons why you may have felt that was not possible for you. I do commend you for your attitude throughout this very difficult time.

[4] I acknowledge also the presence of Mr Tarawa's whānau and I thank you, Evelyn, for your contribution as well. It has been particularly helpful to me to understand something of Patrick's background and his family life. I acknowledge and take into account what you have said about the sacrifices that he has made on behalf of other family members, and I can see why you tell me that what happened on this terrible day was out of character and not consistent with the young man that you know.

The background facts

[5] You are 22 years old, Mr Tarawa. On the 19th of January this year, you were at a petrol station in Kaikohe in your car with your pregnant partner, Tui Rihari, who was a passenger. As you began to turn onto the road, a white van cut across your lane, nearly hitting your vehicle. You had to brake to avoid a collision. You then followed

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

the van, which was driven by the victim, Mr Chris Vujcich, who was 58 years' old. Mr Vujcich turned into his driveway some way down the road. Also in the van was Mr Vujcich's 24-year-old son, Matthew.

[6] You parked your car a short distance away. Mr Vujcich approached your vehicle. You got out and argued with him about the near miss. Mr Vujcich told Matthew to move the van up the driveway, which he did, and then apparently went inside the house. The argument between Mr Vujcich and you escalated. At some point, Ms Rihari got out of the car and tried to stop the exchange, suggesting to both of you that you should go your separate ways. This tragedy could have been avoided if either of you had followed her sound advice. The argument escalated, with Mr Vujcich pushing you in the chest. You responded by aiming a blow at Mr Vujcich; just a glancing blow, but you punched him a second time, in the head, knocking him backwards. His head struck the concrete footpath, making him immediately unconscious. Despite noticing that Mr Vujcich was "snoring" on the ground, you left the scene without checking his condition. Matthew arrived at the scene to find his father lying unconscious.

[7] Mr Vujcich was taken to hospital, and assessed to be in a life-threatening condition. He deteriorated quickly, and died the next day. A post-mortem examination found that the cause of death was a blunt force head injury, causing bleeding at the base of the brain stem and large skull fractures. The injuries were not survivable. The fatal blow was not the second punch, but the force of Mr Vujcich's head striking the concrete.

[8] Ms Rihari and you say that, after leaving the scene, you had a brief discussion about what you should do and agreed you should go to the Police. You went back past Mr Vujcich's house and saw police cars and an ambulance there. You did not stop but you say you were intending at that point to go to the Police, but were apprehended while driving a short time later.

The impact on the victims

[9] I have given careful consideration to the five victim impact statements from members of Mr Vujcich's family: one each from two of his sisters, one from his brother

and his brother's wife; and one from each of his sons. They have been read to the Court and, as I have said, I have found them not only moving but helpful.

[10] I cannot adequately summarise everything they have said nor do their statements justice; but it is clear that their grief is profound and that the impact of the offending on a family of a much-loved man has been devastating. They all speak of Mr Vujcich's life as a family man: a solo father to his two sons, and then a loved grandfather to his grandchildren, some of whom lived with him at times; one in particular. They lament the loss of his company, and of his contribution to the family's well-being. The family members have also commented on how Chris's death coincided with a loss of health for his mother, and her eventual passing only months later. Matthew and his brother Anthony have been out of work because they have had to take time off to deal with their father's affairs and the consequences of his tragic death. As the law requires, and because it is right, I bear these factors in mind in reaching a sentence for you, Mr Tarawa.²

[11] I want to say something about the bail hearing and Mr Tarawa's behaviour. A number of family members have mentioned, and the Crown Prosecutor mentioned, that after the bail hearing when Judge Davis remanded Mr Tarawa on terms which prevented him from having any contact with Ms Rihari, he punched a hole in the wall outside the courtroom. That was not, as I understand it, an expression of contempt for the Court or for the position he was in. It was an expression of surprise and shock and frustration at being told that he could not have anything to do with Ms Rihari during what was inevitably going to be a lengthy period of remand. As it happens, I saw Judge Davis this morning and he mentioned to me that he accepts some responsibility for what occurred. The Judge said he believed it was because he had not warned Mr Tarawa that that was likely to occur, nor explained the reasons why. Of course, the reason was that Ms Rihari would have been a Crown witness at any trial and it would have been inappropriate for Mr Tarawa to have any contact with her until then. So I give that explanation; it does not excuse the behaviour, and Mr Tarawa knows that, but I do give that explanation so that you might have a better understanding of what motivated it.

² Sentencing Act 2002, s 8(f).

[12] I hope that as victims you will use part of this process, at least, to come to terms with the tragedy. I do recommend that you read the material that has been provided to the Court by Mr Tarawa and members of his family and those who support him, so that you will at least have a better understanding of the factors that I have to take into account in considering the appropriate sentence for him.

Purposes and principles of sentencing

[13] The Sentencing Act requires me to take into account some general purposes and principles.³ I regard the requirements to denounce or show disapproval of your conduct, Mr Tarawa, and to hold you accountable for the harm done to Mr Vujcich and his family as particularly relevant. A man died well before his time in circumstances that were entirely avoidable and through conduct that the courts and the community rightly regard as unacceptable. Unless the courts recognise these matters in imposing sentences, respect for the criminal justice system will be undermined and there is a risk that members of the community will be motivated to take the law into their own hands.

[14] I said at the time of giving the sentence indication that the statutory purpose of deterring you and others from resorting to violence is also relevant to the sentence to be imposed, but I have reflected on that proposition and I do not now rely on it. Deterrent sentences are those that are imposed to discourage offenders and others from similar offending – such sentences are harsher than would otherwise be appropriate if they were confined to addressing other sentencing purposes. But I do not see how spontaneous, impetuous offending of this kind – completely lacking in any element of planning or premeditation – could be influenced, let alone deterred, by a stern sentence of imprisonment imposed in a similar prior case. And there are other, more realistic, sentencing options available to reduce any likelihood that you would re-offend in this way. I do not see in your character – what I know of it – and in your past, any prospect that you would behave violently in this way or in any other way in the future.

³ Sentencing Act 2002, ss 7-8.

[15] Parliament has said that the courts must bear in mind the purpose of assisting an offender's rehabilitation and reintegration and to take account of the need to impose the least restrictive outcome that is appropriate in the circumstances.⁴

Approach to assessment of appropriate sentence

[16] In determining what is an appropriate sentence for you, I will follow the standard three-stage approach that I used during the sentence indication.⁵ That means I first find a starting point that reflects the circumstances of your offending, including its gravity and any aggravating or mitigating factors; and prominent amongst those must be the fact that a man died as a result of what you did. I will then make any necessary adjustments for personal factors and, finally, apply a discount recognising your guilty plea and any particular remorse.

Starting point

[17] In setting a starting point, I pay particular regard to two aggravating factors:

- (a) First, the degree of violence with which the offence was committed. You struck Mr Vujcich twice. The amount of force is not entirely clear but the second blow was sufficient to knock Mr Vujcich to the ground, and actual violence to the head is always a serious aggravating factor.⁶ This case is a classic example of why that is so.
- (b) Second, I take into account the extent of harm caused. The violence caused death, albeit unintentionally, but there can be no more serious consequence of any offending.

[18] I also take into account that you had several opportunities to reflect on what was happening and to calm down – including taking Ms Rihari's advice to get back in the car – and that you did not assist Mr Vujcich after he fell.

⁴ Sentencing Act 2002, s 7(1)(h).

⁵ *R v Taueki* [2005] 3 NZLR 372 (CA) and *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

⁶ *R v Taueki* [2005] 3 NZLR 327 (CA) at [31].

[19] The Court of Appeal has noted that provocation can be a mitigating factor in violent offending,⁷ and it is often a mitigating factor in manslaughter cases such as this in which death has been caused by a punch.⁸ Mr Vujcich contributed to the tension of the situation by pushing you but his actions were not the cause of the offending. The cause of the offending was your impetuous and unreasonable response to what may well have been poor driving by Mr Vujcich. Momentary alarm and even anger at an incident that could have involved a collision and injury is understandable; and I understand that your instincts were to react to the risk to Ms Rihari and your unborn child which existed at that moment. But the confrontation that led to Mr Vujcich's death and to your present predicament was caused by your over-reaction, your poor judgment and your inability to control your temper, resulting in two blows at Mr Vujcich, the second of which had dreadful fatal consequences.

[20] There is no tariff case for sentencing in manslaughter cases due to the wide range of circumstances in which that crime can be committed. The comparison with similar cases is instructive. Taking the cases discussed at the sentence indication⁹ hearing and other cases into account, and bearing in mind the factors to which I have referred, I consider a starting point of three years and nine months' imprisonment to be appropriate.

Personal circumstances

[21] In attempting to understand who you are and how you have come to be in this position, I have been greatly assisted by a heartfelt letter from Ms Evelyn Tarawa – your aunt – and Ms Rihari, your partner, whose views are supported by other referees.

[22] Addressing the Court under s 27 of the Sentencing Act, Ms Tarawa has described your childhood in Kaikohe, and the responsibility you took on within your

⁷ *R v Taueki* [2005] 3 NZLR 327 (CA) at [32].

⁸ See for example *R v Needham* HC Wellington CRI-2010-085-5780, 14 December 2010; *R Ovaleni* [2018] NZHC 2034; and *R v Efeso* HC Auckland CRI-2008-92-7925, 24 October 2008.

⁹ *R v Bryenton* HC Auckland CRI-2009-4-3080, 7 April 2009; *R v Efeso* HC Auckland CRI-2008-92-7925, 24 October 2008; *R v Carmichael* HC Tauranga, CRI-2007-70-2603, 6 September 2007; *R v Larson* HC Dunedin CRI-2011-012-1013, 6 July 2011; *Murray v R* [2013] NZCA 177; *R v Ovaleni* [2018] NZHC 2034; *R v Needham* HC Wellington CRI-2010-085-5780, 14 December 2010; *R v O'Brien* HC Auckland CRI-2009-4-11941, 29 September 2009; *R v MacFarlane* [2014] NZHC 1106; *Palmer v R* [2016] NZCA 541

whānau for the welfare of your younger siblings. She says you are a kind, well-mannered young man who wanted to be different and do better than your “rebellious” older siblings who were “going off the rails”. You were an avid sports fan and a devoted and capable rugby league player at school. You moved to South Auckland to attend that fine school Wesley College, and thrived there until you had to move back to Kaikohe due to the breakup of your parents’ relationship. It was from then that you became a “third parent” to your younger siblings and a “support beam” for both of your parents; roles which, Ms Tarawa acknowledges, you were too young to take on. She goes on to describe your deep attachment to Ms Rihari and your anxiety about becoming a father. Mr Tarawa, you are said to be highly respected by your wider whānau and they are fully supportive of you.

[23] Your partner, Tui, describes you as a hard-working, kind-hearted and loving young man who strives for success and who gives his all to be a good role model. She says you are “remorseful for your actions and willing to do what it takes to pay for the consequences”. She has told the Court that she has observed your sincere regret and how you struggle every day to forgive yourself for your mistakes. She talks about the close bond you have formed with your three-month old son, and is fearful of the long-term effect on him if you were to be taken away. She confirms that you are well-loved and supported by your family.

[24] The character references you have provided lead me to conclude that you are universally liked and respected by those who know you. You are described as loving and humble; a selfless young man who put his own life – sporting, schooling and social – on hold to protect and provide for his younger siblings. Despite being well aware of what has brought you here, the people who took time to provide references for you remain supportive. I trust that you will be able to take up the opportunities for employment which appear to be available to you and that in particular, you commit yourself to some form of apprenticeship to build on for the rest of your life.

Aggravating factors

[25] You have several previous convictions, but, as Mr McKean explains, they are minor: for petty theft and driving offences. They are symptomatic, regrettably, of

problems which young people – particularly in this part of the country – suffer through deprivation. I do not regard them as relevant to my assessment of an appropriate sentence, but your history means that you are not entitled to call on your good behaviour and a clean record in the past as a mitigating factor worthy of a discount.

Mitigating factors

[26] As Mr McKean has submitted, the mitigating factors which I must – or should, at least – take into account are the time you spent on electronically monitored bail; remorse; your capacity for rehabilitation, and your youth, particularly relative to the circumstances of the offending.

EM bail

[27] The terms of your bail confined you, after you were released from an initial period in custody, on a 24-hour curfew which is equivalent to home detention. You were either in custody or under that serious constraint for more than ten months and it kept you apart from your family, Ms Rihari and your new-born son in Kaikohe while you were in South Auckland. About two weeks ago, after you pleaded guilty, your bail terms were modified and you have been on EM bail back with your family. The circumstances of your bail have imposed a serious burden on you; moreover, you have fully complied with the very strict terms of it. I consider that those terms justify a discount of six months' imprisonment. Applying that discount would reduce the starting sentence to three years and three months' imprisonment.

Youth factors

[28] The Sentencing Act recognises that the age of the offender can be a mitigating factor,¹⁰ and in a leading case the Court of Appeal has said that youth can be relevant to sentencing in three ways, being:¹¹

- (a) age-related neurological differences between young people and adults;

¹⁰ Sentencing Act 2002, s 9(2)(a).

¹¹ *Churchward v R* [2012] NZCA 531, (2011) 25 CRNZ 446.

- (b) the effect of imprisonment on young people; and
- (c) the fact that young people have a greater capacity for rehabilitation than adults.

[29] Mr Annandale submits that your previous convictions, although not seen as an aggravating factor, are relevant to the Court's assessment of whether reduction for your youth is appropriate and, if so, to what extent. I understand that submission. It is argued that although discounts are applied on the basis that young people have a greater capacity for rehabilitation, you have been assessed as being at medium risk of harm and reoffending. The Crown submits that your previous convictions demonstrate that you continue to offend notwithstanding previous sentences by the Court.

[30] The reliance on neurological differences between youths and adults is not just a device to justify treating young people more leniently than adults who offend. It is based on neurological science which has established that those parts of the human brain which control impulses and reasoning and the assessment of risk are the last to become fully formed. In males, it is acknowledged that adolescence – that is, the process of becoming a fully functioning adult – is usually not completed until the mid- or, in some cases, later-20s. That means that, although you were not a young person, being aged 21 at the time of this offending, you were and remain of an age when young men can be guilty of impulsive or impetuous behaviour without fully comprehending the possible consequences of their actions. Therefore, to a degree, the impulsive, reckless response which caused Mr Vujcich's death can be attributed partly to your youth. What occurred in this case has all of the hallmarks of youthful offending in:

- (a) your gross overreaction to what, at least, you perceived to be Mr Vujcich's poor driving;
- (b) your failure to pause and reflect on your actions when prompted to back off by your partner; and
- (c) your impulsive response when the argument with Mr Vujcich became physical.

[31] Taking all matters into account, I consider a 20 per cent discount for your youth is appropriate. That would produce a reduced sentence of two years and seven months' imprisonment.

Remorse

[32] Following your sentence indication, it was confirmed to Mr McKean that, if a guilty plea was entered, an adjournment of the sentencing would be granted, if necessary, to enable a restorative justice process to occur. You indicated a willingness to participate in a restorative justice conference, but you respected the wishes of Mr Vujcich's family, in a letter addressed to them, when that was declined. You acknowledge that restorative justice would have been difficult for them, and I, too, accept that the family members should not be criticised in any way for declining your offer. Nothing can compensate them for the loss of their much-loved father, grandfather, brother and friend, and they see you as being responsible for that.

[33] In your letter to Mr Vujcich's family you apologise profusely but acknowledge that your words can never replace what your actions have taken from them. You are ashamed of what you did, and you accept full responsibility for it. I consider you have made genuine efforts to accept – and to demonstrate that you accept – responsibility for your offending. Importantly, I accept that you will carry the heavy burden of that responsibility for the rest of your life.

[34] The law requires the Court to take into account any offer of amends when imposing a sentence. In your letter, you expressed your "deepest sympathy" to the Vujcich family and described the "unbearable regret" you live with. You now work hard "every day to be a better person". I accept these sentiments as genuine, and I hope that the Vujcich family, and Mr David Vujcich in particular who referred to this aspect, will understand that this event, though tragic, may make you a fine adult; a fine father.

[35] Where there is tangible evidence of genuine remorse a discount of around five to eight per cent has been considered appropriate.¹² In my assessment, a discount of

¹² *McArthur v R* [2013] NZCA 600 at [13]-[14]; *Rowles v R* [2016] NZCA 208 at [18]; *Clark v R*

two months would be an appropriate reduction in the circumstances, and this brings the sentence down to two years and five months' imprisonment.

Guilty plea discount

[36] Through counsel, you pursued a request for a sentence indication as soon as substantial agreement on material matters of fact had been reached. This means that a significant discount for your guilty plea is available and, as I noted in the sentence indication, I consider that the particular circumstances warrant a discount of 25 per cent. Rounding down, that results in an end sentence of one year and nine months' imprisonment.

Home detention and community detention

[37] As that sentence would be a short sentence of under two years, you are eligible for home detention.¹³ That is in itself serious punishment and it is regarded as meeting the need for a deterrent sentence in an appropriate case.¹⁴ The restrictions that home detention impose on your freedom of movement will be particularly difficult for a young man with a family. Given that a man died, I have to decide whether a sentence less than imprisonment would adequately address the applicable purposes and principles of sentencing I have referred to, particularly the purposes of denunciation and accountability, and those words really mean "punishment".

[38] The Crown submits that, while there is no presumption in favour of imposing a sentence of imprisonment for manslaughter, the sentencing purposes of deterrence and denunciation, and the principle of consistency, are all in favour of a sentence of imprisonment being imposed. It usually is in manslaughter cases. The proposal for home detention is that you would continue to reside at your family's address [REDACTED] which would give you support and potentially assist in your rehabilitation. Mr Annandale questions the degree of support available to you, and the Crown submits that the purposes and principles of sentencing can only be achieved by a

[2013] NZCA 63; *Watene v R* [2014] NZCA 381; *Poi v R* [2015] NZCA 300 and *Kavenga v Police* [2015] NZHC 2599.

¹³ Sentencing Act 2002, s 15A(1)(b).

¹⁴ *R v Iosefa* [2008] NZCA 453 at [41].

sentence of imprisonment to adequately reflect the impact and effect of your offending.

[39] The probation officer who provided written pre-sentence advice to the Court recognises the gravity of your offending but considers that home detention is an available alternative to imprisonment in this case. The high degree of family support you receive, your remorse, your adherence to strict bail terms and your rehabilitation prospects are referred to.

[40] When considering whether to impose a sentence of home detention instead of imprisonment, in what is by no means an easy case, I am mindful that I must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community.¹⁵ A balancing exercise is required.

[41] I consider that the factors weighing against imprisonment are:

- (a) your age;
- (b) your educational qualifications and work history and the potential to be a productive contributor to society;
- (c) the degree of family support you receive and which remains available to you;
- (d) your relationship with Ms Rihari and your child and your ability to contribute to their care and wellbeing;
- (e) the absence of evidence of alcohol or drug abuse;
- (f) the absence of negative emotional health or wellbeing issues;

¹⁵ Sentencing Act 2002, s 16(1).

- (g) your faithful adherence to the stringent terms of EM bail over a lengthy period;
- (h) your willingness to address anger issues through any recommended programmes, and the assessment that your motivation and ability to comply with such programmes are high;
- (i) I take into account the absence of any prior rehabilitative community-based sentence; and finally
- (j) the negative implications for your rehabilitation and, therefore, the interests of the community, if you were required to serve a first sentence of imprisonment.

[42] Standing back, I am not persuaded that the prospect of creating an opportunity for you to redeem yourself through a tailored sentence must yield to what would be, in the circumstances, a purely punitive term of imprisonment. I am satisfied that a sentence of home detention, combined with a substantial period of community work, would meet the sentencing purposes and principles which apply to this case by balancing deterrence, condemnation and accountability against rehabilitation and reintegration.

Sentence

[43] If you were sentenced to a term of imprisonment of around one year and nine months, which is what I have considered would be appropriate, you would be entitled to early release after having served only half of that period; so around about ten months. Early release does not apply to home detention, the maximum period of which is 12 months. Taking that into account, I consider that a period of ten months' home detention is appropriate. In addition, I impose on you a sentence of 400 hours' community work, which is the maximum available.

[44] The conditions of your home detention sentence are those set out in the Probation officer's recommendation:

- (a) You are to travel directly to the address of [REDACTED] immediately following sentencing, and there await the arrival of the electronic monitoring company representative. If that is to occur, given that you have been on EM bail.
- (b) You are to remain at the address of [REDACTED] for the duration of the sentence of home detention unless otherwise authorised by the Probation Officer, and that will mean that you will be released under supervision to carry out your sentence of community work, and I trust that you will be in a position to apply for work leave at an appropriate time during your sentence.
- (c) You are not to purchase, possess or consume alcohol or illicit drugs for the duration of your sentence.
- (d) You are to attend and complete a suitable violence prevention or anger management programme to the satisfaction of a Probation Officer and the programme provider, and the details of the appropriate programme are to be determined by your Probation Officer.
- (e) You are to undertake and complete any other counselling or treatment, if deemed suitable, to the satisfaction of the Probation Officer and counsellor, the details of that course to be determined by your Probation Officer.
- (f) The usual post-detention conditions will apply and those special conditions I have mentioned will also apply post-detention.

[45] Please stand down, Mr Tarawa.

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Toogood J