

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

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

**CRI-2023-009-6581
[2024] NZHC 910**

THE KING

v

ADAM MICHAEL RAPSON

Hearing: 23 April 2024
Appearances: W S Taffs for Crown
K H Cook for Defendant
Judgment: 23 April 2024

SENTENCING NOTES OF DUNNINGHAM J

[1] Mr Rapson, you appear today for sentence on the following charges:

- (a) manslaughter;¹
- (b) two charges of driving dangerously causing injury;²
- (c) failing to stop when followed by red/blue flashing lights;³

¹ Crimes Act 1961, ss 171, 160(2)(a) and 177 – life imprisonment.

² Land Transport Act 1998, s 36(1)(b) – maximum penalty five years' imprisonment, \$20,000 fine.

³ Land Transport Act 1998, ss 52A(1)(a)(ii) and 114(2) – maximum penalty \$10,000 fine.

- (d) learner driver unaccompanied;⁴ and
- (e) driving a vehicle issued with a non-operation order.⁵

Facts of the offending

[2] The following events give rise to these charges. On 17 September 2023 you held a learner driver licence but you were driving a vehicle with three passengers, none of whom was wearing a seatbelt.

[3] At around 2.18 am you were stopped on Carmen Road in Christchurch due to the condition of the vehicle. It had a piece cut out of the bonnet, cracked wheel rims, no VIN plate and no registration sticker. The warrant of fitness had been scratched off. You were issued with a non-operation order and, as a consequence, you were instructed to drive directly home, at no more than 50 kmph, and not to drive it again until the defects were remedied. You were also told of the dangers of driving the car in that state. A further inspection of the vehicle after the crash, showed it had other defects including mismatched tyres, no tread on the tyres, mismatched rims, and loose wheel nuts.

[4] Instead of complying with the instruction, you drove north out of the city with multiple other vehicles shortly before 4 am that night. While you were going north, another police car established that the car you were driving was subject of a non-operation order. It activated its red and blue lights. Instead of stopping, you increased your speed and turned your headlights off, reaching speeds of between 167 and 178 kmph in a 50 kmph zone. The police pursuit was called off such were the concerns about your driving. You subsequently lost control of the vehicle at a speed of between 143 and 147 kmph. The vehicle left the road and collided with a large tree at the front of a property in McIvor Place in Rangiora.

[5] As a result of the crash, as we have heard, the front passenger, Zara Mitchell, was tragically killed and the two other passengers received injuries.

⁴ Land Transport (Driver Licensing) Rule 1999 cl 16(1)(a) – maximum penalty \$100 fine.

⁵ Land Transport Act 1998, s 52(1) – maximum penalty \$10,000 fine.

[6] You had been consuming cannabis throughout the day and a blood test returned a positive result of between 3 to 5.4 nanograms of THC per millilitre of blood. This placed you in the high risk legal limit for THC.

Victim Impact statements

[7] The victim impact statements which were read today, or which I have read, speak compellingly of the ripple effect of your actions. Zara's mother, Anna, gave us an insight into the daughter she lost, right from the sunny-natured baby who overcame her medical issues, through to the teenager making bad decisions, as so many teenagers do, that led to her tragic death. Zara's mother showed an amazing capacity for understanding and forgiveness because she accepts you were not the only one who made bad choices on that night, but you, at least, have had the decency to face up to what you did and show remorse. She believes that for Zara's memory to be honoured, you will need to do something meaningful with your life.

[8] Similarly, Zara's sister, Tayla, talks of growing up with Zara and that it was a privilege, and she describes her as "pure hearted and kind". While she does not support your actions on that night, she respects you for showing remorse.

[9] These are powerful statements and I express my admiration for Zara's family in being so understanding and forgiving in the face of such a devastating loss.

[10] I have also read a victim impact statement from the occupant of the property where the crash occurred, and from his daughter, about the horrendous impact the crash has had on their lives. Not only has he had to experience the fear and shock of a car crashing into his home in the early hours of the morning and having one of the occupants die on the site, he has been harassed by youths in cars and motorbikes coming on to the property ever since that date, doing damage to his fence and the tree, leaving rubbish strewn across the front lawn. It has forced him to install CCTV cameras on the property, because, quite understandably, he has not felt safe in his property since that night.

[11] He believes his home will continue to be seen as a memorial site for Zara and attract those intrusions into his property. I can only hope that there are people in this

Courtroom today who know who these youths are and can signal to them that this behaviour does not honour Zara's memory, and it should stop.

The sentencing exercise

[12] So that deals with the facts of the offending and some of the consequences, I now have to turn to sentencing itself. In doing this, I have had regard to the relevant purposes and principles of sentencing. The primary considerations here are the need to denounce and deter the behaviour that led to these charges, to protect the community, to hold you accountable for the harm done to the victims and the community, but nevertheless, to the extent possible, to assist with your rehabilitation and reintegration.

[13] The process for sentencing will have been explained by your lawyer. I first have to set a starting point on the lead charge of manslaughter, taking into account the aggravating and mitigating features of the offending. In doing this, as the lawyers have suggested, I will take into account the totality of the behaviour which led to all the charges, and the sentences on the lesser charges will be imposed concurrently. I will then consider aggravating or mitigating features which relate to you as the offender and adjust the starting point accordingly, to reach an end sentence.

[14] In setting the starting point, I have been referred to a number of cases where seriously irresponsible or dangerous driving has led to death.⁶ They all note that sentencing in such cases is intensely factual, but the Court must try to impose a sentence which is consistent with the sentence imposed on like offenders in broadly similar circumstances. The cases I have been referred to have adopted starting points of between five years and 10 years and I must decide where, in that range, this offending falls. In that regard, I generally accept the Crown's submissions on what the aggravating features of this offending were.

⁶ *Gacitua v R* [2013] NZCA 234; *R v Skerrett*; *R v Tranter* [2020] NZHC 884; *R v McGrath* [2014] NZHC 1583; *R v Gosling* [2019] NZHC 1233; *R v Vanstone* HC Hamtiln CRI-2010-068-603, 19 April 2021; *R v Barclay* HC Nelson CRI-2006-042-4085, 31 May 2007; *R v McKelvey* CA372/97, 25 November 1997; *R v Pomare* [2017] NZHC 3193; *Ormsby v R* [2013] NZCA 578; *R v Murcott* [2014] NZHC 971; *Whiu v R* [2007] NZCA591; *R v Hawthorn* HC Wellington CRI-2003-035-3840, 28 May 2004; *R v Te Rupe* [2021] NZHC 788, *R v Tiddy* [2023] NZHC 2288 and *R v Stephens* [2023] NZHC 3555.

[15] First, you clearly travelled at excessive speed. You were driving at almost three times the legal limit when the crash occurred.

[16] Next, this was at least a deliberate, if not persistent, course of bad driving. It did not occur on the spur of the moment. You had been warned at 2.18 am to drive directly home because the vehicle was not in roadworthy condition. You disobeyed that order and then, when the police came across the vehicle, you fled at high speed with your lights turned off. These actions were inherently dangerous to you and other road users.

[17] The state of the vehicle was, of course, itself an aggravating feature. I have already described what the deficiencies were, but more, you were told that the vehicle was not roadworthy when police stopped you earlier that night.

[18] The next aggravating feature is your failure to stop for police. Instead of stopping when signalled to do so, you drove off at speed, without the lights on. The police were forced to abandon the pursuit because of the excessive speed you were travelling at and the risk it created to other road users.

[19] A further aggravating feature is the fact that you were a learner driver and not permitted to be driving without supervision at this time of night with passengers.

[20] The next aggravating feature is, of course, that the offending led directly to the death of one of the passengers and injuries to the other two. You have also caused emotional and financial harm to the occupants of the property you crashed into.

[21] Finally, I accept that you had consumed sufficient cannabis to put you in the high-risk category and this is another reason you should not have been driving at all that night.

[22] Mr Taffs, for the Crown, submits that your offending falls towards the higher end of the cases he has referred me to because of this combination of aggravating features, and a starting point of between seven and eight years is appropriate.

[23] Your lawyer has also referred me to other cases and submits the starting point of around six years would be appropriate.

[24] In my view, the circumstances of this case are most analogous to the cases of *R v McGrath* and *R v Pomare*, where starting points of seven years' imprisonment were adopted on a lead charge of manslaughter.

[25] In *McGrath*, the defendant had been drinking. He had conducted several dangerous overtaking manoeuvres. He drove at 100 kmph in a built-up area and though requested to stop by police, he accelerated to approximately 142 kmph when he lost control of the vehicle and smashed into a house. One passenger was killed and another suffered serious injuries. Mr McGrath was on a learner licence.

[26] Similarly, in *R v Pomare*, Mr Pomare sped off from an intersection in the early hours of the morning. Police indicated for him to stop but he continued to drive at speed, reaching speeds of up to 157 kmph in a semi-residential area. After a period of bad driving, he failed to negotiate a bend, crashed into a wall, and killed his passenger. At the time of the offending, he was intoxicated and disqualified from driving.

[27] In my view, this is a more serious than some of the others I have been referred to, including *R v Gosling*, *R v Vanstone*, *R v Barclay* and *R v Murcott*, where slightly lower starting points were adopted, and that is because of the other charges you are facing here.

[28] The cases where higher starting points were taken generally reflect the fact that the defendant had also offended in that way before, which is not the case here. Accordingly, I consider a starting point of seven years' imprisonment is appropriate.

[29] I now turn to whether there are any factors which are personal to you which mean I should reduce that starting point. The lawyers are agreed that there are no aggravating features and instead they focus on the mitigating features.

[30] The first is that you entered a guilty plea early and have accepted full responsibility for your offending. I agree in those circumstances you are entitled to a 25 per cent discount.

[31] The next matter is your youth. At the time of the offending, you were 18 years old. It has long been accepted that there is a need to treat young offenders differently from adult offenders given their reduced mental capabilities, their lack of judgment, and their greater capacity for rehabilitation.⁷ I accept that both the s 27 report and the restorative justice report make it clear that this offending arose out of your vulnerability to peer pressure and your attempts to fit in. The offending was indicative of youthful, impulsive, risk-taking behaviour. A discount of 10 per cent is appropriate in my view in this case.⁸

[32] Your lawyer raises remorse and restorative justice as separate mitigating factors. I consider they have to be seen together. There was a positive restorative justice meeting where you acted appropriately and took blame and responsibility for your actions. In my view, this was a tangible way of expressing your remorse and it has been accepted as such by Zara's family. I note the pre-sentence report raises some questions about the degree to which you are remorseful. However, I consider actions speak louder than words and your participation in restorative justice, the donation of all your savings, being \$800, to Zara's family to assist with the funeral, and writing letters of apology, satisfy me that a discount for remorse is justified.

[33] Mr Cook also raises your rehabilitative prospects. These include that you are said to have a good level of support from family. You have a building apprenticeship ready for you when you are released from prison and, you have been engaging in counselling and you are willing to engage in rehabilitation regarding your drug use. I see all these factors as related. You have rehabilitative potential because you are remorseful and I would discount the sentence a further 10 per cent to reflect these factors.

⁷ *Churchward v R* [2011] NZCA 531 and *Dickey v R* [2023] NZCA 2.

⁸ I note counsel for the defendant referred me to *R v Stephens* where a 15 per cent discount was allowed, but that was for youth and rehabilitative prospects. I deal with rehabilitative prospects separately.

[34] Mr Cook then also points to your personal circumstances as outlined in the s 27 report and the Hokai Tapuwae report and what he describes as your previous good character, as factors which should be taken into account.

[35] Both the s 27 report and the Hokai Tapuwae report outline events in your background which led to you engaging in anti-social behaviour. These included being exposed to domestic violence at an early age by your father and the fact that your parents separated very early on in your life but continued to dispute your care arrangements. Your mother was not able to be a committed and engaged parent. You struggled with concentration at school and were bullied leading to you retaliating with violence. You started drinking at an early age. You were eventually diagnosed with attention deficit hyperactivity disorder. In your early teenage years, you began experimenting with alcohol and cannabis which led to habitual use and eventually included the use of Class A drugs. In your mid-teens you began to isolate yourself from your family and associating with a group of anti-social peers who used drugs and encouraged dangerous driving. Furthermore, over the years you say you have lost seven close friends, including a best friend to suicide.

[36] When you split up from your first long term girlfriend in early 2023, your life began to spiral completely out of control. You ended up losing your job and associating with the individuals you were with on the night of the offending. During this period, you also recall being very depressed.

[37] Fortunately, since the accident, your family and those close to you have been very supportive of you. I am told your mother has put aside her differences with your father in order to focus on you and your rehabilitation. You also have good support from your father and stepmother. You also have a supportive partner who is standing by you and says she will support you on your release from prison.

[38] I accept that those two reports provide some explanation of the factors that led to you using alcohol and drugs and engaging with the type of people who encouraged you to drive the way you did that night. However, it would be contradictory in my view to acknowledge the factors in those reports and your youth, and provide discounts for these and your rehabilitative potential, and then also give you a discount for good

character. In my view, your personal circumstances looked at in the round, warrant a further five per cent discount.

[39] In all, I have afforded discounts totalling 50 per cent and that takes the prison sentence from seven years to three and a half years.

[40] The Crown submits that this might be a case where I should impose a minimum period of imprisonment. However, I consider that a minimum period of imprisonment is not warranted. The sentencing principles I spoke of earlier will be achieved by imposing a sentence that sends you to prison for the first time. It is up to you to show that the faith people have in you, and being able to turn your life around, is warranted. You will need to demonstrate to the Parole Board that that is the case before you are released.

[41] In addition to the prison sentence, I must order a minimum period of disqualification for at least one year. The cases I have been referred to indicate much more substantial periods of disqualification, often around five years, are imposed. However, I accept that too lengthy a period of disqualification, will impede your reintegration and rehabilitation. I also accept that a very lengthy period of disqualification is not necessary for the protection of the public given the information I have about your remorse and rehabilitative potential. Accordingly, you are disqualified from driving for three years, with that period to commence on your release from imprisonment.

[42] Mr Rapson, would you please stand now.

[43] On the charge of manslaughter you are sentenced to three and a half years' imprisonment.

[44] On the two charges of drove dangerously causing injury, you are sentenced to one year's imprisonment on each; to be served concurrently.

[45] As the remaining charges attract a fine-only penalty, you are to be convicted and discharged on each of them. The sentence I have imposed on the manslaughter charge takes account of the aggravating factors represented by these charges.

[46] You are also disqualified from driving for three years, with that period of disqualification to commence on the date of your release from imprisonment.

[47] You may stand down Mr Rapson.

Solicitors:
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