

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

**CRI 2008-068-000609**

**THE QUEEN**

v

**JOHN HUMPHREY EVANS-WHATARANGI**

Hearing: 3 December 2009

Counsel: P Crayton for the Crown  
T Sutcliffe for the Prisoner

Judgment: 3 December 2009

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**SENTENCE OF POTTER J**

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## **Introduction**

[1] John Humphrey Evans-Whatarangi: You are before the Court for sentence for manslaughter. You were charged with murder. The jury who heard your trial acquitted you of murder but found you guilty of manslaughter. Manslaughter carries a maximum penalty of imprisonment for life.

## **Background facts**

[2] A group of friends gathered to socialise and drink in the late afternoon of Friday 14 November 2008 at the flat of Robert Pu in Para Street, Taumaranui. Initially the group were drinking and socialising outside the flat. One of the group was the deceased Mr Simon Conrad, a man aged 56 years. The prisoner arrived at the gathering and immediately started looking for a fight. He accosted two other people before having a verbal exchange with the deceased, Mr Conrad, who was sitting on a seat outside the front entrance door to the flat. Punches were exchanged. The deceased fell to the ground and the prisoner kicked him in the head while he was on the ground. Accounts of witnesses differed as to the number of kicks delivered by Mr Evans-Whatarangi to the head of Mr Conrad - between one and four or five. But the evidence was consistent that the prisoner kicked the deceased in the head at least once while he was on the ground.

[3] Other people intervened. The deceased was helped up and seated back on the chair. He said he was alright. He was given some more beer to drink. The prisoner was then assaulted by another person and was bundled off the property in one way or another. There was some evidence that he returned later when the gathering had moved inside, and apologised to the deceased, but the accounts of the witnesses about this were not consistent. When the group moved inside the deceased was seated in a chair in the corner of the lounge. The drinking and socialising continued. At some stage after midnight all people had left except the deceased and Robert Pu. According to Mr Pu the deceased asked for a blanket, said he wanted to go to sleep

and elected to sleep on the floor. Robert Pu said that he went to sleep on a couch in the lounge near the deceased.

[4] When Robert Pu woke in the morning, he said around 6 a.m, the deceased appeared to be in the same position. He went to awake some of the people who had attended the gathering the previous night and returned to the flat with them. It would appear that the deceased's pulse was then taken by Robert Pu and another person but there was no life. An ambulance was telephoned and arrived around quarter to 8 on the Saturday morning. The deceased was then confirmed dead.

[5] Two pathologists gave evidence at trial. They agreed that Simon Conrad died from a subdural brain haemorrhage caused by the rupture of one or more of the bridging veins in the cavity between the brain and the dura. The blood caused the brain to swell and the resultant pressure eventually caused death. The evidence was that an "event" would have been required to rupture the bridging veins but the pathologists were unable to say what amount of force was required. They were agreed that a kick, a punch or a fall could have been a cause of the rupture. Their evidence was that it is quite usual for there to be a gap in time between the event and the inflicting of the injury, and loss of consciousness. This is because the rate at which the bleeding and the swelling of the brain occur, varies quite considerably.

[6] There were some external injuries to the deceased, including a heavy black eye with some abrasions and internal bleeding to the left cheek, found on autopsy. There was bruising consistent with impact at twelve areas of his head, face and arms. However, there were no injuries to the skull and no brain damage.

### **Pre-sentence report**

[7] I have received a pre-sentence report for sentencing purposes. It records that you, Mr Evans-Whatarangi, are twenty years of age. You were only a few days short of your nineteenth birthday at the time of the offending. You are single with no dependents. You have no health issues. The report records that on your own admission you had consumed over thirty stubbie bottles of steinlager beer and about

half a forty ounce bottle of Jim Beam whiskey on the night of the offending. You admitted to being “quite intoxicated”. I would suggest that is an understatement.

[8] You said to the probation officer that you “felt bad about what happened when he died”, that you were “quite disgusted in myself”, and “did not want him to die”.

[9] The report writer observes of your professed remorse, that unless and until you address the underlying causes of your offending - excess alcohol consumption and anger management - it is likely you will reoffend in a similar manner placing other people at risk.

[10] The report notes that you have thirteen previous convictions of which nine are of a violent nature.

### **Victim impact statements**

[11] I have received victim impact statements from the deceased’s widow and his daughter. They vividly portray the enormous emotional upset and trauma that the death of Mr Simon Conrad at the age of 56 years has caused for his family, particularly his wife of 34 years. In addition is the loss of support which had always been provided by Mr Conrad for his family. He is described as a good provider, a loving family man who willingly undertook household duties and provided significant support in every way for his family. The shock and distress of his sudden violent death have been, understandably, absolutely traumatic for those close to him.

### **Purposes and principles of sentencing**

[12] The purposes and principles of sentencing set out in the Sentencing Act 2002 have helpfully been referred to me by counsel in their written submissions and I take them into account in sentencing. The sentence imposed must seek to hold the prisoner accountable for harm done to the victim and the community by the offending, to promote in him a sense of responsibility and acknowledgement for the

harm done, to provide for the interests of the victims of the offending as far as that is possible in any sentence, to denounce and deter his conduct and to protect the community from him.

### **Aggravating and mitigating features of the offending**

[13] There are no mitigating features of the offending.

[14] Aggravating features include:

- a) The use of actual violence – kicks and punches.
- b) The violence was directed to the head of the deceased. As I have said the evidence was inconsistent as to the number of kicks to the head, but it was clear there was at least one. There were also punches delivered to the deceased and the evidence of twelve places of impact on his body.
- c) There is the evidence of aggressiveness to others immediately before the fatal events that night.
- d) The deceased was 56 years old at the time of the offending. He was not in good health. The prisoner was nineteen years old, a young, fit man.
- e) Simon Conrad lost his life. His death has had a severe impact on his family to which I have previously referred.

### **Aggravating and mitigating factors relating to the offender personally**

[15] Mr Evans-Whatarangi is a young man. Yet he has accumulated in the period 2007 to 2008 no less than thirteen criminal convictions of which nine are violence related. He has previously been sentenced to imprisonment, and was still subject to release conditions when he caused the death of Simon Conrad just five weeks after

his release from prison. These are serious aggravating factors personal to the prisoner.

[16] Mr Sutcliffe has advanced as mitigating factors the youth of the prisoner and his remorse. I am advised that Mr Conrad was Mr Evans-Whatarangi's uncle. It is said that Mr Evans-Whatarangi had no idea the injuries he dealt to Mr Conrad would prove fatal. While the jury's verdict of manslaughter and not murder, demonstrates that the jury were not sure beyond reasonable doubt that the prisoner knew the injuries he inflicted were likely to cause death, it is of concern that Mr Evans-Whatarangi maintains he had no idea the injuries caused could be fatal when he kicked Mr Conrad in the head while he was on the ground, being well aware that he was assaulting a middle-aged man who was not such a fit and well person as he was.

### **Sentencing**

[17] There is much common ground in the responsible and helpful written submissions of counsel for both parties. There is no tariff case for manslaughter. The circumstances of offending vary greatly and the sentence imposed must take account of the individual circumstances and the context of the particular offending. I have considered the various authorities mentioned in submissions and others from my own researches.

[18] The case of *R v Kaika* HC GIS CRI 2006-016-3323 17 March 2008, Lang J perhaps provides the most similar factual circumstances, although as the Crown acknowledges, the offending in that case was more serious than in this case. Two offenders assaulted the deceased and placed him in the rear of a vehicle. At the end of the journey the deceased was put to bed. His death, like that of Mr Conrad, was the result of a subdural haematoma. He suffered multiple blows to the head, face, chest, abdomen and limbs, including fractured ribs. There was an element of premeditation in the offending. A starting point of seven years' imprisonment was adopted which was increased by twelve months for the prisoner's previous convictions for violence.

[19] I take a starting point of five and a half years' imprisonment for this offending. This is within the range advanced by both counsel in submissions, with which I agree.

[20] For the seriously aggravating factors personal to the prisoner, to which I have previously referred, I increase that starting point by fifteen months, to reach a revised starting point of six years nine months' imprisonment.

[21] While the prisoner's youth has been advanced as a mitigating factor, I agree with the Crown that it can provide little by way of mitigation given the prisoner's recent and serious history of violent offending. Likewise, while I accept that Mr Evans-Whatarangi is no doubt very remorseful for causing the death of his uncle, Simon Conrad, expressions of remorse without the significant steps required to address the underlying causes for violent offending, can have limited impact.

[22] I allow a discount of three months to reflect the mitigating factors of youth and remorse limited as they must be in the circumstances of this case.

[23] The end sentence is accordingly six and a half years' imprisonment.

#### **Minimum non-parole period**

[24] Both counsel have addressed the issue of a minimum period of imprisonment under s 86(2) of the Sentencing Act. The primary purposes in sentencing for this offending are deterrence and protection of the community. Given the lengthy sentence imposed which reflects an increase, as it must, for the prisoner's history of violent offending, and given his young age, I do not consider the imposition of a minimum period of imprisonment is required. Mr Crayton for the Crown advised that the Crown does not seek a minimum period of imprisonment. As Mr Sutcliffe has submitted, the Parole Board will be in a better position than this Court, to gauge any risk factors at the point or points when Mr Evans-Whatarangi becomes eligible for consideration for parole.

[25] Mr Evans-Whatarangi you will be a long time in prison. You will have time and opportunity to reflect upon and to address, if you are so motivated, the underlying causes for your serious violent offending. At present you pose a significant risk to other people because of your propensity for serious violence and your inability to control your intake of alcohol. You will need to be very motivated and determined to address the underlying causes for your violence. The Parole Board will undoubtedly be concerned to assess the steps you have taken in prison to address the significant risk factors that presently exist in relation to your violent offending.

[26] Please stand Mr Evans-Whatarangi.

### **Result**

[27] The sentence imposed upon you Mr Evans-Whatarangi is six and a half years' imprisonment.

[28] Please stand down.