

POLICE

v

PERA PERA

Date: 22 May 2019

Counsel: Mesdames K Bell & A Herman for the Crown
Mr D McNair for the Defendant

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[1-39-35]

[1] Pera Junior Tamanu Pera is before the Court for sentencing on one charge of manslaughter to which he entered a guilty plea at the beginning of last week.

Facts

[2] The background facts giving raise to the charge are that the defendant, then aged 18, and the deceased Dominique Taru, then aged 25, are half-brothers. They, with two others, were working for Teariki Pirangi doing building work.

[3] After work on 30 December 2017, they gathered at their boss's place at Arorangi for some drinking and kaikai. After drinking, the boss dropped the four off to a family residence in Turangi, where they continued to drink. The defendant was wearing his work clothes which included steel cap boots.

[4] Later in the evening, the deceased, Dominique, started asking Junior, who was a friend of the other three, about some money. Junior was drunk, he was falling asleep.

[5] Dominique kept questioning Junior and started to get angry. Maurangi Pera told Dominique to leave Junior alone as he was drunk, but Dominique persisted. Maurangi gave him some punches.

[6] At this stage the defendant decided to become involved and he started punching Dominique. Junior grabbed Maurangi's hands and stopped him from throwing any more punches. Dominique ended up on the ground. He started apologising, but the defendant straddled him and continued to punch him the head.

[7] Maurangi grabbed the defendant to pull him away, but the defendant pushed him off. Dominique then tried to get up off the ground and the defendant kicked him in the head. He was still wearing his steel cap boots at the time of the kick and the force of the blow knocked Dominique unconscious.

[8] The defendant checked on Dominique and started picking him up. There was a dispute between Maurangi and the defendant as to what should be done and Maurangi became scared, and went down the road to get help.

[9] The defendant and Junior dragged the deceased, who was still unconscious, into a room inside the house and there they left him. When Maurangi, having gone to get help, returned to the house with another, he checked on Dominique.

[10] There was blood around his mouth and he would not wake up. His breathing was laboured. The defendant then entered the room and asked if Dominique was alright. He told Maurangi to get a bowl of water and a rag and to call the ambulance.

[11] The ambulance arrived at the scene at 11.30pm. By this time Dominique was unresponsive and CPR was commenced. Dominique was transported to hospital where CPR was continued. Death was officially declared at 12.30am on 31 December 2018.

[12] A subsequent post mortem revealed that the cause of death was multiple blunt force injuries and that Dominique would have survived for at least 25 to 30 minutes following the blows to the head.

Sentencing principles

[13] The Crown and the Defence in their submissions have helpfully referred me to the sentencing principles and I take those into account. The defendant must be held accountable for his actions and the sentence must deter him and others from committing the offending for which he must now be sentenced.

Aggravating and mitigating factors

[14] The Court is required to consider aggravating and mitigating factors. Of the offending aggravating factors are the attacks to the head, particularly with a steel cap boot.

[15] The seriousness of the assault – the kicking with the steel cap boot, after a series of punches, when Dominique was on the ground, apologising and in no position to protect himself.

[16] The kicks to the head was gratuitous and dangerous, and those kicks led to Dominique's death.

[17] The defendant failed to get proper assistance for Dominique. Given the expert evidence that the deceased would have survived for 25 to 30 minutes after the assault, had there been immediate assistance it is possible his death could have been avoided. But when the ambulance arrived at 11.30pm Dominique was unresponsive.

[18] In relation to the defendant, he has two previous convictions for fighting in a public place, both in 2017, and he was on probation at the time of this offending.

[19] In mitigation, the Crown accepts there was a lack of pre-meditation. This was spontaneous reaction, if it can be so described, probably exacerbated by the fact that all four had been drinking for a lengthy period.

[20] The defendant was only 18 years old at the time of the offending, and of course now is still a very young man.

[21] Further in mitigation is the defendant's guilty plea. He pleaded guilty on the first day of trial at the beginning of last week. He is entitled to some discount for that guilty plea but it came very late in the piece, and the discount must appropriately reflect this.

Authorities

[22] The Crown and Mr McNair referred me to numerous cases in New Zealand and other jurisdictions because there are no authorities in the Cook Islands on sentencing for the crime of manslaughter.

[23] Manslaughter does not carry any sentencing tariff, as we call it, either here or in New Zealand, because the facts that give rise to manslaughter vary so greatly in each given case. They can vary from little more than common assault to something that can be next door to murder, as is the situation in this case. Murder was charged by the Crown on the 8th May 2018.

[24] Included in the cases referred to me by the Crown are the cases of *Hunt*, where the New Zealand Court took a starting point for sentencing of 8½ years. The facts of that case were more serious than in this case. Two feeding brothers had been drinking and got into a fight. One took an axe, fracturing the skull of the other, causing death.

[25] In *Harrington*, slightly less serious than this case, the defendant tackled the deceased on the ground, placing him in a chokehold for approximately 20 seconds until the victim went motionless, at which point the defendant punched and kicked the motionless victim in the head in the back. In that case the New Zealand Court took a starting point for sentencing of 7 years.

[26] Counsel have referred to remarks of the Court of Appeal in *Police v Goodwin*¹, a recent case in the Cook Islands, decided last year. I will quote two paragraphs from that judgment because they are relevant here. The Court of Appeal said:

¹ *Goodwin v Crown* (CA 11/2018) 3 May 2019, Williams P, Barker JA & Paterson JA

[47] Whilst it is difficult in principle to say that two jurisdictions with identical penalties for serious violent offending should have sentencing regimes distinguished by levels of leniency, we consider that there are some grounds for such differentiation and an argument for making the Cook Islands regime slightly more lenient. Consistency is one of the reasons for allowing the sentence appeal and reducing the period of imprisonment.

[48] The considerations noted by Doherty J in *Police v Nicholas* at [24] and [25] are relevant. Indeed, the virtue of forgiveness has manifested itself in this case in the generous attitude of one of the victims. The Constitution makes it clear that the Cook Islands is not blindly to follow New Zealand precedent and indeed, this Court has not done so. We say little about the prison regime in the Cook Islands other than to note the views of a highly experienced judge in criminal matters (Doherty J) and to observe that the penal system in the Cook Islands cannot possibly offer the same opportunities for rehabilitation and training of prisoners and better accommodation and facilities for them as compared to those offered by a larger and wealthier country with a much bigger population and taxation base.

[27] The Court noted that homicide is very rare in the Cook Islands and that there were no known comparable cases.

[28] The reference to the virtue of forgiveness made by the Court of Appeal is particularly relevant in this case. We have had the privilege of hearing this morning from Ms Maka, mother of both the deceased and the defendant, and I want to quote from the Probation report, which in the usual way of Probation reports prepared for sentencing in the Cook Islands is thorough and thoughtful. The probation officer states:

“Ms Tauri Maka stated that she continues to support PJ” [that is the defendant] “as he is her son. When she grieves for Dominique, she also grieves for PJ.”

The forgiveness inherent in that remark is laudable; it is also understandable.

Sentencing principles

[29] I turn now to sentencing. Bearing in mind the comments of the Court of Appeal that a more lenient regime may be appropriate in the Cook Islands than in New Zealand, whereas in New Zealand a starting point for this offending would be in the range of 7 to 8 years, I take a starting point of 6 years imprisonment.

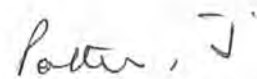
[30] I allow for the guilty plea and for the obvious remorse of the defendant in relation to this offending, a credit of 8 months. This results in a sentence of 5 years and 4 months imprisonment.

[31] The defendant is entitled to a credit for any time he has spent in custody. Counsel advised me that he has been mainly on remand. But any time spent in custody is to be credited towards his sentence.

Sentence

[32] Mr Pera, would you please stand. The sentence I impose upon you, Mr Pera, is 5 years and 4 months imprisonment, less the 28 days you have already spent in custody.

[33] I wish you well. You may stand down.



Judith Potter, J