

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

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

**CRI-2022-090-002350
[2023] NZHC 1980**

THE KING

v

MIKAERE PUATA-CHANEY

Hearing: 27 July 2023

Appearances: A M McClintock and I L M Archibald for Crown
R M Mansfield KC and B M Gloyn for Defendant

Sentence: 27 July 2023

SENTENCE OF EDWARDS J

Solicitors/Counsel:

Meredith Connell (Office of the Crown Solicitor), Auckland
R M Mansfield KC, Auckland

[1] Mr Puata-Chaney, you are here today because you murdered two people: Eliza and Geoffrey Trubuhovich. You pleaded guilty to those murders and now you are to be sentenced.

[2] The sentence for murder is life imprisonment unless such a sentence would be manifestly unjust. There is no suggestion that such a sentence would be unjust in your case and so life imprisonment will be your sentence.

[3] The question to be decided today is the length of time you must spend in prison before parole even becomes a possibility. That is the minimum period of imprisonment or MPI as we call it. Everyone agrees that it will be at least 17 years. The only issue is whether it will be more.

[4] Determining the MPI involves following a process. The first part of that process is setting out the circumstances of your offending. Next, I will consider a starting point for the MPI which reflects the seriousness of your offending. That starting point will then be adjusted for factors personal to you. At the end of what I have to say this morning, I will ask you to stand, and that is when I will deliver your sentence.

[5] Before I start on that process, I want to acknowledge the close family members and friends of Eliza and Geoffrey who are here today. I want to make special mention of Geoffrey's wife; Eliza's mother and Eliza's brother. It is a hugely emotional day. I will talk about the impact of these murders shortly, but I wanted to say something at the outset to acknowledge your trauma, and the courage it takes to be here today.

The offending

[6] The first step in the process is to describe the offending. I realise this will be hard for many in this courtroom to hear, but it is a necessary step.

[7] Mr Puata-Chaney, you and Eliza had been in a relationship for approximately one year. You had been separated for a number of months, but still had contact as you shared a dog, Rocka.

[8] In the months leading up to the shooting, Eliza told her friends that you had been threatening towards her, particularly over your concern that she was seeing someone else. Then, on Friday, 15 July 2022, you and Eliza argued on the phone.

[9] After the argument, you left your home with a soft guitar case containing a firearm and a box of ammunition. You travelled seven and a half kilometres to where Eliza and Geoffrey were living. Two other family members were present at the time.

[10] You knocked on the front door. Eliza opened it partially, asking what you had with you. You forced open the door. The force was so strong that the timber doorframe was damaged along with the door's lock mechanism.

[11] You grabbed Eliza with one hand, dragging her from her home and on to the front lawn. You were holding the firearm in one hand, Eliza in the other. Eliza was screaming "no, no, no" as she was being dragged along.

[12] Geoffrey came outside. It seems clear that he was trying to protect his daughter. You fired a number of shots at him at close range. One of those shots hit him and killed him.

[13] You then turned to Eliza. She was screaming "don't do it" and "please don't do it". You pointed your firearm at her as she stood on the front lawn. You fired a number of shots at her. Those shots went into Eliza's head, face, shoulder and back. Neighbours who saw this unfolding described Eliza falling to the ground as she was shot, and you shooting her again. At least one of the shots was fired at close range.

[14] You then shot the dog, Rocka. You shot him three times, killing him.

[15] The exact number of shots fired is uncertain. However, police found 10 live rounds of ammunition and eight spent cases on the front lawn of the property. There was also evidence that the firearm had malfunctioned at some point.

[16] One of the bullets you fired went through two fences and into a neighbour's car. Another was found in one of the bedrooms of Eliza and Geoffrey's home. As I have said, family members were home at the time.

[17] At least eight witnesses from neighbouring properties saw what happened. Others heard gunfire and screaming coming from the property. Eliza's brother and his partner came outside to find both Eliza and Geoffrey dead.

[18] You left the address and returned home. You called 111 telling them you had done something and to send police. The gun used in the shooting has not been found but is believed to be a semi-automatic weapon.

[19] You pleaded guilty to both murders and were convicted earlier this year.

Victim impact statements

[20] I have been provided with approximately 50 victim impact statements from family, friends, and neighbours. I have read them all. Thank you to those who have shared their memories of Eliza and Geoffrey and the effect that their loss has had on your lives.

[21] It is clear to me that Eliza and Geoffrey were warm, caring, decent people. They touched many lives and were deeply loved. They did not deserve to die in such a brutal way. The manner of their death has had long lasting impacts for many, many, people.

[22] I want to make special mention of the statement read out from Geoffrey's wife, Eliza's mother. It was particularly harrowing to hear. The grief of losing a husband and a daughter having just buried a sister is unimaginable. The distress was also evident in the statement of Eliza's brother, and the other family members who read out their victim impact statements.

[23] It is impossible to describe the devastating effect you have had on their lives, and it would not do justice to their statements to try and summarise them here. The pain, the loss, and the despair, was apparent to all of us.

[24] Also apparent was the dignity with which those statements were presented to Court. It is no easy thing to talk about the intimacy of loss, depression and hopelessness in a packed courtroom. The love and the strength that continues to bind

this family together also came through loud and strong. You have taken cherished lives from this family, Mr Puata-Chaney, but you have not taken that.

MPI – starting point

[25] I now turn to consider the starting point for the minimum period of imprisonment.

[26] The law requires me to set a minimum period of imprisonment that satisfies any or all of the following purposes of sentencing: holding you accountable for what you have done to the victims and the community; denouncing your conduct; deterring you and others; and protecting the community from you.¹

[27] I am required to impose a minimum period of imprisonment of at *least* 17 years for the most serious of murders. Your offending falls into that category because you are guilty of two murders.² There are two other features of your offending that bring it within this category:

- (a) First, the murders were callous.³ Both Eliza and Geoffrey were shot at close range. Eliza begged you not to do it, but you fired at her multiple times including at her face and head. You were ruthless, uncompromising, and callously indifferent that day.
- (b) Second, and adding to this, was the fact that you forced your way into Eliza and Geoffrey's home.⁴ That was a family home full of joy and laughter. They were entitled to feel safe in their home. You took that away from them, and you eroded the sense of security for the others living there.

[28] Your offending also involved an element of calculation and planning. You loaded the gun into a guitar case together with ammunition. You drove seven and a half kilometres to get to Eliza's house. You were intent on achieving your objective.

¹ Sentencing Act 2002, s 103(2).

² Sentencing Act 2002, s 104(1)(h).

³ Sentencing Act 2002, s 104(1)(e).

⁴ Sentencing Act 2002, s 104(1)(c).

This adds to the overall seriousness of what you did, but I do not consider it was the type of lengthy planning that would, on its own, justify a 17-year MPI.

[29] Your counsel and Crown counsel have referred to several cases involving double murders.⁵ Of these I find *Maheno*, *Malik*, *Ogle* and *Frost* to be the most comparable. *Maheno* also involved a shooting. It was on par with yours. A starting point of 21 years' imprisonment was adopted in that case. In the most recent case of *Frost*, a starting point of 23 years was adopted. The nature of the attack in *Frost* makes your offending marginally less serious than that case.

[30] The Crown says the fact that you used what is believed to be a semi-automatic firearm in a suburban area makes your offending more serious than all these cases and justifies a higher starting point. The Crown relies on a case called *Epiha*⁶ which involved the murder and attempted murder of two policemen.

[31] The circumstances of that case are quite different to yours. Mr Epiha was being pursued by police and he opened fire on them as he ran down a suburban street. Your offending involved shots fired at close range and on the front lawn of a family home. Yes, there was a risk posed to the public by stray bullets, but that was not a marker of your offending, and it was not the same as the risk posed in *Epiha*.

[32] Nevertheless, there needs to be some recognition of the use of a lethal weapon in a suburban area. The potential for harm was acute. The terror you caused to neighbours and witnesses needs to be reflected in the MPI.

[33] Taking into account the particular features of your offending when compared with other cases, I adopt a starting point of 23 years' imprisonment for the MPI.

⁵ *R v Maheno* [2013] NZHC 2430; *R v Ogle* HC Wellington CRI-2009-091-2763, 16 October 2009; *R v Ying* [2004] 20 CRNZ 1078 (HC); *R v Howse* [2003] 3 NZLR 767 (CA); *R v Tarapara* [2015] NZHC 1594; *R v Malik* [2015] NZHC 466; *Malik v R* [2015] NZCA 597; and *Frost v R* [2023] NZCA 294.

⁶ *Epiha v R* [2022] NZCA 508.

MPI - personal aggravating and mitigating factors

[34] The next step is to adjust that MPI starting point for aggravating and mitigating features which are personal to you.

Uplift for offending while on bail and criminal convictions

[35] The Crown seeks an uplift of six months for the fact that your offending took place while on bail and for your prior relevant convictions. That is agreed and it is appropriate. I apply an uplift of six months.

[36] The Crown says the MPI should also be uplifted to take into account that any sentence imposed will effectively subsume the previous sentence you received for firearm related offending. You are still serving that sentence. I do not accept that an uplift is appropriate to reflect that factor. It does not sit comfortably with s 83(4) of the Sentencing Act 2002 which prohibits an indeterminate sentence being imposed cumulatively on a determinate sentence. More importantly, it falls outside the purposes for which a minimum period of imprisonment is imposed. No further uplift is applied.

Mitigating factors

[37] There are a number of mitigating factors raised by your counsel.

[38] First, a discount is sought for addiction and mental health related factors. A psychiatrist has provided an expert report in which he suggests you have a range of substance abuse orders, a history of childhood conduct disorder, and that you fulfil the criteria for anti-social personality disorder. Based on your self-report, the psychiatrist concludes that you were suffering from a methamphetamine-induced psychotic episode and depression in the lead-up to the shooting.

[39] I am not satisfied that you were suffering from a mental health condition that was independent from your consumption of methamphetamine at the time of the shooting. Even your depression was, at least partially, related to methamphetamine use. There is simply not enough evidence to suggest that you had a pre-existing mental health condition which causally contributed to your offending.

[40] The substance abuse issues are not, on their own, mitigating either. Your case is *not* the same as a drug addict compelled to deal drugs to feed an addiction. Allowing a discount for a methamphetamine-induced psychosis would be at odds with s 9(3) of the Sentencing Act which prohibits me from taking into account the voluntary consumption of alcohol or drugs at the time of the offending. I decline to apply a discount for either addiction or mental health related factors.

[41] However, I acknowledge that your substance abuse issues form part of your background. That background is characterised by violence, deprivation, and cultural dislocation stretching back generations. Your mother's family are Black Power, and your father's family are Head-Hunters. There is violence in your past, and your past before that. Your formal schooling was cut short at 13 years of age, and your education from that time on was at the gang headquarters. That education consisted of drilling you with acts of extreme violence. It was interwoven into your life.

[42] The Sentencing Act requires me to have regard to your background in imposing a sentence. That ensures that the sentence is tailored to your particular circumstances. As the Supreme Court has said, background factors can contribute to the cause of the offending. They may explain why an offender has come to offend and made certain choices. But sentencing is fact specific. It is not just a matter of applying a discount for a deprived background, or a substance abuse issue. What is required is a careful evaluation of the link between the background and the offending and how that should be reflected in the end-sentence.⁷

[43] While the murder of Eliza and Geoffrey were not gang related, your upbringing provides some explanation for what you did that day. Extreme violence is the only thing you have known in your life. There was no way for you to avoid it. It is normal for you. It is the only way you know how to deal with things.

[44] This played a part in your decision-making that day and it needs to be reflected in your MPI. But it does not relieve you of responsibility for those decisions. While your options may have been constrained by your upbringing, you still retained the power of choice. The features of your background must also be balanced against the

⁷ *Berkland v R* [2022] NZSC 143 at [89]–[94], [107]–[129].

unfathomable harm your offending has caused, and the purposes for which a MPI is imposed.

[45] I have weighed these factors in the mix. I have also considered other cases of double murder involving discounts for factors similar to yours. I have taken into account the discount you received at your prior sentencing. In light of the 23-year MPI I have adopted, I apply a discount of six months for the background factors.

[46] Your counsel also seeks a discount for remorse. It is difficult to untangle genuine remorse from your response to the realisation of what you have done. My sense is that you are still coming to terms with the magnitude of your offending, and it torments you. However, there is some evidence of remorse in the reports before the Court and in your letters. Those statements are substantiated by the fact you rang police after the shooting and pleaded guilty at the first reasonable opportunity. There is a flicker of hope in that expression of remorse. You will need to nourish that flicker over the coming years. A small discount is justified in these circumstances, and I apply six months.

[47] Finally, a discount is appropriate for a guilty plea. Such a discount recognises the stress and time saved in going through a trial, particularly for the family of the victims. For you, the guilty plea represents accountability and responsibility, lessening the need for these purposes to be reflected in the minimum period of imprisonment. Everyone agrees that a two-year discount for your guilty plea is appropriate, as do I.

[48] This brings the end sentence to one of life imprisonment with a minimum period of imprisonment of 20 and a half years.

[49] Mr Puata-Chaney, you are 28 years old. Life imprisonment with no possibility of parole for 20 and a half years is a very long time. It is not a sentence imposed lightly. But it is a sentence necessary to meet the purposes for which a MPI is imposed, and it is a fair and proportionate response to the tragic loss of two precious lives.

Sentence

[50] Mr Puata-Chaney, please stand.

[51] For the murder of Eliza and Geoffrey Trubuhovich, I sentence you to life imprisonment with a minimum period of imprisonment of 20 and a half years.

[52] Please stand down.

Edwards J