IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CRI-2008-009-003597

REGINA

v

THOMAS TIHEMA CHRISTIE

Hearing: 4 December 2009

Counsel: B Hawes for Crown
M Sewell for Prisoner

Judgment: 4 December 2009

SENTENCE OF PANCKHURST J

Mr Christie:

[1] You are for sentence in relation to crimes of manslaughter and indecent assault which involved a young victim whom I will refer to simply as Shaun Finnerty. You were found guilty by verdict of the jury in early November.

[2] The facts of the case are all important to the assessment of your culpability. I presided over a lengthy trial and it is a case where there is a particular need for an evaluation of the facts and to set them out in the course of the sentencing remarks which I am about to make, so I begin at that point.

[3] As of February 2008 you were living essentially on the street. You were associated with a group of similar like-minded young people, most of whom were somewhat younger than you, either in their mid-teens or perhaps early twenties. Daytimes were largely spent in the central city area of Christchurch. The consumption of alcohol was a preoccupation. This was sometimes paid for using money which, on occasion, had been scrounged from members of the public or alcohol was simply stolen for your consumption.

[4] You and Mr Sonny Rehu, your co-accused at the trial, were the older members and you, in particular it seemed to me, a leader of the group. You are now 26. You were 25 at the relevant time. Mr Rehu was older still, aged in his early thirties. And I have formed the clear view that you exercised influence over the younger people, if necessary by the threat or even occasionally the use of force.

[5] Shaun Finnerty was only aged 16½ years at the time of his death. He had been raised in Dunedin. Of course at the relevant time he was living here in Christchurch, initially in the care of an aunt who gave evidence at the trial. He suffered from Attention Deficity Hyperactivity Disorder, ADHD, for which he was prescribed Ritalin. In consequence he was in a difficult phase of his life and he had run away from the home of his aunt repeatedly. It was against this background that he began associating with the group that I have just described.

[6] The evidence at trial contained a detailed account of events throughout the day of 12 February 2008. A group of several, including yourself, Mr Rehu and Shaun, walked from town initially to the area of Riccarton Mall where a period was spent procuring and also consuming alcohol. Later the group walked further up Riccarton Road to the area of the Bush Inn shopping centre. Members of the public noticed the group, both on account of alcohol-related conduct, but also for the treatment that was being meted out to Shaun Finnerty. The evidence which I heard at trial showed to me that he was regarded as fair game by various members of the group at this stage, particularly some of the other younger people.

[7] In any event further alcohol was procured and consumed in the Bush Inn area. At around about 9.00 pm you made at least two entries into a liquor store in that area. Shaun you took with you on both occasions. On the second occasion his and your actions were observed on a security camera. This clearly showed you selecting a bottle of liquor, handing it to Shaun and effectively requiring him to steal it after he had concealed it on his person. Because this was observed, a staff member endeavoured to have Shaun stopped at the check-out. But he made off and was chased by two young male patrons who were in the store at the time.

[8] After a brief pursuit he fell in the carpark area and he was then confronted by the men who had pursued him. The return of the bottle of liquor was demanded. You by this stage were also outside and in the general vicinity in the carpark. Shaun made a mistake of calling out words to the effect "Tom Tom", your nickname, "don't let them hurt me". You pretended not to know him and used words to the effect "Don't suggest you know me". Despite that attempted denial of the connection it was obvious to those present that you were a pair and had been seen as such in the bottle store moments earlier.

[9] After this incident in the carpark area the numbers in the group that had existed throughout the day dwindled. Two, in particular, were highly intoxicated and left the area by bus while others had come and gone as the day unfolded. And so it was by late in the evening you, Sonny Rehu and Shaun Finnerty were the only remaining members and you went to the area of Auburn Park, still in possession of a significant quantity of liquor.

[10] At one point sometime later you were joined by a pedestrian who had run out of petrol as he drove home on Riccarton Road. He was invited to have a drink with the remaining trio. His evidence provided an insight into the nature of the association. Shaun Finnerty was sent with the instruction to obtain petrol to help this man out. He had no money. He was expected to procure it by dishonest means. Perhaps unsurprisingly he returned after a while empty-handed.

[11] It was at that point as the three of you, plus the pedestrian, sat around a table that the first serious violence occurred. Out of the blue Shaun was struck a backhand blow to the face by you, which broke his nose and caused extensive bleeding. The witness left the park leaving only the three of you alone into the early hours of that morning. More alcohol was consumed. Then there must have been an assault which unfolded over a period of time. When his body was examined by a pathologist sometime later he had the injury to the nose, bruising to his right forehead, bruising to his right eye and to the area of his lips. He had as well two areas of subcutaneous haematoma to the scalp. I shall comment further upon the assaults which must have occurred shortly.

[12] It was approaching 6.00 am that a phone call was made by you from a phone box to St Johns Ambulance. You claimed to be a jogger who had just gone into Auburn Park innocently and had encountered a boy in the park who was seriously injured but still alive. You then endeavoured to say that the boy had told you he had been assaulted by Sonny Rehu. This was plainly a crude and unsuccessful endeavour to shift responsibility elsewhere.

[13] When ambulance officers and the police arrived at the park a short time later they found Shaun alone and deceased. Indeed he had been dead by then for some little time. His lower clothing was removed leaving him naked from the waist down, save for the fact that a single item of clothing had been placed over his middle area.

[14] The subsequent post mortem examination revealed the external injuries to which I have already referred, but also what the pathologists described as a diffuse traumatic axonal injury. This was mild in nature. An axonal injury is caused to the brain as a result of violent acceleration which causes movement of the brain within the head and when that movement stops there is a stretching which causes damage to nerve fibres, giving rise to the axonal injuries which were described in such detail to the jury. Blood taken from Shaun established that he had an alcohol content in his blood of 267 micrograms per 100 millilitres of blood. That is to say, a figure much in excess of the limit that is permitted for driving in this country.

[15] Significantly the cause of his death was not the injuries inflicted particularly to his head of themselves, but rather what the pathologist described as positional asphyxiation. What had occurred was that the injury to his brain, no doubt compounded by the effects of gross intoxication for such a young person, led to a state of unconsciousness and, in that stage, he got into a bad position and died of asphyxiation. Causation became an, if not the major, issue at the trial. An array of experts was called.

[16] It was common ground that the axonal injury was a mild one as injures of that kind go and that it would not have been expected to cause death on its own. Hence this was a death which I have no doubt was unintended, indeed, I suspect, unexpected by you. What the verdict clearly signifies is that the jury accepted, and

rightly in my view, that there had been an assault; that it had caused the axonal injuries and although they were not life-threatening, they were a substantial and contributing cause to Shaun Finnerty's death.

[17] There was, in my view, significant forensic evidence which spoke to the violence which had befallen him in the park - in the form of blood in various positions, including on a park table and in the immediate vicinity of a park bench. Mr Hawes in his submissions ventured the view that at some point it was likely this young boy had struck the park bench and it may well be that it was an action of that kind which gave rise to the underlying brain injury. Although the circumstances are unusual and did not in my view support a finding of murder, this was nonetheless a manslaughter brought about by deliberate violence which precipitated the chain that eventually led to this boy's death.

[18] The further offence of indecent assault was put to the jury by the Crown on the basis that it was the stripping of his clothing which was in itself indecent. Mr Hawes in his written submission invited me to the view that it should be viewed as part and parcel of the violence itself, and I agree that that is an appropriate approach to take to this aspect of the case.

[19] Both you and Mr Rehu were extensively and repeatedly interviewed by police officers. For your part, you said that Mr Rehu alone was responsible for the death. As in the 111 call you supplied information which was demonstrably false and in my view you only changed your account when you were forced to do so on account of information which the police had unearthed. I regard you as a totally unreliable historian, both in your police interviews and, equally it seems, in what you said to the probation officer who prepared the pre-sentence report for the purposes of the sentencing today. As Ms Sewell commented, the details in that report as to your background and recent lifestyle are essentially sketchy and unable to be verified.

[20] What is plain is that you have a previous history involving a considerable number of past convictions. Many of these are for disorder type offences, no doubt alcohol-related, and also a very considerable number are for offences of minor

dishonesty. But in 2004 you were convicted of robbery on two occasions and the following year of assault and then in 2006 you committed another robbery.

[21] You are described in the report as non-compliant in relation to the community-based aspect of sentences which you have received. You are also described as having chosen to live a day-by-day existence in the period that preceded this offence. You are further assessed as at high risk of further offending, in part because of a reluctance to accept help in the form of counselling and treatment.

[22] The Crown maintains that there are three main aggravating features to this case. The first is the violence itself which does seem, in my view, to have been focused in large part on Shaun Finnerty's head, seemingly to discipline him for perceived inadequacies in relation to his conduct both in the carpark and perhaps subsequently.

[23] The evidence conveyed to me that the stripping of his lower clothing was indeed something which occurred in the throes of the assaults that occurred and which demonstrated a complete indifference to his plight. I view the indecent assault as an aggravating feature of the violence for these reasons.

[24] Its impact upon others has been demonstrated by the victim impact statements which Mr Hawes read at the commencement of the sentencing this morning. These were statements from a father, a sister, step-mother, step-siblings and a cousin. In general terms they spoke of the needless loss of a young family member, the pointlessness of his death and the various impacts which his death has had upon this range of people. That, too, is an aggravating feature of the crime; that it did cause, in significant part, the loss of a life and these impacts on others.

[25] The second matter is Shaun's vulnerability. He was but a boy, young for his age in my judgment, of slight stature and weighing only 63 kilograms. You, Mr Christie, are a man of significant stature and much more mature and he must have been defenceless at your hands, the more so given the extent of his intoxication.

[26] The third aggravating feature is the abuse, perhaps better called misuse, of a dominant position which I am sure you enjoyed in relation to Shaun and others within this group. He was a boy who was adrift, alone, craving acceptance and very vulnerable to someone who could exercise influence, as you undoubtedly did.

[27] Ms Sewell has made a plea on your behalf based on remorse which she suggested was palpable. I am afraid that has not been obvious to me and was not obvious to me during the course of the trial. If it exists it must be belated. On the other hand I have no doubt at all that you sincerely regret the fact that this young boy's death was caused at your hands and I accept that you did not envisage his death, much less intend it.

[28] Manslaughter is a difficult crime in relation to fixing the appropriate sentence. There is no set tariff for manslaughter. This case demonstrates why. Manslaughters can arise from sheer accident or violence which is little short of that which would support a charge of murder, or anything in between. Sometimes the chain by which the death is caused is complicated as was undoubtedly the case in relation to Shaun Finnerty. And so I must recognise that although you assaulted this boy, although not to a level which would ordinarily have caused death, that nonetheless the axonal injury led to unconsciousness and, with the intoxication, to his death and that, of course, resulted from his getting into an awkward position where, on account of his unconsciousness, his natural body defences were so impaired that he could not right himself and prevent the onset of asphyxiation.

[29] I must grapple with all of those complications in order to assess what your degree of culpability, blameworthiness, is. To that end I have been referred to numerous cases. Mr Hawes cited the Court of Appeal decisions in *R v Ralm* CA32/93 5 October 1993; *R v McLeod* CA112/94 27 May 1994, and also *R v Blance* HC NAP T7/2201 3 May 2002, and a matter I dealt with here in Christchurch *R v Neho* T51/02 20 June 2003. All of these cases have some similar features. They involved injuries which were not of themselves life-threatening, but injuries which so compromised the victims that death resulted from either asphyxia, exposure or the like, and often where there was the complicating factor of alcohol intoxication as well. Various end sentences in the range from four to eight years were imposed.

[30] Ms Sewell has also drawn to my attention a number of cases. As I have already commented I have found some of these less helpful because they were cases which concerned a single punch or a push which led to the victim falling to the ground, sustaining a head injury, and death in unusual circumstances. But I do not see them as comparable because this is a case which involved a course of conduct on your part, rather than a single unfortunate action. Ms Sewell did refer to *R v Kumeroa* CA64/01 16 May 2001, which is closer because it involved punches and kicks to the victim where sentences ranging from 3½ years for one accused, to six years for another, were imposed and upheld.

[31] The Crown maintains that a starting-point in the range of 6-8 years is required for this crime, while Ms Sewell said no, that it should be a starting-point of four years. In my view the appropriate starting-point is five years for this offence of manslaughter, but I increase that sentence on account of your personal background and what I regard as the aggravating feature of your involvement in violence on past occasions. Accordingly I adopt a sentence of six years' imprisonment. I see no basis to adjust that and six years is the term which is imposed in relation to the offence of manslaughter.

[32] With reference to indecent assault you are sentenced to 12 months' imprisonment but that term is concurrent.

[33] The Crown maintains that this is a crime which calls for the imposition of a minimum period of imprisonment in order to denounce your conduct, primarily. I am satisfied that a minimum term is required. In the leading case of *R v Taueki* [2005] 3 NZLR 372, it was indicated that minimum terms are required where violence is involved at a serious level and the more so, of course, if a death should result. So I direct that you are to serve a minimum period of 3½ years' imprisonment before you will even be eligible to be considered for parole.

You may stand down.