

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

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

**CRI-2021-088-001066  
[2023] NZHC 580**

**THE KING**

v

**HONE REIHANA (aka HAWIRA)  
P  
TYRAN PANAPA**

Hearing: 21 March 2023

Appearances: Sam Teppett for the Crown  
Steven Lack for Tyran Panapa  
James Olsen for P and on instructions for Ron Mansfield KC for  
Hone Reihana (aka Hawira)

Judgment: 21 March 2023

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**SENTENCING NOTES OF MOORE J**

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## **Introduction**

[1] Hone Reihana, P and Tyran Panapa appear for sentence having been convicted of discharging a firearm with intent to cause grievous bodily harm (“GBH”).<sup>1</sup> The maximum penalty is 14 years’ imprisonment.

[2] Mr Reihana pleaded guilty to the charge before the trial commenced.

[3] Mr Panapa and P were found guilty on 15 November 2022 following trial by jury.

[4] Mr Panapa also appears for sentence on charges of unlawful possession of a firearm and explosives,<sup>2</sup> a prohibited firearm and magazine,<sup>3</sup> and prohibited ammunition,<sup>4</sup> as well as possession of cannabis for supply.<sup>5</sup> He pleaded guilty to these charges prior to trial.

[5] Each of the defendants may remain seated in the dock until I formally pass sentence at which time I shall ask each to stand. Much of what I will say in these remarks applies to the circumstances of the offending and thus relates to all three defendants and, as a result, through that discussion I will keep you together. However, when it comes to discuss individual personal circumstances and what the end sentence for each will be, I shall deal with each separately and pass sentence sequentially. I will start with Mr Reihana before moving on to P and Mr Panapa. When I have passed sentence on Mr Reihana, I will stand him down before moving on to deal with P and then Mr Panapa.

## **The offending**

[6] I will begin by setting out the facts of the offending on the charge which is common to each of you. These details will obviously be familiar to each. However, because sentencing is quintessentially a public function which is required to be

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<sup>1</sup> Crimes Act 1961, s 198.

<sup>2</sup> Arms Act 1983, s 45(1)(b). Maximum penalty 4 years’ imprisonment.

<sup>3</sup> Section 50B. Maximum penalty 5 years’ imprisonment.

<sup>4</sup> Section 50C. Maximum penalty 2 years’ imprisonment.

<sup>5</sup> Misuse of Drugs Act 1975, s 6(1)(f). Maximum penalty 8 years’ imprisonment.

undertaken in open Court, it is important that I set these out. Having presided over your trial, viewed and reviewed the relevant CCTV footage on countless occasions throughout the trial and having seen and heard the witnesses, I am well placed to summarise the evidence and, of course where necessary, make findings of fact to the required criminal standard.

[7] Because I am sentencing you together, to avoid confusion, I shall refer to you in the third person until I embark on a discussion of your personal circumstances. That is not my normal practice, but is necessary in this case to make sense of what happened and to describe your particular roles as I find them.

[8] The offending arose in the context of “tit-for-tat” rising gang tensions in Auckland. At the time of the shooting which is the subject of the principal charge, Mr Reihana and P were patched members of the Head Hunters Motorcyle Club (“the Head Hunters”). Mr Panapa was a prospect. The target, Mr Swann, was previously connected to the Head Hunters but had changed allegiances to the Mongols Motorcycle Club (“the Mongols”) and the Comancheros.

[9] Between 6 and 11 April 2021, there were six inter-gang confrontations which resulted in damage to commercial and residential properties associated with the Head Hunters and the Mongols. Firearms were involved in all but one. The level of confrontation and potential danger to people escalated with each event. The last in the series occurred over the night of 10 and 11 April 2021 when the Head Hunters’ headquarters on Marua Road, Ellerslie was shot up. Approximately 30 rifle rounds were fired into the building while people were asleep inside. Serious retaliation was inevitable. And it came just four days later when Mr Swann was shot at in the Sofitel Hotel, in Auckland’s viaduct precinct. So, how did that come to pass and what was the background?

[10] On 12 April 2021, the day after the Head Hunters’ headquarters were shot up, a woman booked into a room at the Sofitel. The booking was initially for two nights, being 12 to 14 April 2021, but was extended to 15 April 2021. Staying with her at the hotel was Mr Swann. On 14 April 2021, Mr Swann booked an additional room for an associate, Mr Peeti who shared Mr Swann’s most recent gang affiliations.

[11] It is unknown how the Head Hunters came to learn Mr Swann was staying at the Sofitel. But they did and I am satisfied on all the evidence I heard that a plan was hatched to exact revenge against the gang's rivals by targeting Mr Swann and/or Mr Peeti at the Sofitel.

[12] In the early hours of 15 April 2021, the three defendants arrived at the Sofitel in a utility driven by Mr Panapa. Mr Panapa checked in using his own identification. Unlike his two companions, he made no attempt to hide or conceal his identity. Mr Reihana and P covered their faces as they entered the hotel. They gave reception staff no details.

[13] Mr Panapa and P stayed the night at the hotel. Mr Reihana left to visit an associate up the road at the Heritage Hotel. He returned to the Sofitel later that morning and was captured on CCTV speaking to other Head Hunters' associates who were parked in a black utility outside the hotel. Those able to be identified in that car were later charged as parties to the shooting which followed but were acquitted by the jury.<sup>6</sup>

[14] At approximately 9:00 am, Mr Panapa left his room and took the lift to the ground floor. He made his way to the hotel entrance. It was at this point that he saw Mr Swann and/or Mr Peeti. He recognised them. Mr Panapa quickly returned to the lift and up to the hotel room to let his two other co-defendants know that Mr Swann and/or Mr Peeti was downstairs.

[15] Within minutes, the three defendants took the lift back down. By this time, Mr Swann was sitting in the reception area with a member of the hotel's staff. He was in the process of checking out. First out of the lift was Mr Panapa carrying a black Nike sports bag over his shoulder. He was followed a short distance behind by Mr Reihana and P. All three men were wearing hoodies. Mr Reihana and P were wearing face masks. I am satisfied on the totality of the evidence that the Nike bag carried by Mr Panapa contained at least one firearm. Mr Panapa was walking briskly some metres ahead of the other two men. It would appear that he did not see or

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<sup>6</sup> Namely, Marcus Neilson and Paraire Paikea.

recognise Mr Swann sitting in the reception area as he walked by, but his co-defendants behind did.

[16] As he passed the reception area, Mr Reihana looked to his right and saw Mr Swann. He signalled to P. He walked a metre or two further on before pausing. P stepped back as Mr Reihana reached into his shoulder bag and retrieved a pistol. Mr Reihana moved back towards the reception area where Mr Swann was seated opposite the hotel staff member. He raised the pistol, aimed it in Mr Swann's direction and fired two shots. Two bullets were later recovered from the wall directly behind where Mr Swann and the staff member had been seated. Both Mr Swann and the staff member threw themselves to the floor. Another staff member who was in the corridor just behind the two defendants, also took immediate evasive action.

[17] Mr Reihana ran from the scene and out the front door of the hotel, closely followed by P. Mr Reihana got into the black utility which was still parked outside the hotel. Mr Panapa and P also fled to the ute. However, for whatever reason, instead of getting in, they went to Fanshawe Street where they caught a bus into the downtown CBD. The ute containing Mr Reihana took off.

[18] In downtown Auckland Mr Panapa and P purchased new clothes and Mr Panapa discarded the clothing he had been wearing in a public rubbish bin. Of note is that he retained the black Nike bag, almost certainly because it still contained a firearm.

[19] Shortly afterwards, P and Mr Panapa went in separate directions. Mr Panapa returned to the Sofitel where the utility was parked in the forecourt. On arrival he was immediately arrested.

[20] Some weeks later on 20 May 2021, Mr Panapa's address was the subject of a search warrant. In a Nike branded black bag, indistinguishable from the bag he was carrying at the time of the shooting, was a pump action, sawn-off shotgun and 106 rounds of 12-gauge shotgun ammunition. In a gun bag, the Police found an SKS 7.62 mm semi-automatic rifle, which is a prohibited weapon. The bag also

contained a compatible 30 round magazine and 23 rounds of ammunition. Mr Panapa admitted that the two firearms were his and that he always had a pistol.

[21] Also found in Mr Panapa's bedroom were six bags of dried cannabis. Three contained approximately 475 grams, while the other three contained 256, 28 and 14 grams respectively, a total of 1.723 kilograms. Mr Panapa said he had the cannabis for sale.

[22] The results of the search warrant are reflected in the firearms and cannabis charges which Mr Panapa pleaded guilty to before trial.

### **What is the appropriate starting point?**

[23] I turn to that first stage in the sentencing process, which is to set a starting point for the offending for each defendant reflecting the role I find each played in this enterprise. That starting point will be adjusted to take into account each defendant's personal circumstances at the second stage.

[24] There is no guideline judgment specifically applicable to discharging a firearm with intent to cause GBH. Rather, the appropriate starting point must be set with regard to comparable case law.

[25] I thank counsel for referring me to a number of cases which have assisted me in setting the starting point. Some of these have been footnoted for ease of reference.<sup>7</sup>

#### *Mr Reihana's role*

[26] Mr Reihana pleaded guilty on the basis of an agreed summary of facts. This means that he accepted his role in the offending as it is broadly described above.

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<sup>7</sup> *R v Hakeke* [2013] NZHC 865: gang-related offending of a similar nature and duration to present case, but lower degree of premeditation and less of a risk to civilians. Starting point of four years and six months' imprisonment adopted.

*R v Lee* [2018] NZHC 3446; *Katene v R* [2010] NZCA 394; and *R v Byles* [2022] NZHC 2897: more prolonged offending but fewer attackers in a non-gang related context. Different aggravating features present such as home invasion. Starting points between four years, four months and five years' imprisonment selected for lead offenders. Starting points between two years six months' imprisonment and three years, six months' imprisonment adopted for secondary offenders.

[27] In particular, he accepts that he was the one who discharged the firearm twice at Mr Swann. There can therefore be no dispute that Mr Reihana is the principal offender. He played a significant and leading role in the offending which justifies a higher starting point than that for P and Mr Panapa.

*P's role*

[28] For P, Mr Olsen submits that no active steps were taken by his client during the shooting, and that the starting point for P must be reduced to reflect his lesser culpability.

[29] I accept this submission. The fact that he may have assisted Mr Reihana in identifying Mr Swann in the lobby does not, in my view, materially bear upon the starting point.

[30] That said, P was found to be a party to the common purpose. That means the jury was satisfied he had sufficient knowledge of what was to occur, and knowingly assisted in facilitating that – even if he took no active steps to advance the shared agreement during the shooting itself. On that basis, I do not consider a substantial reduction from the starting point is justified.

*Mr Panapa's role*

[31] For Mr Panapa, Mr Lack<sup>8</sup> submits that his client's role in the offending was limited to advising others as to the presence of Mr Swann. He took no active role in the shooting, having walked past that area well before it took place.

[32] Insofar as the shooting itself is concerned, I accept that Mr Panapa's role was limited. However, it was Mr Panapa who checked in to the hotel room and who facilitated the others' entry into the hotel. Furthermore, it was he who went down to the lobby in the morning, in all likelihood to look for Mr Swann, and it was he who returned upstairs to alert the others to the presence of Mr Swann and/or Mr Peeti.

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<sup>8</sup> Mr Lack was not trial counsel for Mr Panapa. He appeared at sentencing following Mr Panapa's trial counsel being appointed to the District Court bench.

These were essential, active and deliberate steps taken by Mr Panapa in furtherance of the common purpose.

[33] On the other hand, as the Crown responsibly accepts, Mr Panapa was likely following instructions from senior patched members of the gang.

[34] In all the circumstances, I consider Mr Panapa's culpability to be approximate to that of P.

*Starting point*

[35] The aggravating features of the offending are:

- (a) *Planning and premeditation:* I do not accept that the offending reflected a spur of the moment decision following a chance encounter. That is simply untenable on the evidence, particularly the CCTV footage and the timings. Rather, I am sure that the defendants booked the room at the Sofitel with the knowledge that Mr Swann was also staying at the hotel, and with the common intention of causing him harm.

The planning can be seen from the prior bookings, the arrival at the hotel, and the disguising and concealment of the identities of Mr Reihana and P. Mr Panapa, as a prospect, was something of a "fall guy". It was he who was given the tasks of driving the utility to the hotel, checking in the others and later scoping out the reception and lobby areas in search of Mr Swann and/or Mr Peeti. While none of the defendants could have known the exact time that Mr Swann would be in the hotel lobby, or where exactly they would encounter him, they must have anticipated an encounter at some time on 15 April 2021. This conclusion is further supported by the fact that a getaway vehicle in the form of the black utility was waiting for Mr Reihana (at a minimum) outside the Sofitel from at least 7:50 am that morning.

This was a highly planned and co-ordinated enterprise with each of the defendants ascribed different roles in pursuit of a successful outcome.



- (b) *Organised criminal group*: The offending was plainly linked to ongoing and escalating acts of violence between the Head Hunters and Mongols/Comancheros gangs. It occurred in the immediate aftermath of one of the most provocative of acts imaginable; the shooting up of the Head Hunters' headquarters where people were sleeping. It was bound to provoke the violent reaction it did. The "tit-for-tat" inter-gang escalation is an aggravating factor.
- (c) *Multiple attackers*: While Mr Reihana was the only one who discharged a firearm, the other two defendants were effectively by his side and served to outnumber and out-arm Mr Swann. I am satisfied both Mr Panapa and P were armed. I have explained why I have come to that conclusion in relation to Mr Panapa. As for P, the CCTV footage shows him putting his hands in his pocket immediately before the shooting. When he got to the black utility, it is apparent he handed something to one of the occupants before the ute took off with Mr Reihana. Given the circumstances, including the fact that he then went into the city with Mr Panapa, the logical inference is that it was a gun which P handed over.
- (d) *Danger to others*: The danger posed to Mr Swann is obvious and is reflected in the charge. But unrelated others were placed in very serious harm by what happened. In my view this is a seriously aggravating factor. The attack on Mr Swann took place in broad daylight in a busy hotel where members of the public and hotel staff were not only present but in close proximity and thus in serious danger of injury or worse. On the evidence the bullets fired by Mr Reihana hit the wall near where Mr Swann and the hotel receptionist were seated, narrowly missing both men. Another staff member was in the corridor immediately behind Mr Reihana and P when the shots were fired. The victim impact statement from the staff member in reception gives some sense of the emotional effects although I accept they appear to be limited.

[36] In these circumstances and taking into account the case law helpfully referred to me by counsel, I agree with the Crown that the appropriate starting point for Mr Reihana is five-and-a-half years' imprisonment.

[37] As for P and Mr Panapa, there is little to distinguish your respective culpability. Although I am satisfied that P was more closely connected to the organisational hierarchy, his role in the actual events surrounding the shooting was less than for Mr Panapa. However, Mr Panapa was plainly more of "dog's body" undertaking tasks at the direction of more senior members of the gang. For that reason I am satisfied a slightly reduced starting point of four years' imprisonment for both defendants is called for.

*Uplift for Mr Panapa's firearm and cannabis offending*

[38] An uplift will then need to be applied to reflect the additional charges faced by Mr Panapa who admitted the items were his at the time the search warrant was executed.

[39] He pleaded guilty to these charges on 21 September 2022, some six weeks prior to the commencement of the trial.

[40] The Crown suggests and counsel for Mr Panapa does not oppose, an uplift of one year and six months' imprisonment to reflect this offending. I see no reason to depart from this position. It is serious offending in and of itself, although, as I have commented earlier, I accept Mr Panapa was something of a "fall guy" in all this which may explain why he had these items in his possession.

[41] This leads to a global starting point for Mr Panapa of five years and six months' imprisonment.

**Adjustments for personal factors**

[42] I now turn to consider the adjustments that need to be made to the starting point for each defendant's personal circumstances.

*Mr Reihana's personal circumstances*

[43] Mr Reihana, given that this section relates to you specifically, I shall revert to the first person.

*(a) Criminal history*

[44] You have a number of previous convictions but the Crown accepts that none is relevant for present purposes. There is therefore no basis to uplift for this factor.

*(b) Personal background*

[45] As for mitigating factors, I have had the benefit of a cultural report tendered under s 27 of the Sentencing Act 2002, which details your personal background. Like many of the defendants who come before this Court, your upbringing was marred by unfortunate and life-moulding events.

[46] You are one of 14 children. You told the report writer that your father has spent more than half his life in jail, and that both of your parents suffer from drug addiction. You were regularly exposed to methamphetamine use and to violence in the home environment.

[47] You were taken into state care at a young age and bounced from home to home. You received little formal education. You began to associate with gangs and to consume drugs as early as nine years' old. You consumed methamphetamine regularly between the ages of 14 and 18.

[48] There was a brief period of stability in your life after this during which you were in a pro-social relationship and held down employment. At the age of 21, however, your methamphetamine consumption resumed and you were imprisoned twice for driving-related offences.

[49] You are now 29 and you have two young children with your partner. You state that she grounds you, and that you were not consuming drugs when you were at home with her and the kids. At the time of your offending, however, you were experiencing

relationship issues and had been kicked out of home. You claim this drove you to again resort to methamphetamine.

[50] Mr Mansfield KC submits on your behalf that the events which unfolded at the Sofitel represent a culmination of the factors in your personal background. He submits that these warrant a discount of 15 per cent.

[51] I am satisfied that factors in your background causatively contributed to your offending.<sup>9</sup> In particular, your exposure to drugs, gangs and violence from a young age, your lack of a stable home environment, and lack of pro-social role models. These factors provide some context to your actions even if they do not excuse them.<sup>10</sup> I consider a 10 per cent discount is appropriate.

*(c) Remorse*

[52] The next factor advanced by Mr Mansfield relates to remorse. You have accepted responsibility for your offending and for the harm that it caused to the complainants and the members of the public who were present at the Sofitel that day.

[53] It is well established that a discrete discount can be given for remorse even where an offender also receives a discount for their guilty plea.<sup>11</sup> It remains available even in cases such as yours where conviction was all but inevitable. No jury was ever going to acquit you after watching the CCTV footage. Despite that, I am satisfied that your remorse is genuine and propose to apply a five per cent discount for this factor, as Mr Mansfield suggests.

*(d) Guilty plea*

[54] You pleaded guilty to the charge approximately two weeks before the trial commenced. The Crown suggests, and Mr Mansfield accepts, that a discount of 15 per cent is appropriate to reflect this factor.

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<sup>9</sup> *Berkland v R* [2022] NZSC 143 at [109].

<sup>10</sup> *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241 at [66].

<sup>11</sup> *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [63]-[64].

[55] I agree. Such a discount strikes the correct balance between recognising the lateness of the plea and the savings and complications associated with the principal offender not going to trial.

*(e) Net adjustment for personal factors*

[56] It follows I have identified discounts totalling 30 per cent from the starting point of five years and six months' imprisonment. This reduces the end sentence to three years and 10 months, which I regard as appropriate in all the circumstances.

*(f) End sentence*

[57] Mr Reihana, please stand. You are sentenced to imprisonment for a term of three years and 10 months.

[58] Stand down.

*P's personal circumstances*

[59] P, I will now address your personal circumstances and set out the final sentence.

*(a) Criminal history and offending on bail*

[60] You have previous convictions but none of relevance for present purposes. The Crown responsibly accepts this. And so it follows there is no uplift on account of this factor.

*(b) Personal background*

[61] Turning to your personal background, I have before me a s 27 report which sets this out in some detail. I have also read and taken into account the supplementary report given to me this morning containing some very insightful and balanced observations from your mother. She and your whānau feel a deep sense of whakama and she expresses remorse to this Court, which she should not.

[62] You were born and raised in a gang environment; your mother closely linked to Black Power and your father to the Head Hunters. Despite what seems to have been a promising start at Te Kura Kaupapa Māori o Hoani Waititi, as with many other Māori youth, things took a turn for the worse when you graduated to secondary school.

[63] You weren't there for long. You left school at age 13 and instead received an education in violence and criminal offending. You spent time in a residential youth facility for serious violent offending. You say that incidents like that arose because your father would instruct you to exact retaliation on those selling drugs.

[64] At age 19, you were imprisoned for aggravated robbery. By the time of your release, five-and-a-half years later, you were a patched member of the Head Hunters.

[65] You are now 27 years old and firmly entrenched in gang life. You told the report writer that your desire to protect the reputation of the Head Hunters informs everything you do.

[66] Mr Olsen submits that a discount of 15 per cent is appropriate to reflect the factors identified in the report.

[67] I accept this submission. There is a clear nexus between your offending and factors in your background, intergenerational gang affiliation being among the most significant and influential. Your agency was limited, your path having been paved by the people you looked up to and idolised. These are without a doubt the types of circumstances that warrant recognition at sentencing.

*(c) Time spent on restrictive bail*

[68] The next factor advanced by Mr Olsen relates to the time spent on restrictive bail. You spent nine months on ordinary bail with a 24-hour curfew, and one month on electronically-monitored ("EM") bail. Mr Olsen submits that a discrete discount of four months is warranted to reflect this factor.

[69] I cannot accept this submission. You breached ordinary bail three times and EM bail once within that reasonably short period – notably on 15 July 2022 when you

committed further offending of the most serious nature. While I am cautious not to double count that offending in those circumstances, the fact remains that you failed to comply with the terms of your bail on several occasions. The case law is clear that repeated non-compliance is inconsistent with a discount for time spent on restrictive bail.<sup>12</sup>

*(d) Net adjustment for personal factors*

[70] It follows that I have identified discounts totalling 15 per cent from the starting point of four years' imprisonment. This brings the end sentence to one of three years and five months' imprisonment which in all the circumstances I consider properly reflects your offending.

*(e) End sentence*

[71] P please stand. You are sentenced to a term of imprisonment of three years and five months.

[72] Stand down.

*Mr Panapa's personal circumstances*

[73] Mr Panapa, that brings me to your personal background.

*(a) Criminal history*

[74] You have a previous conviction for possessing cannabis for supply in 2018. However, the Crown does not seek a discrete uplift for this factor. Rather, it submits that the uplift of 18 months for the balance of your current offending sufficiently encompasses any uplift for previous offending.

[75] That is a sensible and realistic submission and I am satisfied that no further uplift is to be applied for your previous conviction.

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<sup>12</sup> *R v Bidois* [2009] NZCA 426; *Murray-MacGregor v R* [2011] NZCA 66; and *Gage v R* [2014] NZCA 140.

(b) *Personal background, youth and rehabilitative prospects*

[76] As for your personal background, I again have the benefit of a s 27 report.

[77] This records that unlike your co-defendants, you were raised in a stable and loving home. However, your childhood was marred by two traumatic events. When you were aged between seven and eight, you were sexually abused on a number of occasions by your uncle's partner. You believe this to be the source of your aggression as a child. The report writer was the first person you have disclosed this to.

[78] The second traumatic event in your life occurred when you were 15. You witnessed the fatal stabbing of your best friend. You were forced to relive the events of this night as a witness at two jury trials, the first jury being hung. In addition, the victim's family blamed you for their son's death. Your parents recall receiving telephone calls containing death threats.

[79] This marked a turning point for you. You sought solace in drugs, alcohol and gangs. Although you excelled in sports you finished high school with no formal qualifications.

[80] At the time of this offending, you were 22 and prospecting for the Head Hunters. Since then, however, you have entered a pro-social relationship and will soon be a father. In addition, pending trial, you were admitted to EM bail during which you successfully engaged in stable employment. You have expressed a desire to distance yourself from the Head Hunters and to possibly relocate from Auckland with your family. I also note the certificates provided to me this morning confirming your successful completion of the Department of Corrections' Whatumanawa module. These matters provide some room for optimism.

[81] Mr Lack submits that a combined discount of 20 per cent is appropriate to reflect your personal background together with your youth and prospects of rehabilitation.

[82] I accept this submission. While your background differs in material respects from those of your co-defendants, the two traumatic events of your youth have



evidently had a profound impact on you. I am satisfied that there is a causative connection between these events and your offending, albeit not the strongest.

[83] I also note that at 24 years of age, you are at the upper limit of what may be considered youth for a discount on that basis. Your prospects of rehabilitation, on the other hand, are encouraging. You are not yet entrenched in the gang life which led you to become embroiled in this retaliatory attack, and which so easily could have led to someone being killed. You have the benefit of pro-social influences around you. A combined discount of 20 per cent is appropriate to reflect a combination of your personal circumstances, youth and rehabilitative prospects.

*(c) Guilty plea*

[84] Turning now to your guilty pleas. You pleaded guilty to the cannabis and firearm offending on 21 September 2022, approximately six weeks prior to trial.

[85] The Crown submits that your guilty pleas cannot be regarded as particularly early, given you were charged with the offending on 21 May 2021. It says that a discount of no more than 10 per cent is appropriate.

[86] Mr Lack submits that a discount of at least 15 per cent is appropriate. He submits that you had in fact advised the Crown as early as 4 March 2022 that you would be willing to plead guilty to these charges. Whether that is so, for reasons unknown, the pleas were not entered until much later in time. I therefore propose to apply a discount of 10 per cent for this factor.

*(d) Time spent on restrictive bail*

[87] The final mitigating factor advanced by Mr Lack relates to time spent on restrictive bail.

[88] You spent 17 months on EM bail, five of which were spent subject to a strict 24-hour curfew. Four months were spent subject to a 24-hour curfew but with an exception that permitted you to attend employment and other required activities. The

remaining months were spent on a night-time curfew. You breached the terms of your bail on one occasion by consuming alcohol but otherwise complied.

[89] Mr Lack submits that the time you spent subject to restrictive EM bail conditions warrants a discount of eight months' imprisonment.

[90] I consider some discount to be appropriate, although not to the level Mr Lack presses for. In practice it was only the first five months of your bail that can properly be characterised as truly restrictive. For the remaining 12 months, you enjoyed relative freedom of movement during daylight hours. Being able to attend employment, for instance, is a privilege not afforded to many on EM bail and it is a factor which I have already considered to your benefit.

[91] In assessing the appropriate discount for time spent on EM bail, the restriction on liberty is to be compared with the degree of restriction in a remand in custody.<sup>13</sup> Your conditions of bail for 12 out of 17 months were significantly less restrictive than a remand in custody. I therefore propose to apply a discount of four months' imprisonment, or approximately 6 per cent, to reflect this factor.

*(e) Net adjustment for personal factors*

[92] It follows I have identified discounts totalling 36 per cent from the starting point of five years and six months' imprisonment. This reduces the sentence to three years and six months' imprisonment before any adjustment for totality. Standing back and considering your involvement in what was very serious offending by any measure, and taking into account your personal circumstances, I cannot see room for any further discount. I have gone as far as I can in principle.

[93] That said, I have been impressed by what I have read about you. It does seem to me that your involvement in the shooting that day was driven by a host of events and influences which you now seem to have an insight into and a willingness, if not determination, to change for the better. Fatherhood will also change you. You have seen for yourself how events in your formative years, as you grow up, can affect your

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<sup>13</sup> *Keown v R* [2010] NZCA 492 at [12]; and *Parata v R* [2017] NZCA 48 at [11].

thinking and your decision-making. You have made mistakes and the law requires you to pay for those mistakes by taking your liberty away. Do not let this sentence crush you. Look to the future and to your life after prison as a responsible and contributing family man. If you can hold onto those values, then your life will be rewarding and fulfilling. Let go of those values and you will be back here again. The future and what you make of it is in your hands. I am confident you have the tools, the insight and commitment to succeed.

*(f) End sentence*

[94] Mr Panapa, please stand.

[95] On the charge of discharging a firearm with intent to cause GBH, you are sentenced to three years and six months' imprisonment.

[96] On each of the Arms Act 1983 charges, you are sentenced to 18 months' imprisonment.

[97] On the charge of possession of cannabis for supply, you are sentenced to two years' imprisonment.

[98] All sentences are to be served concurrently. This means you will be required to serve an effective end sentence of three years and six months' imprisonment.

[99] Stand down.

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**Moore J**

*Barristers/Solicitors:*  
Crown Solicitor, Auckland  
Mr Mansfield KC, Auckland  
Mr Lack, Auckland  
Mr Olsen, Auckland

## **Addendum**

1. Paragraphs [49] to [53] inclusive were inadvertently omitted in my oral remarks. While they inform and clarify how aspects of the discounts for personal circumstances were calculated, their omission does not affect the end sentence imposed.
2. Mr Olsen sought and obtained interim name suppression for P to 9:00 am on 29 March 2023 at which time the presiding Judge will determine whether the orders should be extended.
3. Mr Teppett sought and obtained destruction orders for the firearms and related items and the cannabis located at Mr Panapa's address.