

**ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS,  
OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT  
PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011. SEE  
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>**

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

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

**CRI-2023-219-000278  
[2025] NZHC 176**

**THE KING**

**v**

**W**

Hearing: 14 February 2025  
Appearances: A M McClintock and K Nihill for Crown  
B J Hunt and H de Groot (via VMR) for Defendant  
Sentence: 14 February 2025

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**SENTENCING NOTES OF LANG J**

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Solicitors/counsel:  
Meredith Connell, Office of the Crown Solicitor, Auckland  
B J Hunt/H de Groot, Auckland

[1] Mr W, you appear for sentence having been found guilty by a jury of the crime of manslaughter. You stood trial on the charge of murder, but the jury acquitted you on that charge.

[2] The maximum sentence for the crime of manslaughter is life imprisonment.<sup>1</sup>

### **The facts**

[3] The facts on which I propose to sentence you are based on the evidence adduced at the trial. In the large part, this comprised CCTV camera film footage taken of the area in which the incident giving rise to the charge occurred.

[4] You and two associates went to the Albany bus station on the afternoon of 18 September 2023. You were on your way to buy some food. Whilst you were at the bus station, CCTV cameras recorded the victim, Mr Eapara Poutapu, approaching one of your associates, Mr H, and engaging in a discussion with him. Mr Poutapu had earlier been pacing around the bus station and appearing to be in an agitated state. Mr H's interactions with Mr Poutapu led him to conclude that Mr Poutapu was in a mentally unstable state. He then went and talked to you about his discussion with Mr Poutapu. Neither you nor your associates had ever encountered Mr Poutapu before.

[5] The CCTV footage then shows Mr Poutapu walking away from Mr H before walking out onto the main bus platform. You also walked out onto the platform at this time, having discussed with Mr H his interactions with Mr Poutapu. You were some distance away from Mr Poutapu when you went onto the platform. Contrary to the Crown's submission at trial, I do not accept that you made any attempt to advance towards or challenge Mr Poutapu at this stage. Rather, your evidence and your movements as captured on CCTV confirm that you were asking Mr Poutapu about his interactions with Mr H, in whose direction you gestured. At one stage your hand movements also confirm your evidence that you were attempting to calm him down.

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<sup>1</sup> Crimes Act 1961, s 177.

[6] The footage shows that Mr Poutapu then advanced towards you before stopping and taking off his jacket. He placed this, together with a bag that he was carrying, on a nearby seat. He then advanced aggressively towards you with his fists raised. It is clear from this footage that Mr Poutapu was intent at that stage on engaging in a physical fist fight with you.

[7] As it transpires, you were carrying a kitchen knife in your pocket. You removed it from your pocket as Mr Poutapu advanced towards you. You then endeavoured to deflect his attack by kicking him in the abdomen. At the same time, you moved your right hand rapidly towards his face in a punching motion. This resulted in two superficial cuts to Mr Poutapu's face with the knife that was in your hand.

[8] Mr Poutapu was thrown off balance by the manner in which you responded to his advance. However, he quickly regathered his wits and the two of you then came together again in a corridor leading onto the platform. At this point, Mr Poutapu went to deliver a "scissor kick" to your head or upper abdomen. The CCTV film footage shows that you responded by delivering a "roundhouse" blow with your right arm in the direction of Mr Poutapu's upper body. You were looking down towards the ground as you did so.

[9] At the time you delivered this blow, the knife was in your hand. The blow resulted in Mr Poutapu sustaining a single stab wound to the side of his neck. He immediately put his hand to his neck and began walking away. Having seen the injury you had inflicted on him, you backed away and left the scene.

[10] Mr Poutapu staggered from the corridor where he had been stabbed into a ticket office, where he approached the counter. He was bleeding profusely at this time. He then staggered outside and eventually collapsed onto the roadway. Attempts by first responders to save him were unsuccessful.

[11] After leaving the bus station you went to a nearby restaurant, where police officers who approached you observed a significant cut to your hand. You told them you had sustained this when you were stabbed by a person at the bus station. The

officers were not aware of what had happened at the bus station so they let you leave the restaurant to obtain treatment for your injuries. Rather than do this, you travelled with your mother to Hamilton. During the journey you threw the knife into a lake, from where it was subsequently recovered by the police. Later the same day, after you and your mother had seen on the news that Mr Poutapu had died, your mother took you to the police station in Hamilton, you were later formally arrested and charged with murder.

### **Starting point**

[12] The first step in the sentencing process is to set a starting point for the sentence to be imposed on you. This is the sentence that would be appropriate having regard to the circumstances of the offending. It does not take into account any factors personal to you.

[13] There is no guideline judgment of the Court of Appeal to assist in setting a starting point for the sentence to be imposed on a charge of manslaughter. This is because that particular crime can be committed in so many different ways. The usual approach in manslaughter cases is to compare starting points adopted in other similar cases involving offenders who have been convicted of manslaughter. Care must be taken in this exercise because no two cases are ever factually exactly the same. Other cases merely provide guidance as to the range within which an appropriate starting point is likely to lie.

[14] In your case, the Crown points to four aggravating factors. The first of these is that you used the kitchen knife that you had concealed in your pocket as a weapon. Secondly, you used this to wound Mr Poutapu by initially inflicting the cuts to his face and then inflicting the fatal stab wound to his neck. Thirdly, and as is evident from the charge, the offending resulted in Mr Poutapu's death. Fourthly, your offending has had profound consequences not only for Mr Poutapu but also for members of his whanau. You heard one victim impact statement read earlier in Court and I have also read several others. They have been written in an insightful, respectful and measured way. Nevertheless, they show that your offending has had devastating effects for the entire family. In all likelihood, they will continue to suffer these for many years yet.

[15] However, I accept that, at the time you first produced the knife and then subsequently struck the fatal blow, you were acting in self-defence. On each occasion Mr Poutapu was confronting you in an intimidating and aggressive manner. At the time that you inflicted the fatal wound he was delivering a forceful kick aimed at your upper body or head.

[16] I consider the jury's verdict is explicable on the basis that, although they accepted you were acting in self-defence, you used considerably more force than was reasonable given the circumstances as you believed them to be. The fact that the jury acquitted you on the charge of murder also means they accepted that you did not intend to kill Mr Poutapu. Nor did you know that death was likely to result from the blow that you struck to his throat. This is not surprising given that you were looking downwards as you delivered that blow.

[17] The Crown has referred me to several cases that it considers to be comparable to the circumstances in your case.<sup>2</sup> These show that starting points of around seven years imprisonment have been adopted. The Crown submits that this is an appropriate starting point in your case.

[18] Your counsel, Ms Hunt, contends that the cases relied on by the Crown do not support a starting point in your case of seven years imprisonment. She has referred me to other cases in support of her submission that a starting point of no more than five years imprisonment is appropriate.<sup>3</sup>

[19] Ms Hunt also submits that you were placed in a very difficult position because of the aggressive and intimidating manner in which Mr Poutapu confronted you. She says this is the root cause of the situation in which you found yourself. However, I consider the root cause of your offending lies in the fact that you were carrying a knife at the time the incident occurred and you used it as a first resort. Had the knife not been available, Mr Poutapu would still be alive and you would not be in the position in which you now find yourself.

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<sup>2</sup> *R v Smith* [2014] NZHC 2091; *R v Edwardson* HC Rotorua CRI-2006-069-1101; *R v Pene* [2021] NZHC 3327 and *R v Davies* [2020] NZHC 903.

<sup>3</sup> *R v Hanara* [2023] NZHC 2057; *R v Hepi* [2015] NZHC 1449; *R v Emery* HC Auckland CRI 2008-092-12285 13 February 2009, Williams J.

[20] You say that you often carried a knife because of an earlier incident in which you were stabbed when you went to the assistance of another person, who had been injured during a fight that had broke out at a party you were attending. You also say that you did not carry the knife with the intention of using it, but rather to scare others from harming you if the situation required.

[21] This is an explanation the Court hears all too often, particularly in the case of young offenders. Young people carry weapons with them for the purpose you describe, but then use them as soon as they are confronted with a situation in which they perceive they are in physical danger. As this case demonstrates, all too often this ends in tragedy for all involved.

[22] I accept that a starting point of around seven years imprisonment would ordinarily be appropriate to reflect the gravity of your offending. However, given the fact that you were acting in self-defence and Mr Poutapu was acting in an intimidating and aggressive manner, I consider a reduced starting point of six years imprisonment to be appropriate.

### **Aggravating factors**

[23] You have some history of being involved in acts of violence in a family context, but this has never resulted in any conviction or notation in the Youth Court. The Crown therefore accepts that it would not be appropriate to increase the starting point to reflect this factor.

### **Mitigating factors**

[24] I consider you are entitled to credit to reflect several mitigating factors. These are your offer to plead guilty to the charge of manslaughter, your youth, the fact that you have expressed remorse and a willingness to engage in restorative justice, and the factors identified in reports that your counsel has provided for sentencing purposes. These include your rehabilitative prospects, taking into account the efforts you have already undertaken whilst on remand.

[25] I propose to provide you with a discrete discount to reflect your offer to plead guilty to the charge on which you were ultimately found guilty. However, I consider it would be an artificial exercise to attempt to provide individual discounts for the remaining factors. In my view they are inextricably linked and are therefore best considered together. This also avoids the risk of double counting.

*Offer to plead guilty to manslaughter*

[26] You were charged with murder shortly after the incident that led to Mr Poutapu's death. The Crown then provided disclosure of CCTV footage incrementally in late 2023 and early 2024. On 31 July 2024, your counsel advised the Crown that you were prepared to plead guilty to a charge of manslaughter. Although the offer was not made at the earliest opportunity, I accept the Crown's submission that it should attract a discount of 14 months, or approximately 20 per cent. I note that Ms Hunt accepts this to be appropriate.

*Youth and related factors*

[27] You are now 18 years of age. The offending occurred when you were just 16 years of age.

[28] The Courts recognise that, although there is no presumption in favour of a discount for youth, it is generally likely to be a mitigating factor for a variety of reasons. These include age-related neurological differences between adults and young people, the potential for prison sentences to have a crushing effect on young people and the fact that young people are likely to have a greater capacity for rehabilitation, because they may be more receptive to rehabilitative treatment. Further, as your case demonstrates, many young persons who commit serious offences also exhibit other characteristics that are likely to mitigate their culpability.

[29] It is now well recognised that, unlike adults, young persons who are faced with stressful situations may react to them impulsively and without considering the consequences that are likely to follow. I have no doubt that this was a factor in your offending because you immediately reacted to Mr Poutapu confronting you by pulling out the knife and attempting to use it.

[30] As I have already noted, you have no previous convictions or notations in the Youth Court. However, the Crown says the discount to be given for youth and associated factors should be tempered to reflect the involvement that you have had with the police in the context of violent episodes in a family context. It says this should reduce the level of discount to be provided to reflect youth and other factors.

[31] This submission needs to be viewed in light of the material I have now been provided with by your counsel. These include not only numerous letters of support from you, remorse from you and letters of support from members of your family, but also comprehensive reports from a psychiatrist, Dr Immelman, and two clinical psychologists. One of the latter has had the opportunity to engage in therapy with you during your time on remand.

[32] These health professionals have had the opportunity to consider not only your current presentation, but also the issues you have confronted earlier in your life. The reports they have prepared shed considerable light not only on your past interactions with the authorities, but also the circumstances giving rise to the present charge. They provide valuable assistance for sentencing purposes and also for those who will be required to decide how best your rehabilitation should progress in the future.

[33] You grew up in a chaotic family environment in which drug taking and violence between your parents and caregivers was a feature. You were also the victim of violence yourself on several occasions. You have been exposed to physical and emotional abuse as well as neglect, from a very young age. These issues led to intervention by government agencies when you were less than five years of age.

[34] You were enrolled in no fewer than six primary schools but were often suspended from school because of behavioural issues linked to your traumatic background. These disruptions led to academic difficulties flowing from reading deficits and gaps in your learning.

[35] In your adolescent years you began consuming alcohol and cannabis. By the age of 14 years you were using cannabis daily, and this coincided with increased disruptive behaviour and involvement with the youth justice system and mental health



services. This ultimately resulted in you being placed in institutions operated by state agencies, where you remained for some time before being returned to the care of your mother.

[36] During this period, you were diagnosed with ADHD, and placed on medication for this. This resulted from your behavioural issues, including the way in which you reacted to bullying you encountered from your peers. You have never accepted this diagnosis and it now appears that it may have been incorrect because you do not currently display any symptoms suggestive of ADHD.

[37] However, you have now been diagnosed with post-traumatic stress disorder. Part of this diagnosis is attributable to events that you witnessed and experienced in your childhood and adolescence. It is also attributed in part to a traumatic event that occurred whilst you were in a youth justice facility awaiting trial on the present charge. This involved another resident of the institution in which you were housed throwing a cup of boiling water into your face. The water had sugar dissolved in it. This resulted in you suffering severe injuries to your face and eyes that required hospitalisation for a considerable period. You have not yet recovered full use of one eye.

[38] The reports demonstrate that you do not suffer from any global mental impairment and there is nothing to prevent you from engaging in rehabilitative therapy. There is also nothing to prevent you from becoming involved in a pro-social lifestyle in the future. You have already demonstrated your ability to rehabilitate yourself through your conduct during your time on remand. During this period you have engaged well with clinical therapy and you have also undertaken educational activities that resulted in you gaining Level 2 NCEA qualifications. Staff members from the facility have provided glowing reports about your progress in this area. You obviously have the ability to thrive academically, and this is likely to be instrumental to you gaining employment and leading a productive and pro-social life in the future.

[39] Importantly, you have also expressed remorse and insight into the effects of your offending from the outset. This is reflected in comments you have made to the report writers and in the fact that you have offered to participate in a restorative justice process with Mr Poutapu's family. You sought an adjournment of sentencing to enable

this to occur but the family indicated they wished sentencing to proceed before engaging with you.

[40] Finally, I accept that you are more likely to find it more difficult than others to serve, sorry, I accept that you are likely to find it more difficult than others to serve a prison sentence because of the ongoing effects of your eye injury and other factors related to this that are identified in the reports and your counsel's submissions.

[41] Taking these factors into account, I propose to provide a global discount of 22 months, or approximately 30 per cent, to reflect these factors. This reduces the sentence to one of three years imprisonment. The fact that you have already spent approximately 17 months in custody on remand means you are now eligible to apply for parole.

[42] Your counsel has urged me to apply a further reduction to create a sentence that would result in you immediately being released from prison on the basis of the time you have already spent in custody on remand. This would require me to impose a sentence of two years imprisonment or less. I cannot accept this submission. I cannot artificially create a sentence simply to achieve an outcome desired by an offender. However, I acknowledge the concern that has been expressed both in the health assessors' reports and the submissions of your counsel that your transfer to an adult prison is likely to pose very real risks for you.

[43] I have no power to direct how the prison authorities deal with you. However, it is to be hoped that the authorities see fit to continue your detention in a youth justice residence until such time as the prison authorities have had an adequate opportunity to consider these remarks and the material that has been provided to me in anticipation of sentencing. This will enable them to make an informed and considered decision as to how you should be housed if the decision is made to transfer you to an adult prison.

#### **Application for name suppression**

[44] You have applied for permanent suppression of your name. The Court has jurisdiction to grant name suppression in cases where publication will result in the

offender suffering extreme hardship.<sup>4</sup> Ms Hunt submits that you are likely to be placed at physical risk in prison and your rehabilitative prospects are also likely to be significantly impeded if your name is published at this stage. She says this amounts to extreme hardship that justifies permanent suppression being granted.

[45] It is now well established that there is no presumption that publication will cause extreme hardship in the case of a young person convicted of an offence and even a serious offence. However, the Supreme Court has emphasised that New Zealand's international treaty obligations carry weight in this context,<sup>5</sup> as does the right of a child to be dealt with by a manner that takes account of the child's age.<sup>6</sup>

[46] Dr Immelman considers that publication of your name at this stage is likely to derail the rehabilitative journey on which you have embarked and in which you are making good progress. He points out that you are also now particularly vulnerable as a result of the numerous issues that you have faced on remand and the diagnosis of PTSD that has come about partly as a result of these.

[47] I agree that the efforts that you have made to date could easily be derailed if publication of your name should now occur. It is of course extremely difficult to predict with any accuracy the precise effect publication is likely to have. However, like Dr Immelman, I am satisfied that you are in a particularly vulnerable position by virtue of the issues that you have faced to date. I am therefore satisfied that you fall within the category of vulnerable young offenders identified by the Court of Appeal for whom publication would amount to extreme hardship.<sup>7</sup> The Court of Appeal has also confirmed that nothing in s 200 of the Criminal Procedure Act 2012 precludes a Court from recognising the special importance of youth when considering the issue of name suppression.<sup>8</sup>

[48] I am therefore satisfied that jurisdiction exists for a permanent order for suppression to be made. I am also satisfied, for the same reasons, that it is appropriate

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<sup>4</sup> Criminal Procedure Act 2011, s 200(2)(a).

<sup>5</sup> *M (SC 13/2023) v R* [2024] NZSC 29, [2024] 1 NZLR 83; Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

<sup>6</sup> New Zealand Bill of Rights Act 1990, s 25(i).

<sup>7</sup> *DP v R* [2015] NZCA 476, [2016] 2 NZLR 306.

<sup>8</sup> At [11].

to exercise my discretion in favour of suppression. I therefore make a permanent order suppressing your name and identifying particulars from publication.

**Sentence**

[49] Stand now Mr W.

[50] On the charge of manslaughter you are sentenced to three years imprisonment.

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Lang J