

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

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

**CRI-2019-009-10302
[2024] NZHC 1795**

THE KING

v

KIA-ARA RICHARDSON

Hearing: 3 July 2024

Appearances: A R McRae and N Girgis for Crown
R G Glover and A C Kelland for Defendant

Judgment: 3 July 2024

SENTENCING REMARKS OF MANDER J

[1] Kia-Ara Richardson, you are for sentence this morning having been found guilty by a jury of the manslaughter of Mr Hemi.

Facts

[2] You began a relationship with Mr Hemi in July 2019.

[3] On 8 November 2019, after attending a party, you and Mr Hemi returned to the address where the two of you were living together. The teenage daughters of the occupant of that house were hosting a party in the backyard. The two of you went to your bedroom and witnesses reported you were happy together.

[4] It appears Mr Hemi was invited to another party. An argument developed between the two of you which played out on the street. This was captured by two

witnesses from a nearby address on their cell phones after their attention was drawn to the disturbance. The two of you were yelling abuse at each other, as each of you moved up and down the street. Mr Hemi was trying to get the keys to the car that was parked on the road, but you were refusing to provide them. The videos show you and Mr Hemi circling the vehicle and the two of you advancing and retreating from each other on the street outside the address while abusing and yelling at each other. There was evidence from one witness of the two of you, at one stage, being in the front of the vehicle when Mr Hemi punched you a number of times. There is also evidence of Mr Hemi getting out of the vehicle and you following him, before he returns to the car and verbally abuses you.

[5] The final sequence involves Mr Hemi getting into the driver's seat. You can be seen opening the boot of the car before entering the back of the vehicle through the rear passenger side door. The two of you can be heard continuing to argue. Mr Hemi then got out of the vehicle, closed the boot, and yelled at you to "fuck off" before getting back into the driver's seat. He is then heard yelling such things at you as "fuck off or get in". You appear to have the rear door open, and he can be heard yelling "get out of my face bitch!" before a brief period of silence.

[6] It is plain that at this point, while Mr Hemi was positioned in the driver's seat and you in the rear of the vehicle, that you stabbed Mr Hemi in the neck at the base of his skull. You can then be seen, seconds later, exiting the vehicle, slamming the door and then walking to the fence line of the nearby property before returning to the driver's side door. Upon opening the door, Mr Hemi falls out of the vehicle onto the road and states, "I'm bleeding out". You then yell for someone to call an ambulance before doing so yourself. Assistance arrives from a nearby address.

[7] The stab wound was approximately 13 to 15 cm deep to the back of Mr Hemi's neck, just below his skull, in a forward, downward direction. You denied causing the stab wound that killed Mr Hemi and claimed he did it to himself. You maintained this stance at trial. This was an entirely unrealistic defence having regard to the nature and position of the wound on Mr Hemi and other pieces of evidence, including the fact the knife was never found at the scene, let alone in or around Mr Hemi. Unsurprisingly,

the jury rejected your claim and found you guilty of manslaughter. It follows that you killed Mr Hemi by the intentional use of a knife but without any murderous intent.

Victim impact

[8] I have received victim impact statements from Mr Hemi's mother, his grandfather and the mothers of his children, which have been read this morning. They all share the same grief, trauma and pain. Mr Hemi was much loved by his family and whānau and is sorely missed. I acknowledge their presence in Court this morning. For his mother, she will never get over the loss of her son. His children will never again have their father and must grow up without him. You have caused deep, enduring harm. No sentence that I can impose can begin to mitigate their loss.

Starting point

[9] The maximum sentence for manslaughter is life imprisonment which reflects the seriousness of offending that involves the taking of a person's life. The Crown has submitted a starting point of between eight to nine years' imprisonment is appropriate. Your counsel argues a much lower starting point of between three and a half to four and half years' imprisonment should be adopted.

[10] There is no tariff sentence for manslaughter because the offence can be committed in such a wide range of circumstances.¹ In setting the appropriate starting point it is necessary to identify the aggravating features of the offence. Self-evidently, the death of Mr Hemi involved your use of a weapon. Without resort to such a lethal instrument, which you were in the habit of carrying, Mr Hemi would obviously not have died.

[11] Related to your use of a knife is the attack to the back of his neck and head. Because of the vulnerable location in which you struck Mr Hemi, the outcome of such an attack can have, as was the case here, catastrophic consequences. The wound you inflicted was of considerable depth, cutting through the muscles of the back of the

¹ *Murray v R* [2013] NZCA 177 at [20].

head and neck, through the bottom of the skull and edge of a vertebrae in his spine and injuring his brain and major blood vessels.

[12] It is suggested by the Crown that the infliction of such serious harm is a relevant aggravating feature, and while that is so in terms of the consequences of the serious violence, it is of course an outcome that is inherent to the offence of manslaughter.

[13] The vulnerability of the victim has also been put forward by the Crown as a relevant aggravating feature. That factor was not present in its orthodox sense, in terms of Mr Hemi's age, physical size or disability, but I accept that in his seated position he would have been facing forward, unarmed. It would appear from the position and angle of the wound that the attack from behind likely caught him completely by surprise.

[14] Guidance as to an appropriate starting point in manslaughter cases can be obtained from a leading appellate guideline judgment for serious violent offending where serious injury was intended.² That indicated starting point can then be cross-referenced to sentences imposed in broadly comparable manslaughter cases and is an approach that has previously been endorsed.³

[15] Bearing in mind the presence of aggravating factors can be a matter of degree and to the extent to which such features may overlap, the identification of three to four aggravating features would indicate a starting point of between five and 10 years' imprisonment. However, having regard to the nature of the attack and its features, which can only be described as involving an act of extreme violence that resulted in death, I consider the offending must fall towards the upper range of that identified band.⁴

[16] The Crown and your counsel have referred me to a number of different sentencing decisions in support of their respective positions regarding the

² *R v Taueki* [2005] 3 NZLR 372 (CA); *R v Jamieson* [2009] NZCA 555; and *R v Tai* [2010] NZCA 598 at [11].

³ *R v Tai*, above n 2, at [12]; and *Ioata v R* [2013] NZCA 235 at [28].

⁴ *R v Taueki*, above n 2, at [38].

circumstances of your fatal assault.⁵ All cases are different and when drawing comparisons between them inevitably there are elements of the offending which will be unique to the particular case.

[17] I reject any suggestion this was a case of excessive self-defence and, to the extent an analogy is sought to be made with manslaughters that have been committed in the course of violent physical altercations between people in a relationship, I consider such a comparison has its limitations in the circumstances of this case. It is clear that by the time Mr Hemi was stabbed he had recovered the car keys and was no threat to you. Essentially, he was telling you to get out of the car or to shut the door in order to allow him to drive off.

[18] You claim you did not want him to drive in his intoxicated state and you were in fear he would harm himself. I accept Mr Hemi was in an angry, abusive and highly agitated state. However, I think the more realistic reason for his frustration about being denied the car keys was because he wanted to go to another social gathering with his associates which you did not want either yourself or him to attend. In large measure, the issue is not particularly pivotal but I observe it would have been very odd, if you had been truly concerned about Mr Hemi's wellbeing, to have stabbed him in the back of the neck with a knife. Whatever the reason, I consider it plain that you stabbed Mr Hemi out of anger in response to him, having secured the car keys and being able to drive off to go where he wished.

[19] There was evidence given at trial that you and Mr Hemi had a, what was described as, "toxic" relationship. You sought to describe Mr Hemi as having something of a split personality and that Mr Hemi could at times be abusive and violent and, at other times, loving and supportive. That may have been the case, but it is largely uncorroborated. In some measure, that description has echoes of other witnesses' observations of you as a couple and of how not just he but you both mutually behaved towards each other.

⁵ *R v Ames* HC Rotorua CRI-2008-263-19, 30 October 2009; *R v Olley* [2012] NZHC 40; *R v Scollay* [2014] NZHC 465; *R v Patangata* [2019] NZHC 744; *R v Rose* [2017] NZHC 1488; *R v Mahari* HC Rotorua CRI-2006-070-8179, 14 November 2007; *R v Hu* [2012] NZHC 54; *R v Wharerau* [2014] NZHC 2535; *Wharerau v R* [2015] NZCA 299; *R v Balkind* [2019] NZHC 2095; and *R v Beattie* [2019] NZHC 3108.

[20] The video taken by the witnesses on their phones provided a valuable record of how you and Mr Hemi were acting towards each other that night. Mr Hemi's conduct does him no credit. He was aggressive and angry. But you were also not going to back down. Ms Kelland has sought to categorise your offending as an impulsive stabbing in the context of an argument between domestic partners. I accept there is evidence of Mr Hemi having physically assaulted you earlier in the ongoing argument while the two of you were seated in the front of the vehicle. However, that appears to have been a single episode that night that was not repeated during the course of the ongoing abusive argument that continued on the street and was captured in the video recordings. Your act in stabbing Mr Hemi, while impulsive and likely carried out in a state of agitation and stress, was not retaliatory in the sense of being in response to an ongoing physical struggle or confrontation.

[21] Ms Kelland has referred me to a number of cases where, in the course of physical altercations, defendants have acted with excessive self-defence or, alternatively, against a history of the deceased's violence towards a defendant, that person in the heat of the situation, has resorted to the use of a knife. Those circumstances have resulted in a lesser starting point being adopted. While I accept that what unfolded between you and Mr Hemi prior to your attack involved an emotionally charged situation, there was no longer any threat to your safety. There was no physical altercation between the two of you at the time and, to the extent there had been an earlier assault by Mr Hemi, it is not apparent from the video it ever came close to being repeated. As I have observed, there was no threat to you. By the time of your fatal attack, Mr Hemi simply wanted to leave the scene with or without you.

[22] In assessing the circumstances of the offending, I have had regard to your reaction when realising how badly you had wounded Mr Hemi and that you immediately sought to get assistance and called an ambulance. Having reviewed relevant sentencing decisions to which I have had regard, and the circumstances of the offence, I adopt a starting point of seven years' and six months imprisonment.

Personal mitigating factors

[23] There are a number of personal mitigating factors that need to be recognised.

Youth

[24] You were 19 years of age at the time of this offending. Notwithstanding your difficult background, to which I will refer shortly, you have no prior convictions. There are various reasons why youth is to be considered a mitigating factor. Insofar as those reasons are applicable to you, they include the fact that your stabbing of Mr Hemi was likely to have been an unthinking impulsive act.

[25] There is also the greater capacity for rehabilitation of young people, which it is to be hoped will apply to you in light of the fact you have no other convictions. Despite your continued refusal to take responsibility, it is apparent that, at the time, you immediately regretted your actions after realising what you had done. However, as noted in the pre-sentence report, your failure to accept responsibility currently limits the availability of rehabilitative initiatives.

Parental responsibility

[26] You have a two-year-old son. The effect of your incarceration on your relationship with him is a recognised sentencing consideration that should be assessed when imposing sentence.⁶ You have been your son's primary caregiver since he was born, and the evidence before me suggests you are a good mother who shares a close bond with her son. It is to be hoped that, as a mother, you would have showed greater empathy for Mrs Hemi but you seem more focused on yourself, which I suspect is a product of your background.

[27] Taking into account these personal circumstances — your relative youth, absence of prior convictions, and the effect of incarceration on your young child, all of which to some extent overlap and need to be taken in combination — I would apply an overall discount of 15 per cent.

Cultural report

[28] I have been furnished with a report prepared pursuant to s 27 of the Sentencing Act 2002 which provides me with information about your background.

⁶ *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571.

Where such matters help to explain how an offender has come to commit the offence for which they are for sentence, that causative nexus can be taken into account. The report I have received provides insight into your childhood and upbringing which was characterised by deprivation, family neglect and abuse. Drugs, particularly cannabis and alcohol, and gangs were features of your everyday young life. This necessitated State involvement which started when you were just an infant. Domestic violence was a common and accepted occurrence in your parents' relationship. You moved house frequently, and you began taking drugs at a very young age. Despite your intelligence, your schooling was curtailed after you were expelled for truancy when aged 15 years.

[29] You were involved in an abusive relationship when just a teenager, at which time you began using methamphetamine. You managed to break out of that relationship and move to the South Island, where you met Mr Hemi. While not as bad as your prior relationship, there are echoes of your upbringing in terms of the use of alcohol and drugs and the influence of gangs. You say Mr Hemi was violent, although not as bad as your previous partner. However, as I have remarked earlier, it appears to have been a mutually volatile relationship, as I say, described by others as toxic.

[30] The other aspect of your personal background is your mental health difficulties. You are reported as having engaged in self-harming behaviour while a teenager and having attempted to take your own life on two occasions. In November 2019, when under observation pursuant to a compulsory treatment order, you were diagnosed with complex post-traumatic stress disorder. I understand you are currently engaged in counselling in prison.

[31] These features of your background do not bear directly on your actions in killing Mr Hemi. However, in a broader sense, there is some connection between your circumstances and outlook at the time of this offending and your upbringing and early life experience, which included exposure to family violence and lack of social support. Your limited agency and ability to exercise much lifestyle choice appears to have made you reliant on Mr Hemi in what was a mutually abusive relationship that appears to have mirrored much of your life experience.

[32] Insofar as how these features of your background may bear on how you came to commit this offence, I consider a discount of 15 per cent is appropriate.

[33] For completeness, I note that I cannot extend any discrete credit for remorse. You continue to deny your offending. To the extent your actions after stabbing Mr Hemi indicate immediate regret, I have taken that into account as part of the circumstances of the offending in setting the starting point. However, you are unwilling to accept responsibility for Mr Hemi's death. This limits the rehabilitative steps available to you. Moreover, for the purposes of sentencing, because you continue to deny the offending in the face of what is an overwhelming case, any discrete credit for remorse is unavailable.

Time on electronically monitored bail

[34] Finally, I must also take into account the extensive time you have spent on electronically monitored bail (EM bail).⁷ Over the course of a very lengthy period of remand you were on EM bail, although the restrictiveness of the conditions to which you were subject varied. Discounts afforded for time on EM bail are highly discretionary and no arithmetical formula is required to be applied.⁸ You were on EM bail for approximately three years. When initially imposed the conditions were strict. However, in December 2022, they were significantly relaxed before you were made subject to ordinary bail in June the following year. I consider an appropriate approach is to adopt a 35 per cent credit over the full period you were subject to EM bail. This results in one year's deduction from the term of imprisonment that would otherwise have been imposed.

Sentence

[35] Having adopted a seven-year six-months starting point, a 30 per cent deduction for personal mitigating factors and a 12-month deduction for time spent on EM bail, I arrive at a sentence of four years and three months' imprisonment. Having regard to your age and personal circumstances, I make no order for the imposition of a minimum term of imprisonment.

⁷ Sentencing Act 2002, s 9(2)(h).

⁸ *Rangi v R* [2014] NZCA 524 at [10].

[36] Ms Richardson, would you now please stand.

[37] For the manslaughter of Peter Hemi, I sentence you to a term of four years and three months' imprisonment.

[38] You may stand down.

Solicitors:
Crown Solicitor, Timaru

Counsel:
R G Glover, Barrister, Christchurch
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