

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

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

**CRI-2022-092-010376  
[2024] NZHC 2951**

**THE KING**

v

**JOVAN AROHA ZACHARIAH PORA**

Hearing: 11 October 2024  
Counsel: NE Walker and CM Fountain for Crown  
VJ Feyen for Defendant  
Judgment: 11 October 2024

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**SENTENCING REMARKS OF DOWNS J**

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Solicitors/Counsel:  
Crown Solicitor, Manukau.  
VJ Feyen, Auckland.

## **Introduction**

[1] Jovan Pora, earlier this year you were tried by a jury of kidnap and manslaughter in relation to Katelyn Rua-Tuhou. The jury found you guilty of kidnapping Ms Rua-Tuhou, but not guilty of manslaughter in relation to her death. I must pass sentence in accordance with those verdicts. It follows you are *not* for sentence in relation to Ms Rua-Tuhou's death. The significance of this feature I shall return to.

## **The facts**

[2] You and Ms Rua-Tuhou began a relationship in early 2020. You were then 18; she, 17. So, you were both young. Your relationship was marred by frequent arguments and break-ups, and given the evidence at trial, possessive and controlling behaviour on your part. That said, the two of you were clearly fond of each other. On the evening of 17 July 2022, you committed a serious assault on Ms Rua-Tuhou. You had been drinking. She made no complaint to the Police and the matter never went to court, but she left you for a time.

[3] On the evening of Christmas Day 2022, Ms Rua-Tuhou was celebrating with her whānau at their home. You were drinking with friends, elsewhere. You believed Ms Rua-Tuhou might have been unfaithful.

[4] In the early hours of Boxing Day, you drove to Ms Rua-Tuhou's home. You did so for two reasons. First, you had been asked to return her to your parents' home, where both of you were staying. She had been drinking and she was intoxicated. Second, you were angry about her alleged infidelity, and you wanted to confront her. Your anger was unquestionably fuelled by your intoxication.

[5] You arrived at the home a little after 2.32 am. You left there with Ms Rua-Tuhou at or about 3.15 the same morning. In that 40 minute or so window, you argued with Ms Rua-Tuhou's father, Koroni Tuhou, an incident which appears to have been precipitated by you referring to Ms Rua-Tuhou as a "bitch". You then argued with Ms Rua-Tuhou in your car, an event witnessed by her cousin. You kidnapped Ms Rua-Tuhou thereafter.

[6] The precise sequence remains unclear notwithstanding the trial. But, in the very least, you forcibly restrained Ms Rua-Tuhou from getting out of your car despite the interventions of her whānau. She could be heard screaming for help from inside the home, and you were seen holding her, including by her underwear, to prevent her getting out of your car. Neighbours testified of hearing a very nasty incident unfold. I have no doubt that at this point Ms Rua-Tuhou was very frightened of you.

[7] One witness thought you had a knife, perhaps even a machete. I am not sure you presented any weapon at Ms Rua-Tuhou. No other witness saw you with a weapon, and the evidence of the witness who did was somewhat fluid. And, while a pocket-knife or multi-tool implement was (later) found in your car, so were many other things that had plainly not been used for some time.

[8] You drove Ms Rua-Tuhou away. Approximately five minutes later, you crashed on the motorway. Ms Rua-Tuhou was thrown from your car, and she died. There was clear evidence she had opened the passenger door. The Crown contended she was attempting to escape you at that time, and this aspect formed the heart of the manslaughter allegation. You offered evidence that Ms Rua-Tuhou was in the habit of opening car doors while intoxicated, hence that she did so on this occasion did not imply fear of you on her part. As observed, the jury acquitted you of manslaughter.

[9] Police were promptly on the scene. You refused to provide a blood specimen, a charge of which you were also found guilty. You were prohibited from driving at the time, a charge to which you pleaded guilty.

### **Sources of information**

[10] I have had the benefit of a wealth of information, including victim impact statements. I have also considered:

- (a) Your pre-sentence report, which is comprehensive, and helpful.
- (b) A report you commissioned from Dr Ian Goodwin, a psychiatrist.

- (c) A letter from Te Whatu Ora in relation to your voluntary counselling sessions concerning alcohol.
- (d) Various testimonials and letters on your behalf.
- (e) A suite of prison certificates.
- (f) A letter you wrote me (as sentencing Judge) and another to Ms Rua-Tuhou's family.

### **The competing contentions**

[11] The Crown contends I should adopt a starting point of between three and three and a half years' imprisonment; permit modest discounts only for your personal circumstances and time on electronically monitored bail; and your sentence should be one of imprisonment.

[12] On your behalf, Ms Feyen contends I should adopt a starting point of approximately two and a half years' imprisonment; make significant discounts for your personal circumstances and time on electronically monitored bail; and your sentence should be one of home detention.

### **Analysis**

[13] The maximum penalty for kidnap is 14 years' imprisonment.<sup>1</sup> Starting points from two and a half years' imprisonment may be applied when the detention is brief; the associated violence or threats of violence modest; and no weapon is involved.<sup>2</sup>

[14] The Crown's starting point presupposes the presentation of a weapon, and this I have already addressed. It also presupposes premeditation on your part. I am not sure you went to the home intending to detain Ms Rua-Tuhou, as against a more general intention to confront her in some way. That said, I do accept Ms Rua-Tuhou was vulnerable: she was slight and affected by alcohol; Mr Pora, plainly, you were

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<sup>1</sup> Crimes Act 1961, s 209.

<sup>2</sup> *Cassidy-Gugich v R* [2016] NZHC 3027.

much stronger than her. She was also entitled to look to you for protection given your relationship. And, of course, you had seriously assaulted her earlier that year. These aspects aggravate your offending, meaning they make it worse.

[15] It is impossible to be precise about the period of detention. But, given the window mentioned earlier and the other events at the home, the period was probably about 15 minutes, and that includes the travel time before the crash.

[16] This constellation warrants a starting point beyond that offered by Ms Feyen, but less than that offered by the Crown. I settle on two years and nine months' imprisonment. I add one month for your driving offending.

[17] Ms Feyen argues your background contributed to your offending, given the history outlined in Dr Goodwin's report, and that includes a diagnosis of ADHD; use of alcohol and other drugs as a teenager; and abuse by "various partners of [your] mother". Discount "in the vicinity of 25 percent" is sought.

[18] I acknowledge your background was challenging. But I am not persuaded it contributed causatively to your offending.<sup>3</sup> You testified at trial. You were cross-examined closely. You impress as intelligent, articulate, and capable; in short, as someone who exhibits considerable agency. Moreover, the prosaic explanation for your offending is that you were angry Ms Rua-Tuhou had allegedly been unfaithful to you. So, I make no deduction under this head.

[19] Ms Feyen also argues I should deduct between five and 10 percent for remorse. I acknowledge expressions of remorse can readily be found in the record. However, I am unpersuaded your remorse is genuine, unlike your regret concerning Ms Rua-Tuhou's death. You did not plead guilty to the kidnapping charge. You testified you were doing no more than trying to prevent Ms Rua-Tuhou from falling out of the car; driving away in the car; or some combination of the two. Your evidence on that topic was implausible, and the jury was right to reject it. Moreover, you gave a similar account to the probation officer who prepared your pre-sentence report.

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<sup>3</sup> *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

[20] Your digital communications with Ms Rua-Tuhou also have relevance here. They display possessive and controlling behaviours on your part towards her, and related failures of mindset. You do not appear to acknowledge these failings, despite their influence on your offending.

[21] Ms Feyen contends that as you have no convictions, you should receive a discount for good character. A discount of this nature would be awkward in your case, as it is typically given when the offender is somewhat older — at least older than 24 years — and given that you acknowledged at trial that you had seriously assaulted Ms Rua-Tuhou in July 2022.

[22] This brings me to your age, and prospect of rehabilitation. Your pre-sentence report is something of a mixed bag in relation to rehabilitation, but plainly you have made *some* progress in prison. As I said earlier, you impress as intelligent, articulate, and capable. You have potential. You are still young. Your offending also exhibits a measure of impulsivity commensurate with your age. I deduct 15 percent for this mix.

[23] You were on electronically monitored bail for 15 months (and five days). You breached that bail twice. Your first breach was inconsequential, and I say no more about it. Your second was serious: you sent threatening messages to a Crown witness shortly before the verdicts. As you well know, I remanded you in custody.

[24] The Crown contends discount for your time on that bail should be “in the vicinity of three months”; Ms Feyen contends five months. I allow five.

[25] This produces a nominal sentence 24 months’ imprisonment. Some factors favour this sentence rather than one of home detention. The crime of kidnap is inherently serious. Denunciation and deterrence are important considerations. As I said earlier, I have no doubt Ms Rua-Tuhou was very frightened of you when you would not let her out of the car at the home. And, your pre-sentence report recommends a sentence of imprisonment.

[26] On the other hand, you are still young, and you show promise. You have tasted imprisonment, as I remanded you in custody in June. You also spent two and a half months, or thereabouts, in custody following your arrest.

[27] Your case is on the cusp. Ultimately, however, I am persuaded home detention is appropriate because of your age and the prospect of rehabilitation, and importantly because you have experienced incarceration in consequence of your offending.

[28] It is distinctly arguable that time should be reflected in the length of your home detention sentence. As against this, the overarching concern is that the penalty is adequate to the offending. I consider anything less than a sentence of 12 months' home detention would be materially inadequate.

[29] I now return to the significance of your acquittal on the manslaughter charge. I make it clear to you that had you been found guilty of that charge; you would have received a substantial term of imprisonment. But you were found not guilty of manslaughter, and I must respect that verdict. In relation to the kidnapping charge let me speak to you in plain language: you have avoided prison by the skin of your teeth.

[30] Stand please. On the offence of kidnap, you are sentenced to 12 months' home detention. On the driving offences, you are convicted and disqualified from driving for six months.

[31] Stand down, thank you.

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**Downs J**