IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CRI-2024-209-8
[2024] NZHC 2086

THE KING

v

RYAN WILLIAM REX EASTWICK

Hearing:	30 July 2024
Appearances:	D L Elsmore and B W D Alexander for Crown E C Bulger for Defendant
Judgment:	30 July 2024

SENTENCING NOTES OF DUNNINGHAM J

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[1] Mr Eastwick, you are here for sentence today having pleaded guilty to, and been convicted on a charge of manslaughter.

Facts of the offending

[2] The facts of the offending are as follows. On 7 August 2023, when you were 14 years old, you were at home in Christchurch with your mother. You spent most of that evening in your room and your mother noticed that you appeared down and flat in mood.

[3] You were engaged in a Snapchat group with approximately 10 other youths aged from 13 to 22 years old. A 13 year associate in the group had previously told you

to kill yourself on several occasions. That evening you again received a message from the 13 year old via the Snapchat group, telling you to kill yourself.

[4] At some point in the evening your mother gave you a hug goodnight and she went to bed. After she had gone to bed you took the keys to her vehicle, a white Toyota Corolla, and commenced driving at speeds of between 150 and 190 km/ph towards West Coast Road, taking photos of the vehicle's odometer and sending it to the Snapchat group you belong to. You also sent messages saying goodbye.

[5] At approximately 10.57 pm you called your mother crying and said goodbye and this call lasted 22 seconds. You then sent a further four text messages to your mother saying goodbye.

[6] At approximately 11.10 pm the victim in this matter, Sandra Loveday, was travelling east on West Coast Road at approximately 100 km/ph. You were travelling in the opposite direction at approximately 150 km/ph. You veered the steering wheel six degrees to the right into the eastbound lane, 2.3 seconds prior to impact, crossing over to the wrong side of the road. You then straightened up in the victim's lane, colliding head on with her. The victim's vehicle was shunted to the right and your vehicle was propelled some 500 metres ahead and landed on its roof. The victim died at the scene, and you were taken to Christchurch hospital in a critical condition.

Sentencing purpose and principles

[7] Sentencing you today is a very difficult exercise. There are strongly competing purposes and principles of sentencing at play here.

[8] On the one hand, it is important that I hold you accountable for the harm done to the victim and the community by your offending, including all those who have been devastated by her death. It is also relevant that, in sentencing you, I promote in you a sense of responsibility for and acknowledgement of that harm, I denounce your conduct, and I deter you and others from committing the same or similar offence.

[9] However, it is also important to assist in your rehabilitation and reintegration. Balancing those factors is also emphasised in the sentencing principle that I must impose the least restrictive outcome that is appropriate in the circumstances.[1]

Victim impact statements

[10] Before discussing the sentence, I have come to, I want to acknowledge the friends and family of Sandra Loveday. Many of you have provided victim impact statements in which you have written about what she meant to you and how her loss has affected you.

[11] Sandra was clearly a very special lady, loved by all those who knew her. I start by acknowledging Sandra's family: her sister Eileen O'Neill, her former husband, Lindsay Loveday, and her two sons Sean and Cameron. Eileen, you spoke of the enormity of realising you will never be able to talk to your sister again and share occasions such as family dinners and holidays together. Lindsay, you had the terrible job of calling your two sons, who were both overseas, to break the awful news to them. Cam and Sean, even though you both lived overseas, you loved catching up with your mother. Cam, you describe her as having so much life left to live and Sean, you said she was someone who always had so "much on the go". Both of you miss her terribly and are shattered by the fact she will never be there to see you get married and have children.

[12] Sandra also had a close network of friends who thought the world of her. I have heard from Doreen Marshall, and June and Anne Bradley, all of whom had decades long friendships with Sandra. She was clearly a loyal and loved friend who was there to support her friends through thick and thin.

[13] Finally, I have read the victim impact statement of Len Slot, Sandra's new partner, whom she was shortly to go and live with in Tasmania. Although he had not known her for long, he spoke of never having had a connection with someone like her and of his devastation when he learnt that she had died in a car accident.

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1 Sentencing Act 2002, s 8(g).

[14] I am left in no doubt having heard all those victim impact statements that Sandra was a warm, vibrant person who lived life to the full. Her death has caused overwhelming grief for her family, her friends and the wider circle of those who knew her.

Sentencing

[15] I turn now to the sentencing exercise itself. As your lawyer, will have explained to you, I must set a starting point having regard to the gravity (that is, the seriousness), of the offending and the degree of culpability, which means how blameworthy you are. I also have to take into account the sentences that have been imposed on people who have committed similar offending in similar circumstances.

[16] Once I have a starting point, I then have to look at aggravating and mitigating factors that relate to you, before I come to the end sentence.

The starting point

[17] In terms of the starting point, Ms Elsmore, for the Crown, acknowledges that there is no guideline judgment for manslaughter involving a motor vehicle. However, having regard to other cases, she says a starting point of eight years and six months' imprisonment is appropriate.

[18] In terms of the gravity of the offending, she points to the following circumstances:

(a) you engaged in a course of excessive speed, travelling at between 150 and 190 km/ph, well in excess of the applicable speed limit;

(b) there is no external explanation for the crash in that you were not impaired by alcohol or drugs, the car had no mechanical issues, and there were no environmental or road factors which caused or contributed to the crash;

(c) the crash, she accepts, occurred against the background of you being told to commit suicide by an associate and the messages you sent while driving confirm that was your intention;

(d) there was no evidence of swerving, evasive action, braking or even slowing down, rather the evidence is that you purposefully straightened up and crashed into the victim's vehicle head on;

(e) you veered into the vehicle 2.3 seconds prior to impact so there was no chance of the victim escaping your oncoming vehicle;

(f) you were also unlicensed and you had taken the motor vehicle without your mother's authority, something you had been reprimanded for doing before; and

(g) your offending has had a significant impact on the victim's family and friends as I have just described.

[19] While it is accepted that given the charge of manslaughter, no what we call "murderous intent" can be attributed to you, the evidence supports the fact that you intentionally collided with the victim's vehicle. In those circumstances, Ms Elsmore points out that the overall risk of harm of your actions was significant and the terrible consequences which followed were inevitable.

[20] For this reason, she submits the offending was at the top end of its type involving deliberate collisions of vehicles. She refers me to three cases where motor manslaughter charges involved similarly deliberate actions and where starting points of nine to 13 years' imprisonment were imposed.[2] Of these cases, the case of *R v Maharaj* is the most similar. There, the defendant took his father's vehicle without permission and his parents rang the police because they were concerned for their son's mental state as he had previously tried to commit suicide with a vehicle. While driving the defendant accelerated and suddenly swerved into oncoming traffic and he collided

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2 *Taiapa v R* [2019] NZCA 524; *Worthy Redeemed v R* [2013] NZCA 61; *R v Maharaj* [2021] NZHC 3511.

with a vehicle. He caused the death of three people and the injury of a fourth. There, a starting point of 10 years' imprisonment was taken.

[21] However, as that case and one other relied on by the Crown involve three charges of manslaughter, plus at least one other serious charge, they are clearly more serious than your case. The third case relied on by the Crown, *Taiapa*, involved a deliberate collision in the context of intergang conflict and I consider that is sufficiently different to be of limited assistance.

[22] Your lawyer agrees with the Crown that this is an unusual case of manslaughter. She acknowledges that the collision with the victim's vehicle occurred as a result of deliberate actions on your part, although in light of the charge, she reminds me (and I accept), I cannot sentence on the basis that you intended to, or realised you were going to, kill someone in the course of committing your own suicide plan.

[23] However, she accepts that the aggravating features identified by the Crown are present, and, in particular:

(a) the significant impact that this has had on those who were loved by and were associated with the victim;

(b) the appalling driving over a significant period of time and distance by travelling at grossly excessive speeds; and

(c) the fact you were an unlicensed driver.

[24] However, she also notes that, unlike many cases, there was no use of alcohol or drugs which serve to aggravate the starting point and there is also a context to this behaviour which needs to be taken account of in sentencing.

[25] In her view, the most broadly similar case is the recent case of *Gebhardt v R*, where the Court of Appeal was dealing with an appeal against sentence imposed on a charge of manslaughter where a six year old boy died as a result of culpable driving

by his father.[3] The evidence in that case was that Mr Gebhardt was driving well in excess of the posted speed limit of 80 km/ph, and he narrowly avoided a collision with an oncoming vehicle shortly before the crash occurred. He then continued driving at high speed towards a right-angle bend in the road which had an advisory speed of 25 km/ph. The subsequent crash analysis calculated the crash speed to be at least 130 km/ph. Despite being familiar with the road, Mr Gebhardt did not brake or attempt to slow the vehicle down as he approached the intersection. Instead, he drove in a straight line off the sealed road, up a stop bank, causing the car to become airborne where it impacted with a tree seven metres higher than the vehicle's take off point. The vehicle then caught fire.

[26] When emergency services arrived, and removed the defendant from the vehicle he expressed concern for his young son who died in the crash, saying "put me back in, swap me with my son, I want to swap". As is the case here, Mr Gebhardt said he could not remember anything about the crash, but accepted responsibility for it nonetheless.

[27] Although in the High Court a starting point of seven years and six months was adopted, on appeal, a starting point of six years and six months was considered appropriate. In that case, the Court of Appeal rejected comparisons with the decisions in *Taiapa* and *Worthy Redeemed*, two of the decisions the Crown relies on here, saying "if it is not established that he deliberately crashed the car, Mr Gebhardt's offending was significantly less culpable than the actions of the driver in these decisions."[4]

[28] After having regard to the various cases, the Court held that a starting point of six years and six months' imprisonment was appropriate, once the factor of deliberating crashing the vehicle, was excluded from consideration.[5]

[29] Your lawyer, Ms Bulger argues that in this case, the facts of *Gebhardt* are sufficiently similar for a broadly similar starting point to be adopted.

[30] I agree that *Gebhardt* has some similarities. However, there are also important differences. In *Gebhardt* the Court of Appeal observed that the "sentencing

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3 *Gebhart v R* [2024] NZCA 332.
4 At [57].
5 At [67].

legitimately proceeded on the basis that he was intentionally driving the vehicle at speed approaching the corner" but that the sentencing judge should not have assumed that Mr Gebhardt deliberately crashed the car, saying there was no explanation for why Mr Gebhardt would have wanted to deliberately crash the vehicle. Here, there is no such ambiguity. You deliberately drove the vehicle, at speed, towards an oncoming car with a view to ending your life. To that extent, unlike in *Gebhardt*, there is a clear explanation for your behaviour, and the decision to drive into the oncoming car was deliberate. Your case also involves a longer period of driving at speed and you were taking video of that as you were driving. You were also unlicensed and had no permission to drive the car. All those aggravating features make your case more serious than in *Gebhardt*.

[31] However, your case does not have the aggravating factor which was present in *Gebhardt* which was the breach of trust towards his six year old son who was in the car as his passenger.

[32] In balancing out these respective differences, I consider a higher starting point than in *Gebhardt* is warranted and I would take a starting point of seven and a half years. I now turn to the mitigating factors relating to you, noting that the Crown acknowledges that there are no aggravating factors in that category.

[33] The first factor to consider is your guilty plea. The Crown submits that your guilty plea entered on 19 April 2024 warrants a discount, although not the maximum available of 25 per cent given the time that elapsed between the charge and when the plea was entered.

[34] Your lawyer points out, however, that you were not charged on 7 August 2023 as the Crown appeared to assume. The charge was first laid on 17 January 2024. No plea was entered while the matter was transferred to the High Court from the Youth Court as the only initial disclosure had been received and no discussions had taken place with you in relation to plea. The next High Court appearance was scheduled for 15 March 2024. Shortly before that, your lawyer indicated you would enter a guilty plea to a charge of reckless driving causing death. At the call-over the Crown indicated it would need more time to consider its position and it was still

entertaining the more serious charge of murder. At the very next call-over on 19 April 2024, you entered a guilty plea on the charge of manslaughter, although no conviction was entered at that stage as the Crown was still considering its position in relation to the more serious charge.

[35] In the circumstances I have described, I am satisfied that your plea was entered at the first reasonable opportunity and a 25 per cent discount is warranted.

[36] The next mitigating factor is your youth. As your lawyer says, it is generally accepted that Courts should treat young offenders differently from adult offenders, given their reduced mental capabilities, their lack of judgement and their greater capacity for rehabilitation.[6]

[37] Your lawyer says that the factors which warrant a discount for youth are all present here. You were only 14 at the time of the offending. Furthermore, you were a young person suffering from bullying with existing mental health issues and, at the time, an undiagnosed autism spectrum disorder diagnosis. Your offending was triggered by bullying and particular targeted messages suggesting you kill yourself on that night. Combining your youth and these mental health considerations, Ms Bulger says a significant discount should be given.

[38] Ms Elsmore emphasises that in motor manslaughter cases a discount for youth is "often limited by the need to prioritise other sentencing purposes",[7] but notes that otherwise, discounts for youth generally vary between 10 and 30 per cent and she says a youth discount of around 15 per cent is appropriate.

[39] The Crown also acknowledges your mental health issues are a mitigating factor. It is clear that you were desperately unhappy before the accident, having been bullied at school and having shifted from several schools during your schooling. You also had particular vulnerabilities. As Dr Olive Webb notes in her report, had it been understood that you suffered from autism spectrum disorder when you were younger, your pathway might have been very different.

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6 *Churchward v R* [2011] NZCA 531.
7 *Ormsby v R* [2013] NZCA 578 at [10].

[40] Some of the features of autism observed in you is that you have challenges in developing peer relationships, and you demonstrate cognitive rigidity. That means you see things in black and white and, once you get an idea in your head, you find it difficult to let it go. It seems that here, you formed a view your life was worthless and, against the background of significant bullying and the messages encouraging you to commit suicide, you committed to a plan to do so. Once you had committed to that plan you were simply unable to let it go.

[41] However, there are constructive reports before me, particularly from Dr Olive Webb, regarding how you can foster your strengths and manage your difficulties, particularly in social situations and I consider your rehabilitation will be greatly assisted by taking into account these recommendations. The Crown accepts a that further 15 per cent could be given for your various mental health issues.

[42] I am satisfied that the combination of your youth, and your vulnerability due to your mental health issues are both clearly mitigating factors which help explain why you did what may seem, to others, inexplicable. In total, I would give a discount of 30 per cent for these factors.

[43] Your lawyer also points out that you are suffering from ongoing injuries as a result of the accident and in that regard, I have a report from the Laura Ferguson Brain Injury Trust, from ACC and from ABI Rehabilitation Specialists. In short, you suffered a traumatic brain injury, although this does not appear to be affecting your ability to carry out activities of daily living. You have also suffered physical injuries to your legs which means, at present, you cannot move around without a wheelchair or walking frame and you continue to take medication for pain relief. While the medical reports expect there to be some further recovery, it is unclear what improvement is likely. Your lawyer suggests a further discount is warranted for these factors.

[44] The Crown accepts that you have suffered physical injuries as a result of your offending. However, it says the injuries do not reach the threshold to justify a further discount. That requires a high degree of long term physical or mental debilitation

resulting from the offending which is verified by independent expert evidence.[8] Furthermore, it can be expected that you would receive appropriate healthcare for these injuries while in custody.

[45] Discounts can be afforded where a serious injury has been suffered by an offender when committing an offence.[9] There are essentially two reasons for this. The first is that where a serious injury is suffered as a consequence of the offending it might achieve some of the purposes of sentencing, such as punitive and deterrence purposes. The second is that it can make a sentence of imprisonment more arduous than might otherwise be the case.

[46] Here, you clearly do have serious injuries and the medical evidence supports the loss of mobility and the pain you are suffering. However, the evidence does not go so far as to comment on the impact this would have on a sentence of imprisonment. However, given the severity of the injuries and in particular, the impact on your mobility, I would apply a further five per cent discount for this factor.

[47] The next issue to consider is remorse. The Crown notes that a further discount for remorse is not granted simply because remorse is professed. It is granted when a defendant demonstrates an understanding of the wrongfulness of their conduct, and a tangible acceptance of responsibility for it and its effects on any victim.[10] The Crown accepts that you have offered to participate in a restorative justice and a referral to that was made. However, beyond that, the Crown says there is no material to justify a discount.

[48] Your lawyer emphasises that from the outset, you have been prepared to attend a restorative justice conference as you want to have the opportunity to apologise for your actions and to answer any questions the family might have in relation to what occurred. She also points to the letter of apology you have tendered which sincerely and deeply apologises for the pain and loss you have caused and takes full responsibility for what you have did.

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8 Citing *R v Gebhardt* [2022] NZHC 1899 at [51].
9 *R v Potter* (1994) 12 CRNZ 109 (CA) and *Paikea v Police* [2014] NZHC 2609.
10 *Whitcombe v Police* [2018] NZHC 1409.

[49] I am satisfied you have shown some tangible evidence of remorse through your letter submitted to the Court and your offer to attend restorative justice and I would afford a further five per cent discount for that.

Outcome

[50] Your lawyer submits that with the combination of discounts, it may be possible for a short sentence of imprisonment to be reached which, in your case, she says should be converted to a sentence of home detention. However, she also acknowledges that such outcome is not a given and a sentence of imprisonment is also possible.

[51] While I acknowledge there are a number of mitigating factors in your case, which justify significant discounts on sentence, I have not reached a sentence where I can consider home detention. The discounts I have afforded total 65 per cent, but on a seven and a half year sentence that only reduces the sentence to two years and eight months.

[52] It is also acknowledged that you should be subject to a substantial period of disqualification from holding or obtaining a driver's licence. I note in *Gebhardt v R*, a seven year period of disqualification was held by the Court of Appeal to be disproportionate and a one and a half year disqualification was imposed following release. In my view, given the shorter period of imprisonment which will be imposed here, and in order to protect the public, a two year period of disqualification following release is appropriate.

[53] Mr Eastwick, I will now impose sentence. I appreciate you cannot stand, so you can remain seated.

[54] On the charge of manslaughter, you are sentenced to two years and eight months' imprisonment. You are also disqualified from holding or obtaining a driver's licence for a period of two years commencing on your release from custody.

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