IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE

CRI-2023-019-3415
[2024] NZHC 1769

THE KING

v

RICHARD MATHEW COBURN

Hearing:	27 June 2024
Appearances:	R L Mann for Crown R J Laybourn for Defendant
Sentence:	27 June 2024

SENTENCING REMARKS OF PETERS J

Solicitors:	Hamilton Legal, Crown Solicitor, Hamilton
Counsel:	R J Laybourn, Hamilton

[1] Mr Coburn, you are for sentence today for the manslaughter of your partner, Paige Tutemahurangi, on 1 July 2023.[1]

[2] The maximum sentence for manslaughter is life imprisonment but I shall be imposing a determinate sentence, by which I mean one of a fixed term.[2]

[3] As I said at the end of the trial, what has happened in this case is a tragedy.

[4] Paige Tutemahurangi was not only your partner, but you and she had a little boy, and he has now lost his mother as a result of your actions.

[5] That the jury's verdict was manslaughter, rather than murder, means that the jury was not satisfied that you intended to kill Paige or appreciated that there was a serious risk that your actions might do so. But it does not alter the fact that you are responsible for Paige's death, and nor does it diminish in any way the loss that has been suffered.

[6] Paige's death has been and is devastating — for her, for her whānau, and of course for your little boy. Paige was 25 when she died, and an excellent and loving mother. She was also her mother's only daughter. The two were very close, and they enjoyed each other's company.

[7] Paige's death is also a shocking waste of a young life. She had at least the next 60 years ahead of her — 60 years of Christmas holidays, New Years days, birthdays, her child's birthdays, his first day at school, family weddings, celebrations, and the countless other events that would have made her life exciting and pleasurable.

[8] The many victim impact statements that I have received, two of which have been read aloud in Court today, are testament to her personality, popularity, kindness, and her sweet nature.

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1 Crimes Act 1961, s 171.
2 Section 177.

[9] Everyone in the Court will understand that nothing I say or do today will diminish that loss. Despite how Paige's whānau must have felt during the trial, they behaved with great dignity throughout and I was and remain grateful to them for doing so.

Process

[10] Now, what I am going to do, Mr Coburn, is summarise what happened. Then I am going to turn to the sentencing process itself, which comprises two separate stages.

[11] It is a process that takes some time, but it is important that I explain the reasons why I have done what I am going to do. You will not know the sentence until I get to the very end which will be a good 15 minutes from now, so bear with me until then please.

Facts

[12] Coming to the facts, you and Paige had been in an "on again, off again" type relationship for four years and, as I have said, have a child together. At the time of the offending your relationship appeared to be in a fairly good state.

[13] On the day in question, which was a Saturday, you and she had spent most of the day together. You had each done household jobs, and then you relaxed in the afternoon.

[14] Later that afternoon, you went to visit your brother, where you had several beers. At about 7pm, you texted Paige to let her know you would be on your way shortly, and asked if she wanted you to pick anything up on the way home. Paige said she did not, that dinner would be ready by the time you got home, and her text was accompanied by one or two affectionate emojis.

[15] As Mr Laybourn said in his submissions, those texts make it difficult to understand what happened next. You got home at about 7.45pm. On the basis of what you told the Police that night, by the time you arrived, Paige had turned off all the

outside lights and had locked the front door. You went to the back door and found that too was locked.

[16] You knocked sharply. Paige let you in and the two of you started to argue when she took you to task for knocking so loudly. Paige picked up the child and went down the hall to the child's bedroom and you followed.

[17] The two of you continued to argue. Then, and apparently not for the first time, Paige told you to "pack your bags and leave" or words to that effect.

[18] You then pushed Paige. She went face first into the toilet door and then you punched her to the head. The expert evidence at trial was that you must have hit Paige at least five times, forcefully enough to cause serious brain damage.

[19] Paige was unresponsive after the assault. You picked her up, put her on the bed, changed her clothes, wiped her face, apologised and told Paige she was going to be all right, which she plainly was not.

[20] When you realised that Paige was not going to wake up and it looked like things were getting worse not better, you called 111. The operator talked you through doing CPR, I think it must have been for the best part of 15 minutes, whilst the first responders were on their way.

[21] When the police arrived, you acknowledged that you had done "everything". You were then interviewed at the police station for about an hour. You declined to have a lawyer present. The DVD of the interview was played at trial, twice in fact. The account you gave the Detective appeared to me to be honest and complete.

[22] Paige died on 3 July 2023, in the intensive care unit at Waikato Hospital.

[23] The Crown charged you with murder. Your position at trial was that you were not guilty of murder but of manslaughter, and I now understand that you had earlier offered — about seven weeks earlier — to plead guilty to that charge. The Crown did not accept that offer, as was the Crown's right. I shall come back to this point later.

[24] This was not the first occasion on which you had been violent to Paige. You have a conviction for an assault on her, committed in January 2021 and then, in August 2021, there was a serious incident — no assault but a serious, threatening incident nonetheless — where you started waiving a tomahawk around in her presence, and the presence of others. For that you were convicted of possession of an offensive weapon. There was also evidence at trial of Paige complaining you had assaulted her on at least one other occasion.

[25] So, those are the facts.

Reports

[26] To assist me today, I have very helpful submissions from Ms Mann and Mr Laybourn. I have also got two good reports, one from the Department of Corrections ("PAC report") and the other from Ms Tara Oakley. She provides detailed information regarding your background and how it may be relevant to what happened. I will say a bit more about those shortly.

Sentencing process

[27] The first step in the sentencing process is to establish what we refer to as the starting point. That is the sentence that would be imposed for the offending without taking personal factors into account.

[28] Then I will come to step two which is to adjust the starting point up or down by taking into account personal matters. That is how I get to the end sentence.

Starting point

[29] Turning to the starting point, manslaughter is inevitably serious offending because someone has lost their life.

[30] Given that, the sentence imposed must be sufficient to hold you accountable for the loss that you have caused — to Paige, to her whānau, to her son, and to the community generally.[3]

[31] It must also be sufficient to denounce your behaviour, and deter you and others from behaving in a similar way in the future.[4] I must also treat you consistently with others — no better, no worse — and I must impose the least restrictive outcome appropriate in the circumstances.[5]

[32] There is no guideline judgment for cases of manslaughter because the circumstances in which it occurs vary so considerably. Because of that, it is usually considered best to take two points of reference: the starting points adopted in similar cases, and you have heard us discuss some of those this morning, and a Court of Appeal guideline case called *R v Taueki*, which the Court of Appeal delivered to establish sentencing ranges for very serious violence — wounding with intent to cause grievous bodily harm, so right at the upper end.[6]

[33] As to similar cases, Ms Mann and Mr Laybourn have each referred me to a helpful case, *R v Scott*.[7]

[34] Mr Scott pleaded guilty to the manslaughter of his partner, Ms Green. Mr Scott was 52 at the time of the offending, an age at which he would have fully understood the dangerous nature of his actions.

[35] Mr Scott and Ms Green had been in a relationship, which the Judge described as a volatile, for about a year. It was volatile because Mr Scott had hit Ms Green on prior occasions.

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3 Sentencing Act 2002, s 7(1)(a).
4 Sections 7(1)(e) and (f).
5 Sections 8(e) and (g).
6 *R v Taueki* [2005] 3 NZLR 372 (CA); *R v Tai* [2010] NZCA 598 at [12]; and *Murray v R* [2013] NZCA 177 at [27].
7 *R v Scott* [2016] NZHC 1918.

[36] On the day of the offending, Mr Scott had drunk a great deal and had smoked methamphetamine. He became aggressive and he struck or punched Ms Green numerous times. Ms Green became unresponsive.

[37] Mr Scott could not revive her, an ambulance was called, and she died in hospital from head injuries that Mr Scott inflicted. There was also bruising to her temples, the top of her head, her cheek, jaw, lip and neck. To compound matters, Mr Scott initially tried to lie his way out of the situation.

[38] Having conducted a thorough review of other cases, and cross checking with *Taueki*, the Judge in that case adopted a starting point for Mr Scott of eight years' imprisonment.

[39] Ms Mann referred me to two other cases she submits are similar to the offending in this case or provide useful guidance.

[40] In one of those, *R v Kengike*, Mr Kengike, aged 29, killed his partner of at least 10 years. The youngest of their six children were six-month-old twins.[8]

[41] Three days before the fatal assault, Mr Kengike had appeared in court for assaulting his partner, and for breaching a protection order that she had obtained against him. He was given bail but he was ordered not to drink alcohol and not to contact her.

[42] Three days later Mr Kengike ignored both of those orders. Having consumed a lot of alcohol, he killed his partner. When she was found a bit over a day later, she had bruises on her face, lips, jaw, neck and head. She had two subdural haemorrhages, and a fractured eye socket. Mr Kengike had also kicked her in the stomach.

[43] He had left her, unconscious, without seeking help, had told the neighbours that she was fine, and tried to clean up the house before leaving.

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8 *R v Kengike* [2008] NZCA 32.

[44] Mr Kengike had a lengthy and serious criminal history, including convictions for breaching a protection order, male assaults female, and injuring with intent to injure.

[45] That starting point in that case was 10 years' imprisonment, so two more than *Scott*.

[46] The other case the Crown has referred me to is *R v Ferris-Bromley*.[9] Mr Ferris-Bromley, aged 23, killed his partner, Ms Ford, aged 20. He did so in a violent assault after an argument over a trivial matter. He pleaded guilty to manslaughter and two counts of wounding with intent to cause grievous bodily harm.

[47] A medical examination showed that Mr Ferris-Bromley had inflicted terrible violence on Ms Ford, not only that evening but on previous, but recent, occasions. On those previous occasions, he had broken many of Ms Ford's ribs and struck her repeatedly to the head.

[48] However, the attack that caused Ms Ford's death involved Mr Ferris-Bromley punching her many times to her head and back, and striking her with great force in the stomach. It was the blow to the stomach that caused her death because it ruptured part of her duodenum, with fatal consequences. A doctor who gave evidence said it was the type of injury usually only seen in serious road accidents. On examination, doctors found that Ms Ford had 55 bruises to her front, back and arms, as well as black eyes.

[49] Quite aside from that appalling catalogue of injuries, the Police found letters of instruction Mr Ferris-Bromley had written to Ms Ford, telling her what she was allowed to do and what she was not allowed to do.

[50] The Judge took a starting point of nine years for the offending that caused Ms Ford's death, and then increased that by two years for the prior violence.

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9 *R v Ferris-Bromley* [2016] NZHC 772.

[51] *Taueki*, the case I have referred to from the Court of Appeal which is often consulted as a useful source of a proper starting point, identifies factors which makes violent offending more or less serious.

[52] The Crown submits that four factors make your case particularly serious: extreme violence, attacking the head, the vulnerability of the victim given your size and strength, and that death resulted.

[53] Ms Mann submits that, taking into account all of these matters and your prior violence to Paige, a starting point of between nine and 10 years' imprisonment is required.

[54] Mr Laybourn says the appropriate starting point is seven and a half to eight years' imprisonment.

[55] On the information before me, I am not satisfied that the starting point needs to be as high as nine years. I have settled on a starting point of eight years, four months' imprisonment for these reasons.

[56] You delivered at least five very forceful blows to Paige's head. However, the violence was spontaneous. It was not part of a constant campaign of the type that is often seen and can be seen in the violence, for instance, that Mr Ferris-Bromley inflicted on Ms Ford. It will be no comfort, I know, to Paige's whānau, but I expect your assault would have been over and done with in about a minute.

[57] Of the cases to which I have been referred, the closest is *Scott*. However, having heard Ms Mann submissions, I am satisfied the Judge may have been a bit lenient to Mr Scott and that something slightly higher might have been justified.

[58] Equally, the offending by Mr Kengike and Mr Ferris-Bromley is more serious than yours. Mr Ferris-Bromley's is more serious because of the extent of the violence he inflicted in killing Ms Ford and the extremely serious assaults he had inflicted on her within he previous couple of weeks.

[59] Mr Kengike's offending is more serious too. To name just a couple of factors, he was on bail; was in breach of court orders; there had been prior violence; and he failed to seek help.

[60] As to *Taueki*, I do not accept that his was a case of extreme violence, or not in the sense referred to in *Taueki*. I note also that the Judge in *Scott* was not persuaded that the violence in that case — quite similar to this — was extreme. On the other hand, you attacked the head, you caused very serious injury, and Paige was vulnerable. She was a lot smaller and slighter than you. It is necessary, of course, not to double count matters.[10] For instance, attacking the head will often lead to serious injury. I am satisfied there were three factors, possibly with some overlap between two of them.

[61] Of the ranges of starting point identified in *Taueki*, a (band two) starting point of between five and 10 years' imprisonment seems to me the most relevant. My starting point of eight years, four months' imprisonment is within that range, possibly towards the upper end. So, that is my starting point, eight years, four months.

Aggravating and mitigating factors personal to you

[62] This brings me to the second stage of the process, which is to take account of factors personal to you which might lead to an increase or a reduction in the starting point.

[63] I do not propose to increase the starting point because in a sense the starting point I have chosen reflects your prior assault and the "tomahawk" incident. But there are several matters in your favour and I am going to discuss each of them.

[64] First, the gist of the Corrections' report is that you are low risk of reoffending if you address your alcohol use and use of violence. You are at high risk of reoffending if you do not.

[65] Secondly, I observed you at trial, I heard the long call to 111, I have refreshed my memory on the actions you took straight after inflicting Paige's injuries and I have,

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10 *R v Taueki*, above n 6, at [31]; and *Heke v R* [2019] NZCA 256 at [91]–[94].

of course, seen the DVD of the interview. And, very recently I received a separate report from the people who run the unit you are in and they say you are a model prisoner. I also have the letter you have written, and it is a good letter, expressing profound regret, not for yourself but for the many people affected by your actions. You have made no attempt to justify what you did. Despite Ms Mann's submissions, I do not see your attempts to clean up Paige as actions taken to try and cover your tracks.

[66] So, I accept that you are remorseful.

[67] However, when I read the PAC report it tells me that you were remorseful in January 2021 and you said then it would not happen again. Then, eight months later, you are brandishing a tomahawk in a threatening manner when you were drunk, and I think you said you were remorseful then.

[68] Somewhere in these many reports you say there has been violence before but never like this. That it was not like this is a matter of luck. Any punch you landed on Paige could have killed her. We lawyers have a whole category of manslaughter cases called "one punch" cases where death results from one punch. If you hit someone, it does not matter whereabouts on the body, death may result whether because they fall over and hit their head on the pavement, or for some other reason.

[69] In your letter you say you will use your time in prison to "hopefully become a better person in general, make moves to control my anger" and do courses to address your alcohol addiction.

[70] Mr Coburn, the time for trying and hoping is over. Paige's whānau and the community do not want more promises and "hopefullys" from you. They want results.

[71] How you do it, how you make sure you never lift a finger, let alone a fist or a foot, to anyone else is a matter for you. But if you do not address those issues, you will back before the Court and facing very long terms of imprisonment I expect.

[72] This brings me to Ms Oakley's report which is also very good. The contents of the report derive from you, your brother, and importantly, your grandmother. Your grandmother played a significant role in bringing you up after Child Youth and Family removed you from your parents' care. What appears from your grandmother's account, and yours, but I put a lot of store by hers, is that when you were growing up those around you consistently drank to excess. You are said to have started drinking, and by that I mean serious drinking, from 13 onwards. Physical violence was also present in the home, not necessarily directed to you but observed by you and often directed towards your brother. I am satisfied that there is a link between what you observed growing up and your tendency to violence when you have been drinking.

[73] When offending is as serious as it is in this case, the credit that is available for remorse, and for the fact that offending may be linked to youthful experiences, is modest. And, as I have said, your expressions of remorse now are tempered by earlier expressions of remorse, by which I mean back in 2021.

[74] In the circumstances, I propose to reduce the starting point by seven and a half percent for each of these matters, say, 15 months for those two things combined in total.

Offer to plead and other matters

[75] This brings me to your offer to plead guilty to manslaughter. As I understand it, this offer was made approximately seven weeks before trial but the Crown declined to accept it. I must take the offer into account because it constitutes an acceptance of responsibility and because the trial would have been avoided had the Crown accepted the offer.

[76] Mr Laybourn has suggested 15 to 20 percent, the Crown says something less. I am satisfied 15 per cent is appropriate.

[77] This brings the end sentence to five years, 10 months' imprisonment.

Minimum period of imprisonment

[78] The final matter I need to consider is whether the circumstances are such that I have to impose a minimum period of imprisonment.

[79] If I do not, you will be eligible for parole after serving about two years, possibly slightly less. That is simply not sufficient to hold you accountable for the harm you have caused, to deter you from future offending, and to denounce your conduct. There is no dispute between counsel that a minimum period of imprisonment of at least 50 per cent is required, and I propose to impose a minimum period of imprisonment of three years.

Sentence

[80] Mr Coburn, please stand.

Hearing interrupted — Court adjourned 11:20:43

Court resumes 11:51:50

[81] Mr Coburn, I am sorry that happened. It should not have happened and we will have to get to the bottom of what did happen, but let me just finish the process. I had asked you to stand.

[82] For the manslaughter of Paige Tutemahurangi, I sentence you to five years, 10 months' imprisonment. I impose a minimum period of imprisonment of three years. After that three years is served, your release is a matter for the Parole Board.

[83] Please stand down.

Peters J