IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CRI 2009-087-1868

THE QUEEN

v

LEIGH ANN TAMATI

Hearing: 27 October 2009
(Heard at Rotorua)

Appearances: R Ronayne for the Crown
R Gowing for Ms Tamati

Judgment: 27 October 2009

SENTENCING OF WOODHOUSE J

Solicitors:
Mr R Ronayne, Ronayne Hollister-Jones Lellman, Office of the Crown Solicitor, Tauranga
Mr R Gowing, Gowing & Co., Solicitors, Whakatane

[1] Ms Tamati, you may remain seated while I explain the reasons for my sentence.

[2] As you will understand I need to explain it not simply for your benefit, although principally for your benefit, but for the benefit of all others who are directly affected by this, and for the community as a whole. And you are acknowledging to me that you understand that as I am talking to you.

[3] You appear for sentence for the manslaughter of Dillon Hitaua having pleaded guilty to that charge.

Facts

[4] Mr Hitaua was your de facto partner over a period of approximately 17 years. It is relevant to an assessment of the sentence that the relationship of the two of you was physically volatile. Mr Hitaua's death occurred during an argument which appears to have been not much different from many arguments over the years except, of course, that he died. The fact that you were charged with manslaughter in the end, rather than murder, makes clear that the Police accepted that you had no intention to kill him. From all of the information put before me that was plainly the right assessment.

[5] On this occasion an argument over something trivial developed into a verbal and physical confrontation. As the situation got worse you tried to phone the Police. The submissions for the Crown include copies of nine family violence reports from earlier incidents. I mention this because on each of the earlier occasions it was you who called the Police – as you tried to do on this occasion. And on each of these earlier occasions you are recorded as the victim by the police officer who wrote the report.

[6] You phoned the Police in the hope Mr Hitaua would leave the house apparently as he had done on earlier occasions. This time Mr Hitaua pulled the phone cord out of the wall socket. You still had the phone in your hand. You went

into the kitchen and you got a knife. You told Mr Hitaua that you would stab him if he tried to prevent you from phoning the Police. These were defensive actions by you. Mr Ronayne, on behalf of the Crown, accepts that they were defensive actions. But at this point you had a knife in your hand.

[7] Mr Hitaua went into a bedroom and shut the door. You again tried to phone the Police but found that the phone cord was damaged. It is obvious Ms Tamati that for some reason you felt it was important to get him out of the house, and this is where the tragedy has developed. You found the phone was broken. You pretended to speak to the Police, with Mr Hitaua still in the other room, hoping that that would persuade him to leave. He stayed in the bedroom. You forced your way into the room still holding the knife. You have said that your intention, still, was only to scare him into leaving. I accept that. There was a brief altercation and that ended in your stabbing Mr Hitaua once behind his left knee.

[8] He began to bleed profusely. You immediately got a towel to try to minimise the bleeding. You went to get help from two neighbours and an ambulance was phoned. You went back to the house to do what you could. Your home was some distance from the hospital. You and the neighbours put Mr Hitaua into a stationwagon and set off to hospital. You had travelled approximately 17 kilometres before the ambulance reached you. Mr Hitaua was then taken in the ambulance to hospital. Those facts that I have just mentioned have some relevance and I will come back to that.

[9] He died about an hour after your call to the emergency services – or the call that was made. The knife wound severed a secondary artery in Mr Hitaua's leg. He died because of failure of his organs following the loss of blood.

Personal circumstances

[10] I come briefly to your personal circumstances.

[11] You are 39 years of age. As I have already said, you were in a de facto relationship with Mr Hitaua over a period of approximately 17 years. It is plain, Ms

Tamati, that it was an important bond between the two of you, but with this tragic volatility between the two of you. As you have just explained to me, the two of you had four children, not three as I said at first, the oldest of whom died. The remaining three are aged 14, 15 and 18, and you have an older child aged 21.

[12] I have read the pre-sentence report and I did not fully appreciate that – in relation to your children – from the pre-sentence report. I take account of all of the relevant matters that are noted in that report. I do not intend to refer to all of them, but some I will mention.

[13] You have said that you and Mr Hitaua had spoken often about the need to put an end to the harmful parts of your relationship, but you were never able to do that. It seems, Ms Tamati, clear from the pre-sentence report that your upbringing simply did not equip you to deal with this. The domestic violence continued and it has ended with this tragedy. It is a tragedy for you as well as for your children, for Mr Hitaua's parents, and for others.

[14] I accept, from what you said to the probation officer, and all of the surrounding information, that you truly have deep remorse for what has happened. You said to the probation officer that – and these are your words – you "never even wanted to hurt him" and that you simply had the knife to scare him. As I have said, and as the Crown accepts, that is accepted. You said that you – and I quote again –"I lost my partner, my best friend and father of my children".

[15] You have acknowledged the hurt and pain that you have caused, not only to your children but also to Mr Hitaua's parents. You have said, through Mr Gowing, that you accept and respect the comments made by Mr Hitaua's parents in their victim impact statement.

[16] You have not attempted to minimise the seriousness of what you have done. The probation officer reports that you take full responsibility for the consequences of your actions. I fully accept that. This is made clear by one simple but graphic fact, and that is that you pleaded guilty on the very first day you appeared in Court.

[17] You are assessed as being at low risk of reoffending. I have no reason to doubt that.

Victim impact statements

[18] I have read the victim impact statement from Mr Hitaua's parents. They have lost their son, and the father of their grandchildren, through your criminal act – and it is a criminal act. I take account of what they have said. It is unnecessary for me to expand on their grief.

[19] Mr Hitaua's children are also victims. They are, of course, your children as well. The impact on them also impacts on you. This is a burden for you for the rest of your life, as well as for them, and this is something more which I take into account.

Starting point

[20] Ms Tamati, in determining the sentence to be imposed on you I need to take account of the relevant principles and purposes of sentencing, and other relevant provisions, set out in the Sentencing Act. I will do that, but it is not necessary to spell these things out. More broadly, I need to assess the extent of your criminal responsibility having regard to the offence itself, to fix what is called a starting point, and then bring into account any aggravating or mitigating factors relating personally to you rather than the nature of the offence.

[21] There is one particular matter I have to make clear I **do not** take into account. That is Mr Hitaua's criminal history. Your offence has attracted media publicity. This, I believe, is not because of the nature of what you did, but because of the identity of your victim. This is completely irrelevant to my assessment of the sentence to be imposed on you.

[22] In fixing the starting point there is no guideline and that is because circumstances relating to crimes of manslaughter vary enormously. The Crown has submitted that the starting point should be in the vicinity of 4 ½ years imprisonment.

[23] Mr Gowing, on your behalf, did not particularly demur from this. Mr Gowing has accepted on your behalf that there must be a term of imprisonment. My difficult task is to assess how long that should be.

[24] There are no aggravating features of the offence other than what is inherent in the essence of a charge of manslaughter, as Mr Ronayne has already said. It is also inherent in a charge of manslaughter that there was never any intention to kill. There are some important mitigating factors I believe in relation to the offence itself.

[25] As I have said several times, I accept that the only reason you got the knife was to scare Mr Hitaua, and to scare him out of the house, and you had no intention even of hurting him when you got that knife. This is against the background of earlier domestic violence and the other facts I referred to.

[26] As a Judge has said in another case – and this was mentioned by Mr Gowing – and it is a case rather like this – the end result was unlooked for and unexpected[1]. There was a single stab wound. The wound was to the leg. There might simply have been a surface cut. You might have missed altogether. But by tragic chance an artery was severed. It may also be that, if you had been closer to a hospital, he would not have died.

[27] The most comparable cases that have been referred to me are ones called *Stone*, which is the case I just referred to, and as case called *Mahari*[2]. In both cases the starting point was 4 ½ years imprisonment.

[28] There is need for consistency in sentencing so far as that can reasonably be achieved. But as I have said no two cases are alike. I consider that the gravity of your offending – what is called the level of your culpability – is somewhat less than in the *Mahari* case.

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[1] Ronald Young J in *R v Stone* (HC WN, CRI 2005-078-1802, 9 December 2005) at [11].

[29] Taking account of the things I have referred to I consider that the proper starting point for the offence itself is 4 years imprisonment.

[30] There then needs to be the adjustment I earlier mentioned to take account of personal circumstances. There are no personal circumstances requiring any increase.

[31] You are entitled to have your sentence reduced by one-third because of the guilty plea which was made at the earliest possible opportunity. As I have said, it could not have been made earlier. This reduction is clear from decisions of the Court of Appeal. You are entitled to a further reduction to take account of a range of personal circumstances noted in Mr Gowing's submissions on your behalf and in the pre-sentence report, and some of which I have earlier referred to. Taking account of all of these matters I consider that the sentence that should be imposed should be reduced from 4 years to 2 years imprisonment.

Formal sentence

[32] Would you please stand.

[33] You are sentenced to imprisonment for 2 years.

[34] Because the sentence does not exceed 2 years – and I did not mention this before – but because it does not exceed 2 years, special conditions can be imposed under s 93 of the Sentencing Act. I do impose the special condition that you attend counselling for grief, management of relationships and anger management as may be directed by your probation officer. These special conditions expire on the sentence expiry date.

[35] Ms Tamati, I do hope you will take advantage of any programmes that are available to assist you in coming to terms with what has happened so that, when you have served your sentence, you will be better able to manage your life and, in particular, to be a mother to your children.

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[2] *R v Mahari* (HC ROT, CRI 2006-070-8179, 14 November 2007, Winkelmann J)

[36] Would you please stand down.

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Peter Woodhouse J