

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

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

**CRI-2022-092-007548
[2024] NZHC 1851**

THE KING

v

TIPENE TE AHURU

Hearing: 10 July 2024

Appearances: L P Radich and S R Bicknell for Crown
K A Stoikoff and D J Taumihau for Defendant

Sentenced: 10 July 2024

SENTENCING NOTES OF ANDERSON J

This judgment was delivered by me on 10 July 2024 at 3.30 pm.

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Registrar/Deputy Registrar

Solicitors: Kayes Fletcher Walker Ltd, Auckland
Public Defence Service, Manukau

[1] Mr Te Ahuru, after a jury trial before me, you were found guilty of your son's murder. Amaziah was only three months old when you killed him.

[2] Ms Stoikoff has realistically accepted on your behalf that a sentence of life imprisonment is inevitable.¹ She also responsibly concedes that you will be subject to a minimum period of seventeen years' imprisonment, before being eligible for parole.² In these sentencing notes I will explain why that is the sentence I am required to direct.

[3] I wish to acknowledge the presence of Amaziah's mother and other whanau in the courtroom today. Losing Amaziah and in such tragic circumstances is truly devastating. As Amaziah's grandmother has said, Mr Te Ahuru's actions have taken Amaziah away from his whanau, hapu and iwi and no sentence the Court can impose will bring him back. My deepest sympathy to you.

Facts

[4] I am going to start by outlining the facts of the offending.

[5] Amaziah was born on 13 June 2022, five weeks early. At the time you killed him, he had the developmental age of a nine-week-old baby. In September 2022 you were living with your partner and Amaziah in a small two-bedroomed flat together with your partner's two young boys for whom you were their Dad.

[6] I want to acknowledge and record my utmost respect to Amaziah's mother for her moving account in her victim impact statement of the background to your relationship and the stresses in both your lives leading up to that terrible day.

[7] On 18 September 2022 Amaziah had been restless and difficult to settle. In the early evening, your partner left you in sole charge of Amaziah while she went to the laundromat. Based on the timing of several attempts you made to get hold of your partner by phone, it is evident that within five minutes of her leaving the house you had inflicted the fatal injuries that caused Amaziah's death.

¹ Sentencing Act 2002, s 102.

² Section 104.

[8] When you connected with each other some 20 minutes after your first call, you told your partner that “baby wasn’t breathing properly.” She told you to hang up and call an ambulance. On arriving home, your partner called 111 immediately and attempted CPR. Paramedics found Amaziah not breathing. They were eventually able to get a pulse back, however Amaziah’s life support was ultimately turned off 10 days later.

[9] Amaziah was found to have bleeding in and around the brain due to the severe trauma you inflicted on him. This caused his death, resulting in serious irreversible brain damage. Amaziah also had bleeding around the spinal cord, ligament damage to the neck, abdominal trauma involving internal bleeding around the kidney and bowels, and severe retinal bleeding. He had fractured ribs with some of a type that would rarely be caused by CPR. After his death it was discovered that Amaziah also had a healing arm fracture which I conclude was caused in the same incident as the head injuries.

[10] Only you know precisely what you did to cause Amaziah’s fatal injuries, whether this was by severe shaking, striking, slamming or a combination of both. What is plain is that extreme force was required. Medical evidence described it as similar to what is required in a major car accident — yet this was no accident.

Approach to sentencing

[11] You have heard Amaziah’s mother’s victim impact statement. She generously says that you do not need judgement or punishment from anyone else because you will never forgive yourself for taking your son’s life and losing your family. I have seen in the letter you have just provided me with that that is how you feel. Amaziah’s de facto grandfather, Pop, is equally gracious in saying he has no hate towards you, wishing you to find peace for what you have to live with.

[12] But the Court is directed to impose a minimum period of imprisonment for murder of at least 17 years if certain factors are present unless it is manifestly unjust.

[13] One factor that requires a 17-year period is where there is a high level of brutality or callousness. You inflicted an extraordinary level of violence on Amaziah.

However, I accept Ms Stoikoff's submission in her written submissions that your killing of Amaziah was not committed with a high level of brutality or cruelty.³ The Crown accepts that also.

[14] I accept that you did not mean to kill Amaziah. What you did was not premeditated and I acknowledge it was immediately regretted. However, in those few minutes when you were inflicting the fatal injuries, you meant to cause him bodily injury, known to you to be likely to cause his death and you were reckless whether death ensued or not. You were tired, stressed, frustrated, and angry. You lost control and did something truly unthinkable. You fatally assaulted your own infant child, who was in the most literal sense defenceless. Another of the factors that requires a 17-year minimum period of imprisonment is if the victim was particularly vulnerable because of his age.⁴ It is Amaziah's vulnerability that brings this into a category of what the law considers to be an especially bad murder.

Notional minimum period of imprisonment under s 103

[15] The starting point then, is that the Court is required to impose a minimum period of imprisonment of 17 years unless it would be manifestly unjust to do so. There is a two-stage approach to that assessment.⁵

[16] The first is to consider the sentence the Court would impose if there was not this requirement. In doing so I have regard to the purposes and principles of the Sentencing Act 2002. The second stage is to consider whether to impose the 17-year period would be manifestly unjust.

Aggravating factors

[17] In this case the aggravating factors of your offending which impact on your culpability are as follows.

³ Sentencing Act, s 104(1)(e).

⁴ Section 104(1)(g).

⁵ *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43.

[18] First there is the scale of violence you inflicted on Amaziah.⁶ While the actual assault may have been brief, the medical experts agree that a high level of violence was necessary to inure Amaziah in the way that you did. Indeed, the eye specialist described the injuries you caused to Amaziah's eyes as amongst the worst injuries she had seen.

[19] Second, there is the extent of the loss and harm caused by your offending.⁷ Your partner's victim impact statement was so eloquent and so deeply moving in describing immeasurable loss and trauma to her. That in turn has caused her difficulties in caring for her two remaining children in the way she would wish to. Those children have also lost their father in you. You have heard how anxious she is as to how they will be affected in the future.

[20] There is also the profound effect on the wider whanau. Amaziah's grandmother described all the joys she will never now experience seeing Amaziah grow to adulthood. She mourns the special relationship between a mokopuna and his nanny that she will never now have with him. Both maternal grandparents outlined the immense pressures your actions have caused emotionally and financially as they looked after your partner's children. Even more widely there is the loss to the community by the loss of a child in these circumstances.

[21] Third as an aggravating factor there is the abuse of your position of trust and authority in relation to Amaziah.⁸ He was entitled to feel safe in your care in the family home, as you yourself say in the letter I have just read. Your offending is not only a breach of Amaziah's trust but that of your partner, who was entitled to take a short break away to do the laundry, trusting Amaziah would be safe with you. You have breached the trust of the wider family also. Amaziah's de facto grandfather told us of having invited you into their lives and their whanau and the broken hearts and broken trust you have caused.

⁶ Sentencing Act, s 9(1)(a).

⁷ Section 9(1)(d).

⁸ Section 9(1)(f).

[22] Fourth there is Amaziah's vulnerability as an infant baby who was so defenceless against you.⁹

[23] Finally, there is the delay in seeking medical help and your concealment of the offending. Although the offending occurred within five minutes of your partner leaving the house, you did not immediately call for help and indeed did not do so even after your partner told you to contact them. It was your partner who called 111 when she returned. You were not upfront with what had happened when the first responders arrived. Even though it seems unlikely that more prompt medical action would have made a difference, I consider these factors aggravating. That is the case, despite the fact that you undertook a Google search on infant CPR before your partner had returned home and I accept that you tried this on Amaziah.

[24] It is also an aggravating factor that you continued to lie about what you had done to Amaziah. As the Crown submits, you were drip feeding information only as it became apparent the initial explanations were inconsistent with Amaziah's injuries. You did not admit to the violence of the kind that was required to cause them.

Any personal mitigating factors?

[25] An offender's background is relevant at sentencing.¹⁰ This includes not just the offender's personal background, but matters in relation to their family, whanau, community and cultural background.¹¹

[26] You were 30 years old at the time of your offending. You were born in Auckland. You identify as Tangata Whenua from Ngati Tu Whare and Ngati Pikau. You migrated to Sydney with your mother and stepfather when you were four. You noted a change in your stepfather's behaviour towards you once step-siblings arrived. When you discovered he was not your biological father you had unanswered questions but were unable to rekindle a relationship with your biological father. You left school at 16 years old.

⁹ Section 9(1)(g).

¹⁰ Section 8.

¹¹ Section 8(i).

[27] You recommenced living in New Zealand in 2017. Your main family support prior to the time of your offending was your mother, who I understand has recently sadly died. You had felt content with Amaziah's mother until the offending but broke up when you were remanded in custody. Amaziah's mother's victim impact statement does outline the serious stresses you were under in the period leading up to the offending.

[28] You have no criminal history, with the offending related factor in this instance being identified in your pre-sentence report as poor problem solving skills. The pre-sentence report assesses you at high risk of harm to others and reoffending solely based on the present offending.

[29] As Ms Stoikoff says, none of these matters amount to mitigating circumstances. In a break in one of your police video interviews the Court saw you make an anguished apology to your son. I have now read your letter. That continues to say how sorry you are. Your pre-sentence report records that you continue to maintain your innocence. Your counsel has explained that you do accept responsibility and I have read your letter to that effect. However, there are no sufficient mitigating circumstances, but I acknowledge your remorse.

[30] Mr Te Ahuru, Amaziah was a precious gift who needed your love, care and protection. You not only failed to protect Amaziah, but you are the one who inflicted his fatal injuries. Your complete loss of control when left looking after him was deeply irresponsible and profoundly reckless. As I have said, I accept that what you did was not premeditated and was almost immediately regretted. I also acknowledge the stressful conditions in which you and your family were living. But the stress and frustration here does not mitigate the violence you inflicted on Amaziah.

[31] Accordingly, there are no mitigating circumstances apart from your remorse.

[32] Parents must be held accountable for failure to meet the high degree of trust which children and society attaches to that role. In assessing a minimum non-parole period, denunciation and deterrence are important considerations.¹²

¹² *R v Lackner* [2015] NZHC 690 at [17].

[33] Having regard to the factors I have just referred to that are aggravating, I consider that if the 17-year minimum did not apply, an appropriate non-parole period in this case would be no less than 15 years. That accords with the 15–17 years that both the Crown and your defence agree upon and is consistent with the case law referred to me.¹³

[34] I hope that you do take advantage of the programmes available to you in prison to enable your rehabilitation.

Manifest injustice

[35] I now need to consider whether it is manifestly unjust to impose the 17-year minimum non-parole period.

[36] The Court of Appeal has held that personal circumstances of an offender will rarely displace the presumptive 17-year term.¹⁴ Nothing about your personal circumstances sufficiently stands out in this context.

[37] In your case there is no suggestion that you were previously violent towards your children and previously when you had anger management issues you took that out on things not people. Sadly, there are many cases where vulnerable infants have been murdered by their caregivers¹⁵ and several involve single episodes of violence.¹⁶ That you had not previously been violent towards Amaziah does not detract from the enormity of what you did that day.

¹³ *R v Solomon* [2016] NZHC 1653: 17 years' imprisonment; *R v Sinclair* [2021] NZHC 569: 17 years' imprisonment; *R v Taylor* [2023] NZHC 2640: nominal minimum period of 16 years' imprisonment, but 17 years' required by s 104; and *R v Wilson* [2023] NZHC 2640: 15 years' imprisonment.

¹⁴ *R v Williams* [2005] 2 NZLR 506 (CA) at [66]–[67].

¹⁵ *R v Harrison-Taylor* HC Auckland CRI-2004-092-1510, 12 September 2005; *R v Williams* HC Wellington, CRI-2004-078-1816, 24 February 2006; *R v Paul* CA496/05, 1 August 2006; *R v Little* [2007] NZCA 491; *R v Hemana* [2012] NZHC 376; *R v Loffley* [2013] NZHC 201; *R v Ellery* [2013] NZHC 2609; *R v Filihia* [2013] NZHC 2833; *R v Lackner*, above n 12; *R v Solomon*, above n 12; *R v Cooper* [2017] NZHC 2498; *R v MS* [2017] NZHC 2066; *R v Taylor*, above n 12; *R v Duff* [2018] NZHC 2690; *R v Wakefield* [2019] NZHC 1629; *R v Savage* [2020] NZHC 2553; *R v Sinclair*, above n 12; *R v Clancy* [2021] NZHC 1021; *R v T* [2022] NZHC 1038; *R v Brown* [2023] NZHC 1267; and *R v Sopo* [2024] NZHC 1015.

¹⁶ For example *R v Harrison-Taylor*, above n 14; *R v Ellery*, above n 14; *R v Filihia*, above n 14; *R v MS*, above n 14; *R v Paul*, above n 14; *R v Duff*, above n 14; *R v Clancy*, above n 14; *R v Sinclair*, above n 12; *R v Lackner*, above n 14; *R v Cooper*, above n 14; and *R v MS*, above n 14.

[38] Looking at the matter overall, I consider then that it would not be manifestly unjust to impose 17 years as the minimum period in this case.

Conclusion

[39] Mr Te Ahuru please stand. For the murder of Amaziah you are sentenced to life imprisonment. You are to serve at least 17 years.

[40] You may stand down.

Anderson J