

**ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS,
OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT
PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011. SEE
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>**

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

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

**CRI-2017-219-209
[2018] NZHC 3345**

THE QUEEN

v

SM

Counsel: P J Morgan QC and S F Gilbert for Crown
R M Mansfield and S R Lack for Defendant

Sentencing: 17 December 2018

Charge: Manslaughter

Plea: Not Guilty

SENTENCING NOTES OF BREWER J

Solicitors:
Almao Douch (Hamilton) for Crown

Introduction

[1] SM, I have to now sentence you for the manslaughter of Mr Kingi. I cannot do that quickly and simply. I will have to tell you a number of things which you will not understand because they are legal matters, but the reason I will be doing this is that what I am saying now is not just for you. It will be read by other lawyers and if either of the lawyers who have been speaking today decide they do not like what I have sentenced you to, then other Courts might have to read what I am saying. So, I will be explaining in more detail than I would if I were just talking to you.

Facts

[2] On the evening of 28 July 2017, you and your young cousin, DC, and ME were out on the streets of Hamilton breaking into cars. You wanted to find things to steal and, if you could, you wanted to actually take one of the cars.

[3] When you broke into one of the cars, there was a large knife found there. That knife ended up with you.

[4] Eventually you came to Ranui Street in Dinsdale, where you broke into Mr Kingi's and Ms Reihana's car. But then Mr Kingi and Ms Reihana came along the road. They had been to a social function and they were walking back home. They saw what was going on and they shouted and they came running up. You and ME ran off up the hill. DC was too slow and she was caught by Ms Reihana who held onto her. You and ME realised that DC had been caught and you were not prepared to accept that. You and ME decided to go back and rescue DC. Both of you were armed. ME had a screwdriver and you had the knife. You went back to where DC was being held and you demanded that they release DC. They would not.

[5] I accept that at this stage there was a lot of noise – a lot of swearing on both sides. Mr Kingi had been drinking and, in any event, he was not the sort of man who was going to back down when confronted by you and ME. You were being staunch. You knew that Ms Reihana and Mr Kingi were calling the Police, that they were going to hand DC over to the Police, and you were not prepared to accept that.

[6] You threatened Mr Kingi. You said that you were going to “fucking do him”. This happened pretty quickly. Mr Kingi started to go towards you. ME attacked him with the screwdriver – hit him on the head with the screwdriver – and then ducked over towards where Ms Reihana was to try to get DC away, but all she succeeded in doing was getting the bottle of vodka.

[7] That left you confronting Mr Kingi. Mr Kingi came towards you. He was angry and he was shouting. You had the knife out by that stage and, as he came towards you, you thrust out your arm and you stabbed him in the middle of the chest and you killed him. You then immediately ran away.

[8] The lawyers have been suggesting two different ways that I should look at the stabbing. The Crown says I should take it that you stabbed aggressively, as part of the continuing plan to rescue DC. Mr Mansfield, on your behalf, says, no, that is not how I should take it. I should take it that you were frightened and, as a result of your fear for your safety, that is why you stabbed Mr Kingi.

[9] I think it is a combination of the two. Putting it in legal terms, I think there is a reasonable possibility that at the last instant, as Mr Kingi was standing there in front of you, you did stab because you thought he was going to grab you and give you a hiding. That is how I will approach your sentencing.

[10] I do not think it makes much of a difference given all the surrounding circumstances that I have just been referring to.

Victim impact statements

[11] SM, whenever a Judge has to sentence someone for killing someone, it is against the loss that has been caused to the family of the dead person. You have heard about that loss today through the victim impact statements that were read out by the Crown lawyer and through the members of Mr Kingi’s whanau and his friend who came to speak and tell about their loss and grief.

[12] All of them speak of Mr Kingi as a man of great mana, a kind-hearted man who was cherished by his family and community. His passing has left a gap in the

lives of many people. It is clear Mr Kingi's family and friends are still struggling to come to terms with the sense of loss they feel. There is now something missing from their wairua. Their mana has been diminished. I think it is a credit to everyone who has spoken today and whose victim impact statements have been read that they have not written words of anger towards you. They speak with dignity of their grief.

[13] As I said earlier, all I can do with sentencing is to acknowledge the loss. But I am not trying to make up for Mr Kingi's death by sentencing you. That would be impossible. The sentencing process could not make up for Mr Kingi's death.

[14] What I have to do is sentence you in accordance with the law.

Approach to sentence

[15] The maximum penalty for manslaughter is life imprisonment.¹ But manslaughter covers a very wide range of situations. Sometimes the death of a person is very close to an accident and the sentence is a very low one accordingly. At other times, a manslaughter can be within a whisker of murder and the person is sentenced accordingly.

[16] Your case is not at either of those extremes and so the law requires me to look at a case called *R v Taueki* which sets out guidance for sentencing where serious violence has been involved.²

[17] I agree with the lawyers that your offending falls within band 2 of that case. The Crown says I should adopt a starting point of seven years' imprisonment for what you did, and Mr Mansfield says the starting point should be five years' imprisonment.

[18] I have just set out what I take the facts of the case to be and, for me, the difference between the Crown's case and Mr Mansfield's submission is the very short time in which these events occurred. The stabbing took place in a quickly changing and very tense environment – it was dark, there was shouting, and your cousin was being physically restrained. Your actions were not thought out in advance. Your

¹ Crimes Act 1961, s 177.

² *R v Taueki* [2005] 3 NZLR 372 (CA).

actions were not deliberate in the sense that you had set out to stab Mr Kingi. That is the context in which I will place your offending.

[19] I will take a starting point of six years' imprisonment.

[20] I have cross-checked this conclusion with a number of manslaughter cases because I need to look at other cases to see how yours fits in. I will not go through them with you but I will make a list of them in the written version of these sentencing notes.³

Personal circumstances

[21] From a starting point of six years' imprisonment, I now have to look at your personal circumstances to see how much that starting point should be reduced.

[22] I have read your pre-sentence report, a psychological assessment prepared by Ms McFadden and a cultural report prepared pursuant to s 27 of the Sentencing Act 2002. I also had a very helpful report by Mr Tam which was obtained through Mr Mansfield's agency.

Youth

[23] I see that you were in some respects a typically rebellious 15-year-old teenager. Your background was not an easy one but way, way better than the backgrounds of many young people we see in Court who have done something criminal and killed someone. You had got sick of school, which you thought was dumb. You had been wagging school a lot. You had come into contact with troublemakers, one or more of whom had taught you how to break into cars, and you thought it was cool to be out on the street that night breaking into cars, and you thought it would be cool if you could steal a car and take it for a joyride.

³ *Wharerau v R* [2015] NZCA 299; *R v Hu* [2012] NZHC 54; *R v Emery* HC Auckland CRI-2008-092-1285, 13 February 2009; *R v Beazley* [2016] NZHC 811; *R v UGT* HC Rotorua CRI-2006-287-83, 13 June 2007; *R v Raivaru* HC Rotorua CRI-2004-077-1667, 5 August 2005; *R v Edwardson* HC Rotorua CRI-2006-069-1101, 27 April 2007; *R v Herewini* HC Rotorua CRI-2006-063-3151, 5 October 2007; *P (CA479/2015) v R* [2016] NZCA 128; *R v Ames* HC Rotorua CRI-2008-263-19, 30 October 2009; *R v Ariki* [2015] NZHC 3240.

[24] Having said that, I should also say that my impression of ME and from what I saw and heard of DC, that they were more of the leaders of what was going on that night than you were.

[25] The Court of Appeal has held that young people of your age are particularly likely to do stupid things. And the Court of Appeal has emphasised that because young people can change, because they can grow up and become better people, then Judges should do what they can to keep sentences of imprisonment as low as possible so as to give the young person the best opportunity to become a better person. That is in everybody's interests.⁴

[26] The sort of discounts the Court commonly gives to reflect a young person's immaturity is around 30 percent.⁵ It can be greater if the offending is linked to a form of mental impairment,⁶ or if the offending is historic and the offender has since reformed themselves.⁷

[27] In your case, I will give you a discount of 35 percent, for these reasons:

- (a) First, on the reports I have read, your prospects of becoming a better person are strong. You have no previous Youth Court notations or criminal convictions. You are assessed as having a low chance of reoffending. You have no serious history of alcohol or substance abuse. Your attitudes are generally good attitudes and you have expressed realistic goals for your future.
- (b) Second, I am quite sure your offending was marked by impulsiveness and simply a lack of an ability to assess risks.
- (c) Third, you have expressed some remorse about your offending, and Ms McFadden assesses that as genuine. She says you are still trying to

⁴ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

⁵ See, for example, *R v Rehu* [2015] NZHC 2178; *M (CA844/11) v R* [2012] NZCA 352; *V (CA400/12) v R* [2012] NZCA 465; *Lennon v R* [2012] NZCA 551.

⁶ See, for example, *Edri v R* [2013] NZCA 264; *R v Griffiths* [2018] NZHC 1104.

⁷ See, for example, *R v Parata* CA72/01, 21 June 2001.

come to terms with what you have done, but that you do accept the consequences of your actions.

- (d) Finally, you are now 16-years-old and have been doing well at Korowai Manaaki, the Youth Justice facility where you are currently detained. You speak of enjoying the opportunities available to you there. It will be best if you stay there until you are 18-years-old⁸ (which would be in April 2020). Beyond then, you would be in an adult prison and I accept that time spent there should be limited as much as possible.

[28] Mr Mansfield wanted a separate discount for remorse of five percent. I am not going to give you one because I have already taken into account your remorse to the extent it is relevant to your prospects of rehabilitation. In any case, from what I have read, and as is typical for a young person in your situation, you are not really able to understand the loss that you have caused and a great deal of your remorse is for the situation you are in.

Time spent on EM bail

[29] I have to give you a discount for the time that you spent on electronically monitored bail. I will deduct five months from your sentence for that.

Offer to plead guilty

[30] Mr Mansfield has spoken to me about your offer to plead guilty. I accept that was an offer that was made at an early opportunity. I accept it was an offer made against an overwhelming case for manslaughter. I do not hold it against you that at trial you asked the jury to consider the reasonable possibility of self-defence. You were entitled to do that.

[31] In all the circumstances, I will give you a discount of 15 percent for that.

⁸ See 7(4) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 which comes into force on 1 July 2019.

End sentence

[32] We have a starting point of six years' imprisonment. I reduce that by 35 percent for your youth. I reduce it by 15 percent for the offer of the guilty plea to manslaughter and I remove five months because of the time you spent on electronically monitored bail. That comes to an end sentence of two years and 11 months' imprisonment.

Name suppression

[33] I now have to talk about your permanent name suppression.

[34] To this point you have had interim name suppression. You heard the lawyers talking to me about the factors I have to take into account. Extreme hardship is the threshold that has to be met.

[35] I am not going to take much time to talk about this. I can see that you are getting tired. What I will say is that I accept the submissions that Mr Mansfield has made. The materials I have looked at show me that your rehabilitation would be badly affected if your name was out there on social media and you were constantly being held again and again to account at your stage and age. Therefore, I find that the test has been met. I now grant you permanent name suppression.

Sentence

[36] SM, on your conviction for the manslaughter of Mr Kingi, I sentence you to two years and 11 months' imprisonment.

[37] You may stand down.