

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

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

**CRI-2022-004-8230
[2024] NZHC 1705**

THE KING

v

**FREDERICK GILBERT HOBSON
SHANE HENRY TANE**

Hearing: 26 June 2024

Appearances: A McClintock for Crown
D Young and J Anderson for Frederick Hobson
L Burns on behalf of I Tucker for Shane Tane

Sentence: 26 June 2024

SENTENCE OF MOORE J

Solicitors:
MC, Auckland

[1] Frederick Hobson and Shane Tane, you both appear for sentence today for your involvement in the aggravated robbery of the Rose Cottage Superette in Sandringham and in your case, Mr Hobson, for the murder of Mr Janak Patel in the aftermath of that robbery.

[2] However, before I go on any further, I want to acknowledge Mr Patel's family, friends and supporters who fill the public gallery of this large court room and I especially welcome you to the High Court.

[3] Your presence today in such numbers not only adds to the dignity and importance of what we are here to do but is also a fitting tribute to the memory of a fine family and community-minded man who needlessly and so tragically lost his life on that summer evening just over 19 months ago.

[4] I shall have more to say about Mr Patel later in these remarks. I will also have something to say about the hole that his death has left in so many lives, especially those of you who were closest to him. But for now, I just want to thank those who provided the Court with victim impact statements, and to acknowledge the courage it took to compose those and for the dignity of the tributes you pay, and for how Janak's death has affected you.

[5] It is my intention to keep these sentencing remarks as brief and simple as I can. Where it is possible to avoid legal technical speak I shall do so. It is important for the victims of the offending as well as those who committed it to understand how I have arrived at the conclusion I have.

[6] But sentencing is quite a technical process and sentencing for murder is even more technical as you will see. And sometimes, it is simply not possible to record everything which the law requires without descending into what might seem to some of you to be a completely different language. For that I apologise in advance.

[7] Where I can, I shall footnote in my written decision the more technical aspects of my analysis of the caselaw and my reasons for coming to a particular conclusion so that the lawyers and the media, as the eyes and ears of the public are able to understand

why I have decided as I have. There is, however, no need for that sort of detail to clutter and distract from the essence of what I need to say publicly. A copy of these remarks will be published on the Courts of New Zealand website and will be made available to the parties and the media later today.

[8] So with those preliminary remarks out of the way I now turn to the sentencing of both these men.

The offending

[9] Mr Hobson and Mr Tane, it is first necessary for me to set out the facts of your offending. These are well known to you and are, of course, contained in the summaries of fact which you both accept and to which you pleaded guilty. However, because sentencing is quintessentially a public function and must be conducted in open Court, it is necessary for me, in this public forum, to lay them out. I do so referring to you in the third person so that the facts and the roles that you each played are made clear.

[10] On the evening of Wednesday 23 November 2022, Mr Hobson and Mr Tane, together with a third man, Henry Fred, hatched a plan to rob the Rose Cottage Superette (“the Superette”). As Ms McClintock for the Crown explained in written submissions, Mr Fred’s charges have been stayed on compassionate grounds because he is terminally ill.

[11] The plan hatched was for Mr Hobson to enter the Superette armed with a knife to steal cash from the till and anything else he could manage to grab. Mr Tane’s role was to act as lookout and to help Mr Hobson in whatever way was necessary to make sure the plan was a success. Mr Fred was the getaway driver.

[12] Mr Patel and his wife, Vijeta Patel, were working at the Superette that evening. The couple had moved up from Hamilton to Auckland just the week before to look after the Superette while its owners, friends of theirs, were away.

[13] The implementation of the plan started shortly after 7:00 pm that Wednesday evening. Mr Fred picked up Mr Hobson and Mr Tane from Dominion Road in Mount

Roskill. Within five minutes, the three had driven along Fowlds Avenue and Haverstock Road in Sandringham.

[14] The Superette was – and still is – situated on the roundabout where these two streets intersect. It is distinctive because of its rose-pink exterior. However, in other respects it is just like so many other traditional corner dairies that we are all familiar with in suburban Auckland, and indeed in suburbs across the country. It is small; with shelves stacked with goods and produce, with a counter at the back and behind that, the staff area.

[15] What happened that evening was all captured on CCTV footage. I have watched the relevant footage several times and the sequence and events are clear.

[16] At 7:16pm, Mr Tane walked along Haverstock Road to within 100 or so metres of the Superette. He crossed paths with Mr Hobson a minute later. Mr Hobson continued his reconnaissance. He walked up and down Fowlds Avenue and the surrounding streets. He took some time scoping out the Superette as Mr Tane, with Mr Fred as driver, cruised around the surrounding streets.

[17] At about 7:55pm Mr Hobson can be seen crossing the road towards the Superette carrying a brown paper bag. He entered the phone booth directly outside the Superette. The CCTV camera's field of view covered him clearly. Cars can be seen passing in the background. Members of the public can be seen walking in the foreground. Mr Hobson pretended to be on the phone. He can be seen lifting up the receiver and holding it to his ear. He can be seen moving around inside the booth. Knowing what we know now, it is obvious Mr Hobson was watching the front door to see who was moving in and out of the Superette and gauging when the time was right.

[18] After about five minutes of this, the car driven by Mr Fred with Mr Tane in the front passenger seat drove into the parking bay outside the Superette, just metres away from the booth. As this happened Mr Hobson gestured for it to move away. Mr Tane, signalled back to Mr Hobson. These signals confirmed that the robbery was about to start.

[19] Mr Fred and Mr Tane pulled out of the parking bay and immediately turned left at the roundabout. As soon as they were gone Mr Hobson sprang into action. He can be seen pulling up a bandana over the lower part of his face. He raced into the Superette. Cameras inside show very clearly what happened next. Mr Hobson can be seen carrying a knife in his right hand and in the other was the paper bag. He forced his way through a set of low wooden swing doors and ran straight to the counter at the back. Mr and Mrs Patel were in the rear staff area and cannot be seen in the footage at this point. Mr Hobson ran straight to the cash register.

[20] Mrs Patel saw him and ran through the back door to escape. Mr Patel stepped out from the same door. It was here that Mr Hobson first confronted him. He held the knife towards Mr Patel. Mr Patel retreated. He went back into the staff room.

[21] Mr Hobson then picked up the cash register before turning to grab a number of items nearby. These included a box of butane lighters and some vapes. He then left the counter area and made his way outside. It is striking seeing the footage of him leave because he seemed to be in no hurry at all. On leaving the Superette, he turned left down Haverstock Road and walked calmly, almost sauntering, in the direction of Duncan Avenue.

[22] Back at the Superette, Mr Patel grabbed a hockey stick from the back and ran after Mr Hobson. He was quite some distance behind.

[23] In the meantime, despite Mr Hobson's apparent insouciance, he covered about 150 metres before reaching some household wheelie bins sitting on the grass kerb. He opened one of them up and put the cash register inside before dragging the wheelie bin onto the footpath.

[24] It was at about this point that Mr Patel caught up with him. What happened from here is also clearly captured on video. The courageous Mr Patel, who from the video was clearly very the much smaller of the two, approached Mr Hobson carrying the hockey stick. Mr Hobson dropped the brown paper bag and pulled up his bandana.

[25] He picked up a tree branch, turned around aggressively and advanced towards Mr Patel with the branch in his left hand and the knife in the other. Initially Mr Patel backed away. But then he advanced on Mr Hobson shouting and swinging the hockey stick. He did so with such vigour and tenacity that Mr Hobson began to back off.

[26] Mr Hobson waited for Mr Patel to swing the hockey stick again. When he did, he dropped the branch and lunged at Mr Patel pushing him back-first onto the ground. Mr Hobson then leant over him and held him down with his left hand. Using his right hand, he stabbed Mr Patel with the knife at least three times in quick succession.

[27] Then Mr Hobson grabbed the hockey stick and attempted to wrench it from Mr Patel's grasp. This had the effect of pulling Mr Patel back onto his feet.

[28] As Mr Hobson held onto the hockey stick with his left hand, he stabbed Mr Patel another three times. The final blow was to Mr Patel's neck. This caused him to drop to the ground again. Mr Patel moved around the wheelie bin to shield himself from his attacker. Mr Hobson approached him again and attempted to stab him.

[29] Despite this, Mr Patel managed to break free. He began to run back towards the Superette. However, he collapsed after just five steps. It was at this point that Mr Hobson can be seen to turn around. He took hold of the wheelie bin and walked off casually along Haverstock Road in the same direction he had earlier with the wheelie bin in tow. When he got to the intersection with Duncan Avenue, he took the cash register out of the bin. There he rendezvoused with Mr Fred and Mr Tane who were waiting in the car. He got into the back seat with the cash register and the three men drove off. As they did Mr Hobson changed his clothes.

[30] Meanwhile Mr Patel managed to get back up onto his feet and slowly made his way back towards the Superette. He stopped several times leaning against fences. When he finally made it back to the rear of the Superette he collapsed on the ground. He was bleeding profusely from various stab wounds. He died from his injuries a short time later.

[31] At the post-mortem it was found that Mr Patel had suffered six stab wounds, all to the left side of his body. Plainly the cause of death was knife-wounds.

[32] The three men spent the rest of that evening in each other's company. They spent money at a petrol station and at a gaming parlour. The following day they spent more time off and on together.

Victim impact statements

[33] I have received five victim impact statements, four of which were read out in open Court this morning. The fifth, that of Vijeta Patel, Mr Patel's wife, was not read out but I have read it carefully and have taken into account what she had to tell me.

[34] The other four victim impact statements came from Mr Patel's mother and father, his sister and his brother-in-law. I won't repeat what they said. You heard it. Needless to say, what each had to say about a son, a brother and a brother-in-law was as moving as it was deeply sad. Their loss is inconsolable.

[35] All speak of Janak Patel as a quiet, humble and kind man. His youngest sister described him as a wonderful uncle to her children; a man connected with nature, a pure soul, a man who lived his life caring of all living beings and sharing everything that he had. She said he put his family before himself and that he was a man in harmony with the world.

[36] At the time of the murder, Mr Patel's parents were visiting New Zealand experiencing what should have been, as one described, "the trip of a lifetime". Instead, it turned into unimaginable horror. They spoke of their utter disbelief in learning of their son's death and the enduring sense of loss they feel.

[37] Mrs Patel's statement was not read in open Court. Her's is a very personal experience and in deference to her privacy I shall not repeat what she told me except to say that she has been hit in ways that will leave lifetime scars. She described how her world has collapsed and how the dreams she and Janak shared for a life in this country have been shattered.

Mr Hobson's sentence for murder

[38] I now turn to the sentencing process itself. I start with you, Mr Hobson, on the charge of murder.

Approach to sentencing for murder

[39] Everyone who commits murder must be sentenced to life imprisonment unless such a sentence would be manifestly unjust, given the circumstances of the offence and the offender.¹ Both your lawyers and the Crown agree that there are no such circumstances in your case to depart from that presumption. I must and I will sentence you to life imprisonment. But that is not the end of the sentencing exercise. I need to explain why.

[40] The real issue in your case is setting the length of the minimum period of imprisonment that I must impose in addition to life imprisonment. That is the period of imprisonment that you must serve before becoming eligible for parole. I shall refer to it as the MPI.

[41] What I need to emphasise however is that the MPI is *not* your sentence. Your sentence is life imprisonment. There is a widespread public misunderstanding of what an MPI is and what life imprisonment is. If you will bear with me for a moment I need to explain the difference, particularly in this case which has captured so much media and public attention. I hope this explanation may go some way to correcting these popular misconceptions because they are unhelpful and potentially damaging to the process.

[42] When someone is sentenced to life imprisonment with an MPI, it is often incorrectly believed that the MPI is the sentence they will serve and that the defendant will somehow automatically get out of jail after that. That is wrong in two important ways.

¹ Sentencing Act 2002, s 102(1).

[43] First, the MPI is the term of imprisonment that an offender must serve before they can even be contemplated as eligible for parole.² It is up to the Parole Board to decide whether, when or even if ever a particular defendant sentenced to life imprisonment should be let out.³ The Board's paramount consideration in deciding whether an offender should be released is the safety of the community.⁴ Other relevant considerations include that the rights of victims are upheld.⁵ It is far from certain that a defendant, on reaching the end of their MPI, will be released.

[44] Secondly, even if a defendant is granted parole, they remain subject to their life sentence until they die.⁶ There are restrictions on where they may live and what they may do for work.⁷ They may not leave the country without their probation officer's prior written consent.⁸ If they breach their release conditions or commit an offence punishable by imprisonment, they can be recalled back to prison.⁹ These restrictions remain for the whole of a defendant's life.

[45] I hope this explanation goes some way to correcting this misunderstanding. Now, back to the sentencing.

[46] Section 103 of the Sentencing Act 2002 says that if a person is sentenced to life imprisonment for murder, the Court must impose an MPI of not less than 10 years.¹⁰ It further requires that this MPI must be what the Court considers necessary to hold an offender accountable for the harm done to the victim and the community; to denounce the conduct in which the offender was involved; to deter the offender and others from committing the same or similar offences and to protect the community from the offender.

² Parole Act 2002, s 84(3).

³ Sections 6(4) and 109(1).

⁴ Section 7(1).

⁵ Section 7(2)(d).

⁶ Section 29(4)(b).

⁷ Section 14(1)(c), (f) and (g).

⁸ Section 14(1)(fa),.

⁹ Section 61(b) and (c).

¹⁰ Sentencing Act 2002, s 103(2).

[47] However, if the murder involves one or more of the aggravating factors listed in s 104 of the Act, then the Court *must* impose an MPI of at least 17 years unless it would be manifestly unjust to do so.¹¹

[48] This means that there are three questions I must answer in deciding what MPI you must serve:¹²

- (a) First, do any of the aggravating factors listed in s 104 of the Sentencing Act apply here?
- (b) Secondly, what MPI would be appropriate but for s 104?
- (c) Thirdly, if s 104 does apply, would an MPI of 17 years be manifestly unjust?

[49] And so, I now turn to consider each of those three questions.

Do any of the aggravating factors in s 104 of the Sentencing Act apply?

[50] The first question is whether any of the aggravating factors in s 104 apply.

[51] The Crown says that there are two aggravating factors listed in s 104 that apply in your case:

- (a) first, that the murder was committed in the course of another serious offence, in this case aggravated robbery; and
- (b) secondly, that the murder was committed in an attempt to escape and avoid detection for the aggravated robbery.¹³

[52] So, the question for me is whether either of these factors is present here. I am satisfied they are not for these reasons.

¹¹ Section 104(1).

¹² *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 at [25].

¹³ That is, whether s 104(1)(a) of the Sentencing Act applies.

(a) Was the murder committed “in the course of” the aggravated robbery?

[53] Section 104(1)(d) applies if a murder is committed “in the course of another serious offence”.

[54] What that means is that the serious offence must be a prior event to the murder, and the murder must then be committed in the course of *executing* that prior event.¹⁴

[55] There is no dispute here that the aggravated robbery which you, Mr Hobson, admit you committed was a serious offence. It is also rightly agreed between the lawyers that the aggravated robbery was complete by the time you left the Superette carrying the items you had stolen. So, by the time you stabbed Mr Patel the aggravated robbery was over.¹⁵ The question is what does this mean for the purposes of s 104?

[56] The Crown Solicitor, Ms McClintock, says that regardless of when the aggravated robbery was complete as a matter of law, you still murdered Mr Patel “in the course of” the aggravated robbery for the purposes of s 104. In short, she says it makes no sense to find that s 104 would apply only if you had stabbed Mr Patel inside the store rather than outside it.

¹⁴ *R v Slade* [2005] 2 NZLR 526 (CA) at [39].

¹⁵ I consider this conclusion to follow from the Court of Appeal’s decision in *R v Tahana* [2021] NZCA 497, (2021) 29 CRNZ 1002.

In that case, the Court had to consider whether the defendant could, as a matter of law, be convicted for aggravated robbery. The defendant had taken bottles of alcohol with the requisite intent for theft from the shelf of a store before proceeding outside with them. After an attendant followed him outside to ask him to come back and pay, he was alleged to have pulled out a knife which he pointed at the attendant. The Court of Appeal held that as a matter of law, the defendant could not be convicted for aggravated robbery on these facts. At the point that the defendant was outside the store, heading away without having paid for these goods, the Court said that the theft was complete and that the attendant was attempting to recover it. The Court thus considered that the alleged threat of violence did not accompany the theft nor prevent or overcome resistance to the bottles being stolen, but rather prevented the recovery of items that had already been stolen (see [50] of the Court’s decision).

I consider the rationale of the Court of Appeal’s decision to be applicable and binding on me here. Here, Mr Hobson’s theft was one by taking. While the theft might have continued as Mr Hobson carried the cash register and other items out of the Superette, the items had plainly been stolen by the time Mr Hobson and Mr Patel fought, 150 metres down Haverstock Road.

[57] Your counsel, Mr Young, disagrees. He says that s 104 only applies if you murdered Mr Patel in the course of executing the aggravated robbery. Because the robbery was complete by the time you stabbed Mr Patel, he says s 104 does not apply.

[58] I agree with Mr Young. The Court of Appeal's interpretation of s 104(1)(d), which is binding on me, is that the provision refers to where a murder is committed in the course of executing another serious offence.¹⁶ That is not the case here. In running after you and confronting you with a hockey stick, Mr Patel was attempting to recover the items you had stolen. The theft and therefore the aggravated robbery was well over and complete by that point.¹⁷ It was therefore not committed in the course of "executing" the aggravated robbery. I have footnoted a more detailed analysis of this reasoning in my written decision. I won't clutter my remarks with those technical details here.

(b) *Was the murder committed in an attempt to avoid detection for the aggravated robbery or to otherwise subvert the course of justice?*

[59] Section 104(1)(a) applies if a murder is committed in an attempt to avoid any person's detection, prosecution or conviction for any offence, or in any other way to attempt to subvert the course of justice.

[60] The Crown says that this is such a case. It says you murdered Mr Patel in an attempt to protect your stolen property and to avoid detection for the aggravated robbery. Ms McClintock says this is supported by the fact that you pulled up your bandana moments before you stabbed Mr Patel. She says it is an available inference I can draw beyond a reasonable doubt that in doing so you were trying to avoid capture because if Mr Patel had succeeded in overpowering you, you would have been caught.

[61] Mr Young disagrees. He says that as soon as it became obvious to you that Mr Patel no longer posed a threat you walked away. You didn't chase after him. As far as you were concerned, for whatever reason, he was unable or unwilling to confront you anymore. He says this is obvious because of the casual way you walked to the

¹⁶ *R v Slade*, above n 14, at [39].

¹⁷ As the Court of Appeal explained in *R v Tahana*, above n 15, at [8]–[10], aggravated robbery is an aggravated form of robbery which is, itself, an aggravated form of theft.

getaway car and got in. In other words, you didn't attack Mr Patel because you wanted to eliminate him as a witness to the aggravated robbery as the cases involving s 104(1)(a) describe.

[62] In considering this point it is important to go back to the actual words of s 104(1)(a). It refers to murders committed to “avoid the detection, prosecution or conviction of any person for any offence or in any other way to attempt to subvert the course of justice”. Significantly, nowhere in the section does it refer to attempting to escape. Attempting to escape and avoiding detection are two quite different things. If Parliament in passing the section intended it to cover murders committed to enable escape, then it would have said that in s 104. That is for Parliament to do, it is not for Judges to do.

[63] Nor can I infer beyond reasonable doubt on these facts that your attack on Mr Patel was to eliminate him as a witness. The purpose of s 104(1)(a) is to capture murders carried out so that an offender can get away with their offending. For example, where a victim is killed to prevent them from reporting the crime or so they cannot identify an offender to the Police. That is the common theme in many of the cases where s 104(1)(a) has applied.¹⁸

[64] That is not what happened here. You killed Mr Patel to thwart his extraordinarily heroic and courageous actions in chasing after you despite knowing you were carrying a knife. Mr Patel was determined to recover what you had stolen from him and you were determined to stop him from doing that. You didn't kill him to prevent him from identifying you to the Police. It was too late for that because Mr Patel was not the only witness you knew who could describe you despite the bandana. Mrs Patel could do that too. I also regard it as stretching the meaning of

¹⁸ Mathew Downs (ed) *Adams on Criminal Law - Sentencing* (online ed, Thomson Reuters) at [SA104.01] referring to *R v Kumar* [2015] NZHC 954 (burning victim to death to avoid detection for earlier assault); *R v Lundy* (2002) 19 CRNZ 574 (CA) (murder of daughter who witnessed the offender killing his wife); *R v Bell* CA80/03, 7 August 2003 (murder of three witnesses to an aggravated robbery who could identify him); *R v Goodman* [2008] NZCA 384 (murder committed in attempt to avoid detection for burglary); *Roigard v R* [2019] NZCA 8.

s 104(1)(a) to say that in preventing Mr Patel from recovering the stolen items, you were somehow subverting the course of justice.¹⁹

[65] For these reasons, I do not accept that s 104(1)(a) applies.

(c) *Do any other s 104 aggravating factors apply?*

[66] The Crown does not suggest that any of the other aggravating factors listed in s 104 apply in your case. That is a responsible concession and I agree.²⁰

What MPI would be appropriate under s 103?

[67] I now turn to consider what the appropriate MPI for your offending should be under s 103 or, put another way, having found that s 104 does not apply, what MPI should be adopted. That is done by considering comparable cases and what MPI was imposed in those. It involves setting a starting point MPI before considering what adjustments need to be made to take into account your personal circumstances.

(a) *What is the appropriate starting point MPI?*

[68] In terms of a starting point, I consider the following aggravating factors are present in your murder of Mr Patel:

- (a) First, your offending involved the use of a weapon and actual violence. As the Crown submits, you quickly overpowered Mr Patel's challenge with the hockey stick. Having done so, you then proceeded to stab him in a frenzied way. And it was not just a single attack. After stabbing him while you held him down on his back and after Mr Patel got back up you stabbed him another three times, the last being to his neck.

¹⁹ As the Court of Appeal said in *R v Green* CA461/04, 2 June 2005 at [27], the s 104 criteria should not be construed in an over-literal fashion or inconsistently with the clear purpose that s 104 cases will be very much the exception and not the norm.

²⁰ I record for completeness that I do not consider the aggravating factors in s 104(1)(e), (g) or (i) to apply. While the murder of Mr Patel was brutal, cruel and callous, it was not especially so as to engage s 104(1)(e). Neither was Mr Patel particularly vulnerable in the sense contemplated by s 104(1)(g), nor the circumstances of Mr Hobson's offending here so exceptional as to fall within s 104(1)(i).

- (b) Secondly, your offending has had a devastating impact on Mr Patel's family. It has also outraged the community and induced fear in those many other shopkeepers like Mr and Mrs Patel who run similar, small businesses like the Rose Cottage Superette.
- (c) And, thirdly, your offending took place in the aftermath of a premeditated and serious aggravated robbery in which others were involved. While I accept that Mr Patel's actual murder was not premeditated in the sense there was a plan to kill or to cause serious bodily harm to him, it is plain that the aggravated robbery of the Superette involved considerable pre-planning. For example, you waited for over an hour and scoped out the target before launching your attack. And, as the Crown submits, both crimes were closely linked.

[69] The Crown and Mr Young have provided me with a large number of cases which they say help inform what MPI should be adopted under s 103. The cases the Crown refers to all involved murders which took place in the course of executing aggravated robberies.²¹ Mr Young's cases vary in factual context, but generally involved either:

- (a) a sudden and unexpected altercation following which the offenders murdered their victims in excessive self-defence;²² or
- (b) fighting that resulted in the relevant victims sustaining stab wounds causing their death.²³

[70] In light of the cases the Crown has referred me to, Ms McClintock says that an overall MPI of at least 15 years, taking account of your personal circumstances, would be appropriate. Mr Young submits that a starting point MPI in the region of 12 to 14 years is warranted.

²¹ *Kee v R* [2011] NZCA 229; *Clarke v R* [2021] NZCA 151 and *R v Davis* [2013] NZHC 2716.

²² *Daken v R* [2010] NZCA 212 and *R v Rapana* [2015] NZHC 3331. I note that in supplementary submissions, Mr Young referred to *Broughton v R* [2018] NZCA 70 and *R v Filoa* [2022] NZHC 2461.

²³ *R v Eaton* [2021] NZHC 3357; *R v Ellery* [2022] NZHC 2251 and *R v Kipa* [2023] NZHC 1642.

[71] Of all the cases I have been referred to by both counsel, I consider *Kee* and *Clarke*,²⁴ two of the cases the Crown referred to, to be the most helpful here. In both the victims were murdered in the course of aggravated robberies – in *Kee*, at a liquor store; in *Clarke*, at the victim’s own home.

[72] As in your case, the aggravating factors present in those two cases included the use of a weapon; actual violence; a premeditated aggravated robbery with multiple defendants; stolen property and very serious impacts on the victims’ families. In both, 17-year MPIs were adopted on account of s 104(1)(d) applying.²⁵ Relevantly however in *Clarke*, the Sentencing Judge (and the Court of Appeal) considered that an MPI of *at least* 15 years was justified for the offending in that case under s 103.²⁶

[73] While there are differences between those two cases and yours, I consider your offending to be generally comparable. And, although I accept that you did not murder Mr Patel “in the course of” your aggravated robbery for the purposes of s 104 as happened in those cases, it is nevertheless a critical aggravating factor that you killed Mr Patel in the robbery’s immediate aftermath. While your murder of Mr Patel was not premeditated or planned, Mr Patel’s heroic response can hardly be described as a sudden and unexpected attack on you akin to the excessive self-defence cases your counsel has referred me to. The Crown is right to say that but for the robbery, Mr Patel would not have died.

[74] Here, s 103 requires me to set an MPI necessary to satisfy the purposes of:

- (a) holding you accountable for the harm you caused Mr Patel, his family, and the community generally;

²⁴ In *Kee v R*, above n 21, the victim was killed as part of the defendant’s aggravated robbery of a liquor store. The defendant was one of six involved, and one of three who entered the store. As the defendant’s two other co-defendants removed boxes of liquor, the defendant shot the victim as the victim attempted to remove the till. A 17-year MPI was adopted on account of the fact s 104 applied.

In *Clarke v R*, above n 21, the victim was shot dead by one defendant in the course of his aggravated robbery with two others. The defendants had planned to steal drugs and money from the victim, arriving at the victim’s property to do so. Other aggravating factors not present in Mr Hobson’s case included the unlawful entry of the victim’s dwelling place at night, and the fact that the victim’s partner had been shortly detained while some of the defendants went in search of the victim. See *R v Chase* [2018] NZHC 3332 at [26]–[30].

²⁵ *Kee v R*, above n 21, at [20] and *Clarke v R*, above n 21, at [40]–[42].

²⁶ *Clarke v R*, above n 21, at [41].

- (b) denouncing your conduct;
- (c) deterring you and others from committing the same or similar offending; and
- (d) protecting the community from you.

[75] Reflecting on that requirement, I consider the need to denounce and deter your conduct to be especially strong factors engaged by your offending. What you did sparked a national outcry, including a protest and community vigils in solidarity with Mr Patel and his family. It was a lightning rod for community backlash against the rise of aggravated robberies in retail stores across the country. It remains significant in the memory of the public as can be seen by the significant media presence in this Court this morning.

[76] Bearing the relevant purposes in mind, and having regard to *Kee* and *Clarke* as discussed, I consider a starting point MPI of 16 years is justified.

(b) *What adjustments should be made to the starting point MPI for personal circumstances?*

[77] I now turn to consider what adjustments should be made to that MPI. While the seriousness of your offending must be my particular focus in setting your MPI for murder,²⁷ adjustments may nevertheless be made on account of your personal circumstances. This just means that your mitigating factors play a lesser role than they otherwise would if I was sentencing you for an offence other than murder.²⁸

(i) *Personal aggravating circumstances*

[78] The Crown says that any MPI should take account of your personal aggravating factors. These are:

- (a) that you were subject to a Returning Offender Order on 20 April 2022 when you were deported from Australia; and

²⁷ *Webber v R* [2021] NZCA 133 at [33]

²⁸ At [33], citing *Hohua v R* [2019] NZCA 533 at [44].

- (b) that in the proceeding two months before Mr Patel's murder, you committed burglary, aggravated assault and were found in possession of offensive weapons.

[79] Mr Young responsibly accepts that an uplift is warranted here in the region of six months. I agree.

(ii) *Personal mitigating circumstances*

[80] I now turn to consider your personal mitigating circumstances. Mr Young submits that there are three: your guilty plea; your remorse; and the causative contributors to your offending that evening.

[81] Mr Hobson, you are aged 36. You are not a young man.

(1) *Guilty plea*

[82] I start first with your guilty plea. You pleaded guilty on 13 March 2024, less than two months out from trial. While this was relatively late in the piece, I accept that some credit should be given for this factor. As the Crown responsibly accepts, your guilty plea means that Mr Patel's family have been spared the stress and ordeal of enduring a trial and the State has been spared the very significant costs involved in a full-blown, contested trial. That must count for something.

[83] Where an MPI for murder is involved, the appropriate discount for a guilty plea is generally in the region of one to two years.²⁹ Mr Young submits that a discount in the region of between one to two years should apply. The Crown says that an adjustment of no more than one year is necessary to recognise your guilty plea and other mitigating factors.

[84] I consider a discrete reduction of one year to be appropriate.

²⁹ *Frost v R* [2023] NZCA 294 at [78] and [86].

(2) *Remorse*

[85] I next come to your remorse. You have written a letter to the Court. It was read out by Mr Young. It expresses your remorse and acceptance of responsibility for murdering Mr Patel. I have read it. Consistent with the report you have provided under s 27 of the Sentencing Act, and the pre-sentence report, I do accept that you are remorseful.

[86] You say you make no excuses, and you take full responsibility for what you did that evening. You go so far as to say you have written the letter, not to seek a discount on sentence, but rather to express your sincere regret for what you did and the consequences it has had on Mr Patel's family and others. To the s 27 report writer you said you had used methamphetamine and GBL in the lead up and that you were severely sleep deprived and homeless at the time.

[87] Despite this, I am not prepared to give you a separate and discrete credit for remorse. I consider that any recognition for remorse is adequately reflected in the reduction I gave you for your guilty pleas. It was Parliament's intention that in sentencing for murder, the seriousness of your offending should be my focus when setting an MPI.³⁰

(3) *Causative contributors to Mr Hobson's offending*

[88] Finally, I turn to the causative contributors to your offending – that is, to those features of your background, upbringing and what was happening immediately before your offending which helps explain why you offended as you did. I have received three reports – a s 27 report, a pre-sentence report and an alcohol and drug report – which usefully address this question.

[89] While most of the information contained in those reports is self-reported, your s 27 report was put together following interviews with your mother who lives in Australia and with your former partner – and the mother of your three children – who lives in Rotorua. I take what follows from all three of the reports I have mentioned.

³⁰ *Webber v R*, above n 27, at [33].

[90] You were born in Kaitaia and grew up in Awanui, hailing from Ngāi Takoto on your father's side. Growing up, you were the middle child in a family of three boys. Your father's deteriorating health meant that he became increasingly violent, and you say that violence was often directed at you.

[91] Despite feeling disengaged with school, you achieved NCEA Levels One and Two. You suffered setbacks, however, when you missed out on joining the New Zealand Army as you had hoped, and also when your father died when you were 18.

[92] The s 27 report records that your relationship with alcohol became problematic after your father died, and that this was a driver of your early offending. It was in your early twenties however that you were introduced to methamphetamine. Referring to your time in Australia, you told the s 27 report writer that your addiction grew to consuming a gram of methamphetamine a day, often acquired on credit which you would pay off through criminal activities.

[93] You were then sentenced to prison in Australia. You told the s 27 report writer that while in custody, you were introduced to heroin and that your drug use escalated even further. This period was challenging for you, given you were isolated from your family, and culturally dislocated in Australia. You then returned to New Zealand after being deported as a convicted non-citizen.

[94] Having lived in Australia for many years, you said that this transition left you disoriented and without familiar and adequate support. Your struggles with substance abuse also persisted. After an initial period of housing on your return to New Zealand, you explained how you eventually became homeless, relying on friends or otherwise living on the streets. You also said you struggled to find and retain work. This led to you undertaking criminal activities to meet your needs and to sustain your drug addiction, such as stealing clothes to sell to drug dealers in exchange for methamphetamine.

[95] The essence of the three reports is that your deportation, addiction to methamphetamine, homelessness and employment struggles causatively contributed

to the situation that unfolded that November evening in 2022. I accept that your final MPI should reflect that reality, although modestly.

[96] The reports also say that you have never received treatment for your drug addiction, but that you are open to receiving treatment while in custody.

[97] Taking account of all of those factors and while appropriately acknowledging that the seriousness of your offending must be my focus in setting an MPI, I consider that a discrete reduction of six months is warranted.

(c) What is the appropriate MPI?

[98] With an increase of six months due to your personal aggravating factors and reductions of one-and-a-half years for your personal mitigating factors, I consider the appropriate MPI in your case to be 15 years under s 103 alone.

Would an MPI of 17 years be manifestly unjust?

[99] The last question I must answer is whether an MPI of 17 years would be manifestly unjust. For the reasons I have already given, I do not need to answer this question because I have decided that s 104 does not apply.

[100] Even so, I record that the Crown responsibly accepts that if any of the aggravating factors in s 104 were engaged, a 17-year MPI would have been manifestly unjust on account of your guilty plea and other factors. I agree.

What is the appropriate MPI in this case?

[101] For all the reasons given, I consider that in respect of Mr Patel's murder a sentence of life imprisonment with an MPI of 15 years is appropriate in your circumstances.

Mr Hobson and Mr Tane's sentences for aggravated robbery

[102] I now turn to sentencing you both for the charge of aggravated robbery you each face. This requires me to set a starting point which reflects the seriousness of the

aggravated robbery itself, before adjusting that starting point – up or down – to reflect your respective personal circumstances.³¹

[103] In sentencing you both for this offending, I particularly have in mind the need.³²

- (a) to hold you accountable for the harm that your aggravated robbery caused;
- (b) to denounce this conduct; and
- (c) to deter others from committing the same or similar offences.

What is the appropriate starting point for the aggravated robbery?

[104] The guideline judgment for sentencing for aggravated robbery is the Court of Appeal's decision in *R v Mako*.³³

[105] In light of that decision's guidance, the Crown says that a starting point of six years' imprisonment should be adopted for your aggravated robbery. In your case Mr Tane, your counsel agrees. However, Mr Young does not. He says only a four-year starting point is warranted because there was no actual violence inflicted during the aggravated robbery itself.

[106] I agree with the Crown and with Mr Tucker that a starting point of six years is warranted in this case. Here, there are six aggravating factors:

- (a) First, that there were three of you and that you each performed a separate role designed to make the aggravated robbery a success.
- (b) Secondly, that you, Mr Hobson, used a disguise as a means to conceal your identity.

³¹ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46].

³² Sentencing Act 2002, s 7(1).

³³ *R v Mako* [2000] 2 NZLR 170 (CA).

- (c) Thirdly, that your offending was clearly premeditated and planned. You both scoped the Superette and the surrounding area for an hour before Mr Hobson entered it. Mr Hobson pretended to be on the phone waiting for the right time while Mr Tane and Mr Fred kept nearby ready to lend a hand and to provide the getaway.
- (d) Fourthly, the aggravated robbery involved Mr Hobson's use of a knife and a direct threat to use it.
- (e) Fifthly, that property was stolen albeit that it certainly seems likely it was trifling.
- (f) Finally, that Mr Patel lost his life in the course of attempting to recover the items stolen, causing devastation and immeasurable harm to his family and sending shockwaves around the country.

[107] As the Crown rightly submits, the aggravated robbery in this case is on all fours with the kind of "bad case" robbery of a small retail shop for which the Court of Appeal in *Mako* said a six-year starting point was warranted.³⁴ I accordingly adopt a six-year starting point for you both.

Mr Hobson's appropriate sentence for aggravated robbery

[108] Mr Hobson, I now turn to assess what sentence you should receive on this charge given your personal circumstances.

[109] As with the charge of murder, your relevant personal circumstances include your previous convictions, but also your guilty plea, remorse and those factors that have causatively contributed to your offending. I have already discussed these. I won't repeat them.

[110] Given your previous convictions, I consider an uplift of 15 per cent appropriate. It is especially relevant in my mind that just a few months earlier you

³⁴ At [56].

were convicted of aggravated assault and just over a month before your offending here, you had been convicted of burglary as well as an additional offence, as I understand it, of possession of an offensive weapon which was committed just five days before this offending.

[111] As regards your mitigating factors, I consider your guilty plea and remorse to warrant a combined reduction of 20 per cent. Allowing a further reduction of 20 per cent for the causative contributors of your offending that I have already set out, I consider a net reduction of 25 per cent to be warranted here. That brings me to a final sentence of four years and six months' imprisonment.

Mr Tane's appropriate sentence for aggravated robbery

[112] Mr Tane, I must now turn to assess what sentence you should receive on this charge given your personal circumstances. You are aged 44.

[113] The Crown accepts there are no personal aggravating factors. I agree.

[114] The relevant mitigating factors in your case are your guilty plea and the remorse you display for your actions.

[115] As regards your guilty plea, you pleaded guilty on 8 May 2024. This was just over one week before your trial was scheduled to commence.

[116] In those circumstances, the Crown says only modest credit of 10 per cent should be given for your guilty plea. By contrast, your counsel submits that you are entitled to a greater credit for your guilty plea. He says that while the Crown maintained its murder charge against you, conversations about a guilty plea to the aggravated robbery were not a possibility. Counsel explains that it was only after Mr Hobson pleaded guilty, and after discussions between the Crown Solicitor and the Solicitor-General about dropping the murder charge against you, that you were able to plead guilty.

[117] Given those circumstances, I accept that your guilty plea has not come so late as to only justify a 10 per cent reduction. I consider the appropriate reduction here to be one of 15 per cent.

[118] As for your remorse, you have – like Mr Hobson – penned a letter to the Court expressing your remorse and regret for your offending. In it you say that you take full responsibility for your role in the offending. You also address Mrs Patel and the entire Patel family more directly in that letter, offering sympathy for their loss and asking for forgiveness for what happened that evening. However, in your pre-sentence report you tell a rather different story: that you had “no idea” that a robbery was going to happen, or that Mr Hobson was going to commit such a heinous act.

[119] That account is plainly at odds with the facts you accepted when you pleaded guilty. It is on those facts I am bound to sentence you. I agree with the pre-sentence report writer that this makes it difficult to give your expressions of remorse much weight. Even so, I consider a modest discount of 10 per cent to be appropriate in the circumstances.

[120] Finally, I record that I have read your pre-sentence report and what it has to say about your background and the immediate events leading up to your offending. While I do not consider these factors justify any further reduction, I acknowledge that in the lead up to your offending you were estranged from your family, although you have now reconnected with them.

[121] It follows that a total net reduction of 25 per cent should be made on your starting point.

[122] I consider an end sentence of four-and-a-half years’ imprisonment to be warranted.

End sentence

[123] Mr Hobson, please stand. For the murder of Janak Patel, I sentence you to life imprisonment with a minimum period of imprisonment of 15 years. On the charge of

aggravated robbery, I sentence you to four years and six months' imprisonment to be served concurrently.

[124] Mr Tane, please stand. On the charge of aggravated robbery, I sentence you to four years' and six months' imprisonment.

[125] Stand down.

Moore J