

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

**I TE KŌTI MATUA O AOTEAROA  
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2024-088-000296  
[2024] NZHC 2910**

**THE KING**

v

**SHANE LESLIE AMSON**

Hearing: 8 October 2024  
Counsel: KMM Soich for Crown  
S Thode and MIA Creamer for Defendant  
Judgment: 8 October 2024

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**SENTENCING REMARKS OF DOWNS J**

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Solicitors:  
Crown Solicitor, Whangārei.  
Thode Utting, Auckland.

The Judge addressed everyone at the beginning of the hearing:

Before the victim impact statements are read aloud, let me just say one or two things. Firstly, my name is Justice Mathew Downs. Unsurprisingly, I am the Judge. I welcome the whānau of Jaeden-Reign and I apprehend the parents of Mr Amson. I acknowledge today is a very difficult day for everyone in the courtroom. I cannot imagine what it would be like to lose a loved one through something like this, or to have a loved one in the dock. I thank you for your quiet participation and with that I will revert to the role I need to administer. Thank you so much.

Three victim impact statements were then read aloud, followed by submissions on behalf of the Crown and Mr Amson.

### **Introduction**

[1] Shane Amson, you are for sentence on two charges: manslaughter,<sup>1</sup> and reckless driving causing injury.<sup>2</sup> The first charge has a maximum penalty of life imprisonment; the second, a maximum penalty of five years' imprisonment.

### **Facts**

[2] Your offending occurred on the evening of 9 June 2023 from, or at or about, 7 o'clock. You were driving towards Whangārei on State Highway 1. You had been drinking. You had also consumed cannabis. You drove dangerously and recklessly for approximately three and a half kilometres. The best way to capture your driving is to recite some of the summary of facts:

The first witness saw the defendant's vehicle ... and saw that it veered towards the centre line a few times. The defendant's vehicle has then overtaken him and remained on the southbound lane passing a vehicle approximately 100 m ahead of him. The witness estimated the overtaking vehicle's speed at about 140kph+.

The second witness said that he and the vehicle in front of him were also overtaken by the defendant's vehicle and it was completely over double yellow no passing lines as it did so. The defendant's vehicle pulled back into the correct lane between 50 – 100 m.

The third witness was travelling further ahead than the second witness. He said he was overtaken by the defendant's vehicle after it had passed five or six vehicles behind him. The third witness had to brake to let the defendant's vehicle get back into the lane in front of him, to avoid a head on collision with

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<sup>1</sup> Crimes Act 1961, ss 160(2)(a) and 171.

<sup>2</sup> Land Transport Act 1998, s 36(2)(a).

an oncoming southbound vehicle. The utility then took off at high speed which the witness estimated at 160-180kph.

The fourth witness, travelling ahead of the third witness, said she had been travelling north in the passing lanes at about 90-100kph. The defendant's vehicle rapidly approached her in the northbound lane then overtaken her at what she estimated to be 120-130kph. The fourth witness knew the road curved to the left after the passing lanes but she saw the vehicle carry on straight ahead and not following the road around to the left. She saw the taillights of the vehicle and then nothing but a cloud of debris. She continued on through the crash scene as she had her young children in the car with her.

[3] This brings me to your immediate victims. Victor Apoua and his 17-year-old son, Jaeden-Reign Mafi, were driving on State Highway 1 from Whangārei. Mr Apoua saw you coming towards him. You were in his lane — the wrong lane. He tried to avoid you, but could not. The resulting crash killed Jaeden-Reign. His seat was torn from the car by the impact of the collision.

[4] Mr Apoua survived. He suffered several fractures to his chest and sternum.

[5] You were travelling between 150 and 165 kilometres per hour at the point of impact.

[6] Your offending has caused profound harm. Jaeden-Reign's parents have lost their son and his siblings, their brother. That harm has rippled throughout the whānau as evident by the victim impact statements that were bravely read aloud this morning in court.<sup>3</sup> I quote very briefly from one:

Our son was taken from us, taken from his parents, his siblings, his grandparents, his family and friends. Our son was robbed, robbed of his future, robbed of his life. He's gone. It's all gone.

[7] You were charged 5 February this year. On 20 June 2024, you asked to be arraigned. You were 5 July 2024. On that date, you pleaded guilty.

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<sup>3</sup> I received three victim impact statements (from Natasha McDonald-Shelford, stepmother; Roxanne Hughes, aunt; and Tausani Mafi, uncle). But, the restorative justice report provides some information about victim impact.

## Starting point

[8] There is little difference between the Crown and your lawyer in relation to the starting point. The Crown contends the starting point should lie between six and a half years' imprisonment and seven years' imprisonment. Mrs Thode, your lawyer, advances a starting point of approximately six years' imprisonment. I will not trouble you with the cases that underpin their analyses; my written remarks will capture them in a footnote.<sup>4</sup> It is enough to observe sentencing in this context turns on the overall gravity, meaning seriousness, of the offending.

[9] Several factors make your offending a *very* bad example of its kind.

[10] First, you had been drinking *and* consuming cannabis. A blood sample revealed 166 milligrams of alcohol per 100 millilitres of your blood. The limit is 50 milligrams of blood for an infringement offence; 80 milligrams for an offence that leads to a conviction. It follows you were driving with more than twice that amount of alcohol in your system. I mentioned you had consumed cannabis: your blood sample also revealed a "high level of cannabis".

[11] Second, you drove at greatly excessive speed for approximately three and a half kilometres. It bears repeating you were travelling between 150 and 165 kilometres per hour at the point of impact.

[12] Third, you overtook many vehicles recklessly. You overtook one on a double yellow line. Your overtaking of another might well have caused an earlier collision except for the fact the witness was able to brake and let you back into the lane. And, of course, you were on the wrong side of the road when you hit the victims' car.

[13] Fourth, you caused significant injury to Mr Apoua. It was fortunate he was not killed. But you killed Jaeden-Reign.<sup>5</sup>

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<sup>4</sup> *Ormsby v R* [2013] NZCA 578; *R v Kala'uta* [2016] NZHC 1526; *R v McGrath* [2014] NZHC 1583; *R v Tiddy* [2023] NZHC 2288; *R v Munro* [2024] NZHC 151; and *R v Price* [2020] NZHC 2995.

<sup>5</sup> Death is an ingredient of the offence of manslaughter.

[14] Consequently, your offending involved persistent dangerous and reckless driving that led to the inevitable: a collision with another car and death.

[15] I, therefore, adopt a starting point of six and half years' imprisonment.

[16] For completeness, I record the Crown's submission that the absence of a warrant of fitness and registration in relation to your car makes the offending more serious. I do not consider that so as there is nothing to suggest your car was unsafe — unlike your driving.

### **Personal circumstances and potential mitigating features**

[17] You are 44 years of age. Your background appears unremarkable. Your pre-sentence report says there was “no exposure to depravation, gang activity, violence or alcohol/drug use within the home”. You have four children. Two are with their mother. Another two are in state care.

[18] You have a not insignificant criminal history, which includes some historical driving related offending. Your criminal history is consistent, or at least not inconsistent, with the misuse of alcohol and drugs.

[19] There is no real contest that your guilty pleas should attract the maximum discount of 25 percent. I allow that amount on the basis I am satisfied they were entered at the first reasonable opportunity.

[20] You participated in a restorative justice conference with Mr Apoua and his partner, Natasha McDonald-Shelford, and Gina Rakuraku, Jaeden-Reign's mother. You expressed remorse at that conference and to the probation officer who prepared your pre-sentence report. She considers you “appropriately remorseful”, albeit she also considers you at “high risk of re-offending”. You have offered to pay reparation, saying you have approximately \$2,000 or perhaps \$2,500 in savings. Your letter to me (as sentencing Judge) and your letter to the victims also disclose evidence of

remorse, as does your brief meeting with Mr Apoua at court this morning.<sup>6</sup> I deduct six percent for this constellation on the basis your remorse is genuine.

[21] You have taken some steps towards rehabilitation while on bail. You self-admitted to a detoxification unit at Dargaville Hospital and from there went to Odyssey House. You appear to be using your time in custody profitably. I deduct a further 10 percent for your rehabilitative efforts and your prospect of rehabilitation.

[22] Mrs Thode argues your time on bail also warrants a discount. I disagree. Your time on bail was reasonably brief and your bail conditions did not significantly affect or compromise your liberty. To avoid doubt, you were not on electronically monitored bail.

### **Uplift**

[23] This produces an adjusted starting point of 46 months' imprisonment. The parties agree a one-month uplift for your criminal history is warranted, for what could be described as general but persistent lawlessness. This produces a sentence of 47 months' imprisonment, or three years and 11 months.

### **Mr Apoua's views about the outcome**

[24] This leaves one important topic. Mr Apoua does not wish you to be incarcerated. Other members of Jaden-Reign's whānau do not share that view.

[25] A victim's request for a lenient or merciful sentence is a relevant sentencing consideration. However, it is one consideration among others. This reflects a number of principles.

[26] First, the commission of a criminal offence is a wrong against the community. That is particularly so when the offence constitutes a crime, as it does here, and involves the loss of life. Second, a defendant's sentence should be consistent with sentencing levels for that offence. Relatedly, the outcome in any case largely turns on the seriousness of the offending. Third, principles of denunciation, deterrence, and

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<sup>6</sup> Contrary to Minute (No 3) of yesterday, the meeting could, and did, take place.

public protection may assume importance, and they do in your case. Those who kill through particularly dangerous and reckless driving typically receive a substantial term of imprisonment. While I acknowledge the benevolence of Mr Apoua's view, a view which commands respect, there is no special reason for an outcome other than imprisonment. Indeed, Mrs Thode does not argue otherwise.

### **Sentence**

[27] Mr Amson, please stand:

- (a) For the manslaughter of Jaeden-Reign Mafi, you are sentenced to a term of three years and 11 months' imprisonment.
- (b) For the reckless injury of Victor Apoua, you are sentenced to a term of two years' imprisonment.

[28] These sentences will run at the same time, so your effective sentence is three years and 11 months' imprisonment.

[29] You are disqualified from driving for four years. Your period of disqualification begins when you are released from prison.

[30] This leaves reparation. You are ordered to pay reparation of \$2,000 to Jayden-Reign's whānau.

[31] Stand down.

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**Downs J**