

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

**I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE**

**CRI-2022-025-000396
[2025] NZHC 751**

THE KING

v

NAYA RAPIU FABIAN WHAREKURA

Hearing: 1 April 2025

Counsel: M B Brownlie and A M MacKenzie for Crown
S G Vidal for Defendant

Sentencing: 1 April 2025

SENTENCING NOTES OF RADICH J

[1] Naya Wharekura, you appear for sentencing today after a jury found you guilty of the murder¹ of Chad Parekura and the attempted murder² of Austin McGregor. The jury by its verdict was satisfied that you intentionally stabbed Mr Parekura, and that when you did so you were either intending to kill him or you knew that your actions would likely cause his death but you carried on regardless. The jury by its verdict was satisfied also that you intentionally stabbed Mr McGregor and that when you did so you intended to kill him.

¹ Crimes Act 1961, ss 167 and 172; maximum penalty of life imprisonment.

² Section 173; maximum penalty of 14 years.

Approach to sentencing

[2] Under the Sentencing Act 2002, the main purposes of sentencing here are to hold you accountable for the harm you have caused by your offending; to promote a sense of responsibility for, and acknowledgement of, that harm; to denounce and deter such criminal conduct; and to assist in your rehabilitation and reintegration into society.³ I must consider the gravity of your offending and the degree of your culpability. Your sentence must be consistent with sentences imposed in other reasonably similar cases,⁴ and I should impose the least restrictive sentence appropriate in the circumstances.⁵

[3] When a person has committed murder, the Sentencing Act mandates that that person must be sentenced to imprisonment for life unless, given the circumstances of the offence and the person, a sentence of imprisonment for life would be manifestly unjust. The strong presumption in favour of life imprisonment reflects the sanctity of human life.⁶ It may only be displaced in compelling cases⁷ having regard to the principles and purposes of sentencing.⁸ There is no argument from anyone involved here that there are no circumstances that would make life imprisonment manifestly unjust. As a result, you will be sentenced to imprisonment for life.

[4] The question that then arises is what the minimum period of imprisonment should be. The minimum period of imprisonment is the period of imprisonment an offender must serve before they can be considered for parole by the Parole Board. What I want to make clear is that the minimum period of imprisonment is not the time at which you will be released, and it is not the sentence. The sentence is life imprisonment and the Parole Board will not release you on parole unless it is satisfied that you do not pose a future risk to the community. And even if you are eventually released on parole after you have served the minimum period of imprisonment that I

³ Sentencing Act 2002, s 7.

⁴ Section 8(b) and (e).

⁵ Section 8(g).

⁶ New Zealand Bill of Rights Act 1990, s 8.

⁷ *R v Van Hemert* [2021] NZCA 261 at [36]. The successful appeal of that case to the Supreme Court did not undermine this aspect of the Court of Appeal's decision; see *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [56]–[63] in general, and in particular at [62] and [63], per Glazebrook, O'Regan, Ellen France and Kós JJ.

⁸ *R v Rapira* [2003] 3 NZLR 794; *R v Smail* [2007] 1 NZLR 411 (CA) at [14].

set today, you will remain under the supervision of the Department of Corrections and you can later, if necessary, be recalled to prison to continue to serve your life sentence.

[5] The purpose of a minimum period of imprisonment is to hold an offender accountable, to denounce their conduct, to deter others and to protect the community.⁹ The minimum period of imprisonment may not be less than 10 years on all charges of murder,¹⁰ and may not be less than 17 years if specific factors set out in s 104 of the Sentencing Act are engaged.¹¹ I agree with counsel for both parties that none of those factors are engaged here, so s 104 does not apply.

[6] The maximum sentence for the charge of attempted murder is 14 years' imprisonment. The Court cannot add the sentence for that charge on top of the sentence of life imprisonment,¹² but I may take that charge into account when I set the minimum period of imprisonment on the murder charge.

Victim impact statements

[7] Before I go on to discuss the offending and the sentence in more detail, I want to acknowledge the victims of this offending.

[8] First, I acknowledge the whānau of Chad Parekura. You have the Court's deep sympathies for your loss. Many of you are in Court today and were in Court throughout the trial last year. Three of you read out the victim impact statements we have just heard: Bridget Lahman, Chad's sister; Marcia Waikato, Chad's aunty; and Heidi-Paige Hunwick, the mother of Chad's son. You have all been courageous in putting your feelings into words and reading them in Court.

- (a) Ms Lahman, you came here to represent Mr Parekura's parents and your three siblings. You spoke of how Mr Parekura's time in Invercargill had turned his life around and of the positive outlook that he had for his life. You spoke of his unconditional love for his son. He was someone,

⁹ Sentencing Act, s 103(1) and (2).

¹⁰ Section 103(2).

¹¹ Section 104.

¹² Section 23.

you have told us, who made those around him smile. You expressed in compelling terms the pain that you and Mr Parekura's whānau feel and the way in which it is overwhelming for you all.

- (b) Ms Waikato, you spoke of the void that the loss has been left in the lives of Mr Parekura's whānau. You spoke of the way in which Mr Parekura could light up a room and make those around him feel special, of the way in which he was always ready to help those in need. You spoke of the warmth he had in his heart. You spoke of the indescribable pain that his mother is feeling alongside that of his father, his grandparents, his siblings and his treasured son.
- (c) Ms Hunwicke, you spoke of the way in which the actions of Mr Wharekura stripped Mr Parekura's son of his father and of his innocence. You spoke of the deep way in which he has been affected, the way in which his behaviour has changed, and you spoke of the impact on yourself which, I acknowledge, has been considerable.

Offending

[9] I begin the sentencing process now by describing the facts of the offending. Mr Wharekura, on the evening of 23 April 2022 you went into town to buy MDMA from Mr McGregor. In town, Mr McGregor gave you the MDMA but you did not pay him the full amount agreed. You and the group you were with then left town and returned to the house you had been in. Later, one of your associates received text messages and calls that have been described as threatening in nature about the failure to pay the full amount. There were demands for you to come back to town to sort it out. From the tone and content of the messages, you expected to face a group of people on your return. You and your associates decided to return to town so that you could pay what was owed.

[10] Unbeknown to your associates, before you left you armed yourself with a knife from the kitchen. The knife had an 18 cm blade. You and your associates arrived in town in the early hours of 23 April 2022. You got out of the car you were travelling

in on Kelvin Street, just before the intersection with Don Street. You went down Don Street on foot while your associates continued down Don Street in the car. Mr McGregor had been informed that you were returning to town to meet with him. Several of his associates accompanied him to the meet-up, including Mr Parekura. Mr Parekura ran out towards you in front of the rest, who were walking. Several other members of the group appeared to be focused on speaking with your other associates, rather than being focused on you. Once Mr Parekura neared you, he appeared from the CCTV footage to adopt a fighting stance. You then stabbed him in the torso. Your movement in doing so was quick and decisive. He was unarmed. The stab wound killed him.

[11] You then, in short order, turned, went towards Mr McGregor and stabbed him in the torso. Like Mr Parekura, Mr McGregor was unarmed. He made no endeavour to fight or to suggest that he might. Again, your movement was quick and decisive. Mr McGregor was taken to hospital. He sustained significant injuries. Fortunately, he did not die.

Setting the minimum period of imprisonment on the charge of murder

[12] I am now going to assess what the minimum period of imprisonment should be. In doing so, I will address several matters:

- (a) First, I will determine what the starting minimum period of imprisonment should be on the charge of murder.
- (b) Secondly, I will determine whether an uplift to the minimum period of imprisonment is appropriate to reflect the charge of attempted murder.
- (c) Thirdly, I will determine whether it is appropriate to discount the minimum period of imprisonment to reflect your personal circumstances.

Starting minimum period of imprisonment

[13] The Crown submits that the appropriate minimum period of imprisonment on the charge of murder is 14 years. Counsel for the Crown make the point that, because the jury accepted by its verdict that you intended to kill Mr McGregor, it can be inferred that you also intended to kill Mr Parekura given you used the same knife to stab both men and stabbed them both once and in the same manner. The Crown refers to *Brown v R*,¹³ *R v Middleton*¹⁴ and *R v Pepene*.¹⁵ The Crown adds in submissions this morning that an aggravating factor is that you were on parole at the time of the offending.

[14] Ms Vidal, your counsel, submits that the appropriate minimum period of imprisonment should be 10 years. She has referred to the conduct of the victims on the night as being provocative and says that this can be considered as a mitigating factor. The submission is made that the incident arose out of an unlawful transaction, a drug deal, and the threats about receiving a beating were being made. As a result, she says, the actions of the victims can be regarded as having contributed to the tragic outcome in the case. She refers to *R v Te Maru*¹⁶ and *R v Alexander*.¹⁷

[15] The conduct of a victim is something that the Sentencing Act contemplates *can* be a mitigating factor.¹⁸ Whether a victim's conduct is a mitigating factor in a particular case depends essentially on whether, and to what extent, the conduct has materially reduced the culpability of an offender in responding to it.¹⁹ Whether that is the case depends on factors such as whether the offender's response was proportionate in nature, the duration and gravity of any provocation, the timing of that response, and whether the provocation was an operative cause of the offender's response.²⁰

[16] I do not accept that the conduct of the victims contributed to your actions or reduces your culpability in any way. I accept you received threats, but the threats were

¹³ *Brown v R* [2011] NZCA 95.

¹⁴ *R v Middleton* [2012] NZHC 3261.

¹⁵ *R v Pepene* HC Auckland CRI-2009-044-7883, 13 December 2010.

¹⁶ *R v Te Maru* [2020] NZHC 2084.

¹⁷ *R v Alexander* [2018] NZHC 1584.

¹⁸ Sentencing Act, s 9(2)(c).

¹⁹ *Wairau v R* [2015] NZCA 215 at [31].

²⁰ At [29(c)] and [32].

received prior to your arrival at Don Street and, importantly, they did not materialise when you arrived on Don Street. Rather than a group of people running to attack you, there was a single person, Mr Parekura, running towards you. He did not present a serious threat. He was alone and unarmed. His associates were walking at a slower pace or were standing and talking with your associates. Mr Parekura adopted what has been referred to as a fighting stance, yes, but there was no indication whatsoever that he had a weapon. Your response in stabbing him with the large knife you carried was quite out of proportion to any potential threat Mr Parekura posed. After you stabbed Mr Parekura, you turned, walked a short distance and stabbed Mr McGregor. The fact Mr McGregor had sent threatening messages prior to your arrival in Don Street did not make him a serious threat. There was no indication that Mr McGregor had a weapon or wanted to fight you at all. He was standing passively and talking with others at the time.

[17] I accept that you may have been angered by the actions of Mr McGregor and Mr Parekura. However, that does not reduce your culpability in killing Mr Parekura and attempting to kill Mr McGregor. The case law is clear that an offender does not have reduced culpability simply because they claim to have been incensed by the actions of the victim.²¹

[18] As a result, I see the relevant factors of your offending that go to your culpability for the murder of Mr Parekura as being:

- (a) First, your intent in stabbing Mr Parekura. I accept the submission that has been made that it can be inferred from the jury's verdict on the charge of attempted murder that the jury would have thought you intended to kill both Mr Parekura and Mr McGregor, rather than being reckless about death. The single stab with which you killed Mr Parekura was forceful and deliberate.
- (b) Secondly, your use of the knife as a weapon, and with that, a small element of premeditation. While I do not think you calculated or

²¹ *R v Taueki* [2005] 3 NZLR 372, (2005) 21 CRNZ 769 (CA) at [32]; *Tuau v R* [2013] NZCA 623 at [31].

planned the attack, you intentionally brought a knife with you to the scene.

[19] I have had regard to each of the cases to which your counsel and counsel for the Crown have referred, as well as some others,²² and see the appropriate starting minimum period of imprisonment for your offending as being 12 years' imprisonment. I do not intend to go through the details of those cases because they each involve tragic offending. It suffices to say that I see some material differences between those cases and the circumstances here. Those differences are these:

- (a) First, I do not accept there was any element of provocation by the victims here.
- (b) Secondly, and importantly, many of those cases did not follow the process I am using here. Rather than determining a starting minimum period of imprisonment, then adding uplifts and taking off discounts for personal circumstances and matters such as remorse, many of those cases do that all in one go. As a result, the minimum period of imprisonment of many of those cases accounts for personal circumstances when I am not accounting for your personal circumstances in setting this starting minimum period of imprisonment. I will account for your personal circumstances later in the sentencing exercise.
- (c) Thirdly, many of the cases involved an offender who had killed the victim out of recklessness, rather than through having formed an intention to kill – as I am satisfied was the case here.

Uplift for attempted murder

[20] I will now uplift that starting minimum period of imprisonment to account for your attempted murder of Mr McGregor. The Crown and Ms Vidal are both in agreement that a two-year uplift to the minimum period of imprisonment on the charge

²² *R v Singh* [2015] NZHC 2369.

of murder is appropriate to reflect the seriousness of your attempt to murder Mr McGregor.

[21] I have had regard to similar cases of attempted murder and have reached the conclusion that, if I was sentencing you for the attempted murder as a sole charge, a starting point of six and a half years' imprisonment would be appropriate.²³

[22] The Sentencing Act provides, as I have mentioned earlier, that I must not add a penalty for attempted murder on top of the penalty of life imprisonment. I have had regard to other cases in which a murder and attempted murder were committed²⁴ and agree with both the Crown and Ms Vidal that the two-year increase to the minimum period of imprisonment is appropriate to reflect the attempted murder charge, bringing us to a total minimum period of imprisonment of 14 years' imprisonment.

Discounts for personal factors and remorse

[23] I am going to look now at whether that total minimum period of imprisonment should be reduced to account for your personal circumstances, including whether any discount should be provided for remorse. In making this determination, I have the benefit of two reports that were prepared for your sentencing: a pre-sentence report, prepared by Corrections; and an alcohol and drug report, prepared by four report writers.

[24] The pre-sentence report assesses you as being at a high risk of further violent offending. You moved to Australia at the age of 19, where you were working productively but engaging in drug consumption. The report writer tells us that when you moved back to New Zealand, you gravitated to associates from your past who had

²³ There is no guideline judgment for attempted murder. The starting point for such offending is usually set by reference to the Court of Appeal's decision of *R v Taueki*, above n 21, with the caveat that the charge of attempted murder involves the more serious state of mind of an intention to take a person's life: *Taylor v R* [2017] NZCA 53 at [21]. Here, I see the offending as falling with band two, which attracts a starting point of between five and 10 years' imprisonment, with the aggravating features of the offending being the use of a weapon, arguably an element of premeditation (although I do not see that the premeditation involved concerted planning or a plan that formed and was maintained over a long period of time), and serious injury. In assessing a starting point of six and a half years' imprisonment as appropriate, I have had regard to *R v Beerens* [2018] NZHC 2669; *R v Keoghan* [2007] NZCA 109; and *R v Kiripatea* HC Auckland CRI-2007-204-81, 3 July 2007.

²⁴ *R v McLean* [2017] NZHC 3183; *R v Singh*, above n 22; and *R v Scott* [2016] NZHC 290.

in your absence become involved in gang life and criminal activities. The report indicates that following your engagement in a Corrections programme, the conclusion was reached you are at a high risk of harm from amphetamines and at a low risk of harm for other substances.

[25] The report writer describes the way in which you maintain your view that the offending was an act of self-defence because you feared people were coming to get you. The report comments also on your desire to rehabilitate. However, the writer does observe that, despite assertions that you wish to use your time in prison to better yourself, you have accumulated 11 misconducts in prison for tattooing, seven for possession of homebrew, two for possession of non-prescribed medication, one for fighting, offensive behaviour toward staff, and possession of razor blades and cannabis oil.

[26] I turn now to the alcohol and drug report. That report provides that it includes a component under s 27 of the Sentencing Act. Under that provision, the Court can hear from people on (amongst other things) a person's background and on the way in which it may have related to the commission of an offence.

[27] I observe at the outset that the report writers are not trained in medicine or psychology and that their findings are based on self-reporting from you. But the information is helpful and the report writers have relevant qualifications, one of them having a speciality in addiction which enables a useful perspective.

[28] You are of Waikato-Tainui – a proud and just people, who suffered immeasurable loss when the Crown invaded and then confiscated Waikato-Tainui's tribal lands and taonga. The widespread loss, suffering and deprivation has lasted for generations. It weighs heavily.

[29] The report describes a sad picture of your own life to date, Mr Wharekura. It describes a very difficult childhood, one in which you experienced a lack of stability, adverse behaviour towards you, instability and violence from your father's side of the family, and in which you saw heavy drinking, drug use and violence as normal. The passing of your grandparents affected you deeply because you saw them as parental

figures. You did have support from your mother's side of the family who were, the report writers say, good role models and practised Te Ao Māori principles.

[30] The report describes the substance abuse issues you have both in relation to alcohol and stimulants. The issues started for you at a young age. An addiction to methamphetamine that really developed in Australia in particular appeared to drive you to commit burglaries and an aggravated robbery for financial gain with which to fund your addiction. You report as having been under the influence of either methamphetamine or alcohol for all of your offending. The report concludes that there is a strong correlation between your offending and your drug use. It describes you as currently abstaining from substances due to your incarceration and describes you as being motivated to recover from your substance abuse issues for the benefit of your young son.

[31] The report describes also the way in which, during your imprisonment, you became a member of the Black Power gang, an organisation you were drawn to because of the sense of belonging and support it gave you.

[32] Having described these reports, I will now make some comments.

[33] I do not accept that you are genuinely remorseful. Your insistence on characterising your offending as self-defence undermines any acceptance of your actions by virtue of your plea of manslaughter. Neither report, nor any material handed to me, in any way demonstrates that you understand and are truly sorry for the impact of your actions: killing Mr Parekura and severely injuring Mr McGregor. I accept you have a level of desire to rehabilitate from your substance abuse and for that I commend you. I sincerely hope that that desire translates to a genuine engagement in recovery courses for your own betterment and for your son's sake. However, there is not enough there, in comparison to the other cases I have already described, to conclude that a discount should be granted for this reason.

[34] I do accept that you have a real struggle with substance abuse, and that the struggle has causatively contributed to the fact of your historic and present offending. I have real sympathy for the elements of your upbringing that normalised substance

abuse and violence in your eyes. I am satisfied that your exposure to violence, to drugs, and consequent substance abuse issues do reduce your culpability in committing the offending and justify a decrease in the minimum period of imprisonment. Not only did your substance abuse issues, borne from your very difficult childhood experiences, drive you to consume the alcohol and drugs that I accept would have impaired your judgment on the night, but also your upbringing and exposure to violence may have impacted your perception of what kinds of threats you were facing and what a proportionate response from you would be. That does not change the fact that your response in stabbing two people, when they provided no real or serious threat at the time, was in no way justified or in any way a proportionate response. But it does mean that your history causatively contributed to your offending in a way that would usually see a discount on a sentence.²⁵

[35] In saying that, I need to mention *Thompson v R*, a recent decision of the Court of Appeal, which reaffirmed the longstanding principle that the approach to applying discounts to a minimum period of imprisonment on a sentence of life imprisonment is quite different from the approach taken to applying sentence discounts more generally.²⁶ The Court explained it in this way:

[25] ... In the case of murder, the minimum period of imprisonment is not the end sentence. The sentence is life imprisonment. The minimum period of imprisonment is simply the minimum period of imprisonment that must be served before an offender can apply for parole. However, it is not possible to apply a percentage discount to a term of life imprisonment.²⁷ Nevertheless, even when a person is sentenced to a term of life imprisonment, the courts have recognised that it will generally be appropriate to recognise mitigating factors (including guilty pleas) at sentencing in some way. This is done by adjusting the minimum period of imprisonment.²⁸ A minimum period of imprisonment, however, will inevitably be for a much shorter term than the actual sentence of life imprisonment. The minimum period of imprisonment is not therefore treated as if it were the actual end sentence for the purpose of assessing appropriate discounts to the minimum period of imprisonment in murder cases.

[26] Further, as this Court made clear in both *Frost v R* and *Webber v R*, the legislative policy mandated for murder means personal mitigating factors carry less weight in murder sentencing.²⁹ Section 103(2) of the Act signals Parliament's intention that the seriousness of the offending is to be the focus

²⁵ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109].

²⁶ *Thompson v R* [2024] NZCA 266 at [25].

²⁷ *Malik v R* [2015] NZCA 597 at [26].

²⁸ At [28].

²⁹ *Frost v R* [2023] NZCA 294 at [41]; and *Webber v R* [2021] NZCA 133 at [33].

when setting a minimum period of imprisonment for murder. This further reinforces that the minimum period of imprisonment is not to be adjusted to take account the personal factors of a defendant as though it were the determinate sentence.

[36] I have decided to discount the minimum period of imprisonment by nine months to reflect your background and your substance abuse issues. In determining that discount, I have had regard to the facts of *Thompson v R*, in which the Court upheld the sentencing Judge's decision to reduce a starting minimum period of imprisonment of 18 and a half years' imprisonment by 12 months to reflect personal factors. I have had regard also to the cases referred to me by all counsel in the proceeding, to which I referred earlier.

[37] That brings us to a minimum period of imprisonment of 13 years and three months.

Sentence

[38] Mr Wharekura, please stand. I sentence you as follows:

- (a) For the murder of Chad Parekura, I impose a sentence of imprisonment for life with a minimum period of imprisonment of 13 years and three months.
- (b) For the attempted murder of Austin McGregor, I impose a concurrent sentence of five years' and 10 months' imprisonment.

[39] Please now stand down, Mr Wharekura.

Radich J

Solicitors:
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