

The offending

[2] Mr Atkocaitis and the victim, Mr Woodthorpe, had been friends for approximately four years. Mr Woodthorpe was 69 years old at the time of the offending and lived in a caravan. He passed away after the events that are traversed in this judgment. His death was not related to Mr Atkocaitis's actions. Mr Atkocaitis was 63 years old and lived in his campervan near to where Mr Woodthorpe lived.

[3] In the days leading up to the offending, Mr Atkocaitis asked Mr Woodthorpe to help paint Mr Atkocaitis's campervan. Mr Woodthorpe performed the work on 11 May 2024 and at the end of the day he and Mr Atkocaitis had a drink together. An argument broke out between the two men. Mr Woodthorpe told Mr Atkocaitis that he would not be doing any more work for him and that he never wanted to see Mr Atkocaitis again. Mr Woodthorpe then left. Later that evening Mr Atkocaitis sent messages to Mr Woodthorpe saying he was upset by Mr Woodthorpe's comments. He asked for his paint materials back and how much he owed Mr Woodthorpe for the work he had done.

[4] The following day Mr Atkocaitis called Mr Woodthorpe and again asked for his materials back and how much he owed Mr Woodthorpe for the paint job. Later that day Mr Woodthorpe dropped the paint supplies off for Mr Atkocaitis to collect. Mr Woodthorpe sent Mr Atkocaitis a text message saying how much he was charging him for the paint work. Mr Atkocaitis responded with an angry message.

[5] On 13 May 2024, Mr Atkocaitis went to Mr Woodthorpe's caravan. There he slashed two tyres on Mr Woodthorpe's Jeep using a knife. A person who knew Mr Woodthorpe and Mr Atkocaitis confronted him. Mr Atkocaitis responded saying that "Woody let me down so I'm letting him down". About an hour later, Mr Woodthorpe sent Mr Atkocaitis a text telling him he would refer matters to the police if Mr Atkocaitis did not replace the tyres he had slashed.

[6] Around 11.30 pm on 13 May, Mr Atkocaitis returned to Mr Woodthorpe's caravan. An argument started. Mr Atkocaitis produced a flick knife with a 9 cm blade. Mr Atkocaitis then proceeded to stab Mr Woodthorpe approximately 17 times on the left side of his chest, his left arm and neck. Mr Woodthorpe managed to disarm

Mr Atkocaitis who ran back to his campervan. Mr Woodthorpe called the police and an ambulance.

[7] Mr Woodthorpe suffered a hemopneumothorax (where air and blood in the chest cavity cause a collapsed lung) and severe blood loss (of approximately 1,300 ml).

[8] Mr Atkocaitis was arrested that night and taken to hospital where a blood alcohol sample was taken. Mr Atkocaitis's counsel informed us that this produced a blood alcohol reading of 63 mmol/L. This is approximately 290 mg of alcohol per 100 mL of blood. That test was taken around five hours after the offending.

Sentencing decision

[9] The Judge reasoned that Mr Atkocaitis's offending fell within the upper end of band two of this Court's judgment in *R v Taueki* and adopted a starting point of nine years' imprisonment.² This assessment was based upon the following aggravating factors:³

- (a) The offending involved extreme violence.
- (b) There were attacks to Mr Woodthorpe's neck.
- (c) Mr Atkocaitis brought a potentially lethal weapon to the scene and used it to inflict serious injuries to Mr Woodthorpe.

[10] The Judge deducted:

- (a) 20 per cent (22 months) to reflect Mr Atkocaitis's guilty pleas;⁴
- (b) approximately two per cent (two months) to reflect Mr Atkocaitis's minimal level of remorse;⁵ and

² At [12]–[13], citing *R v Taueki* [2005] 3 NZLR 372 (CA).

³ Judgment under appeal, above n 1, at [11].

⁴ At [15].

⁵ At [16].

- (c) approximately four per cent (four months) to reflect Mr Atkocaitis's prospects for rehabilitation.⁶

[11] Dr Goodwin, a consultant psychiatrist, prepared a report on Mr Atkocaitis. That report contains references to Mr Atkocaitis's consumption of alcohol. He told Dr Goodwin that:

At the time of the offending, he was drinking at least 4 x 7% cans of lager per day, as well a bottle of red wine.

Mr Atkocaitis told Dr Goodwin that he would drink more at the weekends. Dr Goodwin observed that Mr Atkocaitis "has a long history of abusing alcohol".

[12] Mr Atkocaitis told Dr Goodwin he had been drinking the night he stabbed Mr Woodthorpe. This acknowledgement was consistent with the letter that Mr Atkocaitis wrote to Mr Woodthorpe when he said that after "having a couple of beers, I made a stupid decision of letting the air out of your tires by stabbing them".

[13] The Judge also had the benefit of a neuropsychological report prepared by Mr Cunningham. That report recorded that Mr Atkocaitis suffered a very severe traumatic brain injury in 2003 when he was apparently hit by police using a baton. A CT scan taken at the time revealed a significant brain injury.

[14] In 2005, psychometric tests were administered to Mr Atkocaitis. The ensuing report showed Mr Atkocaitis had significant and occasionally severe levels of cognitive impairment in relation to:

- (a) new verbal learning and memory;
- (b) attention and concentration;
- (c) speed of information processing; and
- (d) executive frontal lobe functioning.

⁶ At [18].

[15] The report writer noted Mr Atkocaitis's symptoms were "entirely consistent with the persisting effects of severe brain injury". It was also noted however that Mr Atkocaitis's cognitive deficiencies were potentially compounded by his consumption of alcohol:

[Mr Atkocaitis's] tendency to become wound up and agitated increases with alcohol consumption ...

[16] The Judge accepted that some discount was warranted to reflect Mr Atkocaitis's traumatic brain injury, but that discount had to be tempered because of Mr Atkocaitis's significant use of alcohol in the period leading up to the attack on Mr Woodthorpe. The Judge settled upon a further discount of 10 per cent (11 months) to reflect the contents of Mr Cunningham's report.⁷

[17] The end result was the sentence of five years and nine months' imprisonment for the charge of wounding with intent to cause grievous bodily harm and a concurrent sentence of three months' imprisonment for the charge of wilfully damaging the tyres on Mr Woodthorpe's vehicle.⁸

Grounds of appeal

[18] There are two grounds of appeal that relate only to the sentence imposed for the charge of wounding with intent to cause grievous bodily harm.

[19] First, it is submitted by Mr Dalton on behalf of Mr Atkocaitis that the Judge erred by not affording him a greater discount to reflect his traumatic brain injury. Mr Dalton argued that the Judge mistakenly took into account Mr Atkocaitis's alcohol consumption both in the past and on the day of the offending. Mr Dalton submitted that the Judge overstated the conclusions in the reports on the impact of Mr Atkocaitis's alcohol consumption on his traumatic brain injury. He also submitted that the summary of facts did not state Mr Atkocaitis was intoxicated at the time of the offending.

⁷ At [28].

⁸ At [30]–[31].

[20] Secondly, Mr Dalton submitted that the discount for remorse was unreasonably low and should have been considered in the context of Mr Atkocaitis's traumatic brain injury.

Analysis

[21] In order to allow the appeal we must be satisfied that there was an error in the sentence and that a different sentence should be imposed.⁹ Ultimately we have to be convinced that the sentence was manifestly excessive.¹⁰ Our focus is on the end sentence rather the Judge's methodology.¹¹

[22] We consider the Judge's discount of 10 per cent (11 months) to reflect Mr Atkocaitis's traumatic brain injury is justified in the circumstances. In particular, the Judge was correct to temper the discount that he might otherwise have given for this factor because of Mr Atkocaitis's alcohol consumption leading up to the attack on Mr Woodthorpe.

[23] While it is correct the summary of facts does not record that Mr Atkocaitis was intoxicated when he stabbed Mr Woodthorpe, there was sufficient information for the Judge to deduce that Mr Atkocaitis's loss of self-control was, in all likelihood, partially triggered by his consumption of alcohol:

- (a) The report of Dr Goodwin records Mr Atkocaitis's long history of alcohol abuse and his high levels of alcohol consumption at the time of the offending.
- (b) Mr Atkocaitis's letter of apology to Mr Woodthorpe refers to him having had "a couple of beers" that night.
- (c) The blood alcohol reading from the sample taken approximately five hours after the offending was very high. Mr Atkocaitis was arrested soon after the offending. He would not have had the

⁹ Criminal Procedure Act 2011, s 250(2).

¹⁰ *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [31]–[35].

¹¹ At [36].

opportunity to drink once he was arrested. It is reasonable to assume that his blood alcohol level at the time of the offending was likely to have been even higher than what it was at the time the test was administered.

[24] Similarly, there was nothing wrong with the Judge's approach when assessing the modest discount for Mr Atkocaitis's remorse. If anything, the Judge may have been generous in providing any discount for remorse, regardless of Mr Atkocaitis's traumatic brain injury. We make this observation based on the following matters:

- (a) Mr Atkocaitis told the provision of advice to courts report writer that the stabbing was accidental.
- (b) Mr Atkocaitis told Mr Cunningham that he was primarily acting in self-defence.
- (c) Dr Goodwin noted that Mr Atkocaitis "did not display any remorse or regret within his recounting of [the] incident".

[25] The sentence was well within the range that was reasonably available and not manifestly excessive.

Result

[26] The appeal against sentence is dismissed.

Solicitors:

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