

**ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS,  
OCCUPATION OR IDENTIFYING PARTICULARS OF CO-DEFENDANT M  
PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011.**

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2019-092-005399  
[2024] NZHC 623**

**THE KING**

v

**TAMATI KAS SIMPSON**

Hearing: 21 March 2024

Appearances: D Stevens, G Witana for the Crown  
M Dyhrberg KC, D-M Cross, J Jackson for T K Simpson

Judgment: 21 March 2024

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**[REDACTED] SENTENCING NOTES OF WHATA J**

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[1] Mr Simpson you have been found guilty of:

(a) One charge of unlawful possession of a firearm.<sup>1</sup>

(b) One charge of murder.<sup>2</sup>

[2] The maximum penalty for murder is life imprisonment. The central issue to determine to today is whether you must serve a sentence of life imprisonment or a fixed term of imprisonment and in either case, the minimum period of imprisonment you must serve.

### **Mr Siaosi**

[3] Before I go further, I wish to first acknowledge, Mr Siaosi, as well as his aiga and friends. He was only 23 when he died. As the victims statements show, Mr Siaosi was a much loved partner, father, brother and son. As [redacted] and [redacted] so beautifully said, Mr Siaosi was a most big hearted person, loyal and honest. He had a great passion for sport and was loved for his loyalty and honesty. He was a humble man who always looked out for those when he could.

[4] I also acknowledge the deep grief and anger felt by Mr Siaosi's family. A partner, son and brother traumatised not only by their loss, but by their proximity to the killing. Nothing I say today will provide a remedy for your trauma or for the loss suffered by you all, but hopefully you can feel sure that I have taken it into account your trauma when reaching my sentence.

### **Facts of offending**

[5] I turn now to the facts of your offending Mr Simpson.

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<sup>1</sup> Arms Act 1983, s 51: maximum penalty 3 years imprisonment/\$4,000 fine.

<sup>2</sup> Crimes Act 1961 ss 167, 168 and 172: maximum penalty life imprisonment.

[6] On the afternoon of 17 May 2019, at about 3pm, you were driving a blue Holden Commodore with your friend M along [redacted]. A school was located nearby.

[7] While driving along [redacted], you saw [redacted] and Joseph Siaosi standing outside Mr Siaosi's family home. Mr Siaosi stared at you both, trying to "staunch [you] out".

[8] You stopped at the dairy at the end of the road. M entered the dairy and purchased some items. He got back in the car, and you drove back down [redacted]. You stopped the vehicle outside [redacted]. As you stopped [redacted] and Mr Siaosi approached the car and spoke to you and M, telling you to leave. Mr [redacted] saw the butt of a gun held by you.

[9] You and Mr Siaosi got into a verbal argument and Mr Siaosi challenged you both to a fight. Mr Siaosi turned away from the car and began walking away. As he was walking you raised a .22 calibre firearm, pointed it at Mr Siaosi, hesitated and then shot Mr Siaosi striking him first in the arm, the bullet penetrating into his chest. He died a short time later.

[10] You then fled the scene but reported to the police some days later.

[11] I pause here to record my view of what happened. This was not a premediated or planned action. On the contrary, this was a random encounter. The firing of the gun was an impulsive, grossly reckless act by you. There was simply no need for you to act in the way that you did and there is good evidence that everyone, including M was shocked by what had happened. I also accept that you fled in shock.

### **Mr Simpson**

[12] Mr Simpson I turn now to your personal circumstances. They are especially relevant because they inform my assessment of your culpability, the likely severity of the sentence for you and your capacity for rehabilitation. For this purpose, I have had the benefit of a psychiatric assessment, a s 27 cultural report and a PAC report.

[13] Mr Simpson you were 21 when you killed Mr Siaosi. You are of Ngā Puhi, Waikato and Ngāti Porou. You had a challenging upbringing. Your relationship with your father was poor and you were exposed to violence, substance abuse and gang life from a young age. Your mother had many struggles. Your father was violent with her and they separated when you were 10. She also suffered with alcohol and drug abuse. Against this background, it is little surprise that you joined the Killer Bees at about 15, following in the footsteps of your older brother, [redacted], who later became a member of the Tribesman. This would create its own problems for you because at about the time of your offending, the Killer Bees and the Tribesman were at effectively at war with each other. It was a very unstable time for you.

[14] But yours is not a story lacking hope. Your whanau cares and loves you, including your mother, siblings, your partner and two children – who are aged seven and five years old. I see that your family are here supporting you today. You have also shown resilience and capacity to make a positive contribution to your family and to your community. You passed NCEA Levels 1 and 2. As a young man you thrived at sport, showing talent in rugby and rugby league. You continued with this passion for physical wellbeing while on remand in prison, with regular training sessions.

[15] To your credit you have also completed several programmes while on remand, including programmes directed to choosing to change, alcohol and other drug abuse, AOD relapse prevention, controlling anger, problem solving, creative writing and critical thinking.

[16] You also acknowledge the trauma caused by you. The PAC report records you as saying you feel “ugly and fucked up” about the impact it has had on the victim, their family and your own family. Your psychiatric report also suggests that you have matured greatly over the last four and half years – that you have good insights into your behaviour, planning and thought processes.

[17] The s 27 report records your recognition of the fact that you had no one else to blame but yourself, not your father, not your mother but only yourself. To my mind what you are expressing therefore is a deep sense of whakamā.

[18] In this regard it is also important to record that you strongly identify with your whakapapa and remain strongly connected to your whanaunga. You display this identification and connection in several ways, including your respect for kawa and tikanga. This is very important in terms of your rehabilitation. The s 27 report puts it this way:

Tamati's reverence for tradition and his commitment to becoming a better father and partner serve as a beacon of hope, symbolizing the potential for positive change and unity within the whanau.

### **Sentencing Framework**

[19] I am now going to describe the legal frame, principles and purposes that must guide my sentencing.

[20] I have to take into account the purposes and principles of sentencing outlined in ss 7 and 8 of the Sentencing Act 2002. There is a need to denounce the offending and to hold you accountable for the harm that you have caused. The sentence I will impose is intended to promote a sense of responsibility in you for that harm. There must be deterrence, both against future offending by you and against others who might act similarly. I have to consider the protection of the public, together with your rehabilitation.

[21] The sentence I impose must be consistent in kind and in length with those imposed on others who have offended in a similar way. I must consider the gravity of your offending and your culpability. I must also take into account any circumstances that might make an otherwise appropriate sentence disproportionately severe.

#### *Presumption of life imprisonment*

[22] In all cases of murder, a sentence of life imprisonment together with a minimum period of imprisonment (or MPI) of at least 10 years must be imposed unless it would be manifestly unjust to do so.<sup>3</sup> Irrespective of whether life sentence is

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<sup>3</sup> Sentencing Act 2002, s 102.

imposed, the length of the MPI must be sufficient to satisfy one or more of the following factors:<sup>4</sup>

- (a) To hold you accountable;
- (b) To denounce your offending;
- (c) To deter similar offending; and
- (d) To protect the community from you.

[23] Some very serious murders may also require an MPI of at least 17 years. Crown counsel and your counsel submit that your offending does not fall into this category of murders and I agree.

[24] So, should a sentence of life imprisonment be imposed in your case? To answer this question, I have taken the following steps:

- (a) First, I have identified a determinate or fixed term of imprisonment for your offending. For this purpose, I have considered the degree of your culpability by comparing it to other similar cases. This has involved a process of taking into account aggravating and mitigating factors of your offending and you personally.
- (b) Second, I have undertaken an assessment of an appropriate MPI for your offending, there being no dispute that your offending demands an MPI. In combination these two steps identify a maximum length for a fixed term sentence, and any MPI you would need to serve if life imprisonment was not imposed.
- (c) Third, I have assessed the MPI that would need to be served if a sentence of life imprisonment was imposed. This has been assessed

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<sup>4</sup> Sentencing Act 2002, s 103(2).

having regard to the same aggravating and mitigating factors and the MPIs imposed in similar life sentence cases.

- (d) Fourth, I have assessed whether, in all of the circumstances, a sentence of life imprisonment and an associated MPI is so disparate to the maximum length of sentence and MPI you would otherwise serve as to be manifestly unjust. As the Court of Appeal stated in *Williams*, albeit in a different context, what level of disparity amounts to manifest injustice remains a matter of sound sentencing judgment that is not capable of precise determination.<sup>5</sup>

*Steps 1 & 2 – a determinate sentence and MPI*

[25] Turning then to the starting point for your offending. The following features are plainly aggravating:

- (a) First, the harm done – you killed Mr Siaosi – while causing death is a factor in all murders, this extreme harm must be factored into any starting point for a fixed term sentence (that is one without life imprisonment). I note in this regard that had this offending not killed Mr Siaosi, but left him with a permanent injury, the starting point sentence for Grievous Bodily Harm (GBH) would have been at the top end for offending of this type.<sup>6</sup>
- (b) Second, possession of a firearm in your car – driving around in your car with a with a gun in reach is a recipe for potentially lethal violence.
- (c) Third, the use of a firearm in a built up residential location – you fired a gun in close proximity to surrounding homes and to a school.

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<sup>5</sup> *R v Williams* [2005] 2 NZLR 506 at [68].

<sup>6</sup> *R v Taueki* [2005] 3 NZLR 372 (CA); *Tahuri v R* [2013] NZCA 254; *R v Salt* [2022] NZHC 3007 and *Salt v R* [2023] NZCA 404.

- (d) Fourth, the timing – this was a busy time of the day, as children were being collected from or about to leave school, when the shooting occurred.
- (e) Fifth, Mr Siaosi was defenceless, and at the time of the shooting, non-threatening – he was in the process of turning away from you.

[26] While strictly speaking not mitigating factors, it is necessary to note that when assessing culpability, the absence of premeditation and that your actions were impulsive grossly reckless rather than the product of a specific motivation to kill. For completeness however I place no weight on the fact that you were challenged by Mr Siaosi to a fight. Your reaction was simply too grossly disproportionate for this to be a relevant factor.

[27] In my assessment offending of this kind, a starting point of **21 years' imprisonment** is appropriate. This is comparable to the starting point adopted by the Court of Appeal in the case of *Epiha* where the defendant recklessly stabbed the victim.<sup>7</sup> An aggravating feature of that case is that Ms Epiha not only confronted her victim, but actively pursued her and stabbed her in the neck. She also threatened to kill some - one else. On the other hand, the inherent danger presented by you travelling around with, and then firing a gun, in a residential enclave close to a school is worse in terms of the demands of deterrence and protecting the community.

[28] A 20 year starting point was also applied in *Huntley*.<sup>8</sup> This case involved a stabbing of the victim by a young man in a car park during a fight between a number of young people. In this case Mr Huntley stabbed multiple victims, which is an aggravating factor absent here. But again, the inherently dangerous nature of your offending is materially worse.

[29] I see no need to uplift for possession of the gun as I have factored this into the starting point in terms of aggravating factors.

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<sup>7</sup> In respect of *Epiha v R* CA645/2020 as cited in *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [234]–[235].

<sup>8</sup> *R v Huntley* [2024] NZHC 182 at [34].



[30] In terms of mitigating factors, I reduce this starting point by 20 per cent for your youth and upbringing (including within that a recognition of the link between these factors and the impulsive nature of your offending as well as the severity of any lengthy period of imprisonment for you), 5 per cent for your capacity to rehabilitate and 5 per cent for remorse. I also apply a further discount of 10 per cent to reflect the impact of a lengthy incarceration on your children.<sup>9</sup> Collectively, this amounts to a discount of **40** per cent. This discount is similar to other cases where similar factors have been present.<sup>10</sup>

[31] Applying ordinary rules for fixing sentence, I come to a fixed sentence of about 13 years. Stepping back however, and reflecting that this is a murder and the seriousness of the harm, – a sentence of 17 years better accords with overall the gravity of your offending and your culpability. Turning then to an MPI, a 50 per cent MPI is clearly justified and consistent with MPIs handed down in other murder cases where a fixed term sentence has been applied.<sup>11</sup>

[32] In the result, a fixed term sentence of 17 years imprisonment together with an MPI of 8 years 6 months is justified.

### *Step 3*

[33] Turning now to an MPI assuming a life sentence is imposed. Two cases, cited by Mr Stevens, *Te Tomo* and *Paewhenua* involve sufficiently similar facts to provide some guidance.<sup>12</sup> In *Te Tomo*, Mr Te Tomo shot the unarmed victim at close range. The victim was from a rival gang and the shooting was at the end point of a period of violence between them and their associates. An MPI of 12 years before discounts was considered appropriate.<sup>13</sup> In *Paewhenua*, Mr Paewhenua shot the victim at very close range. But the shooting was not considered pre-meditated. A starting point of 11 years and six months was considered appropriate.<sup>14</sup> A further case, cited by your counsel,

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<sup>9</sup> *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571; *Sweeney v R* [2023] NZCA 417 at [27].

<sup>10</sup> See *R v TH* [2023] NZHC 630 at [35]–[36]; and *M (CA 434-2022) v R* [2023] NZCA 319 at [110].

<sup>11</sup> See *Dickey* above n 7; *R v Yu* [2023] NZHC 1391; *R v TH* above n 10; *Huntley* above n 8; and *R v Simeon* [2021] NZHC 1371.

<sup>12</sup> *R v Te Tomo* [2015] NZHC 2671; *R v Paewhenua* [2018] NZHC 301.

<sup>13</sup> At [43].

<sup>14</sup> At [41].

Ms Dyhrberg, *Kaitai*, involving a reckless shotgun killing, also attracted a minimum starting MPI of 11 years six months.<sup>15</sup>

[34] I consider your offending is less serious than either of those cases cited by the Crown. They involved either in extended period of violence or violence that was only marginally short of purposeful violence. *Kaitai* also involved other violence prior to the killing.

[35] I therefore consider a lower starting point, an MPI of 11 years, to be justified. With discounts for youth, rehabilitative capacity, and mitigation of harm to your children, a 10 year MPI is appropriate in connection with a sentence with life imprisonment.

#### *Step 4*

[36] Coming then to the assessment of whether a sentence of life imprisonment is manifestly unjust. The Court of Appeal in *Dickey* identified that for some young offenders a life sentence may be manifestly unjust through a combination of the indeterminacy of the sentence, the length of the MPI and lifetime parole and where a determinate or fixed term sentence of imprisonment is capable of responding to such injustice.<sup>16</sup>

[37] I commence with the impact of an MPI. The difference in MPI is two and half years. To my mind that is not grossly disparate having regard to the seriousness of the offending and the trauma caused by it. Therefore, a 10 year MPI is not by itself manifestly unjust.

[38] I now examine the effect of a sentence of life imprisonment. As highlighted by the Court of Appeal, life parole may be characterised as a form of permanent exclusion from free society. It may involve a loss of dignity and belonging, enjoyed by other members of the community that may preclude the full integration that ought to be the object of rehabilitation.

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<sup>15</sup> *R v Kaitai* [2022] NZHC 2438 at [67].

<sup>16</sup> *Dickey* above n 7 at [193].

[39] There are now several examples where youth and other personal factors, together with good prospects of rehabilitation were key factors in finding that life imprisonment would be manifestly unjust. Those cases included:

- (a) *Yu*, who was about 20, when he was a party to a killing and an associated drug dealing.
- (b) *TH*, who was 20 when he stabbed and killed the victim in a bar fight that spilled out on to a nearby road.
- (c) *M*, who was 14 at the time he repeatedly stabbed the victim who had also been armed with a knife. He was also assessed as having a very low IQ, was remorseful and had positively engaged during his time in a youth facility.
- (d) *Huntley*, a case already mentioned by me, involving a 17 year old who recklessly stabbed the victim once in the chest. Mr Huntley's upbringing was also marred by violence and profound deprivation while his prospects for rehabilitation were good.
- (e) *Simeon*, a case involving a killing by reckless stabbing in a domestic violence context. The offender was only 18 at the time and there was evidence she suffered from a psychiatric disorder at the time of the offending.

[40] But there is one factor Mr Simpson not present in any of those cases namely the use of a firearm, in a public place at a time when there was heightened danger to the public, including young school children. The principles of general deterrence and public protection are fully engaged by these facts. It must be recalled also that Mr Siao Si was vulnerable and defenceless to your attack. That brings into focus the need to also strongly denounce what you have done.

[41] Accordingly, while the shooting was clearly an impulsive act of a young man, and while your rehabilitation and reconnection to your whanau are very important

considerations – and there is good reason to be optimistic about you Mr Simpson – I am unable to find that a sentence of life imprisonment for killing Mr Siaosi, in the circumstances that always involved grave danger to the public, including children, is manifestly unjust.

[42] I want to be clear, by serving this sentence, and by committing to a life without further criminality, e patua te whakamā e koe – you can banish the whakamā. I also hope Mr Simpson you will come to see that this process is necessary too, and will over time, fully restore and maintain your mana.

[43] I conclude by acknowledging again the aiga and the friends of Mr Siaosi. As I have said, this sentence will not bring you any relief from the harm caused to you. But I hope it will help restore some balance to your lives.

[44] Mr Simpson please stand:

- (a) On the charge of murder, I sentence you to life imprisonment with a **MPI of 10 years.**
- (b) On the charge of possession of a firearm, I sentence you to 12 months imprisonment, to be served concurrently.

[45] Mr Simpson you may stand down.

Whata J

Solicitors:  
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