

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

**CRI-2007-091-4694**

**THE QUEEN**

v

**CHARLIE KARAKA**

Trial: 23 February 2009 - 10 March 2009

Appearances: G Burston with Ms Verrall and Mr McGoldrick for the Crown  
P Surridge for the Prisoner

Sentence: 15 May 2009

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**SENTENCING REMARKS OF MALLON J**

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[1] Mr Karaka I ask you to stand please. You appear this morning for sentence on one charge of murder [s 167 of the Crimes Act] and one charge of wounding with reckless disregard [s 188(2) of the Crimes Act], having been found guilty on these charges at trial. The penalty for murder is life imprisonment. The maximum penalty for wounding with reckless disregard is seven years' imprisonment.

**Circumstances of the offending**

[2] The circumstances leading to the murder and wounding are as follows.

[3] On the evening of 7 December 2007, after you had finished work for the day, you went to a friend's place for a few drinks. Your friend is a member of the

Mongrel Mob, as are you. You went to your friend's place wearing your leather vest which has the Mongrel Mob patch on it. At your friend's place there was also his girlfriend and two other friends who are also members of the Mongrel Mob.

[4] Between the five of you, you shared two dozen "Black Ice" beers. You drank at least half a dozen of them, perhaps up to eight of them. About two or three hours later the five of you left your friend's house by foot.

[5] As you were walking along you came across three young males. Two of them had earlier been at a party at a Mungavin Avenue address and were making their way back to the party after going to the duck pond to drink a cask of wine. A number of those at the Mungavin Avenue party were associated with the "Crips" gang, and the three young males you came across were Crips or were associated with them.

[6] Some words were exchanged and the three young males headed back to the party. Your group followed them. There were quite a few people gathered at the party inside and outside of the house. Words were exchanged. Bottles were thrown by those at the party at your group. There was also evidence that your group threw bottles. You were outnumbered. Some of the Mungavin Avenue group grabbed fence palings and chased you away from the house in the direction of a service station. At the service station the altercation continued. You were hit a number of times with a fence paling. You were on the ground while you were being hit. In the course of this, your Mongrel Mob vest with the patch was ripped off you.

[7] The Mungavin Avenue group ran off and your group dispersed. You had sustained injuries but were able to walk to your mother's place where you sat on her porch for a while. Your brother was at the house and saw you on the porch and was worried about you. Your mother came home and saw you and was worried about you also. She rang your sister to come around to see if she could help you. Your sister came around immediately with her baby. While your mother looked after the baby in the car your sister tried to speak with you, it seems to try and find out what happened and if she could calm you down. You did not let her help you. Instead you headed off by foot carrying a knife with you that you had picked up from your

mother's place. Your sister went running after you. You came across three young men and a young woman who had been having a few drinks that evening and were making their way to the dairy to get something to eat. Two of this group were worried and thought you were concealing something up your sleeve, which you were.

[8] You seem to have satisfied yourself that this group were not Crips and in any event you decided to leave them alone and carried on. In the meantime your mother had woken up another of your brothers who was asleep back in the house with his baby. Your brother hopped into his mother's car and soon picked up you and your sister. The three of you headed to the Cannons Creek shops. The car was seen driving slowly around the back of that area and pulling up by the taxi stand.

[9] At the taxi stand were Fitzgerald Risati, his brother Risati Risati Jr, and a group of their friends. They were celebrating Fitzgerald Risati's 24<sup>th</sup> birthday and had gone to the taxi stand to catch a taxi to the markets to have something to eat. They were in good spirits and were heard to be singing Samoan songs as they waited for some time for a taxi to show up.

[10] As Fitzgerald's group were waiting, three young males apparently associated with the Crips, one of them wearing a blue bandanna, arrived and briefly chatted with the group. Those three quickly walked away as your car approached. You got out of the car and called out to one of them asking if he was a Crip. He did not reply.

[11] By this stage Fitzgerald Risati was near your car. You turned your attention to him. You had the knife in your hand. A fight broke out between the two of you. In the course of that fight you used the knife. You inflicted two wounds to Fitzgerald. One a cut to Fitzgerald's wrist, the wound being consistent with Fitzgerald attempting to block the knife. The other wound was inflicted to his chest. The wound came in from the front and at a downwards angle and was consistent with a stabbing motion delivered with moderate force.

[12] At some point in the fight Risati came to assist his brother. The two Risati's were winning the fight and you sustained a number of blows. You continued to swing your knife. You inflicted a wound to Risati's back penetrating his lung.

[13] Your brother hopped out of the car in the course of the fight to come to your assistance. Others from Fitzgerald's group also came over. Your evidence was that they joined in the fight, but I do not accept that. They tried to break it up. You and your brother managed to get yourself back into the car and you drove off. From beginning to end the fight was all over in a few minutes.

[14] After you left, Fitzgerald and Risati's friends looked after them while they called for an ambulance and also texted for one of their brothers to come quickly with a car to take them to hospital. The car arrived and they got Fitzgerald and Risati to Kenepuru Hospital but, not long after, Fitzgerald died as a result of the stab wound to his chest which had penetrated his heart. Risati was transferred to Wellington Hospital where he stayed for some five days. You did not know you had killed Fitzgerald, and found out later on the morning of 8 December when news of his death reached you.

### **Victim impact statements**

[15] There are victim impact statements from Fitzgerald's father and mother, his sister and his partner of some four years. There is also a victim impact statement from Levine who was injured in the fight at the taxi stand when he tried to break it up.

[16] There are also statements from Brian Churms who was Fitzgerald's best friend; and statements from Laura Palepua, a family friend; Katherine Leach, a work colleague of Fitzgerald; and from the Mayor of Porirua City, Jenny Brash. These statements are not from "victims" as that term is defined in the Victims' Rights Act [2002], but I grant leave to the Crown for these statements to be submitted for sentencing purposes [s 21(1) of the Victims' Rights Act] and no objection is taken to that by your counsel.

[17] I have read all of these statements. In addition, this morning the statement from Fitzgerald Risati's sister, who lives in Australia, was read via a DVD recording which has been played.

[18] The statements tell of Fitzgerald Risati's wonderful qualities and the devastating impact this offending has had. His death has caused immense sadness and pain to those who loved him and he is dearly missed. I think the Crown's written submissions summarise these statements fairly as follows:

The victim impact statements make sober reading. It is evident in many of these statements that the death of Fitzgerald Risati not only affected those close to him, but also within the wider community. The victim impact statement of Risati Risati Sr speaks of how Fitzgerald Risati's kind nature rubbed off on many who he met, and notes that it was the biggest funeral that he has seen in Porirua. Maria Risati speaks of the joy that Fitzgerald Risati brought into her life. She is left with the lingering uncertainty of why his life was taken in this way. The statements of Zarah Reuelu Smith and Oliver Churms speak of the devastating personal impact that Fitzgerald Risati's death has had on their lives. Many of the statements also speak of Fitzgerald Risati's dedication to his work with the intellectually disabled. The statement of Katherine Leach gives some insight into how his passing has affected the wider community, especially the children for whom he used to provide support.

[19] I also refer to the concluding comment from Mayor Jenny Brash. She says:

The damage caused to the Risati family, the community and the city's reputation as a whole was incalculable. The community's resilience to work through the effects of this crime was tested to the hilt but came through in the following months largely due to the strong support networks of youth workers, community and church leaders.

### **Pre-sentence report**

[20] I have read your pre-sentence report. This report tells me that you are 33 years old and of New Zealand Maori descent. You have had a 17 year relationship with your partner and have three children with her. A fourth child died in 2004.

[21] You were raised by your mother and Samoan stepfather. You told the probation officer that you were subject to regular psychological and physical abuse at the hands of your stepfather. Your sister confirms this. You believe that your

path of anti-social behaviour began because of your stepfather's views that you were weak and stupid.

[22] Your interest in gangs arose when your mother told you that your biological father was a member of the Mongrel Mob. You wanted to follow in his footsteps. You did so when you joined the Mongrel Mob when you were 21 years old. You advised the probation officer that you remain a member of the Mongrel Mob, though you are uncertain as to whether you are in good standing because of your reluctance to associate with the Mongrel Mob on previous occasions.

[23] You said that you had been involved in many physical altercations with local gangs. You said that you were often confronted by gangs of Pacific Island descent and attacked in a manner you consider to be against "the rules" (if I can put it that way). In particular you do not like how those gangs attack from the rear and use weapons.

[24] You consider that alcohol was a factor in your offending. You said your pride was damaged by the earlier beating you had sustained and the removal of your gang patch. You wanted to regain your patch. You said "paranoia" was present, and that in fear of a subsequent attack, you picked up the weapon "for protection". You maintain that you thought Fitzgerald Risati was involved in the earlier altercation and that you did not mean to stab anyone, let alone with enough force to kill someone.

[25] You accept that you will be spending a long time in prison and have ended your relationship with your partner because of this.

[26] You said you were willing to make amends via any means available, including a restorative justice meeting. You said you could not look at Fitzgerald Risati's father during the trial. You said that you think about Fitzgerald Risati every day.

[27] You also said you are not willing to attend alcohol and drug counselling or psychological counselling or violence prevention programmes because they had not

worked in the past. You considered that the Maori Therapeutic Programme, which you had derived benefit from previously, would be the best means to address your offending.

[28] In view of your history, the probation officer assesses your risk of re-offending as high.

### **Previous convictions**

[29] Turning to your offending history, you have 49 convictions, involving offending between 1992 and March 2002. Of those the most serious is your participation in a gang-orientated aggravated robbery in which you were the get-away driver. This was in 1998 and you were sentenced to four years' imprisonment for that. There are a number of dishonesty offences, seven cannabis offences, four male assaults female, three firearm offences and a variety of other less serious offences. The most recent of your offences up until the present offending was for cannabis cultivation and possession for supply. That was in March 2002, although you were not sentenced on that until June 2004.

### **Sentencing Act**

[30] I will deal first with the sentence on the murder conviction. Section 102 of the Sentencing Act [2002] requires me to sentence you to life imprisonment unless that sentence would be manifestly unjust. Counsel has not suggested that such a sentence would be manifestly unjust and I am satisfied that it is not. Accordingly you are sentenced to life imprisonment.

[31] The next question is to determine a minimum non-parole period: that is not to be equated with the sentence. The sentence is life. The minimum non-parole period is the period of imprisonment that you must serve before you are eligible to apply for parole. Eligibility for parole does not mean that you will be released from prison at that time. Your suitability for release will be a matter for the Parole Board. Even

when released on parole, a person sentenced to life imprisonment remains subject to that sentence for the rest of their life and may be recalled to prison.

[32] In setting the minimum term, s 103 of the Sentencing Act requires me to set the minimum term that is necessary to hold you accountable for the harm you have done, denounce the conduct, deter you or others from committing a similar offence and protect the community from you.

[33] In certain circumstances the Court is required to impose a minimum non-parole period of at least 17 years. In this case it is accepted that the circumstances here are not of that kind. In cases that fall outside that category the minimum non-parole period is 10 years, or such longer period as the Court considers is necessary to satisfy all or any of the factors that I have just mentioned.

### **Submissions**

[34] The Crown submits that an appropriate minimum non-parole period is in the range of 14 to 16 years. Factors it views as relevant are as follows:

- a) Premeditation: because you took the knife from your mother's house expressly looking for members of the crips gang and you were willing to use the knife to achieve your objectives, whether you had the primary aim of recovering your patch or seeking retribution for your earlier humiliation;
- b) There were two victims, and it was fortunate that the outcome was not significantly more serious for Risati Risati Jr;
- c) The gang context, here there having been ongoing gang rivalries with apparently escalating levels of violence with you having said in your police video interview that it was only a matter of time before someone was seriously injured;
- d) This was an unprovoked attack on innocent members of the public;



- e) There was an element of vulnerability, the Crown says, in that the victims were unarmed and caught off-guard and that your brother acted in support of you;
- f) That because of your previous convictions and that the probation officer has assessed your risk of reoffending as high and because of your attitude to intervention programmes, there is a need to protect the community from you;
- g) And lastly, the devastating impact upon the friends and family of Fitzgerald Risati and the wider community.

[35] Overall it emphasises that mindless violence calls for a stern response and that there is a real need to protect the community from you. It says you started this and you murdered someone and seriously injured his brother.

[36] Mr Surridge submits that the jury verdict does not mean that they were sure that the Crown had excluded the reasonable possibility that you were acting defensively. He says that logically you were convicted for using excessive force. He refers to the earlier beating you had sustained, to your evidence that you thought assailants were coming up your mother's driveway, and says that one can well understand you arming yourself to prevent another hiding and the protection for yourself and others.

[37] Mr Surridge says that the *R v Wallace* [HC WN CRI-2007-083-1608; CRI-2007-085-2762; CRI-2008-085-2981 20 February 2009] case, which is relied on by the Crown in their written submissions, where a baby was killed in a gang drive-by shooting in Wanganui, has little application here. He says that case involved a high degree of planning and premeditation whereas here the events were more of a continuum, and in circumstances when you had been subject to a recent and serious beating which had affected your ability to think straight such that you could not recall going to your mother's house and were in a state of paranoia when you went to the taxi stand. He also distinguishes the *R v Wallace* because in that case a child was killed.

[38] Mr Surridge also says that the case did not involve gratuitous street violence such as is discussed in the decision of *Fa'avae* [HC AK CRI-2006-204-748 10 July 2008]. He says that there is no special or significant matters of principle that set this case apart from the general rule that the taking of the life must mean life imprisonment and that the minimum non-parole period of 10 years should be imposed.

[39] Mr Surridge emphasises matters that are favourable to you. He refers to your insight, remorse and contrition evident from the pre-sentence report. Mr Surridge advises that you are well aware of the harm your actions have done to the Risati family, to your family and to the community at large. He says that you have always wished to see Mr Risati Sr for a restorative meeting. He says that you were overwhelmed when you heard Mr Risati Sr say in court that he had forgiven you. He says that your unwillingness to participate in prison courses is explained by the fact that you have been on those courses and there has been no change in the syllabus since that time. He says that you had, on your release from prison, been living a lifestyle that you had not experienced before where your involvement in the Mongrel Mob was on the wane, you had a job you loved and you were getting ahead in your life. Mr Surridge describes the events on the evening as a night of madness and paranoia for you.

### **My assessment**

[40] As the trial Judge I find that you were humiliated and angered by the beating and, particularly, by the taking of your patch, and you took the knife with you to use to get your gang patch back. You went looking for Crips. In taking the knife there may have been an element of self-protection because the Crips did not fight by the rules, but not in the sense that you would only use the knife if you ended up in a situation where you needed it to protect yourself purely defensively. You intended to threaten any Crip or Crips you were able to find with the knife as a way of getting your gang patch back. You did not set out intending to kill anyone, but in taking the knife you must have known that you might use it. You were pumped up and angry. You didn't stop to find out if Fitzgerald Risati and his group were actually Crips.

You turned your attention to Fitzgerald Risati and, in the ensuing fight, you used the knife. Your counsel says that I should find that this was self-defence with excessive force. That is only a possibility if the fatal wound was inflicted at a point in time when you were not the aggressor. On the confused state of the evidence, given the different accounts that were given, it is not possible to be sure about when the fatal wound was inflicted. If you were losing the fight at the time you inflicted the fatal wound, I do not see that as reducing your culpability. If it was not the first blow you struck, then it occurred after you had already started using the knife aggressively. The reality is that you instigated the fight, you took the weapon to the fight and you were prepared to use the knife from the outset.

[41] This was misguided, misdirected, senseless and unwarranted provocation over a gang patch. Sadly it ended the life of a much loved and promising young man who had nothing to do with gangs, or indeed the earlier incident that had provoked you, and who was unfortunate to be in the wrong place at the wrong time.

[42] In assessing the culpability of the offending I consider there to be two particular aggravating features. The first is that there was an element of premeditation. Your attackers at the service station had gone and you had made it back to your mother's place. As you sat on the steps you decided to get your patch. You took the knife with you for that purpose.

[43] Secondly, and in my view most significantly, is the gang context. Gangs are a menace to our society. Tensions and violence between gangs in the streets cause fear for those who live in communities where they are present and put innocent members of the public at risk. They have significant impact in the community for those directly affected and also for others. The statement from the Mayor of Porirua describes the lock-down mode the city went into after this, with deserted streets as fearful families stayed inside. Your offending occurred against a background of where you knew there had been confrontations between the gangs and you yourself admit to being confronted by Pacific Island gangs. Your direct involvement with your gang associates may have waned, but the events on the night of 7 December began when, wearing your Mongrel Mob regalia, you and your associates decided to go the Mungavin Avenue property. The value you placed on your patch, and the

humiliation you felt when it was taken from you, caused you to act in the way that you did. A gang patch. How could that ever be worth what you did?

[44] That said, this is a different kind of case than in *R v Wallace*, which the Crown places particular emphasis upon, and where a minimum non-parole period of 15 years was imposed on the principal offender. In that case there was lawless, pre-meditated, gang warfare, involving a group attack in a convoy and with a loaded weapon. You were motivated by what had occurred to you, rather than general gang warfare. Essentially you acted alone. Your brother was only there because your mother had sent him after you, and he only became directly involved in the fight after it had started and you were sustaining heavy blows. You had a knife, you did not have a loaded shotgun.

[45] You acted sufficiently aggressively and recklessly with the knife so as to stab Risati Risati Jr in the back. That is relevant context but of itself not aggravating in setting the minimum non-parole term on the murder charge.

[46] Turning to factors personal to you, your previous convictions, though numerous, are not similar to the present. Your convictions are indicative of your involvement in a gang and I have already taken that into account. There is nothing in those convictions to indicate that you are likely to offend in this kind of way again. This killing occurred because of a particular situation. You had been making efforts to get your life back on track with your job which you were enjoying. You are not without all prospect for rehabilitation.

[47] I do not see it as relevant that at this point you see no point in some of the prison courses that are on offer which are directed to your rehabilitation. You have identified the programme you believe would best assist you. It may be in time that you will come to see the value in other programmes that are available to assist you.

[48] I am not sure from what I have heard from you and in your pre-sentence report that you realise that the taking of a gang patch is not provocation of a kind to warrant taking a knife to get it back. However, having had the opportunity to see you throughout the trial, and listening to your counsel this morning, I accept your

remorse is genuine in that you very much regret that you killed Fitzgerald Risati. I also accept that you were overwhelmed when you heard in Court that Mr Risati Sr forgave you and you wish to see him to have the chance, as I understand it, to say how sorry you are. I also accept that you are aware of the impact your actions have had on the Risati family and friends, and on your family and the wider community. These things count in your favour when I consider the purposes of sentencing that I must take into account.

[49] Taking all of these factors together I consider that a minimum non-parole term of 10 years is insufficient to meet the purposes of denunciation, deterrence and accountability given, in particular, the gang context in which this occurred. It was mindless violence and it requires a stern response. I see this as lifting this above the so-called “ordinary” level of culpable murder for which a minimum non-parole period of 10 years is appropriate. I consider that a minimum non-parole period of 12 years is the minimum necessary to meet the purposes of sentencing, taking into account the nature of the offence and the factors which count in your favour. When I check this for comparability against the cases relied on by counsel this morning (in addition to those I have referred to reference was also made to *R v Sauaki* [HC AK CRI-2006-092-9497 31 October 2007], *R v Piilua* [HC CHCH CRI-2005-009-11878 1 September 2006], *R v Harrison* [HC AK CRI-2003-092-36746 10 February 2005], *R v Sullivan* [HC GIS CRI-2005-016-2100 25 August 2006]), and also other cases which I have looked at such as *R v Ati* [HC AK CRI-2006-092-16228 24 April 2008] and *R v Tuwhangai* [HC HAM CRI 2007-019-19 24 September 2007]. You were not young as in some of those other cases, such as *R v Fa’avae* relied on by your counsel, where a lower minimum has been given. I am satisfied that a minimum non-parole period of 12 years is appropriate.

### **Wounding with reckless disregard**

[50] I now turn to the sentence on the wounding with reckless disregard charge. Neither counsel addressed me on this presumably because the sentence on this charge must be concurrent with the sentence of life imprisonment and so in that sentence is academic. Nevertheless I am required to set the term for this sentence. I

consider that the offending fits into “band two” in *Taueki* [[2005] 3 NZLR 372 (CA)] (given, in particular, the use of the knife and the gang context) and, adjusting this because *Taueki* deals with a more serious kind of offending, that a three-year term of imprisonment is appropriate to be served concurrently.

### **Sentence**

[51] So in summary, what all this means is that:

- a) You are sentenced to life imprisonment on the charge of murder with a minimum non-parole period of 12 years;
- b) You are sentenced to a term of three years’ imprisonment on the wounding with reckless disregard charge, to be served concurrently.

[52] Finally I add that, as with any sentence of this kind, the minimum non-parole period is not intended to illustrate what a life is worth. The sentence is the best that the courts can do in the circumstances. I would also like to say that the family and friends of Fitzgerald Risati, that they conducted themselves during the trial with the utmost dignity in these most awful circumstances.

[53] Please stand down Mr Karaka.

Mallon J

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