

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

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

**CRI-2021-092-008196
[2023] NZHC 2542**

THE KING

v

CORRDON FEMITIAI VAILOA ESERA

Hearing: 12 September 2023

Appearances: A Kefu for the Crown
G Newell and D Dickinson for the Defendant

Judgment: 12 September 2023

SENTENCING NOTES OF HARVEY J

Solicitors: Kayes Fletcher Walker, Manukau
Counsel: G Newell, Barrister, Auckland
D Dickinson, Barrister, Auckland

Introduction

[1] Corrdon Esera, at the age of 33, you appear this morning for sentence, having been found guilty by a jury of the murder of Misiona Talafu-Petelo. You will be aware that the maximum penalty for murder is life imprisonment.

The facts

[2] Mr Esera, you will know what happened on 16 October 2021 better than most. However, it is important that I address the facts during this sentencing since the law requires that it must be done in public, and that I refer to those facts that are directly relevant when setting the sentence that will be imposed. I will therefore refer in this sentencing to parts of the evidence given at trial.

[3] Mr Faataape, your co-defendant, was acquitted on the charge of murder as a party and of manslaughter. However, the jury accepted that, for you, the elements of the charge of murder were proven by the Crown beyond a reasonable doubt. You must accordingly be sentenced on that basis. So, I must determine the factual basis for sentencing, consistent with that verdict.¹

[4] I repeat, the events that took place on 16 October 2021 will not easily be forgotten by you or by everyone else connected with the case. On that date you had planned to have drinks after work, at about 6:00 pm, with some work friends at the Oakwood Manor Motel on Massey Road in Māngere. When you arrived, a woman called Nastasija Barney was present. She was intoxicated and tried to hug you, which annoyed you. Ms Barney taunted you and said her partner, Mr Felotoi, would come to punch you. Mr Felotoi is Mr Talafu-Petelo's father, and Ms Barney his stepmother.

[5] When Mr Felotoi and his associates arrived on a Suzuki Swift, he confronted you and accused a friend of not protecting his wife. It was about 7:00 pm when what Police described as a disorder incident happened. You left the address about 20 minutes before the Police arrived and drove to your home address in Manurewa.

¹ Sentencing Act 2002, s 24(1).

[6] Once the Police had arrived, Mr Talafu-Petelo and his crew left the address on the Suzuki Swift. However, Mr Felotoi was arrested.

[7] Once at home you picked up a gun that you owned, an AR-15 military style semi-automatic rifle, and loaded some ammunition. You told your wife you were dropping off the gun at a friend's house. You set off in your truck. Along the way you called a friend and asked him to drive you, but he declined. You then drove to Mr Faataape's house in Māngere and asked him to drive.

[8] You and Mr Faataape drove to the Oakwood Manor Motel. You exited the car to speak to the occupant of a unit. Mr Faataape positioned the car in the carpark with a clear view of the entrance. At that point the Suzuki Swift returned to the motel driven by Mr Talafu-Petelo. One of the occupants of that car entered the same motel unit and spoke to you and the occupant. You exited the unit and, walking past the Suzuki Swift, glanced inside. Getting back into your truck, you waited for the Suzuki Swift to leave and instructed Mr Faataape to pursue it. It was at this point you loaded the magazine into your AR-15 rifle.

[9] At 7:56 pm the Suzuki Swift drove past your truck and you presented the firearm at the occupants. You instructed Mr Faataape to follow them which he did. Both vehicles turned left onto Massey Road. As they were in motion, you leaned out the passenger side window of the vehicle and fired four shots into the Suzuki Swift. All the shots were aimed at the rear right side of the vehicle. One of those bullets hit Mr Talafu-Petelo and fatally injured him.

[10] You did not stop and instead you and Mr Faataape returned to Manurewa and Māngere East. You disposed of your phone the day after the shooting and the day after that, you surrendered yourself to police.

Victim impact statements

[11] I have received the victim impact statements from Simeone Felotoi and Nastasija Barney. They remain completely distraught despite the passage of time. As a result, they have decided not to attend this sentencing because it would be too painful for them to be here today. As Mr Kefu submitted, that they were not part of the ifoga

ceremony in Samoa doubtless adds to their distress, despite the positive intentions behind that event.

[12] There is little doubt both from the victim impact statements and from the evidence given during the trial that Mr Talafu-Petelo was a loved and respected son, grandson, brother, cousin, nephew and friend within his immediate aiga. They have all said so and I have no reason to doubt them. Mr Talafu-Petelo maintained the affection, love and support of his family, several of whom came to the trial either to give evidence or to witness the proceedings.

[13] Nothing I will say can change what has happened. The ongoing impact and toll of his death and the circumstances of it, will remain embedded in the family indefinitely. The grieving of Mr Talafu-Petelo's aiga inevitably continues to the present day. They may never get over the loss of their son and friend in such circumstances. I thank all of them for their presence during the trial, despite its obvious emotional toll. I also acknowledge their heartfelt and sincere victim impact statements as part of this sentencing.

Approach to sentencing

[14] In imposing sentence today, I will first decide whether the sentence for murder should be life imprisonment. I then determine what the minimum period of imprisonment should be, taking account of the aggravating and mitigating features of the offending. I will then apply any uplifts or discounts to reflect personal factors.

[15] There are certain purposes and principles under the Sentencing Act 2002 I must consider as part of the sentencing process today. Four of the main purposes of sentencing in this case are first, holding you accountable for the harm done to Mr Talafu-Petelo, his family and the community. Secondly, denouncing your conduct. Thirdly, deterring you and others from committing murder. Fourthly, protecting the community from you. I will take account of the gravity of the offending; the seriousness of the type of offending; achieving consistency with appropriate sentencing levels; and the effect of the offending on the family of Mr Talafu-Petelo.

Should the presumption in favour of life imprisonment for murder apply?

[16] Life imprisonment is the mandatory sentence for murder unless that sentence would be manifestly unjust.² The Crown and your counsel agree that there are no circumstances making a sentence of life imprisonment manifestly unjust.

[17] My conclusion, too, is that there is no reason why the presumption of life imprisonment should be disturbed. The jury found you guilty of murder and I am not persuaded that in the circumstances of this case, it would be manifestly unjust to set aside the presumption of life imprisonment in favour of a finite sentence. You will be therefore sentenced to life imprisonment.

Minimum period of imprisonment

[18] Where life imprisonment for murder is imposed, the minimum period of imprisonment must not be less than ten years.³ This must be the minimum term required to satisfy any or all of the sentencing purposes for murder, which as I have mentioned include:⁴

- (a) holding you accountable for the harm you have caused to the victim and to the community;
- (b) denouncing the conduct in which you were involved;
- (c) deterring you and others against any future offending of this type; and
- (d) protecting the public.

[19] In addition, if one or more specified aggravating factors are present in your offending, then a minimum period of imprisonment (MPI) of at least 17 years must be imposed unless it would be manifestly unjust to do so.⁵ Crown counsel say that s 104 of the Sentencing Act is not engaged for the imposition of a 17-year minimum period

² Crimes Act 1961, s 172; and Sentencing Act 2002, s 102(1).

³ Sentencing Act 2002, ss 103(1) and 103(2).

⁴ Section 103(2).

⁵ Section 104(1).

of imprisonment. I agree. But that does not diminish the effects and impact of this offending on everyone involved.

[20] Instead, Crown counsel argued that the minimum period of imprisonment range for your offending is between 12 and 14 years' imprisonment.

[21] Mr Dickinson agreed that range is appropriate and submitted a final MPI after discounts of 11 years would be appropriate. The issue for me to decide is what length of MPI, at or above the ten-year minimum, I must set in order to achieve the relevant purposes of sentencing.

[22] I have to fix the minimum period of imprisonment by reference to your culpability or responsibility. In doing so, I must consider any aggravating and mitigating aspects of your offending. The sentence that I impose should also be consistent in kind and length with other comparable cases for persons who have committed similar offences.

Aggravating features

[23] Crown counsel submitted the following aggravating factors are present: use of a weapon; premeditation; vulnerable victim; fleeing the scene; disposal of evidence; and extent of loss.

[24] Mr Kefu argued the use of a weapon, an AR-15 firearm, was aggravating. He pointed to the evidence at trial that you had used a scope. Mr Dickinson in the written submissions did not contest this. This aggravating factor is clearly present.

[25] I also agree with the Crown that there was premeditation. Your counsel submitted that it is open to the Court to find that you could have formed the intention to cause serious bodily injury to the occupants of the Suzuki Swift very soon before the fatal shooting. However, your offending nonetheless involved an element of planning. You left the motel to retrieve a firearm from your home some distance away and found a driver so that you could fire the gun from your truck. The issue of your intent was a key issue at trial but it is clear that before the fatal shot you intended to "teach the victims a lesson", whether that was by presenting or firing the weapon. You

located the victims, looked into their car to be sure it was them and waited for the Suzuki Swift to drive away, instructing Mr Faataape to follow it so that you could fire the shots. Regardless of when you formed the necessary murderous intent, you had prepared yourself with a firearm which enabled you to carry out that violence.

[26] As to victim vulnerability, Mr Kefu argued that Mr Talafu-Petelo and the other occupants of the vehicle were vulnerable because they could not shield themselves from the shots, were driving at normal speed and were unarmed. Mr Dickinson submitted that the occupants of the vehicle “ducked into the rear foot wells” and therefore the Crown’s submission is inconsistent with the facts.

[27] There are well-established categories of victim vulnerability, including children, elderly people, people with a medical or mental health condition or disability, and people in a temporary state of vulnerability such as being intoxicated. There is conflicting authority on whether a person subject to a surprise attack (and therefore unable to defend themselves) is considered vulnerable.⁶ However, the question of whether a victim was vulnerable, and whether they were vulnerable to an extent that aggravates the offending, turns on the facts.⁷ Ultimately, the occupants of the vehicle were not vulnerable victims in the manner envisaged by s 9(g) of the Sentencing Act.

[28] Mr Kefu argued that fleeing the scene is an aggravating factor of your offending.⁸ Mr Dickinson contended it was incorrect for the Crown to state you “must have known” that someone was seriously injured or dead. Nonetheless, I agree that your case is similar to *R v Tinei*. Fleeing the scene demonstrates a lack of remorse.

[29] In addition, Mr Kefu submitted that disposal of evidence is an aggravating factor because although you surrendered a stock of a firearm you said was involved in the shooting and an empty magazine, the police could not confirm it was the stock used in the shooting. You also disposed of your mobile phone. Mr Dickinson submitted that although the Police armourer could not confirm the stock from the firearm was used in the shooting, he could not rule it out. I do not consider the

⁶ *Sheppard v R* [2013] NZCA 639; and *Graham v R* [2011] NZCA 131.

⁷ *Graham v R* [2011] NZCA 131 at [13].

⁸ Relying on *R v Paewhenua* [2018] NZHC 301 at [30]; and *R v Tinei and Tapusoa* [2021] NZHC 556 at [68].

circumstances relating to the firearm stock and magazine to be aggravating regarding the disposal of evidence. The disposal of your phone is aggravating but evidence was nonetheless recovered so I consider this feature to be aggravating to only a small degree.

[30] I also accept the Crown's submission that you have caused great damage and harm as a result of your offending which can clearly be seen in the victim impact statements. Your actions have also caused doubtless great distress to your own family, who are also present today.

Mitigating features

[31] There are no mitigating features of your offending.

Comparison with other cases

[32] When deciding on a minimum period of imprisonment, I have to consider similar sentences in cases with generally similar features.

[33] Mr Kefu submitted there are similarities to cases where an MPI of 17 years was set, but in circumstances where s 104 was engaged. In *R v Winders* the defendant collected a firearm and drove 200 km to the victim's location, discharged the firearm point blank, left via a planned escape route and undertook various steps to avoid being caught.⁹ Then there was the case of *R v Phillips* which involved the defendant planning to confront the deceased with a firearm, following him in the car, firing at the vehicle causing it to roll down a bank then getting out of the car and continuing to fire at the deceased, including after he had been struck in the leg and shoulder.¹⁰ The Crown accepted that these cases are more serious than your offending, but submitted there were similar features. Mr Dickinson accepted that these cases were more serious.

[34] There are a few other cases I consider relevant to setting your starting point. In the case of *R v Filoa*, the defendant shot the victim after being assaulted by him in

⁹ *R v Winders* [2018] NZCA 277.

¹⁰ *R v Phillips* [2022] NZHC 2037.

the context of a drug deal gone wrong.¹¹ The use of a weapon and premeditation were present, as was the extent of loss. In particular, the premeditation was that Mr Filoa “carried a loaded weapon for the purpose of a confrontation to either threaten or cause harm”.¹² However, it was mitigating that Mr Filoa faced aggression from the victim. A starting point MPI of 11 years was imposed. I consider your offending is similar but slightly more serious, as you were not facing any aggression or perceived threat.

[35] There are also similarities to the case *R v Robinson* in which the defendant drove from a gathering to an address to pick up a sawn-off firearm before travelling to the victims’ address, and once being invited inside, but while still in the driveway, shot one victim in the stomach and one fatally in the chest.¹³ An MPI of 13 years was imposed with an 18-month uplift for the non-fatal shooting.

[36] Taking these authorities into account and applying them to your circumstances in this case, I consider that your offending is most similar to *Robinson*. After a triggering event you travelled some distance to uplift a lethal weapon. Although in *Robinson* the shooting was at closer range, in your case you picked up an accomplice to enable you to use the weapon, and by shooting at the car endangered the lives and safety of all the occupants as well as potential other road users and pedestrians. You attempted to dispose of your phone to hide evidence of you contacting another person to assist with your offending, which as I have mentioned is aggravating to a small degree. This justifies a minimum period of imprisonment starting point of 13 years.

Personal considerations

[37] I now turn to your personal circumstances which includes your pre-sentence report. Regarding your family life, you moved to New Zealand from Samoa at seven years old. You left school as a pre-teen after being expelled for disruption and fighting. This violence was often in response to bullying. As a result you struggle with low literacy skills.

¹¹ *R v Filoa* [2022] NZHC 2461.

¹² At [34].

¹³ *R v Robinson* [2021] NZHC 1605.

[38] Your father drank alcohol regularly and would at times become angry and assault your mother as well as break things in the house. This behaviour became less frequent and eventually stopped.

[39] At the time of your offending you were drinking alcohol most nights, sometimes up to 24 cans of alcohol. You consumed alcohol and cannabis from an early age and acknowledge alcohol in particular is a problem for you. You were drinking on the night of the offending and say that this contributed to you pulling the trigger in the moment when you only took the gun out to scare the occupants of the car. You also converted to Islam about five years ago and feel that you have committed a sin against that religion. When asked about how you feel about what happened now you say that you feel like crying and that the deceased was the same age as your younger brother. You accepted your actions and acknowledged you are the reason why another father is not going to see his son ever again.

[40] People the pre-sentence report writer spoke to described you in a positive light, as a friendly and helpful person. This included your previous employers and a church friend.

[41] Mr Dickinson also informed me that your parents and the victim's family participated in a traditional Samoan ifoga ceremony in an effort to acknowledge the offence, demonstrate remorse, and make peace between the two affected families.

[42] To your credit you have a clean conviction background with no previous offending. You have also maintained steady employment throughout your life. Indeed, I note that two of your former employers spoke highly of you and would welcome you back despite what has happened.

[43] Mr Dickinson submitted that as a result of this you should be entitled to discounts for your lack of previous convictions, previous good character and matters raised in the cultural report.

[44] Given the seriousness of your offending, a discount for lack of previous convictions and previous good character should be modest. However, I acknowledge

you have undertaken rehabilitation efforts at Brainwave, Iosis addiction assessment programme and MenD developmental programme, Life 101 programmes, and Kāhui Tū Kaha's Te Hokinga Mai Raki – Out of Gate programme. That effort is significant. One of the purposes of this type of discount is to recognise that rehabilitative potential is higher for people who have not previously offended. You should continue these rehabilitative efforts in prison. I award a 10 per cent discount which accounts for previous good character and rehabilitative efforts and potential.

[45] Turning to the cultural report, I acknowledge that you were exposed to alcohol abuse from a young age and in turn developed problems with alcohol. I also accept that intoxication played some role in your offending although you must accept responsibility for your actions. I also acknowledge that you and your family had a difficult time relocating to New Zealand from Samoa. Your family taken advantage of economically which contributed to the domestic situation and you report experiencing racism from teachers which contributed to your poor educational experience. However, there is not enough to link those matters to your offending. A discount of five per cent is appropriate to acknowledge the alcohol issues that resulted from your upbringing.

[46] Before formally passing sentence, I need to repeat the sentence that is being imposed on you today is one of life imprisonment. You must serve at least the minimum period of imprisonment I will now impose before you can be considered eligible for parole. That decision will ultimately depend on the Parole Board's assessment of the risk you pose to the community. After the passing of that minimum period, you will remain in prison until the Parole Board decides otherwise.

Sentence

[47] Mr Esera, please stand. For the murder of Misiona Talafu-Petelo, I sentence you to life imprisonment, with a minimum period of imprisonment of 11 years.

Please stand down.

Harvey J