IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CRI-2023-012-191
[2023] NZHC 2288

THE KING

v

BRENT JAMES TIDDY

Hearing:	22 August 2023
Appearances:	R D Smith for Crown A Dawson for Defendant
Judgment:	22 August 2023

SENTENCING NOTES OF DUNNINGHAM J

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[1] Brent Tiddy, you are here for sentence today having pleaded guilty to a charge of manslaughter and causing the death of Katherine Joyce Broad.

The offending

[2] At the time of the offending, you had never held a driver licence. Furthermore, more than five years earlier, on 5 November 2017, you had been forbidden to drive by police until an appropriate licence was obtained. On 22 January 2021, you were sentenced a six month disqualification period and subject to an alcohol interlock device by the Court for committing a number of driving offences including driving with excess blood alcohol.

[3] On 23 February 2023, at around 10.45 pm, you were driving with the victim around the Dunedin area in your Honda Accord. You had been drinking alcohol and smoking cannabis earlier in the evening. When you drove into the McDonald's outlet at North Dunedin you mounted the kerb as you tried to park the vehicle in the carpark. After ordering some food there, you got back into the driver's seat and drove north towards State Highway 1. At around 11 pm, you drove at speed through a set of road works. The road works were signposted with a temporary 30 km/ph speed limit. You overtook a vehicle that was travelling north by swerving into the far right south bound lane and continued in this lane for approximately 150 m.

[4] Minutes later you approached a set of north bound passing lanes, in a 100 km/ph area and began overtaking a vehicle that was travelling north. You crossed a set of double yellow lines that separated the north bound passing lanes from the single south bound lane and you travelled into the path of an oncoming truck and trailer unit. The truck driver took evasive action and you narrowly missed it, swerving back into the left hand lane.

[5] At approximately 11.05 pm your vehicle was seen parked on the right side of the road by the occupants of the vehicle you had previously overtaken. At approximately 11.15 pm you approached the same vehicle at excessive speed and came up so close behind the vehicle that your headlights were unable to be seen in the rear view mirror. You overtook this vehicle once again as well as another vehicle in front of it, again, crossing a set of double yellow lines and travelling in the south bound lane to do so.

[6] At around 11.24 pm, you entered the township of Waikouaiti. Again, there were roadworks present and there was a 30 km/ph temporary speed limit. You were travelling at excess speed and lost control of the vehicle, veering left and hitting the 30 km/ph sign. The vehicle rolled once before it hit a tree. Neither you nor the victim were wearing seatbelts at the time of the crash. As a result of the crash, the victim suffered catastrophic head injuries and was killed instantly.

[7] The crash analysis showed that you lost control of the vehicle, and that was likely caused by excessive speed, inappropriate braking, or a combination of both, on an area of road involving a change in gradient and loose seal. This resulted in you oversteering from which you could not recover.

[8] Analysis of the victim's cellphone, which had an application on it that captured location and speed data, recorded a top speed of 158 km/ph during the trip.

[9] An analysis of your blood showed an alcohol reading of 141 mg of alcohol per 100 ml of blood (significantly in excess of the legal limit of 50 mg per 100 ml for an infringement offence and 80 mg per 100 ml for a criminal offence). It also showed the presence of tetrahydrocannabinol, the active ingredient in cannabis. You admitted to drinking alcohol and consuming cannabis earlier in the evening. However, you say you can remember nothing of the crash or the preceding events.

The reports

[10] A pre-sentence report was prepared for the purpose of sentencing. It is not encouraging. It said your offending related factors are identified as relationships, attitudes, alcohol use and drug use. You were said to have presented with an entitled attitude when it came to driving behaviour. Although you knew you were not allowed to drive, you were still prepared to take the risk of getting behind the wheel. The writer assesses your risk of reoffending on release as high, noting you have continued to offend since you were deported from Australia in 2017, and this conviction is the latest in a string of offences, including 11 previous driving related offences, since your return to New Zealand.

Section 27 report

[11] I also have a s 27 report prepared by Mr David Shenkin. He spoke with you, your father and your sister to get perspectives on your family history. He outlines an abusive and disruptive upbringing. You have witnessed and been subject to violence and trauma all your life. This includes witnessing your baby brother drowning in the bath, being physically abused by your mother and her new partner, and seeing your mother attack your father with an axe handle.

[12] You then were shifted to your father's care, and you moved with your father and stepmother to Australia when you were seven. You were diagnosed with ADHD when aged five and, it seems, with bipolar affective disorder when you were aged nine. Although the only official record I have of these diagnoses is a report of testing done by a neuropsychologist which only suggests the diagnosis of bipolar disorder, I accept your lawyer's submission that your father confirms these diagnoses were made and he has discussed them with medical professionals. By the time you were aged 12 you were truant and running away from school. At this age you also began using tobacco, alcohol, cannabis and methamphetamine. You became a father for the first time at age 14 to an older female, whom you met through school. You moved in with her and became involved in drug dealing to support your respective drug habits.

[13] At age 18, your Australian visa was revoked and you returned to New Zealand. You moved back in with your birth mother who reportedly used alcohol and drugs with you. Your bipolar medications were discontinued, because it seems your medical history was not transferred from Australia to New Zealand. The report writer is of the view that your alcohol use, magnified by your bipolar disorder, led to significant behavioural changes, and fed into your cycle of destructive behaviour and substance abuse. He points out, and I agree, it is critical to have your mental health and substance use disorders assessed and properly treated, and for you to have proper support structures to facilitate your recovery and rehabilitation.

Victim impact statements

[14] While you have experienced much adversity in your life, I also want to acknowledge the trauma that your actions have caused others. We heard today victim impact statements from four of Katherine's family. The first was from her son, Casey Antill. He is struggling to deal with the grief of losing his mum. He has been unable to work and has been in counselling, and he looks to a future without his beautiful, quirky mother.

[15] We also heard from Barbara Cooper, Mrs Broad's mother. She has lost her only child as a result of this accident. She describes how her whole life has been turned upside down, leaving her absolutely traumatised. Her plans for her own life

have changed entirely. Instead of a quiet retirement in Owaka she has moved to Dunedin to support Tara, a role which Tara's mother Katherine should have been able to fulfil, if she were still alive. That has significantly affected Barbara's financial situation for the worse. Barbara's feelings about the restorative justice meeting are that your anger and aggression at the outset of the meeting were upsetting and she found it incomprehensible that it took her daughter's death for you to realise that drinking and driving were not okay.

[16] Next, I heard from Teresa Cooper, Katherine's aunt, who says she feels destroyed by her sister's death. She says you have taken away a major chunk of her life and a person she loved and treasured. She also says your actions have had ramifications throughout the family. They have caused heartbreak, grief, emotional and financial devastation. However, she is more charitable about the outcome of the restorative justice meeting. She says she was pleased to be able to talk to you as it gave her some closure. She hopes you can move on and get the help you need.

[17] The last was from Katherine's 19 year old daughter, Tara. She spoke about losing a mother with whom she had an inseparable bond. Her mother was looking forward to the birth of her first grandchild and now Tara is raising her son without the advice and unconditional love and support which she would have had from her mum. She is also upset that the restorative justice conference did not bring her the closure she had hoped. She said you would not even look at family members when you were being told how Katherine's death affected them all. If anything, she says, the meeting added to her grief.

Submissions

Crown submissions

[18] As you have heard, Mr Smith, for the Crown, identified the following aggravating features in your offending:

(a) you were driving while disqualified and contrary to Court orders;

(b) you had consumed alcohol and drugs;

(c) there was prolonged and persistent reckless driving;

(d) you drove aggressively and at excessive speeds; and

(e) you failed to follow the basic driving rules by not ensuring you and your passenger wore seatbelts.

[19] All this, he says points to a starting point of six and a half to seven and a half years' imprisonment. However, your driving conviction history and the fact you were on bail at the time of this offending, and also in breach of your curfew condition, suggests, in his submission, an uplift of 10 per cent.

[20] In terms of personal mitigating factors, the Crown acknowledges your attendance at the restorative justice conference. As I have already noted though, there were mixed outcomes of that conference, with some family members saying it was helpful and others saying it was a negative experience. The Crown submits a credit of perhaps five per cent could be allowed in that regard.

[21] The Crown notes that the s 27 report referring to you suffering from ADHD and bipolar disorder, although it queries the report writer's expertise to suggest that your bipolar disorder was a direct cause of the offending. This is particularly so when you could not recall the incident and you blamed the consumption of alcohol and drugs. The Crown does not accept that your bipolar disorder was directly causative of the offending. However, it accepts, that those diagnoses would have played a role in your life trajectory more generally, making a modest credit available.

[22] Finally, the Crown accepts that you are entitled to a credit for your guilty plea. That said, it notes the case against you was overwhelming and the charge could not realistically have been defended, therefore a 20 per cent discount at most would be appropriate which was the discount allowed in a case called *R v Millar*.[1]

[23] Whatever end sentence is reached, the Crown submits this is an appropriate case for a minimum period of imprisonment and Mr Smith suggests that a minimum

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1 *R v Millar* [2018] NZHC 625.

period of imprisonment of at least half the sentence should be imposed. The Crown also seeks a lengthy disqualification period having regard to the circumstances of the offending and the risk you pose, and suggests the disqualification period of five years.

Defence submissions

[24] Your lawyer Mr Dawson acknowledges many of the points made by the Crown, including the factors identified as aggravating factors, although Mr Dawson suggests that the starting point should be at the lower end of the range identified. In submitting that, he says your circumstances are closest to the decision in *R v Millar* where a six and a half year starting point was taken.[2] He also points out that in *Millar* there were two victims, and unlike in *Millar*, there is nothing to suggest that the victim was not happy to be in the vehicle with you at the time. However, I note, in that regard, we will never know what the victim's views were. Mr Dawson seeks to distinguish the case of *R v Savigny* which the Crown referred to, saying it is a substantially more serious example of motor manslaughter offending, because it included taking the vehicle without authority and the deliberate attempt to evade pursuing police.[3]

[25] Mr Dawson accepts that an uplift of five to 10 per cent could be applied to recognise your previous convictions and the fact you were on bail at the time and in breach of your bail conditions.

[26] In terms of mitigating factors your lawyer says your plea justifies a 25 per cent discount and the decision in *Millar* to give only 20 per cent discount seems unduly harsh. He points out you did not enter a not guilty plea and entered a guilty plea as soon as the serious crash analyst had provided his report.

[27] Mr Dawson also considers you deserve a discount for your remorse and your participation in restorative justice. He explains some of the reasons for you not being particularly receptive at the outset of the conference but kicking furniture is something you deny. He says you got very late notice of its scheduling which meant you could not have a family member with you for support and you felt somewhat unprepared for

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2 *R v Millar*, above n 1.
3 *R v Savigny*[2021] NZHC 164.

it. However, he says I should take particular note of the victim impact statement of Ms Cooper, which he says is balanced and fair. She found the process helpful and your lawyer says an overall a credit of 10 per cent should be given to reflect your remorse and participation in restorative justice.

[28] Your lawyer then spent some time on your background, cultural deprivation and mental health issues as outlined in the s 27 report. Your lawyer accepts that the report writer overreaches when he suggests that the offending occurred as a consequence of a period of mania. However, he says the existence of your identified mental health concerns, especially unmedicated, contributed to your poor life trajectory, making an incident like this more likely to occur. He also submits that your background and your allied drug and alcohol abuse causatively contributed to the offending in this case. He submits a credit of 15 per cent should be afforded to recognise these factors.

[29] Overall, taking into account the personal aggravating and mitigating factors, your lawyer suggests a net adjustment of 40 to 45 per cent should be made to the starting point.

[30] Your lawyer also argues against a minimum period of imprisonment. He says the fact of imprisonment itself is a significant deterrent factor for you. He also points out that your release will no doubt only be considered once you have undertaken significant rehabilitative steps to address your underlying issues. Delaying the parole eligibility date might only serve to decrease your motivation to quickly complete such courses and that would not be in your interests or the interests of the community.

Analysis

[31] As you have heard, there is no guideline case for manslaughter sentencing. The starting point generally reflects the aggravating and mitigating features in any particular case.[4]

[32] In your case, the aggravating features are:

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4 *R v Gacitua* [2013] NZCA 234, at [25].

(a) the fact you had been consuming alcohol and were well over the legal limit for driving;

(b) you had also consumed cannabis;

(c) you had no driver licence and, indeed, had been expressly prohibited from driving;

(d) your driving was aggressive and reckless. You overtook cars in a dangerous way and ignored speed limits; and

(e) neither you nor your passenger were wearing a seatbelt.

[33] In short, this was an extended period of driving that disregarded virtually every rule designed to keep road users safe. It was almost inevitable that you would harm someone with your entitled driving behaviour. Unfortunately, on the night in question, it was your passenger you killed.

[34] Both lawyers have referred me to the case of *Gacitua*, where the Court of Appeal referred to a number of manslaughter cases in which alcohol was an aggravating factor and said they indicated a starting point between six and six and a half years was appropriate.[5] The Crown also referred me to two cases decided since that case.[6]

[35] I have considered all those cases, but I accept that your culpability is broadly similar to that in *Millar*. Your case involved more prolonged aggressive driving, however, the top speeds in *Millar* were faster and it involved some showing off and there were two victims in that case, one who died and one who was injured. I believe a starting point of six and a half years is appropriate.

[36] I now move on to consider whether that starting point should be adjusted for aggravating and mitigating factors. I accept that your criminal history is a relevant

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5 *Gacitua vR* [2013] NZCA 234 at [44].
6 *R v Millar*, above n 1; *R v Savigny*, above n 3.

aggravating factor. You have a conviction for driving with excess blood alcohol in 2020. At the time you were an unlicensed driver, and you were also convicted on charges of operating a motor vehicle causing a sustained loss of traction, operating a vehicle carelessly and failing to stop when followed by police. In 2018, you were fined and disqualified for driving a motor vehicle with a sustained loss of traction. In 2017, you were fined and disqualified from driving for driving with excess breath alcohol. You were also on bail at the time of the current offending, and you were in breach of your curfew conditions. I consider a 10 per cent uplift is appropriate to recognise these aggravating factors.

[37] In terms of mitigating factors, there is your guilty plea. While there are arguments to support a discount of 20 per cent being sufficient, I accept that the fact you did not enter a not guilty plea and entered a guilty plea as soon as the crash report was available, was appropriate and it is clear the fact you pleaded guilty promptly was a relief to the family. In the circumstances, I will afford a 25 per cent discount.

[38] The question of a discount for remorse and your participation in restorative justice is more difficult. I accept it was difficult for you to attend restorative justice and face a family who are angry and hurting. However, your aggression and hostility at the outset (even leaving aside whether you kicked furniture), must have been upsetting for the family and it is unsurprising that some of them are still sceptical of your remorse. However, your willingness to face the family and to give some of the closure should be acknowledged and I am prepared to grant you a five per cent discount for your attendance at restorative justice and your expression of remorse.

[39] The last issue is whether there should be an adjustment for your background and cultural circumstances which are touched on in the pre-sentence report and discussed fully in the s 27 report. There is no doubt that you have had a disrupted upbringing, punctuated by periods of abuse and neglect, although it appears to me that when you were with your father he did his very best to support you, and that support continues today, with him travelling from Australia to be with you.

[40] I also accept that you have been diagnosed with ADHD and bipolar disorder, although I do not have evidence to suggest that either of those factors directly caused

the offending. However, I do accept that their existence, unmedicated, contributed to your disruptive and risk-taking behaviour including your use of drugs and alcohol, and to you making poor decisions which led to the tragic circumstances that caused Ms Broad's death. I would allow a 10 per cent discount for these factors.

[41] When the 10 per cent uplift is netted off against the 40 per cent discounts, the starting point is reduced by 30 per cent to a sentence of four years and six months' imprisonment.

MPI

[42] I then have to decide whether, having reached that sentence, it is appropriate to impose a minimum period of imprisonment on you.

[43] As you have heard, the Crown has suggested a minimum period of at least half the overall sentence imposed, while your lawyer says that is not necessary. The very fact of imprisonment will be a significant deterrent.

[44] I can only impose a minimum period of imprisonment if I consider the statutory eligibility date for parole will be insufficient for one or more of the following purposes:

(a) to hold you accountable for the harm done to the victim and to the community by the offending;

(b) to denounce the conduct in which you were involved;

(c) to deter you and others from committing the same or similar offences; and

(d) to protect the community from the offender.

[45] In this case, I consider the requirement to hold you accountable for the harm you have done to the victim, to deter you and others from committing such offences, and to protect the community from you, means it is necessary to impose a minimum

period of imprisonment. If I did not, you would be eligible for release after 18 months and I consider that would be insufficient to meet the purposes I have just listed.

[46] However, I am mindful, too, that you need to engage in rehabilitative programmes so you can make good your promise to the family that you would not drink or take drugs and drive. For that reason, the minimum period of imprisonment I will impose on you is two years.

Disqualification

[47] Finally, because you have been convicted of manslaughter using a motor vehicle, I can impose a period of disqualification.[7] Although the principal objective of disqualification is public safety I also recognise that imposing too long a period of disqualification can be counter-productive. As has been said before, the Courts should not set offenders up to fail.[8]

[48] Given the aggravating features of your offending which include the use of alcohol and drugs, the excessive speed and the reckless driving, and the fact you have a number of previous driving related offences, public safety has to be prioritised. I will impose a period of disqualification of five years commencing from the day you are released from custody.

[49] Mr Tiddy, would you now stand.

[50] On the charge of manslaughter, you are sentenced to four and a half years' imprisonment. You are to serve a minimum of two years before you are eligible for parole.

[51] You are also disqualified from driving for five years. That disqualification will commence on the day you are released from custody.

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7 Under s 125(2) Sentencing Act 2002.
8 *R v Tranter* [2020] NZHC 884 at [56].

[52] You may stand down.

Solicitors:
Crown Solicitor, Dunedin
Public Defence Service, Dunedin