

**INTERIM ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES,
OCCUPATIONS OR IDENTIFYING PARTICULARS OF DEFENDANTS
UNTIL 31 MARCH 2023, OR UNTIL RESOLUTION OF THE APPEAL IN THE
COURT OF APPEAL, OR UNTIL FURTHER ORDER OF THE COURT**

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2021-088-1433
[2023] NZHC 630**

THE KING

v

**TH
HH**

Hearing: 24 March 2023
Counsel: M B Smith for Crown
A J Maxwell-Scott for TH
T J Buckley for HH
Sentenced: 24 March 2023

SENTENCING NOTES OF BREWER J

Solicitors/Counsel:
Marsden Woods Inskip Smith (Whangarei) for Crown
S R Lack and A J Maxwell-Scott (Auckland) for TH
Ron Mansfield KC and Tiffany Buckley (Auckland) for HH

Introduction

[1] Mr TH, the jury found you guilty of the charge of murder and the charge of assault with a weapon. The maximum penalty for murder is life imprisonment. The maximum penalty for assault with a weapon is five years' imprisonment. Mr HH, you pleaded guilty to one charge of injuring with intent to injure. The maximum penalty for that crime is five years' imprisonment. My task is to sentence you both on your respective charges.

[2] First, I acknowledge the whanau and friends of Haze Peihopa. I have read a lot about him. I did not know him. Everything I have read tells me that he was a good man. It is a tragedy he was killed in this way. Mr TH, you heard some of the victim impact statements this morning read by people who are grieving and angry at the loss of their loved one. You are responsible.

[3] I say to the whanau and friends of Mr Peihopa, echoing what Mr Smith said, that as a Judge I know that nothing I can do today will come close to compensating for Haze's death. That would be impossible. My job is simply to apply the law. I do not make the law and I am bound by it. I hope you all understand that.

[4] The sentencing is going to take some time. There are two reasons for that. The first, Mr TH and Mr HH, is that I am not just talking to you. I am talking to a wider audience of your family, Mr Peihopa's family, other lawyers and, possibly, other Judges. So, I cannot just tell you what your sentences are. The second reason that I am going to have to take quite a long time relates to you, Mr TH. Your sentencing was originally scheduled for 2 February 2023. I had to adjourn the sentencing because on 27 January 2023 the Court of Appeal changed the law on sentencing of young people for murder. The case is *R v Dickey*.¹ You see, prior to that decision the law was that a person in your position would be sentenced to life imprisonment with a minimum period of imprisonment of 10 years. That is because youth would carry little weight when balanced against the public interest in denunciation and accountability.² Indeed, when your lawyer, Mr Lack, filed his first submissions on your sentence, he

¹ *R v Dickey* [2023] NZCA 2.

² *R v Rapira* [2003] 3 NZLR 794 (CA).

accepted that you must be sentenced to life imprisonment. His concern was to limit your minimum period of imprisonment to 10 years. The law has now changed.

[5] Although the Court of Appeal in *Dickey* said that there is no exception to life imprisonment for all youth murderers, and the seriousness and culpability of the offending remains centrally important, the law now is that young persons may present with a combination of mitigating circumstances relevant to the offending and personal mitigating factors which together can make it manifestly unjust for a young person to be imprisoned for life. The Court of Appeal directed that when sentencing a young person for murder, a Court must always undertake an analysis which gives careful consideration to whether life imprisonment would be manifestly unjust.³

The facts

[6] First, I will briefly set out the relevant facts. Since just about everything that happened was recorded by a number of CCTV cameras, I can be brief.

[7] On the evening of 12 June 2021, you both arrived together in the Whangarei CBD with two other associates at around 11.17 pm. You were seen consuming alcohol and inhaling nitrous oxide gas in a carpark area before moving to the main street. You tried to get into a couple of bars but were denied entry.

[8] At around 11.50 pm, the two of you with your two associates walked down Bank Street towards Bacio Bar. You were met by a number of other associates. The victim of the murder, Mr Peihopa, was at Bacio Bar with Mr Tohu, who is the complainant in Mr TH's charge of assault with a weapon.

[9] It appears that words were exchanged between the group you two were with and with Mr Tohu outside Bacio Bar. This rapidly escalated into a fight between the group you two were a part of and the group Mr Tohu was a part of. It was a moving fight with multiple confrontations between different members of the groups, spread out over the road and the nearby intersection. There were no weapons involved, although at one point the deceased appeared to use a bottle as a weapon.

³ Sentencing Act 2002, s 102.

[10] Mr HH, at one point you are seen scrapping with Mr Peihopa. He swung you around.

[11] There was a lull in the fighting and you, Mr TH, went over to an associate and said, "give me the blade, give me the blade, I'm gonna shank this motherfucker". You obtained a very large and obviously lethal-looking knife from your associate and, holding it behind your back, walked towards Mr Peihopa. Mr HH, you went with your brother. Mr Peihopa saw you coming and walked sideways and backwards as you advanced towards him.

[12] Mr TH, you then tried to strike Mr Peihopa with the knife using several overhand blows. None of them connected. Mr Peihopa fought back, grabbing your jersey and using it to pull you towards the direction of the road. This caused your shirt to be torn, and your lawyer submits that it was in these few seconds that you received an injury to your nose inflicted by Mr Peihopa. I cannot exclude that as a reasonable possibility. However, you then stabbed Mr Peihopa with the knife. The knife entered Mr Peihopa's body on the left side and went through the chest cavity, fracturing one of the bones of the ribs, and then through the left lung. The knife cut through the left pulmonary artery, and went into the spinal column. This resulted in injuries to the vital organs, causing substantial bleeding. The depth of the wound was approximately 160 millimetres.

[13] Mr Peihopa also had a cut to his arm. The pathologist could not exclude that as being part of the single stab wound, and I must take it that it was.

[14] You withdrew the knife. Mr Peihopa was still standing. You then turned your attention to Mr Tohu. As Mr Tohu was walking backwards, you swung the knife towards him. Mr Tohu was avoiding being struck and a female attempted to hold you back by your shirt.

[15] About this time, Mr Peihopa stumbled and fell to the ground. Mr HH, you then kicked him. The two of you left the area and you, Mr TH, dropped the knife. Mr HH, you picked it up and discarded it further along the street. You both went into the Vine Street toilets where you were arrested at approximately 12.02 am.

[16] I need to emphasise that the period from when you, Mr TH, got the knife to when you stabbed Mr Peihopa was very short. The period of your actual confrontation with Mr Peihopa was only about three seconds. That is important.

[17] As for you, Mr HH, I am required to sentence you on the summary of facts to which you pleaded guilty. The charge of injuring with intent to injure arises from your part in the attack on Mr Peihopa. You were with your brother as he fought with Mr Peihopa, using the knife. When Mr Peihopa fell to the ground having been stabbed, you kicked him in his upper torso. Having seen the CCTV footage, I do not conclude that you knew that Mr Peihopa had been stabbed (again, the whole incident lasted just about three seconds) and there is no injury identified as resulting from your kick. However, that is the charge to which you pleaded guilty.

[18] Mr TH, you were 20 years old when this happened. Mr HH, you were 17 years old.

Sentencing of Mr TH

[19] Mr TH, I will begin with your case.

[20] The law is that someone who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.

[21] I will begin by deciding whether in your case a sentence of imprisonment for life would be manifestly unjust.

[22] The Crown's submission is that it would not be. Your lawyer submits to the contrary.

[23] Your lawyer submits that you did not deliberately kill Mr Peihopa. Instead, I should take it that you intended to cause him very serious harm which you knew might kill him, and you were reckless as to whether he died.

[24] Having seen the CCTV footage, I have decided that you took the knife intending to attack Mr Peihopa with it. Initially you used chopping motions, which did not connect, but then, as Mr Peihopa fought back and swung you out onto the street, you suddenly stabbed him. I cannot be sure you intended to kill him. When you withdrew the blade Mr Peihopa was still standing and you did not attempt to stab him again. You turned to Mr Tohu instead. I will sentence you on the basis that this was a reckless murder.

[25] But the fact is you used an obviously lethal weapon to stab Mr Peihopa and the stab wound was deep and inflicted with force.

[26] At 20 years of age, you were a young person in the age range adopted by the Court of Appeal in *Dickey* (the upper end of which is 25). You were disinhibited by your use of alcohol and nitrous oxide. That is not an excuse, but young people's brain development at your age makes you more likely to make impulsive, risky decisions without mature thought. Particularly in stressful situations. I am satisfied that the way you behaved that night in the highly charged street fight you were involved in is typical of the brain stage development discussed at length by the Court of Appeal in *Dickey*. What happened, happened very quickly.

[27] As Ms Maxwell-Scott has submitted on your behalf this morning, you had a difficult upbringing. I have read the pre-sentence report and the cultural report. You grew up connected to your cultural identity through your Marae and through a Māori immersion pathway. You are the oldest of the five children living in the house at that time. As a young child your family life was positive. But your father became a member of the Head Hunters gang. Methamphetamine entered the house, and both your parents became addicts. There was a lot of domestic violence and you were beaten and abused. The gang lifestyle was normalised for you and you thought violence was normal and the solution to problems. Methamphetamine took what money there was in the family and you lived in poverty. Your parents separated.

[28] You began using cannabis and alcohol at an early age.

[29] You have a criminal record. On 16 June 2018, when you were 17, you injured with intent to injure. You were sentenced initially to a term of home detention, but that was later changed to a sentence of four months' community detention and to one year and three months' intensive supervision. You were not compliant. You breached conditions.

[30] On the other hand, you have a clear potential for rehabilitation. Your reports show that you have real insight into yourself and your situation. After your parents separated and your mother became lost in addiction, you became the father-figure for your siblings and you did that well. Your letters of support speak to that. At the time of the offending you were employed by Traffic Management NZ. Your branch manager speaks very highly of your work ethic and your interpersonal skills.

[31] I do not have the in-depth mental health reports which the Court of Appeal had in respect of the three appellants in *Dickey*. But, looking at what I know of you personally I conclude that an indeterminate sentence and a 10 year minimum period of imprisonment would, in your case, be unduly harsh. It would be manifestly unjust.

[32] I will not sentence you to life imprisonment. However, you murdered a man. That means that you must still be sentenced to a very long period of imprisonment.

[33] The appellant in *Dickey* whose case is most similar to yours is Ms Epiha. Her personal background was more tragic than yours. But, at a party, when 18 years old, she had an argument with another young woman. She went to the kitchen and got a knife. She went to where the victim was, shrugging off attempts by others to stop her. She stabbed the victim once in the neck, killing her. She left the knife and went outside. She saw a friend of the victim's and chased her, threatening to kill her. Her murder was a reckless murder. She pleaded guilty.

[34] The Court of Appeal adopted a starting point for Ms Epiha of 20 years' imprisonment. Taking into account the differences in your offending, I will adopt the same starting point for your actions in respect of both charges. As it happens, that was your lawyer's submission.

[35] I consider that your deprived social background, and particularly the normalisation of violence and your exposure to gang culture, contributed to your offending. But not to the extent that Ms Epiha's background did. I will discount the starting point by 15 per cent.

[36] Your youth is a factor that must be recognised. Your actions in this unexpected transition from peaceful evening to sudden street brawl to impulsively getting the knife and using it reflects the pattern of neurological immaturity and emotional impulsivity that is a characteristic of young persons. You were 20 years old. I will discount the starting point by 20 per cent for this factor.

[37] This produces a provisional sentence of 13 years' imprisonment.

[38] But that would not be a proportionate response to your offending. I have to step back and look at what you did overall, bearing in mind that despite your personal situation you committed murder. You took a life. I will uplift the provisional sentence of 13 years' imprisonment to one of 18 years' imprisonment.

Minimum period of imprisonment

[39] I now have to assess your minimum period of imprisonment taking into account the purposes of sentencing. The standard minimum non-parole period would be six years. I am satisfied that because the theoretical capacity of young people to be rehabilitated is actually present in you then it is not necessary for me to uplift the period dramatically to hold you appropriately accountable for the harm you have done and to denounce your conduct. I will impose a minimum period of imprisonment of seven-and-a-half years.

[40] Mr TH, let me be clear about what I have just said about your sentence. Your sentence will be 18 years' imprisonment. If, after seven-and-a-half years, the Parole Board concludes that you are safe to give parole to then it will. If not, then it will not. Whether you serve the whole of the 18 years or less than that will depend on you and how you behave in prison.

Sentencing of Mr HH

[41] Mr HH, I have already described your part in the fight. The summary of facts is not helpful and I have to take it that when you kicked Mr Peihopa as he lay on the ground you did so with the intention of injuring him, and you did injure him. The maximum sentence is five years' imprisonment.

[42] Your background is much the same as your brother's. I say that because you went away to Auckland for a short period. But you grew up in the same socially deprived circumstances. Violence was normalised. Drugs and alcohol use were normalised. Poverty was very real for you. Like your brother, you were immersed in your Māori culture, but also in the culture of the gang.

[43] You were involved with People Potential in 2020 and got your driver's licence. You then, as you put it, "got into trouble" and had involvement with the youth justice system. The Crown does not rely on that. In November or December of 2022, you obtained permanent employment with a firm of builders.

[44] The Crown submits that because Mr Peihopa was helpless on the ground when you kicked him, and because you attacked him with your brother, I should adopt a starting point of two to two-and-half years' imprisonment. The Crown acknowledges you would be entitled to a discount for your plea of guilty, and suggests 15 per cent.

[45] Your lawyer points out that the only reason why you were not dealt with in the Youth Court for this offence was because you were also charged with being a party to the murder committed by your brother. However, you were found not guilty of the murder. Your lawyer submits, and I accept, that I should consider your case in accordance with the principles of Youth Justice as applied by the Youth Court. It is submitted that you should be discharged without conviction.

[46] I accept that the Youth Justice principles emphasising the need to keep young people in the community and to ensure they remain integrated and rehabilitated apply to you.

[47] In my view, your offending is at the lower end of the scale for the charge. You got involved in a street fight, you had an initial encounter with Mr Peihopa, you backed up your brother, and you kicked Mr Peihopa when you saw the opportunity. No injury has been identified. You cannot be sentenced on the basis you knew Mr Peihopa had been stabbed.

[48] Your actions have all the hallmarks of impulsive risk-taking and actions of a young person disinhibited by drugs and alcohol and suddenly caught up with others in a rapidly moving and unexpected event. That is to say, actions by a young person with your background.

[49] I also have to take into account that you spent 20 months on bail subject to a 24-hour curfew. I note that the curfew allows you to be out in the company of your mother and so she goes with you to work and stays on site so you can work on your apprenticeship.

[50] Among your letters of support is one from your employer. He speaks highly of your work ethic and determination to achieve in your apprenticeship.

[51] You have expressed an understanding of your actions and I am told you are remorseful.

[52] I have considered whether to discharge you without conviction. I assess the gravity of your offending itself as moderate. That is because you kicked Mr Peihopa when he was helpless on the ground after fighting alongside your brother and because you accept you injured him. When taking your personal characteristics into account the overall gravity of your offending is low.

[53] On the other hand, there are no particular consequences, direct or indirect, which have been identified for you if you are convicted. There are the general consequences which are always present. A conviction can inhibit employment, may affect the ability to travel overseas and can affect social regard. These can have particularly negative impacts on young persons. You have, however, secure employment and your employer knows about your offending.

[54] I cannot conclude that entering a conviction would have consequences for you out of all proportion to the gravity of your offending.

[55] Given the amount of time you have spent on restrictive bail conditions, there is no further sentence which would be appropriate.

[56] I will convict you and I will discharge you.

Name suppression

[57] If you were in the Youth Court you would have automatic and permanent name suppression. For me, I must be satisfied that publication of your name would cause you extreme hardship and, if so, having balanced the public and private interests, I should exercise my discretion to suppress your name.

[58] Your lawyer puts the extreme hardship to you as arising not from publication of you kicking Mr Peihopa, but of being charged and tried for murder. And for participating in the fight which led to your brother's conviction for murder. Your lawyer relies on *R v Q*⁴ where a Judge of this Court suppressed the names of two brothers who fought at school with another young boy who died because of a medical condition which no-one knew he had.

[59] In another case, this time in the Court of Appeal in *DP v R*,⁵ it was held that nothing in the law precludes a Court from recognising the special importance of youth at either the jurisdictional or discretionary stages of the name suppression inquiry.

[60] I have been supplied with copies of news media articles on this case. It is clear that if I do not suppress your name then it will become more widely known. I accept that notoriety can be particularly damaging to a young man of your age. I accept it must be influential that had you stayed in the Youth Court you would have permanent name suppression and that the reason you were tried in this jurisdiction did not result in a conviction that was not within the jurisdiction of the Youth Court.

⁴ *R v Q* [2014] NZHC 550.

⁵ *DP v R* [2015] NZCA 476.

[61] I am required to take into account any views of the victims of your offence conveyed in accordance with s 28 of the Victims Rights Act 2002.⁶ For some reason, the Crown did not, before this hearing, seek out those views and provide them to me. But, as you saw, I adjourned the sentencing hearing to enable Mr Smith to talk to the victims who are present.

[62] As is perfectly understandable, the victims talk about the unfairness of their son and loved one's name being out in the public but there being a prohibition on the names of the people who caused their loss being published. They also say, and this has been confirmed by the news media representative who made submissions, that your name and that of your brother are already out in the community through social media.

[63] The view of your victims is that suppressing your name will not achieve anything. Further, if I suppress your name then necessarily Mr TH's name will be suppressed. That is because the media coverage has already repeatedly described your relationship as brothers.

[64] The news media representative made the point that if your name is suppressed then the members of the public who already know about it will not know what your role in the death of Mr Peihopa was. If your name is not suppressed then accurate reporting will tell everybody what your role actually was.

[65] I accept what I have been told by Mr Peihopa's whanau and by the news media representative. Further, I do not conclude that accurate reporting of your part in the fighting which led to the death of Mr Peihopa would cause you extreme hardship. Even if it did, because you were tried for murder in this case and acquitted and your brother was not acquitted, in my view there is a very real point of public interest in knowing your brother's name. I accept it is already widely known in the community, but probably not in the community beyond Whangarei. So, if I were wrong in finding that you would not suffer extreme hardship, I would nevertheless not exercise my discretion to enter name suppression.

⁶ Criminal Procedure Act 2011, s 200(6).

[66] Accordingly, I decline to grant you permanent name suppression.

Decision

[67] Mr TH and Mr HH, would you stand please.

[68] Mr TH: on the charge of murder, you are sentenced to 18 years' imprisonment. You will serve a minimum period of imprisonment of seven-and-a-half years' imprisonment.

[69] On the charge of assault with a weapon, you are sentenced to one year's imprisonment, to be served concurrently with the sentence for murder.

[70] Mr HH: you are convicted and discharged. I do not make an order suppressing your name.

[71] You may both stand down.

Brewer J

Addendum

[72] Ms Buckley has asked me to continue the name suppression of Mr HH for five days so that she can take instructions on whether to appeal my refusal to grant him permanent name suppression to the Court of Appeal.

[73] The law gives me no choice. If such an application is made, I have no choice but to grant it.

[74] I extend the interim name suppression of Mr HH for five working days from today's date. If a notice of appeal is filed in the Court of Appeal in that period, then

the interim name suppression will continue until resolution of the appeal in the Court of Appeal or until further order of the Court of Appeal.

Brewer J