

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

CRI 2009-019-5625

THE QUEEN

v

CALEB ANTHONY PAIKEA

Hearing: 29 September 2009
(Heard at Rotorua)

Appearances: J C O'Brien for the Crown
R Gowing for Mr Paikea

Judgment: 29 September 2009

Sentence: Manslaughter charge: 4 years imprisonment
Reckless wounding charge: 18 months imprisonment (concurrent)
Disqualified from holding or obtaining a driver's licence for 5 years

SENTENCING OF WOODHOUSE J

Solicitors:
Ms J C O'Brien, Ronayne Hollister-Jones Lellman, Office of the Crown Solicitor, Tauranga
Mr R Gowing, Gowing & Co., Whakatane

Offences

[1] You appear for sentence, Mr Paikea, for manslaughter and for reckless wounding. The maximum sentence for manslaughter is life imprisonment. That indicates how serious the offence is. The maximum sentence for reckless wounding is 7 years imprisonment – that is the maximum – and 7 years in prison is a long time. You pleaded guilty to these charges in July of this year.

[2] As I have already indicated to your partner, Ms Taingahue-Beale, everyone is aware – and I know you are aware – that I need to impose a sentence of imprisonment because of the nature of these offences. I do need to explain why, not just for your benefit – but it is very important for your benefit. I need to explain it, obviously, for your family, but I also have to explain it to the entire community – and you understand that, do you, and you have told me that you do – because you have offended against everybody. It affects everybody.

Facts

[3] I will outline what happened, because that really tells its own story. The charges arose from the death of your friend, Mario Edwards, and serious injuries to your partner, Ngawhini Taingahue-Beale, in a car accident on 23 May 2009. You were the driver.

[4] In about April 2009 you bought a 1989 Honda which had been substantially modified. These modifications affected the handling of the car, significantly increased its power and increased the exhaust noise. You were aware that the modifications were not certified. It was unlawful to have the car on the road in this condition and the modifications made the car unsafe for normal use.

[5] You were, and still are, 20 years old. You held a learner licence only. This means that you were not entitled to drive by yourself and you were not entitled to drive with passengers other than a fully licensed supervisor.

[6] On 7 May a police officer stopped you when you were driving this car. That is about two weeks before this tragedy. You were issued with a non-operation order because of the modifications to the car. You were told not to drive the car until the modifications had been certified and a fresh warrant of fitness had been obtained. You completely ignored this. You did not obtain the required certification and you continued to drive the car. These are important facts as background to what then happened.

[7] On the evening of Saturday, 23 May 2009, you were seen driving the car at high speed around the residential 50 kph area of Opotiki. You were therefore driving illegally, and in a number of ways.

[8] Later that evening you went to a party and drank a substantial amount of alcohol and smoked cannabis. At about 10:00 p.m. you left the party. Witnesses described you as being drunk and wasted. You left with your friend Mario as a passenger. You should not have driven with Mr Edwards, who was not fully licensed to drive.

[9] You picked up your partner, Ms Taingahue-Beale, apparently with the intention of returning with her and with Mr Edwards to the party. You were not entitled to have Ms Taingahue-Beale in the car either.

[10] You started driving at speeds up to 135 kph. All of your driving occurred in a 50 kph zone on streets in Opotiki. Your passengers pleaded with you to stop. You ignored them. You drove straight through a compulsory stop sign at approximately 130 kph. There is evidence that you and associates of yours have done this sort of thing before, and that you refer to it as doing a "chicken run".

[11] As you went through the intersection you narrowly missed another car by about five metres only and became airborne, travelling over 20 metres completely across the street that ran at right angles. On landing you lost control. The car mounted the footpath, crashed through a post and wire fence and into a tree. The car caught fire. All three of you were trapped in it.

[12] People at the scene were able to remove Ms Taingahue-Beale. You and Mr Edwards had to be cut out of the car.

[13] Your friend received major injuries and died at the scene.

[14] Ms Taingahue-Beale was taken to Tauranga Hospital and was there for some time. She had fractured vertebrae in her neck and back, a broken femur, a dislocated hip and a large laceration to the rear of her skull.

[15] It seems that she is making good progress in her recovery. She has had the courage to stand up and talk to me this morning. I do understand that she still has some problems from the injuries.

[16] You suffered a ruptured aorta, burns, concussion, two broken ribs, collapsed lungs and a fractured leg.

[17] Analysis showed you had 132 milligrams of alcohol per 100 millilitres of blood.

Victim impact

[18] Mr Paikea, I have received a victim impact statement from Ms Fiona Thomas – as you know – Mario’s mother. The police officer who spoke to her about this said that she was initially reluctant to provide one because she did not want to influence the Court in any way. That is commendable on her part. But she has been able to bring herself to express what is very difficult for anybody else to fully understand – and that is the enormous loss to her of her son, and the enormous loss to Mario’s father, and to all of the family. She has also said some important things about you. She does not hate you but she does believe you need to be held accountable for your actions. I said that at the very beginning, and I do believe you acknowledge that – and you are acknowledging it to me, and I appreciate that. She expresses the strong hope that you will receive counselling and education while in prison so that you really do learn.

[19] Your partner, Ms Taingahue-Beale, as I have already said, has had the courage to stand up and speak to me in court. She did not want to provide a victim impact statement, and that is completely understandable. She has expressed – at a young age – enormous support for you, and she has expressed an understanding of the fact that there has to be this period of time in prison. I hope that you can get strength from that.

Personal circumstances

[20] As I have mentioned, Mr Paikea, you are 20 years old. You and Ms Taingahue-Beale have a 2 year old son.

[21] You told the probation officer that you were expelled from primary school and then suspended from secondary school for difficulties caused by you. You have apparently been a heavy user of cannabis from a reasonably young age, smoking it daily if you could get hold of it. You also told the probation officer that you drank very heavily about once a month. You say that since the accident you have decided to try and stop using alcohol and drugs because, in your words, “it took my best mate away”. I encourage you in every respect to follow that up, and I really hope you do.

[22] I do not doubt what you have said about the impact on you of the death of your friend, who was also your cousin. I accept, Mr Paikea, that that is a burden you will have to live with for the rest of your life – and that is an enormous burden.

[23] From what I have read I accept that you have genuine remorse beyond the grief you feel for the death of your friend. This is acknowledged by the probation officer. I also note that you went of your own accord to get help from a whanau social worker. He said, amongst other things – and I am quoting from his letter:

Caleb came to see me of his own accord i.e. nobody had referred him ... Caleb came across as confused, scared, sad, ashamed, and angry when telling me of the sequence of events from the time before the accident, the party (including his actions from what he could remember around the time of the accident), his time in hospital, visiting the grave of his friend, his aroha for his girlfriend, baby and whanau, leading up to the time of his visit to see me.

I have read that out Mr Paikea because it is an understandable mixture of emotions. It is not for me to sit here and lecture you – and I do not want to – I just urge you to work on the most constructive emotions for the future. Do you understand what I mean?

[24] As I have also already said, you have the support of Ms Taingahue-Beale, which she has expressed herself, and you have the support of your family as a whole – and that is evidenced by the numbers here in support today.

Starting point

[25] I come to what is called the starting point for a sentence. The first thing I need to assess is the seriousness of the offences themselves without taking account of any personal factors. I do this in relation to the manslaughter conviction which, of course, is the more serious of the two.

[26] I have already described the circumstances leading up to your driving on 23 May and the driving on that occasion. Things which aggravate your offending – which make your criminal conduct worse than other cases where these tragedies occur – include the following:

- a) The events before 23 May. You bought a dangerous car, you should not have been driving it, and you ignored direct Police warnings about it. This is long before you started drinking. This occurred when you were still serving a community work sentence for growing cannabis.
- b) You got into the car when you were drunk and when you were affected by drugs.
- c) You knowingly drove with your friend when you were not entitled to have him in the car and when you were not entitled to be driving.
- d) The same applies once you had picked up Ms Taingahue-Beale.

- e) You ignored their pleas for you to stop.
- f) You did some extremely dangerous driving through the streets of Opotiki.
- g) Some of this you obviously had done before or knew that others had done before. Mr Paikea, you were showing off in a lethal way. Do you understand what I mean?
- h) Your speeds were extremely dangerous.
- i) At the end of all of this you killed your best friend and seriously injured your partner and yourself and you narrowly missed hitting another car.

[27] The Crown has submitted that the starting point for the offence should be 7 ½ to 8 years imprisonment. That is assessed having regard to the aggravating features of the offending itself. Mr Gowing in submissions this morning has accepted, by reference to other cases, that the starting point needs to be 7 years.

[28] To assist in determining a starting point I have had regard to other cases, including the ones referred to by Mrs O'Brien, for the Crown, and by Mr Gowing. I am not going to read out the names of the cases, but I will record them in my sentencing notes.¹

[29] Having regard to those other cases, and to the relevant purposes and principles of sentencing, and applying those matters to your case, I consider that the appropriate starting point is 7 years. That takes account, in my judgment, of all relevant features of the offending.

¹ *R v Skerrett* (CA236/86, 9 December 1986); *R v Wharewaka* (CA47/90, 28 June 1990); *R v Grey* (1992) 8 CRNZ 523 (CA); *R v Abraham* (1993) 10 CRNZ 446 (CA); *R v Pentecost* (HC CHCH, T12/98, 2 July 1998, Packhurst J); *R v Emerson* (CA203/02, 9 September 2002); *R v MacSwain* (CA37/05, 26 May 2005); *R v Prescott* (HC AK, CRI 2004-004-19706, 15 July 2006, Allan J); *R v Rutene* (HC ROT, CRI 2006-069-1183, 26 September 2006, Winkelmann J); *R v Ah Chong* (HC AK, CRI 2004-004-010735, 9 August 2007, Venning J); *R v Luke* (HC ROT, CRI 2007-070-3532, 19 October 2007, Ronald Young J); and *R v Herewini* (HC HAM, CRI 2007-019-01074, 14 May 2009, Andrews J).

[30] I do not intend to increase that for the conviction of wounding.

Personal circumstances

[31] I then come to your personal circumstances and the effect that has on the end sentence.

[32] I do not consider there are any personal factors which will justify increasing the sentence.

[33] There are some personal factors which I do need to take into account to reduce the sentence that would otherwise be imposed. This includes the fact that you pleaded guilty, but I will deal with that separately and at the end.

[34] The other matters that I take into account include, in particular:

- a) You have genuine remorse shown in ways in addition to your guilty plea. And I accept that Mr Paieka, notwithstanding what your aunt has said in her victim impact statement. But please remember what she has also said.
- b) I take into account the death of your friend. As I have already said, this is a burden – and an enormous burden – you will now have to carry for the rest of your life.
- c) You have the support of Ms Taingahue-Beale and parents and grandparents and extended family.
- d) You did have the courage to speak to your aunt, Mario's mother, and I acknowledge that.
- e) You have expressed a willingness to engage in rehabilitation courses, and I do urge you to do that.

- f) You do not have any previous convictions for driving offences. I cannot give you much credit for that, because you had held a licence for a very short period and this tragedy was the result. But I can also take account of the fact that your other offences are minor and not relevant to this offending.

- g) You are young. As Mr Gowing has acknowledged, the Court of Appeal has said in another case, *R v Pretty* (CA277/00, 26 October 2000), that little discount can be given for youth. There are reasons for that because of these types of offences. But I do not ignore your youth.

[35] Overall, Mr Paikea, having regard to what I have just referred to and to provide you with some encouragement within the limits of the law, I intend to reduce the sentence by 12 months before taking account of the guilty plea. From a starting point of 7 years that may not seem to you like very much. Can I assure you that in my judgment it is a generous reduction and it is given to encourage you, as I have said, as far as I can within the limits of the law. Please remember that.

[36] The guilty plea occurred at an early stage. This is something for which you are also entitled to a substantial credit. The Crown accepts this. The further credit you are entitled to is one-third of the sentence that would otherwise be imposed. That reduces the sentence, and the end sentence, to a total of 4 years imprisonment. I also need to impose a period of disqualification.

Formal sentence

[37] Mr Paikea, would you now please stand.

[38] On the charge of manslaughter you are sentenced to imprisonment for a term of 4 years.

[39] On the charge of reckless wounding, you are sentenced to imprisonment for a term of 18 months.

[40] You are disqualified from holding or obtaining a driver's licence for 5 years.

[41] Those two sentences are concurrent and that means that the total is 4 years.

[42] Please stand down.

Peter Woodhouse J