

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

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

**CRI-2023-004-006857
[2025] NZHC 854**

THE KING

v

DARIUSH TALAGI

Hearing: 10 April 2025

Counsel: AM McClintock for Crown
JM Scott and CG Wright for Defendant

Judgment: 10 April 2025

SENTENCING REMARKS OF DOWNS J

Solicitors:
Crown Solicitor, Auckland.
Public Defence Service, Auckland.

[1] I begin by acknowledging those in court today here on behalf of Mr Tuuholoaki and also on behalf of Mr Alexander, and of course on behalf of Mr Talagi, and I thank you for your quiet and respectful participation. I acknowledge this is a difficult and painful process.

The case

[2] Dariush Talagi, you were found guilty by a jury of wounding Jarome Alexander with intent to cause him really serious bodily harm; and of murdering Sione Tuuholoaki. You are now for sentence for both crimes.

[3] It is common ground I must impose life imprisonment, which carries a minimum period of 10 years' imprisonment. What is not common ground is whether your minimum period should be longer than 10 years. The Crown argues it should be much, much longer. You argue, through your lawyers, otherwise. Much of what I say today is ultimately about this issue.

[4] I should make clear, however, for the benefit of those watching on and for the benefit of others who may read about the case, that life imprisonment means potentially just that. Typically, a person is not released when their minimum period expires. The minimum period says nothing about the value of someone's life.

[5] I turn to the facts.

The facts

[6] On the evening of 3 August 2023, you were in the Auckland CBD with your partner and her brother, whom for convenience, I refer to as your brother-in-law. For reasons that remain at large, you had a loaded pistol in a small bag around your waist. Also in the CBD were Mr Tuuholoaki, Mr Alexander, and several of their colleagues. You were unknown to them. Mr Tuuholoaki was 26 years of age; you were two years younger. You had been socialising, as had Mr Tuuholoaki and those with him.

[7] At approximately 11.30 pm, you encountered Mr Tuuholoaki's group on Queen Street. Words were exchanged, including something uncomplimentary about

your partner. You took exception to that remark or to those remarks. You walked quickly towards the other group as they came towards you.

[8] You made it clear to them you had a pistol. That is apparent from closed-circuit television footage which captured the entirety of the incident. You were goading them, and they were goading you.

[9] Members of their group encouraged you to a one-on-one fight; I should add, a fight without weapons. One of them grabbed you and took you to the ground. He punched you repeatedly to the head. I do not doubt his violence was, at least in part, intended to prevent you from using the pistol, but it was violence, nonetheless.

[10] Another member of the group punched your brother-in-law. He fell to the ground. Your partner remonstrated during the ongoing assault that he was vulnerable. He had suffered a serious head injury in 2018.

[11] Other members of the opposing group then joined the violence on you. During it, you twice shot Mr Alexander. One of the bullets went through Mr Alexander's left forearm. The other entered his abdomen, striking his bowel, gallbladder, and kidney. Mr Alexander stumbled away, clutching at his stomach. You then broke free.

[12] By this stage, Mr Tuuholoaki was leaning over your brother-in-law, who was on the ground. Mr Tuuholoaki was holding him but, I stress, not hurting him. The footage makes it clear the violence had ended. Everyone, it seems, had had enough, other than you.

[13] You pulled your jacket over your head, as if to conceal your face. You strode purposefully toward Mr Tuuholoaki, who remained bent over your brother-in-law. You put the pistol to the back of Mr Tuuholoaki's head. You then fired at point blank range. Mr Tuuholoaki collapsed and died (shortly thereafter). Those with him scattered. As they did, you fired a fourth shot at them. It is quite clear from the footage you were hoping to hit someone, and this was not, as you claimed at trial, a warning shot. Fortunately, that shot missed everyone.

[14] You testified at trial. You said you were frightened of the other group. It is clear from the footage you were not, at least until any violence erupted. You said the pistol was not yours, and you thought it was a starter gun, not a firearm. Whether the pistol was yours is not something I need to resolve. Whatever the position in relation to that, I am sure you knew it was a pistol, and I am sure you knew it was loaded. Your behaviour throughout made that abundantly plain. Indeed, that you had a loaded pistol on you prompted you to behave as you did — with reckless bravado. So, while it is correct the other group inflicted violence upon you, you acted to provoke that violence, treating the gun as your insurance policy.

[15] You told the jury you could not remember shooting Mr Tuuholoaki. You said that having reviewed the footage, you believed you shot him accidentally. I accept trauma, stress, or both, in connection with the incident might have compromised your memory. However, I have no doubt you knew that what you had done was deliberate. No one watching the footage could reach any other conclusion. It is, frankly, quite extraordinary. It shows your angry taking of another's life on Auckland's main street because of violence inflicted on you.

[16] After you shot Mr Tuuholoaki and shot at his group, you fled, leaving your brother-in-law at the scene. This has some significance as it was also your case at trial that you were acting to defend your brother-in-law. As I have said, he was vulnerable because of his head injury. Despite this, I have no doubt you were *not* acting to defend him when you shot and killed Mr Tuuholoaki. First, you could not possibly have seen what happened to your brother-in-law because you were dealing with other members of the group. Second, Mr Tuuholoaki posed your brother-in-law no danger, and that too is apparent from the footage; it would have been apparent to you at the scene. Third, you killed Mr Tuuholoaki after the violence had ended, and because you were angry at what had happened. All of this, I stress, is plain on the face of the footage. That explains, no doubt, why the jury reached verdicts in such quick time given the length of the trial.

[17] It follows excessive self-defence played no role in your killing of Mr Tuuholoaki. I repeat, he did not pose your brother-in-law any danger, and you knew that. Your shooting of Mr Alexander did, however, involve excessive self-

defence. Violence was being inflicted on you by more than one person when you fired both shots. Your response was, however, grossly disproportionate. The jury's verdict makes that clear.

[18] I complete the narrative. After fleeing the scene, you hid from Police for 105 days; then you handed yourself in.

Victim impact

[19] Your offending has profoundly affected the lives of many people and will continue to do so. I remind you of the content of the victim impact statements read aloud this morning, which capture, better than I ever could, the harm you have caused.

Factors aggravating the murder

[20] Your murder of Mr Tuuholoaki is aggravated, meaning made worse, by three things. First, your carriage and use of a firearm, which is a matter of increasing community concern. Second, the execution-style manner by which you took Mr Tuuholoaki's life. Third, the fact you fired a final shot at his group, a shot which missed by chance only.

Factor mitigating the murder

[21] As against this mix, that you suffered violence immediately before killing Mr Tuuholoaki somewhat diminishes the seriousness of your conduct.¹

Starting point

[22] I have considered broadly similar cases of other defendants helpfully collated by the lawyers on behalf of the Crown, and those on your behalf. My written remarks will capture those cases in a footnote.² None of the cases identified is quite like yours.

¹ *R v Taueki* [2005] NZCA 174, [2005] 3 NZLR 372 (CA) at [32](a).

² *R v Te Tomo* [2015] NZHC 2671; *R v Simpson* [2024] NZHC 623; *R v Pilitati* [2019] NZHC 3164; *R v Broughton* [2017] NZHC 671; *Daken v R* [2010] NZCA 212; and *R v Murray* [2015] NZHC 2179.

[23] The Crown argues the starting point of your minimum period should be 13 years' imprisonment. Your lawyers say 10 years. I adopt a starting point of 12 years' imprisonment given the features I spoke of a little earlier, particularly the execution-style manner by which you took Mr Tuuholoaki's life. That starting point would have been higher but for the violence on you, which clearly influenced your murderous decision.

Uplift for wounding Mr Alexander

[24] The Crown argues your wounding of Mr Alexander should attract an additional three years.³ I adopt Ms Scott's analysis of a one-year uplift given the element of excessive self-defence. The case identified by the Crown in support of its position involved premeditated offending. Yours was not that.

Mitigating factors

[25] As I mentioned earlier, you were 24 years of age when you committed these crimes. You are now 26. You have a young child with your partner and, I gather, another from an earlier relationship.

[26] Your pre-sentence report, and a report from a clinical psychologist prepared before trial, suggest a difficult upbringing, with a largely absent father and a mother afflicted by depression and other difficulties. You ran away from home at a young age and spent time on the streets. You were exposed to drugs, violence, and drifted into stealing cars. I pause to observe your handful of convictions includes nothing of relevance, or any real relevance, to today's exercise. You describe sleeping rough as an 18-year-old, but later finding stability with your partner. And I pause to record the obvious; that your offending occurred in that more stable period of your life. I record also that your partner continues to support you, as do members of your family, including your brother-in-law. Their letters I have read.

[27] You have written letters of apology to Mr Alexander and to Mr Tuuholoaki's family. These convey remorse. Remorse was not apparent from your evidence at trial

³ Citing *Longi v R* [2024] NZCA 522.

or your trial stance more generally. So, while it is possible you are now remorseful, I am unable to place any real weight upon this factor given its belatedness and lack of expression other than through correspondence to me.

[28] Your age, however, is mitigating, particularly given the sentence of life imprisonment, and your background provides some general mitigation too. I, therefore, deduct one year from the global minimum period of 13 years' imprisonment. This produces a minimum period of 12 years' imprisonment. This period is appreciably shorter than that sought by the Crown, but longer than that sought by your lawyers. This reflects my factual determinations within the parameters established by the jury's verdicts.

Sentence

[29] Mr Talagi, please stand.

[30] Your sentence for murder the wounding of Mr Alexander is five years' imprisonment. That will be concurrent with the sentence I am about to impose, meaning it will run at the same time.

[31] Your sentence for the murder of Mr Tuuholoaki is life imprisonment with a minimum period of 12 years.

[32] Stand down.

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Downs J