

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2020-044-3817  
[2023] NZHC 2367**

**THE KING**

v

**DESMOND LAWRENCE BOURNE**

Counsel: B D Tantrum and D S Houghton for Crown  
B J Hunt and S Tait for Defendant

Sentenced: 29 August 2023

Charges: Murder; Wounding with reckless disregard

Plea: Not Guilty

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**SENTENCING NOTES OF BREWER J**

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Solicitors/Counsel:  
Meredith Connell (Auckland) for Crown  
Barbara Hunt and Shane Tait (Auckland) for Defendant

## **Introduction**

[1] Mr Bourne, at the age of 48, you appear today for sentencing. You were found guilty by the jury on one charge of murder<sup>1</sup> and one charge of wounding with reckless disregard.<sup>2</sup> The maximum penalty for murder is life imprisonment and for wounding with reckless disregard it is seven years' imprisonment.

[2] You shot and killed Zane Smith. As I will come to, my conclusion is that you did that deliberately.

[3] You have just heard from victims of your offending who were members of Mr Smith's family. Their grief and anger are completely understandable. They spoke with great dignity, and I commend them for that. As they said, you have taken from them something that can never be restored: Mr Smith's life.

[4] I want to be very clear that in sentencing you today, I will not try to compensate for Mr Smith's death. As Ms Miller has just said, "there is no justice that can bring Zane back". Instead, my task is to sentence you in accordance with the law.

## **The offending**

[5] I will first set out the facts relevant to your sentence. I take them from the essential elements of the charges which the jury must have found proved and from the facts which, as trial Judge, I am satisfied were proved.

[6] On 28 November 2020, you and others decided to buy methamphetamine for your own use. You pooled money and one of your group, Scott Fowles, arranged the exchange. The supplier of the methamphetamine was to be Zane Smith, the deceased.

[7] You and Mr Smith knew each other. You had previously supplied Mr Smith with GBL, a class B controlled drug. There was a dispute over the payment for the drug. Mr Smith maintained that the drug was of poor quality and in the end refused

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<sup>1</sup> Crimes Act 1961, ss 167 and 172.

<sup>2</sup> Section 202C.

to pay the final \$1,000 of your price. There was evidence that, at least on the surface, you had accepted that situation. In my view, you harboured a resentment.

[8] You and Mr Fowles went to meet Mr Smith to buy the methamphetamine. Mr Fowles drove your vehicle with you as passenger. That was because you were very intoxicated. You had consumed the better part of a bottle of whisky and you had also been consuming drugs.

[9] Mr Fowles had some concern about whether there was still bad blood between you and Mr Smith. He had arranged initially for the drug deal to occur at a public place, Centennial Park, partly because that would lessen the chance of confrontation.

[10] For some reason, Mr Smith did not come to Centennial Park but instead contacted Mr Fowles and arranged for the drug deal to take place at the intersection of Wayby Station Road and McPherson Way. With Mr Fowles continuing to drive, you arrived at that meeting place at about 7.20 pm. Mr Smith arrived shortly afterwards at about 7.30 pm and parked his vehicle near yours but facing away at an angle. Mr Fowles told you to stay in your vehicle. He got out and walked to Mr Smith's vehicle and got into the front passenger seat.

[11] Shortly afterwards, you got out of your vehicle and you got the firearm which you kept under the back seat. It was a high calibre weapon which could fire on a semi-automatic setting. You approached Mr Smith's vehicle from the driver's side. Both Mr Fowles and Mr Smith were seated in the front and Mr Smith was still wearing his seatbelt. You shouted to Mr Smith, "where the fuck is my money?" You approached the driver's side window, where Mr Smith was seated, and yelled again, "where the fuck is my money?" You then fired into the front of the vehicle. Your shot went through the driver's side window, taking fragments of the glass with it. Miraculously, the bullet did not strike either Mr Smith or Mr Fowles directly. It must have passed in front of them and it is a mystery as to what happened to it. The evidence is that the front passenger's door was closed but there was no bullet damage to it. It is possible that the bullet fragmented upon striking the window glass. Certainly, Mr Fowles received wounds consistent with fragmentation. One fragment lodged in his chest.

[12] Mr Fowles, momentarily stunned by the event, and bleeding, quickly scrambled out of the front passenger seat and ran off down the road. As he was running he heard you fire further shots.

[13] The evidence is that there was a distinct pause between you firing the first shot and then beginning to fire further shots. There were houses in the near vicinity and occupants remember the pause. There was also a witness who was on the road just down from the intersection where your vehicles were parked. She was there when the first shot was fired and then turned and ran up her driveway.

[14] You fired a further four shots after the pause. They were all angled towards the front cab of Mr Smith's vehicle. The fatal shot was fired from a different angle to the other three. It was almost square on to the front driver's door. You did not fire from point blank range but you were, at most, a few metres away. The fatal shot went through the door and struck Mr Smith.

[15] Your defence was that you were so intoxicated that you have no memory as to how you got to the intersection. Your few coherent memories, you say, are of being attacked by Mr Fowles while you were still in your vehicle. Your previous dealings with gang members made you think that your life was in danger and so you grabbed the weapon and just fired it blindly in the direction of Mr Smith's vehicle without knowing who was in it. Your evidence was you had no intention of hurting anyone, let alone killing them.

[16] The jury rejected this defence and in my view, on the evidence, there was no reasonable possibility of excessive self-defence. In my view, the evidence was overwhelming that you knew it was Mr Smith in the front seat of his vehicle; that having shot once you then paused and fired again four times at Mr Smith intending to kill him. I will assess your sentence on that basis.

### **Minimum period of imprisonment**

[17] The only possible sentence on the charge of murder is life imprisonment. I also have to decide what your minimum period of imprisonment should be before you can be considered for parole.

[18] There is a common misunderstanding about a life sentence for murder. Many people think that the sentence is the minimum period of imprisonment. Even some journalists. But that is not the case. A life sentence means what it says. You might spend the rest of your life in prison. All that the minimum period of imprisonment does is put off the time when you can apply to be released on parole. The Parole Board will not release you on parole unless it is satisfied that you do not pose a further risk to the community. Even if you are released on parole, if you further offend you can be recalled to prison to continue to serve your life sentence.

[19] So, that means I must now decide your minimum period of imprisonment.

[20] The lawyers have engaged in the written submissions on a factor known as a s 104 analysis. I have decided that s 104 does not apply, and I will not take time here to discuss it.

[21] The standard minimum period of imprisonment for murder is 10 years. The Crown submits that a longer period than 10 years is called for. Mr Tantrum submits 13 to 13-and-a-half years. Ms Hunt submits 11 years would be appropriate, taking into account the offending against Mr Fowles.

[22] Again, I will not go through the detail of the Crown's argument and Ms Hunt's argument. They are well set out in their written submissions. Instead, I will give you my reasoning.

[23] First, I do not find that your shooting of Mr Smith was planned. I think you were disinhibited by alcohol and drugs and when Mr Fowles went and got into the front passenger seat with Mr Smith your resentment over Mr Smith's refusal to pay you the \$1,000 came to the surface and you reacted explosively. I accept that you had the loaded weapon under the back seat of your vehicle as a general protection and not because you were going to meet Mr Smith.

[24] All murders are brutal. But some possess a higher level of brutality than others and are characterised by cruelty. This murder lacks those factors.

[25] I have considered the matters personal to you. I have read four reports prepared on your behalf. Two are by a psychiatrist, Dr Lehany. There are also a s 27 report prepared by Dr Gilbert and a pre-sentence report. Dr Lehany confirms your longstanding history of drug and alcohol abuse. He confirms that you suffer from substance use disorders. It is his opinion that your offending was, in part, caused by your substance abuse more generally and that on this occasion you were more susceptible to the effects of alcohol because you reported a period of abstinence. Dr Gilbert's report tells me about your personal history and in his opinion your substance abuse was a cause of your offending.

[26] I agree that if you had not been drinking and had not had access to an illegal loaded firearm, the murder of Mr Smith would not have happened.

[27] The pre-sentence report is consistent with the other reports. I note, and Mr Tait has reinforced that just now, that you stick to your account of what happened at the intersection.

[28] I have also read the letters from your mother, daughter, ex-partner and friends telling me about positive aspects of your character. And I have read your criminal history. I will not give you credit for your character, but neither will I use your criminal record against you.

[29] Overall then, my conclusion on the murder is that a minimum period of imprisonment of 10 years would be appropriate. But that does not take account of the charge of wounding Mr Fowles with reckless disregard. This is a significant aggravating feature.

[30] Mr Fowles was in the front passenger seat of Mr Smith's vehicle when you fired your first shot through the driver's side window. That shot could easily have killed Mr Fowles. As it was, he was shocked and wounded. He managed to get out and run away before you resumed firing at Mr Smith.

[31] This was a second life which you put at risk and he was wounded as a result of you firing with reckless disregard for his safety. I will, having considered totality, add two years to your minimum period of imprisonment.

**Result**

[32] For the murder of Zane Smith, I sentence you to life imprisonment with a minimum period of imprisonment of 12 years.

[33] On the charge of wounding Mr Fowles with reckless disregard, I sentence you to a period of three years' imprisonment, to be served concurrently with the sentence for murder.

[34] You have outstanding fines of \$2,562 and enforcement fees of \$1,782. Ms Hunt has asked that I remit them. I remit them accordingly.

[35] You may stand down.

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Brewer J