

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

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

**CRI-2023-012-1083
[2024] NZHC 1612**

THE KING

v

ROBERT FRANCIS TAYLOR

Hearing: 18 June 2024
Appearances: R D Smith for Crown
J A Westgate for Defendant
Judgment: 18 June 2024

SENTENCING NOTES OF DUNNINGHAM J

Charges

[1] Robert Francis Taylor, you are for sentence today on one charge of burglary¹ and one charge of manslaughter,² having pleaded guilty to both charges.

Facts of the offending

[2] The facts of the offending can be summarised as follows. You had been socialising and drinking on the evening of Saturday 26 May 2023. Shortly after 1 am in the morning of 27 May 2023 you, along with four friends, drove to a bottle store in Dunedin in a vehicle that had previously been stolen and which had stolen registration

¹ Crimes Act 1961, s 231, maximum penalty 10 years' imprisonment.

² Sections 160 171 and 177, maximum penalty life imprisonment.

plates fixed to it. You and others in the group had decided to burgle the bottle store to obtain more alcohol. It seems, though, that you acknowledge that the victim, your friend Michael McClelland, was not interested in burgling the bottle store, and he simply wanted to be dropped home.

[3] Seven crates of beer were taken during the burglary, valued at \$370. However, the burglary activated an alarm, and a member of the public also heard the burglary occurring and called the police. When your group was confronted by this member of the public, you all went back to the vehicle.

[4] With the car headlights turned off, you then drove the group away from the bottle store with the crates of beer. A police unit saw the vehicle and activated blue and red flashing lights signalling for you to stop. However, you accelerated away from the police driving dangerously around the residential streets in Dunedin attempting to evade them.

[5] You narrowly missed colliding with a member of the public's vehicle at one intersection when you drifted across the lane. You then ignored a give way sign at an intersection that crosses a main thoroughfare and travelled through the intersection at speed. You then continued travelling at speed down Melbourne Street which is, in part, a one-way street which narrows considerably and has a gentle raised chicane to slow traffic at the approach to an intersection which is controlled by a stop sign. You approached the intersection at speed and made no attempt to stop. You struck the curb of the chicane, causing you to lose control of the vehicle which spun clockwise before hitting a power pole and concrete wall. The vehicle's speed was calculated at being between 86 and 92 kms per hour as it travelled through a clockwise yaw, in other words, as it was moving sideways, immediately before the collision.

[6] Mr McClelland was in the rear left passenger seat and died at the scene from the injuries sustained in the crash. Your brother, Hakopa Taylor, was in the middle rear seat and was rendered unconscious and suffered from multiple fractured ribs. Thomas Bridgman, who was seated in the front passenger seat, received significant lacerations to his face.

[7] After the crash you left the vehicle and fled on foot without checking on your passengers. You were tracked by a police dog handler who located you nearby. The subsequent breath and blood alcohol testing administered on you showed you had 153 milligrams of alcohol per 100 millilitres of blood, when the legal limit is 50 milligrams.

[8] The events of that night have had a lasting and irreversible impact. That was made clear to me from the victim impact statement given by Mr McClelland's mother, Karla O'Connor. She quite rightly says that her son died a "senseless" death and it haunts her that he simply wanted to go home and not burgle the bottle store, but was caught up with what you and others had planned. You heard her graphically describe the guilt, grief, and sadness that she feels as a parent, wondering what she could have changed or done to avoid his death, but did not.

[9] I do also note, however, that you attended a restorative justice conference with her and it seems to have been of some help to her and I acknowledge it must have taken some courage to face up to, and speak to, the mother of your victim, noting your victim was also your friend and, then I have also heard today about the other family members of Mr McClelland that you have spoken to voluntarily, so I acknowledge that.

Setting the starting point

[10] With that background in mind, I now turn to the sentencing process itself. The lead charge is the charge of manslaughter. I way I am going to approach it is to consider that charge first and uplift it to reflect the additional charge of burglary.

[11] Sentencing when death has been caused by culpable driving is, as you have heard, very fact-specific.³ However, in the case of *R v Makoare*, it was said that:⁴

[17] A starting point of six to nine years' imprisonment is usually adopted in manslaughter cases where death arises from reckless driving under the influence of alcohol.

³ *Gacitua v R* [2013] NZCA 234.

⁴ *R v Makoare* [2020] NZHC 2289.

[12] As the Crown submissions note, the case of *Gacitua v R* identifies a number of matters which can be aggravating factors at sentencing as well as mitigating factors. I do not intend to set those out in full but will consider the extent to which they arise here.

[13] In your case the following aggravating features are present:

- (a) First, there was the significant consumption of alcohol before you drove, with your blood alcohol level being three times the legal limit.
- (b) Next, you drove aggressively and recklessly by driving around Dunedin streets at night with your car headlights turned off.
- (c) Your driving was also dangerous, noting you almost struck a member of the public's car and you failed to observe a give way sign and a stop sign at two separate intersections.
- (d) You also drove at grossly excessive speed for the roads you were driving on. As the summary of facts notes, at the time of the crash, you were estimated to be travelling between 86 and 92 kms per hour on a narrow street controlled by a stop sign and with a chicane to slow traffic.
- (e) Your driving also included failing to stop for police. They signalled for you to stop but you chose to drive aggressively away.
- (f) Your offending was also aggravated by the fact you were driving a stolen vehicle.
- (g) A further aggravating feature is that your driving did not just result in the death of Mr McClelland but caused injuries to your brother, and to Mr Bridgman.
- (h) Finally, you fled the scene of the crash without checking on your passengers and you were only apprehended when you were tracked

down by a police dog handler. While I understand you say you thought that the other passengers had got out too, you had no basis to think that without checking.

Crown submissions

[14] The Crown submits that this is offending where the starting point should be in the upper half of the range identified in *Makoare* and Mr Smith says a starting point of seven and a half to eight and a half years' imprisonment would be appropriate having regard to all the aggravating features I have just listed and the fact that you had committed a burglary, and he also says that is the point one arrives at by looking at cases with similar aggravating features to this case where the starting points of six and a half years' imprisonment to nine years' imprisonment.⁵

Defendant's submissions

[15] Your lawyer, Mr Westgate, has referred me to other cases where starting points of between six and seven years were adopted for dangerous driving causing death where other aggravating features were present. He submits that your culpability is similar to those in the cases of *R v Millar*, *R v Rapson* and *R v Stewart*, where starting points of six and a half, to seven years' respectively were taken. He submits that other cases referred to by Mr Smith, being *R v Savigny* and *R v Te Pou*, where a nine year and a nine year and a half year starting point were adopted, involved much greater culpability than here.

[16] In *R v Millar*, the defendant had consumed large quantities of alcohol and had a blood alcohol reading of 142 milligrams of alcohol per 100 millilitres of blood. The defendant decided to go on a joyride with two passengers who were expecting to be taken straight home. He drove at speeds of 100 km per hour and beyond in areas with speed limits of 50 km per hour, deliberately drifting through an intersection and mounting a kerb. He then accelerated to 100 km per hour on an open road, where he performed handbrake turns and donuts before heading back into town. On the way

⁵ *R v Millar* [2018] NZHC 625; *R v Savigny* [2021] NZHC 164; *R v Te Pou* [2023] NZHC 3483; *R v Rapson* [2024] NZHC 910; *R v Thomas* [2018] NZHC 819, and *R v Stewart* [2019] NZHC 1797.

back, while attempting to perform another drift, he lost control, crashed down a bank and into a tree. One passenger was killed and another was injured. A starting point of six and a half years' imprisonment was adopted. However, I note this offending did not have several of the aggravating features in your case, including evading police.

[17] In *R v Tranter*, a seven year starting point was imposed for deliberately bad driving at high speed while the defendant was recording the bad driver. However, in that case, Wylie J pointed out that the driving did not have the aggravating features of there being passengers or more people killed or injured which is the case here. At a blood alcohol level of 112 milligrams of alcohol per 100 millilitres of blood, the defendant was also less intoxicated than in your case and, this case did not have the aggravating feature of evading police. This might suggest that a higher point than seven years could be adopted for your case.

[18] Similarly, Mr Smith has pointed out that the case of *R v Porer* had a seven year starting point but fewer aggravating features.⁶

[19] However, I accept that in the case of *R v Stewart*, a seven year starting point was taken and is largely comparable in that it involved evading police, travelling at excessive speed, driving dangerously and injuring other passengers in addition to killing one of the passengers.

[20] I also accept that the case of *R v Rapson* is somewhat comparable. Again, a seven year starting point was taken where there were aggravating features of injuries to other passengers in addition to the death of a passenger, driving dangerously and at speed, failing to stop for police, and being under the influence of cannabis, as well as driving a vehicle that was not roadworthy.

[21] Having regard to that selection of cases, I am satisfied that a starting point of seven years on the manslaughter charge reflects the aggravating features of the driving offending, although I do note it could have been slightly higher.

⁶ *R v Porer* [2015] NZHC 1104.

[22] However, I also have to consider the burglary charge. That, on its own, could attract a starting point of around a year. While it was a commercial not a residential premise, the burglary did involve a modest degree of premeditation and had multiple defendants and noting that bolt cutters were used to gain entry. I accept the value of the goods taken was not high. Nevertheless, having regard to totality, I would uplift the sentence by six months to get to seven and a half years.

Uplift

[23] I also consider it is appropriate to uplift your sentence to reflect your criminal history despite Mr Westgate's submission to the contrary. This is not the first time you have been convicted of driving-related offending. In 2012 you were convicted for driving with excess breath alcohol and, in 2015 you were convicted of driving dangerously causing injury. You failed to stop at an intersection controlled by a stop sign, struck the victim's vehicle causing injuries to the victim and then fled the scene with your associate. You later admitted that you had been consuming alcohol prior to the crash. You were sentenced to imprisonment for one year, with leave to apply for home detention and you were also disqualified for driving for one year and three months.

[24] In my view, the fact that you have already injured someone through drinking and driving is highly relevant to your culpability and I consider an uplift of five per cent is appropriate.

[25] I now turn to what discounts should be applied to the starting point of seven and a half years.

Mitigating features

Crown submissions

[26] The Crown acknowledges that you attended a restorative justice conference and that you have expressed your remorse, although it notes that your delay in pleading guilty does not sit comfortably with genuine remorse. In Mr Smith's submission, a credit of perhaps five, but no more than 10 per cent would be appropriate.

[27] In respect of your guilty plea discount, the Crown notes that you initially faced charges of manslaughter and driving with excess breath alcohol causing death. The police had intended the latter charge to be laid in the alternative. However, it was not. You promptly pleaded guilty to the charge of driving with excess breath alcohol causing death but resisted the Crown's attempt to proceed with the manslaughter charge and amend the excess breath alcohol charge so that it was recorded as being laid in the alternative. That issue proceeded to a hearing in October 2023 and on 10 November 2023, this Court released a decision confirming that the Crown could amend the charge as of right.⁷ The Crown promptly filed a Crown charge notice to that effect on 13 November 2023. You subsequently pleaded guilty to the manslaughter charge on 5 March 2024.

[28] The Crown suggests in all those circumstances, a credit of no more than 20 per cent would be appropriate.

Defence submissions

[29] Your lawyer, Mr Westgate, submits that you are entitled to the full guilty plea discount of 25 per cent. He says it was made clear to the Crown that you accepted responsibility for the driving from the outset.

[30] He also submits that you are entitled to a full 10 per cent for participation in restorative justice, particularly noting your voluntarily approaches to Mr McClelland's father and to his former partner.

[31] Finally, Mr Westgate submits that the matters that are set out in the pre-sentence report and, more importantly, in the s 27 report, do address factors that are causative of your offending and entitle you to a further 10 per cent discount.

Discussion

[32] I consider that you are entitled to a 20 per cent discount for your guilty plea. It was not given at the first available opportunity, to the most serious charge of manslaughter and, I note, in the face of overwhelming evidence.

⁷ *R v Taylor* [2023] NZHC 3181.

[33] I accept you have shown genuine remorse and rehabilitative potential. Your participation in the restorative justice and in meeting with the other family members is commendable. While you cannot bring your friend back, you can, as you have been invited to, continue to support Mr McClelland's family.

[34] You also recognise that alcohol is a problem for you and is the cause of your offending behaviour and you have shown a clear commitment to address that both to the pre-sentence report writer and the s 27 report writer and I note that the pre-sentence report writer does assess you as being at low risk of reoffending.

[35] These reports reveal that you are valued by your employer having been in employment for six years and you were training to become a foreman. You are also a committed and engaged father to your daughter. All these things suggest to me that if you manage your issues with alcohol, you are unlikely to reoffend. So, for remorse and rehabilitative potential, I would give a 10 per cent discount.

[36] The next issue is whether there should be a further discount for background factors as identified in the s 27 report. That report identifies you have had several adverse childhood experiences. You were raised in poverty by a single deaf father who was a cannabis addict. You acknowledge he did his best. Your mother, however, was an alcoholic, who was mostly absent from your life and she had a capacity for violence. Parental abandonment was a reality for you. Furthermore, because your whakapapa Māori was through your mother's family, her absence from your life left you without any connection with your hapu or iwi and, without support from those social structures.

[37] You were involved with anti-social peers and crime from the age of 13. This likely normalised crime and substance abuse for you. The report also identifies the role of alcohol in your offending. While, of course, I cannot take account of the fact you were under the influence of alcohol in assessing the culpability of the offending, it is relevant that your background made you more susceptible to turning to alcohol and then offending under its influence. The report writer says you present as having a high pre-disposition to alcoholism both genetically and environmentally, given your mother's alcoholism and your father's cannabis addiction. You also had a sister who

abused alcohol and eventually committed suicide. Your behaviour understandably declined when she died as you dealt with your grief by even heavier alcohol and cannabis abuse, and other unhealthy behaviours which led to more crime.

[38] In short, the role models you were brought up with and the family dysfunction you experienced, predisposed you to problematic drinking. As the report writer points out, alcoholism is not determined by how often a person drinks, but by what happens when they do. And with you, alcohol abuse is clearly causative of your offending.

[39] For six years, when you were in a relationship where alcohol use was not tolerated, you were able to establish a successful career and start a family. There is no doubt in my mind that if you can address your issues with alcohol, you can remain offence free.

[40] I am satisfied that background factors were causally connected to your offending behaviour and a further discount of 10 per cent is warranted. When I take account of the five per cent uplift and the 40 per cent in discounts, the starting point will be discounted by 35 per cent.

Minimum period of imprisonment

[41] The Crown also submits consideration should be given to a minimum period of imprisonment to denounce and deter the offending, to hold you accountable for the harm done and to protect the community from any future similar behaviour.

[42] Your lawyer accepts this issue is finely balanced but says it would be double-counting to uplift the sentence for prior convictions and then take it into account in opposing a minimum period of imprisonment.

[43] While I accept your history of offending point in favour of a minimum period, I am not persuaded it is necessary in your case. You seem to have a much clearer understanding of what drives your offending behaviour now and you have expressed a commitment to address it which I have assessed as genuine. In my view, therefore, if you are able to convince the Parole Board that your release is consistent with the safety of the community, then I consider you should be released at that point.

Disqualification from driving

[44] The Crown points out that disqualification from driving in the range of four to five years is routinely imposed in cases involving vehicular manslaughter and a disqualification of at least five years is said to be appropriate here given this offending and your prior record.

[45] I accept a reasonably lengthy period of disqualification is appropriate and I would disqualify you for driving for four years to take effect from when you are released from custody.

Name suppression of police officers

[46] Finally, the Crown seeks an order suppressing the identity of the police officers who initiated the pursuit against you, noting they have been cleared of directly contributing to the crash and it is sought on the grounds that publication would cause undue hardship to the officers.

[47] There is no active opposition to that order, and I make it.

Sentence

[48] Mr Taylor would you please stand.

[49] On the charge of manslaughter, you are sentenced to four years and 10 months' imprisonment. You are also disqualified from driving for four years commencing on your release.

[50] On the charge of burglary, you are sentenced to six months' imprisonment to be served concurrently.

[51] You may stand down.

Solicitors:
Crown Solicitor, Dunedin

Copy to:
J A Westgate, Barrister, Dunedin