IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CRI-2022-091-1925
[2024] NZHC 1658

THE KING

v

ELIJAH DAVERON

Hearing:	21 June 2024
Appearances:	A J Brosnan for Crown S J Gill for Defendant
Judgment:	21 June 2024

SENTENCING NOTES OF GRICE J

Introduction

[1] Mr Daveron today I sentence you following a jury finding you guilty on 15 April 2024 on a charge of attempted murder.[1] I now set out the background facts that came out at that trial.

The offending

[2] The events occurred on 31 October 2021. The victim had been contacted by a Ms May who lured him to a bar in the Mana area. The messages exchanged between the victim and Ms May suggest that the victim was initially wary of meeting with her as he had heard that rumours were circulating about him being responsible for a recent

[1] Crimes Act 1961, s 173 — maximum penalty 14 years' imprisonment.

shooting toward Ms May's partner, Mr Coker. Ms May lied saying she did not know anything about that and reassured the victim she had not heard the rumours and she had not seen Mr Coker recently.

[3] The victim arrived at the meeting place and Ms May suggested they drive to the Camborne Jet Ski Club to consume drugs. The victim agreed and followed her, driving his vehicle in convoy behind her. When they arrived at the carpark, they each parked their vehicles and Ms May joined the victim in his vehicle, sitting in the front passenger seat.

[4] At the same time, Mr Daveron, Mr Coker, and Mr Tua were travelling from Kapiti to the carpark. They were in contact with Ms May to coordinate their movements. Mr Coker sent his partner, Ms May, a text message to say that they were travelling to the carpark, asking her to identify to him the victim's car. Mr Daveron, Mr Coker, and Mr Tua arrived at the Jet Ski carpark just moments behind the victim and Ms May. It was a fine Sunday afternoon and members of the public were nearby.

[5] The victim did not know anything about Ms May contacting her partner Mr Coker and the others in the car.

[6] When Mr Daveron, Mr Coker and Mr Tua got to the carpark, they parked near the victim's car. Mr Daveron got out of the car. He was armed with a .22 calibre firearm and opened the rear driver's side door of the victim's vehicle. Mr Daveron then fired a total of three .22 calibre bullets at the victim. One went past the victim's head, through the front passenger visor out the front windscreen, and the two other bullets entered the victim's torso and lower back area.

[7] Mr Daveron then returned to the vehicle, where Mr Coker and Mr Tua were still seated, and they drove away at speed towards Pāuatahanui. Ms May left the victim's car and returned to her own car. She drove off at speed following the vehicle carrying Mr Daveron, Mr Coker, and Mr Tua.

[8] The victim also left the carpark driving his vehicle out and travelled a short distance before he was stopped by police and received medical attention. As a result

of the shooting, he suffered lacerations of his right kidney and his large intestine was injured in four places. He was hospitalised and had emergency surgery to repair the damage.

[9] The three co-defendants (Ms May, Mr Coker and Mr Tua) pleaded guilty to charges they faced in relation to the shooting.

Approach to sentencing

[10] It is well known there is a two-step approach based on the case of *Moses v R*:[2]

(a) First, I must calculate the adjusted starting point, incorporating all the aggravating and mitigating features of the offence.

(b) Second, I incorporate all the aggravating and mitigating factors personal to the offender, together with any guilty plea discount (which is not relevant in this case).

[11] In determining the appropriate sentence, I must take into account the principles of sentencing which are set out in the Sentencing Act 2002.[3] I may also consider the other purposes which are set out under s 7 of that Act. In this case, I consider the following purposes are applicable:

(a) first, to hold Mr Daveron accountable for the harm done;[4]

(b) secondly, to promote a sense of responsibility in Mr Daveron for the harm he has caused;[5]

(c) thirdly, to denounce that conduct;[6]

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2 *Moses v R* [2020] NZCA 26, [2020] 3 NZLR 583.
3 Sentencing Act 2002, s 8.
4 Section 7(a).
5 Section 7(b).
6 Sentencing Act, s 7(e).

(d) fourthly, to deter Mr Daveron or other persons from committing this sort of offending;[7]

(e) fifthly, to protect the community;[8] and

(f) finally, to assist in Mr Daveron's rehabilitation.[9]

[12] Attempted murder may be committed in many different ways and circumstances, so there is no guideline case. But for serious offending, guidelines are given in *R v Taueki.* These are commonly used as assistance in attempted murder cases in sentencing.[10] The Court of Appeal in that case sets out a number of aggravating and mitigating factors which may be present in serious violent offending, and these are then evaluated to determine the appropriate starting point in a given case.[11] The seriousness of the particular factors must be established in the circumstances.[12]

[13] The sentencing bands set out in the *Taueki* case for serious violent offending are:

(a) Firstly, band one, which is three to six years' imprisonment.[13] That is for offending involving violence at the lower end of the spectrum of grievous bodily harm cases.

(b) Secondly, band two, which is five to 10 years' imprisonment.[14] That is for grievous bodily harm which features two or three of the aggravating factors.

(c) Finally, band three, which is nine to 14 years' imprisonment.[15] That is for serious offending which has three or more aggravating factors and where the combination of aggravating factors is particularly grave.

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7 Section 7(f).
8 Section 7(g).
9 Section 7(h).
10 *R v Taueki* [2005] 3 NZLR 372 (CA). See *Marsters v R* [2011] NZCA 505; *R v Kamal* [2014] NZHC 698; *R v Vaioleti* [2013] NZHC 3358; and *R v M* [2024] NZHC 576.
11 *Taueki*, above n 10, at [31].
12 At [30].
13 At [36]–[37].
14 At [38]–[39].
15 *Taueki*, above n 10, at [40]–[41].

Starting point

Submissions

[14] For the Crown Ms Brosnan says that a starting point of 12 years' imprisonment is appropriate. She submits that premeditation, serious injury, use of weapons, attacking the head, and acting in revenge are all aggravating features of this offending. She says there are no mitigating features of the offending. That indicates the offending would fall within the upper area of the *Taueki* band three cases. The Crown points to a number of cases, which I refer to below, in support of this submission.

[15] Mr Gill, for the defence, submits that a starting point of 10 years' imprisonment is appropriate. He accepts the aggravating features of pre-meditation, serious injury, use of weapons, and acting in revenge are present, and that there are no mitigating features of the offending. But he submits that it is unlikely that Mr Daveron was the person who organised the attack, given that Mr Coker and Ms May were the ones seeking retribution against the victim. Mr Gill also says that there is some speculation about the attack being directed at the victim's head and that was unproven. He says it is not clear whether the bullet that went through the front windscreen was a shot aimed at the head or simply a mis-shot at the body. Referring to the same comparator cases as the Crown, Mr Gill contends the offending in this case is comparable but somewhat less serious, warranting a starting point of 10 years' imprisonment.

[16] There is no victim impact statement in this case.

Aggravating features of the offending

[17] I now look at the appropriate starting point, having regard to those aggravating and mitigating features.

[18] I consider the following aggravating features are relevant to Mr Daveron's offending here:

(a) First, *premeditation*:[16] The offending involved a degree of planning and coordination between Mr Daveron and the three co-defendants. They worked together to execute a plan to lure the victim to the carpark where the shooting took place, with each having a specific role to carry out. Premeditated violence is more culpable than violence which is impulsive or carried out in reaction to an unexpected event. There is no doubt here there was planning involved, given the events leading up to the attempted murder. However, I accept the length and extent of Mr Daveron's involvement in the planning is unclear. Nevertheless, the aggravating factor is present to a moderate degree.

(b) *Serious injury*:[17] The victim suffered a lacerated kidney and four injuries to his colon as a result of the shooting, despite that (as Mr Gill points out) he was able to drive away from the shooting. He had to have emergency surgery to repair his colon and to create a colostomy. The victim spent three weeks in hospital and had to use a colostomy bag for about three months after while his colon healed. He has fortunately, as Mr Gill indicated, made a full recovery. The seriousness of the injuries at the time, the intense medical treatment required and their potential be to fatal (had there not been timely medical attention), make the serious injuries an aggravating factor of the offending. Fortunately, on the other hand it seems the victim will not suffer any long term or permanent disability as a result. I consider this factor is at moderate level on the scale of serious injury in the context of the offending.

(c) As to the *use of weapon*:[18] Mr Daveron fired a .22 calibre firearm at the victim at close range. The use of a lethal weapon such as a firearm is a serious aggravating factor in itself, however where the use of the firearm is premeditated, the criminality will be worse. In this case, Mr Daveron brought the firearm to the scene with the intention of using

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16 Sentencing Act, s 9(1)(i); and *Taueki*, above n 10, at [31(b)].
17 Sentencing Act, s 9(1)(d); *Taueki*, above n 10, at [31(c)].
18 Section 9(1)(a); *Taueki*, above n 10, at [31(d)].

it. In *Taueki* this was described as something which would be "severely aggravating".

(d) In relation to the factor of *acting in revenge*:[19] the evidence suggests that Mr Daveron shot the victim as part of a plan to take revenge for the victim allegedly shooting at Mr Coker. This is an attempt to take the law into one's own hands and an aggravating factor of the offending. The Crown emphasised that Mr Daveron was not known to the victim and appeared to be fulfilling the role of a "hitman" for the co-defendants. This does add seriousness of the offending but is related to premeditation, which I have already taken into account. I also note Mr Gill's submission that there does not appear to have been money changing hands for the hit.

(e) Next, *attacking the head*:[20] Mr Daveron fired one shot at a height of 13 cm above the headrest of the driver's seat, where the victim was sitting. Although the shot missed, the Crown contend the shot was clearly aimed at the victim's head. Although relevant, this factor can only be, in my view, a minor aggravating factor, as there is speculation about whether Mr Daveron was aiming the firearm at the head and there was no actual injury caused to the victim's head. In *Taueki*, this factor appears to highlight the significant injury that can be caused to a victim even without use of a weapon if an attack is aimed at the head. The factor of the offending or the violence aimed at the head referred to in *Taueki* is usually present if the attack is directed specifically at the head, because even without use of a weapon an attack aimed at the head can cause very serious injury. In the context of the present offending, where the attack was not clearly aimed at the head and a use of a firearm has already been identified as a serious aggravating factor, I accept Mr Gill's submission and do not consider this factor adds a great deal to the overall assessment of the offending.

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19 *Taueki*, above n 10, at [31(m)]
20 *Taueki*, above n 10, at [31(e)].

[19] The defence concedes and I agree that there are no mitigating factors of the offending in this case.

[20] Counsel have both referred to three cases which are similar but vary in their facts compared to this case. They involved a range of cases of attempted murder in which 10 to 11 years of imprisonment were imposed. I briefly review these cases.

[21] The first was *R v Jackson*, which took a starting point of 11 years' imprisonment.[21] The offending involved the aggravating factors of premeditation and use of a weapon, however, only one shot was fired and no serious injury was caused to the victim. An additional aggravating factor in that case was that the offender at all stages continued to express a wish that the victim had died.[22]

[22] *R v Nicol* involved very similar aggravating factors to those in the present case, including use of a weapon, attack to the head, serious injuries, and premeditation.[23] In that case, a starting point of 11 years was adopted.[24] Although the current offending has an additional aggravating factor of retribution, this is balanced by the fact that in *Nicol* the bullet fired lodged in the victim's head, whereas in the present case there was no head injury involved.

[23] The third case is *R v O'Brien*, which predated the *Taueki* decision.[25] However, it involved similar aggravating factors which are present in this case, including the use of a firearm, serious physical injury, a high level of premeditation, and a motive of revenge.[26] A starting point of between 10 to 11 years was adopted there.[27]

[24] The bands in *Taueki* for sentencing are to be applied flexibly. The Court must exercise judgement in assessing the gravity of aggravating features. At this stage of the two-step approach, "[t]he features of the offending … must be carefully assessed

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21 *R v Jackson* HC Whanganui, CRI 2006-083-1891, 7 February 2007.
22 At [5].
23 *R v Nicol* [2014] NZHC 2110.
24 At [19].
25 *R v O'Brien* HC Christchurch, T0307546/02, 17 October 2003.
26 At [7].
27 At [18].

in order to establish a starting point which properly reflects the culpability inherent in the offending".[28]

[25] Based on my assessment of the aggravating factors, and drawing on the relevant case law, I would place the offending within the low-mid range of *Taueki* band three of nine to 14 years, and I adopt a starting point of 11 years' imprisonment.

Personal aggravating and mitigating factors

Submissions

[26] I now to turn to the personal aggravating and mitigating factors. Mr Daveron has a number of previous convictions going back some years. The Crown submits that a small uplift is warranted for Mr Daveron's relevant prior convictions of aggravated robbery with a firearm, wounding with intent to cause grievous bodily harm, and aggravated robbery. The Crown has also reviewed the Alcohol and Other Drug Assessment report and PAC report and submits that no discount is warranted for background factors, addiction, or prospects for rehabilitation due to the details set out in those reports.

[27] Mr Gill acknowledged that Mr Daveron has a significant criminal history but submits that given the significant length of the likely sentence range, there is no need for further uplifts. He submits that a 10 per cent discount is warranted for cultural upbringing and deprivation issues, which he referred to as s 27 issues, on the basis that the Alcohol and the Corrections (or PAC) reports demonstrate the challenges in Mr Daveron's upbringing and family background, which have a "causative contribution to the offending".[29] He seeks an additional 10 per cent discount for Mr Daveron's addiction issues, submitting that all of these were clear drivers of the offending. In all, he submits a 20 per cent discount is appropriate.

Provision of Advice to Courts (PAC) report

[28] I have read the pre-sentence reports that have been supplied.

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28 *Taueki,* above n 10, at [42].
29 *Carr v R* [2020] NZCA 357 at [65].

[29] The first, the PAC report, observes that Mr Daveron's criminal history is predominantly made up of dishonesty and non-compliance-based offending. The present offending is an escalation in severity to his three notable convictions for serious violent offending.

[30] The report notes that while Mr Daveron continues to deny his involvement in the offending, he has admitted to substantial drug use during the period of offending. The report recommends that any treatment pathway include programmes to try to address the substance abuse. Mr Daveron advises the report writer that he does not believe he would be able to commit to a programme to address the substance use at this stage, but is open to trying. The report also observes that it is difficult to access programmes to address Mr Daveron's violence, given his continued denial of the offending. Mr Daveron does not meet the initial criteria for the Special Treatment Unit for Violent Offenders — that may change following this sentence, however. If sentenced to an extended period of imprisonment, prison staff will be able to work with Mr Daveron to determine the best treatment pathway, I am told.

[31] The report says that Mr Daveron is of Samoan Māori descent and grew up in East Auckland. He told the writer his upbringing was a struggle, as his mother did not work and they often had no food. Unfortunately, his father passed away following a serious illness while he was on compassionate release from prison. Mr Daveron was only seven years old at that stage. Mr Daveron began selling drugs once he left primary school with the intention of providing for his family, and has used drugs himself since 11. He went to youth justice facilities at age 16 and he is unable to maintain a job for any significant period, and has been in and out of custody for most of his adult life.

[32] Mr Daveron reports he has the support of his mother and his aunt. His aunt spoke to the report writer and confirms that. She is present here today to show her tangible support for him. She believes that Mr Daveron's difficult childhood is what has led to his current offending. She notes that while Mr Daveron's father came from a broken family himself, and his mother struggled to raise "five energetic children" on her own. Nevertheless Mr Daveron parents were loving.

[33] Mr Daveron has a young son with his ex-partner. She says that she remains supportive of Mr Daveron, despite their relationship having ended when Mr Daveron last returned to custody. In regard to Mr Daveron's background, she described him as "unloved and lost". While his former partner expressed disappointment that Mr Daveron had not turned from his habitual offending after the birth of his son as she had hoped, she also said he was a caring partner and "the best dad to our son".

[34] The report writer expresses concern about the limitations on Mr Daveron's support and that the people who are supporting him did not appear to have knowledge of his substantial issues with drug abuse.

[35] The Alcohol report indicated that Mr Daveron had been partaking in moderately harmful use of cannabis, methamphetamines, alcohol, cocaine, and hallucinogens.

[36] The report notes that in recent years Mr Daveron has demonstrated a pattern of reoffending and disregard for sentence conditions. He has 12 previous breaches of community-based sentences, and committed the current offending whilst subject to parole. He is assessed at a high risk of reoffending.

Alcohol and Other Drug Assessment

[37] The Alcohol and Drug Assessment report notes that Mr Daveron is the oldest of four siblings and his early memories are of "getting hidings and waking up in the morning and seeing mum's black eyes". After his father died of leukaemia, his uncle moved in, who Mr Daveron said would frequently drink and was violent toward the children and their mother on a daily basis. His uncle died by suicide when Mr Daveron was aged 15 years. Mr Daveron reported having a positive relationship with his grandparents, however alcoholism, drug abuse, violence and crime were commonplace among the extended family.

[38] The report notes that Mr Daveron first tried alcohol when he was nine, and drank significantly throughout his teenage years. He told the report writer that he used to commit burglaries to fund his alcohol use. He said prior to his first incarceration he

was drinking large quantities of alcohol most days, and experienced withdrawal symptoms while in prison.

[39] Mr Daveron said he first starting using cannabis at about 12 and rapidly "became addicted to it", so robbed "houses to get weed". He first smoked methamphetamine at 16, but it did not become a real habit until his first period of imprisonment, and upon release he committed numerous crimes to pay for this use.

[40] On release from prison, Mr Daveron abstained from substance use for three weeks but cited boredom and "a feeling" he "wanted to try it" as triggers to relapse to cannabis and methamphetamine use. He currently is not using any substances in order to maintain visiting privileges in prison, but also said there was "nothing to do in prison but "sit in our cells and watch telly". "I can't get any [drugs]; if it was there, I'd smoke it", he said.

[41] Mr Daveron said he would like to attempt rehabilitation but there is currently nothing currently available in prison. He is also concerned that he is too institutionalised and cannot see a future when he is already there. He has however been reading motivational "self-help" books while in prison. Mr Daveron has never had a psychiatric diagnosis, but reported feeling anxious in prison about people trying to kill him. He had also developed an online gambling habit last time he was in the community "to kill time".

[42] The report provides a provisional diagnosis of severe cannabis use, alcohol use disorder, nicotine use disorder and gambling disorder, all in remission in the controlled environment.

Previous convictions

[43] In relation to previous convictions, Mr Daveron does have an extensive list of previous convictions. However, as noted by counsel in the PAC report, most of these are not relevant in the context of the present offending. The only instances of violent offending on Mr Daveron's criminal record are aggravated robbery with a firearm in

2016,[30] aggravated robbery in 2010,[31] and wounding with intent to cause grievous bodily harm in 2008.[32]

[44] In those circumstances, I do not consider any uplift is warranted for Mr Daveron's previous convictions. The relevant offending occurred some time ago, and the present offending is significantly more serious than any of Mr Daveron's prior offending. Bearing in mind the principle of imposing the least restrictive outcome that is appropriate in the circumstances, in my view the sentence reached here for the present offending will be of sufficient length to achieve the relevant sentencing purposes in the circumstances.

Cultural background and addiction

[45] In relation to the reports and the cultural background, upbringing and addiction, I must take those into account. It is well established that the court must take into account the offender's personal, family, whānau, community, and cultural background. Both Mr Daveron's aunt and ex-partner have provided information, as has Mr Daveron, to the report writers to cover those relevant factors in their reports. In addition, the offender's drug use is relevant in considering a sentence even where it is not a proximate cause of the offending, but is a contributory factor in the general deprivation such as to limit the offender's options in life and make offending more likely.

[46] The most recent comments in relation to background circumstances were made in the Supreme Court decision of *Berkland v R*.[33] In that case, the Court explained that an offender's background in deprivation and family circumstances may be "diffuse" factors explaining the offending in general terms.[34] They contribute to the "chaotic and conflictual circumstances" in which offenders often find themselves and proximate factors such as addiction may be the result of that background.[35] Those

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30 Sentenced to four years and six months' imprisonment on 8 August 2018.
31 Sentenced to four years and two months' imprisonment (concurrent) on 6 August 2010.
32 Sentenced to one year and six months imprisonment (concurrent) on 6 August 2010.
33 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.
34 At [109].
35 At [109].

factors explain why an offender may have been drawn into offending in the first place and so, the Supreme Court says, are relevant to sentencing.

[47] In this case, the reports highlight Mr Daveron's background. They tell of an amount of deprivation and frequent exposure to violence and substance abuse from a young age. Mr Daveron has clearly struggled with addiction for most of his life and has admitted to using methamphetamine on a regular basis around the time of the offending, although not on the day of the offending. While not directly linked to the attempted murder, Mr Daveron's background and challenges with addiction have a broader general "causative contribution" to the circumstances he finds himself in and to the offending. They made him more predisposed to a lifestyle of offending and limited his choices. Sadly, his circumstances are substantially better than many who come before the court, and he continues to have the support of his aunt and ex-partner. His young son will be affected by the fact that his father is not present in his life and is serving a prison sentence.

[48] Mr Daveron has no connection with his whānau on his father's side, his father having died early on in Mr Daveron's life. Mr Daveron noted that he had only met many of his relatives for the first time when he was in prison. In that respect, Mr Daveron was disconnected from his Māori whakapapa.

[49] All these factors are interconnected. There is a wide range of discounts available for such factors, however the Court of Appeal has indicated that 30 per cent "is clearly at the upper end".[36] I consider that an overall discount here of 10 to 15 per cent discount is warranted for Mr Daveron's cultural background whānau factors and deprivation, as well as the addiction issues. I have listed the factors earlier.

[50] Although Mr Gill seeks that separate discounts be awarded for the various personal cultural deprivation and whānau issues, and the addiction issue on the other hand, I have dealt with these together given the close relationship between them all. This is not a case where addiction was a direct cause, such as in the drug dealing cases, where the addicted offender was driven by feeding his habit. Nevertheless, I accept

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[36] *King v R* [2020] NZCA 446 at [28].

Mr Gill's submissions on the relevance of the addiction issue, but combined with the other personal factors.

[51] I consider a discount of 15 per cent is warranted for those factors combined in this case.

Minimum period of imprisonment (MPI)

[52] As to the Crown's submission that the minimum period of imprisonment (MPI) should be imposed, that mechanism is available given the sentence imposed is of more than two years imprisonment. In those circumstances, I must consider whether a MPI should be imposed. Generally, persons serving long-term sentences (of more than two years) are eligible for parole after serving one-third of their sentence.[37] However, the court may impose a MPI if the court considers that the one-third default minimum would be insufficient to hold the offender accountable for the harm done, denounce the conduct, deter the offender or others, or protect the community.[38]

[53] The Crown submits that a 50 per cent MPI is warranted in order to fulfil the purposes set out in s 86 which I have referred to. The present offending represents an escalation from Mr Daveron's previous violent offending, and I accept that the attempted murder occurred while he was on parole for violent offending and there was a "hitman" quality to the offending. I also noted it occurred in a public recreational area on a Sunday afternoon. Mr Daveron also continues to deny the offending, and he is assessed as at high risk of reoffending. These are factors pointed to by the Crown.

[54] The Court of Appeal has noted that when considering an MPI or a minimum period of imprisonment, the Court will generally look at any aspects which "set the particular offending apart".[39] It went on to note that:[40]

> The central consideration must be culpability which necessarily is increased by matters such as unusual callousness, extreme violence, vulnerable or multiple victims and serious actual or intended consequences.

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37 Parole Act 2002, ss 4 and 84.
38 Sentencing Act, s 86(2).
39 *R v Brown* [2002] 3 NZLR 670 (CA) at [32].
40 At [32].

[55] Mr Gill submits that the likely significant sentence of imprisonment which is inevitable today recognises the s 86 factors, which are relevant to considering the minimum period of imprisonment. He submits that Mr Daveron should have the ability to appear before the Parole Board at the appointed time, when hopefully he would be responsive to rehabilitation and be considering his future.

[56] In my view, the factors listed by the Crown do not meet the threshold to set the offending apart so warranting a minimum period of imprisonment. The factors listed by the Crown do go to the seriousness of the offending, but have been largely taken into account in reaching my final sentence. I consider that the length of this sentence as it stands is sufficient to serve the purposes of s 86 in the circumstances. Although Mr Daveron is assessed at a high risk of reoffending, he has indicated a willingness to participate in rehabilitative programmes and there is clear difficulty accessing those programs while he is in prison. Given the views of the report writers, if Mr Daveron could have access to programmes that were targeted at his difficulties that would give him a greater chance of breaking his cycle of offending rather than further time spent in prison. Mr Daveron is also fortunate to have the tangible support of his aunt, and he has a young child waiting for him which should add to his motivation for the future. Accordingly, I do not impose any MPI.

[57] However, the use of the firearm in the public place on a Sunday afternoon, and firing three shots in the carpark with people enjoying the afternoon in the carpark, would warrant a prohibition order under s 39A of the Arms Act 1983. Mr Daveron is over the age of 18 years, committed a specified offence and therefore is eligible for the making of a firearm prohibition order. I am satisfied and the defence in general terms accepted, that such an order is: necessary, reasonable and appropriate to assist in managing the result to public safety. Therefore, I consider an order would be appropriate.[41]

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[41] The Crown had sought a firearm prohibition order and there was no opposition to the making of the order in the circumstances. However, prior to the sentencing notes being issued I became aware that the commencement date of s 39A of the Arms Act 1983 post-dated the offending and therefore such an order would not be validly made. Accordingly, while I indicated that an order should be made there is not power to do so and therefore I make no order and my indication that I would do so is of no effect.

Result

[58] Mr Daveron I will now impose your final sentence. Please stand. Mr Daveron, you are sentenced to nine years and fours' months imprisonment.

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Grice J

Solicitors:
Luke Cunningham & Clere, Wellington
Steve Gill Law, Lower Hutt