

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

**CRI-2015-043-1723
[2016] NZHC 2964**

THE QUEEN

v

QUINTON PAUL WINDERS

Hearing: 9 December 2016
Appearances: AJ Gordon for Crown
JP Temm and K Patterson for Prisoner
Sentence: 9 December 2016

SENTENCING NOTES OF TOOGOOD J

Background

[1] Quinton Paul Winders, you appear for sentence for the murder of Mr George Taiaroa at Atiamuri on 19 March 2013 after a jury properly found you guilty of that charge on 9 September 2016.

[2] Your counsel, Mr Temm, accepts that I must sentence you to life imprisonment.¹ What I must decide today is how long you should remain in prison before you are eligible to be released on parole. Regrettably, your sentencing has been delayed by the need for me to obtain a further report from a psychologist. I am sorry you have had to wait so long until now to know what non-parole period will be imposed.

The facts I find to have been proved

[3] The identity of the offender was the single issue at your trial. You denied, and continue to deny, that you were Mr Taiaroa's killer.² The jury's verdict means that they were satisfied beyond reasonable doubt that you were, and I agree with them.

[4] It is not possible to infer from the verdict what conclusions of fact were drawn by the jury in coming to their verdict but, as sentencing Judge, I am required to determine, consistently with the verdict, the relevant facts which I find to have been proved beyond reasonable doubt.³ My findings will inform my decision as to the non-parole period, so I need to explain them in some detail.

[5] The jury's verdict means that, at approximately 3.15 pm on Tuesday, 19 March 2013, at Atiamuri, you were guilty of the cold-blooded and calculated killing of Mr George Taiaroa, a virtual stranger, by shooting him in the head at point-blank range with a .22 calibre rifle. It was an entirely unprovoked attack on an unsuspecting man.

¹ Sentencing Act 2002, s 102(1).

² Recorded in the Provision of Advice to the Court by Probation Officer LK Judd, dated 25 October 2016; in Dr Peter Dean's report dated 27 October 2016; in Renata Bellve-Wack's report of 7 December 2016 and Mr Temm's submissions dated 7 December 2016.

³ Sentencing Act, s 24; *R v Heti* (1992) 8 CRNZ 554 (CA).

[6] The facts leading to that conclusion which I find to be proved beyond reasonable doubt are these:

- (a) On 12 March 2013, you were a passenger in your father's Landrover which was involved in a minor collision near roadworks at Atiamuri. Mr Taiaroa was in position as the operator of a Stop/Go sign at the roadworks. As a result of Mr Taiaroa having signalled late to your father that he should stop his vehicle to make way for oncoming traffic, your father was required to stop and reverse his vehicle. The trailer it was towing collided with the vehicle behind.
- (b) Your father was liable to meet the \$989.58 repair costs of the other vehicle and was apprehensive that he might not be insured for the loss. A note written by you after the accident satisfies me that you were concerned about your parents having to pay for the repairs. You considered Mr Taiaroa to be responsible for the collision in the sense that, had he been doing his job properly, your father would not have been required to reverse his vehicle and the collision would not have occurred.
- (c) When you collected your blue Jeep Cherokee from a panelbeater in Stratford on the morning of 19 March 2013, you went to your home in Ohura Road, Pohokura, where you collected a .22 rifle and ammunition. You then drove a distance of over 200 kilometres from your home, passing through Taumarunui, to a bridge on Tram Road, Atiamuri, with the intention of encountering Mr Taiaroa.
- (d) At around 1.40 pm on 19 March 2013, your blue Jeep Cherokee was positively sighted in Taumarunui heading towards the scene of the murder, in the opposite direction to that in which you later told Police you had gone when you left the town. Leaving Taumarunui at that time is consistent with your arriving at the Tram Road bridge at around 3.15 pm that day.

- (e) Between the time you left Taumarunui at around 1.40pm and the time you encountered Mr Taiaroa that afternoon, you removed the number plates from your vehicle for the purpose of reducing the risk that it might be identified by any witness.
- (f) At the Tram Road site, you stopped your vehicle near to where Mr Taiaroa was standing with his sign indicating you were required to stop. You beckoned Mr Taiaroa to your vehicle and then, without warning and at a distance of less than half a metre, shot Mr Taiaroa through the forehead, causing serious head injuries from which he died a short time later.
- (g) Having fired the fatal shot, you then sped across the Tram Road Bridge and turned right onto Tirohanga Road from where you drove at high speed through the Pureora Forest to a farm near Benneydale owned by a friend, Mr Kieron O'Dwyer, who had engaged you to do some fencing work on the farm that day.
- (h) One of the witnesses who saw your blue Jeep Cherokee during that journey had what the witness described as “a good look” at you as you overtook her vehicle on Tirohanga Road. She was able to positively identify you as the driver from a photo montage she was shown 23 days later.
- (i) Some time after 19 March 2013, in an effort to avoid the identification of your blue Jeep Cherokee as the vehicle driven by Mr Taiaroa’s killer, you altered the appearance of your vehicle by removing the tow bar assembly, JEEP badge on the bonnet and the spare wheel, and by affixing a red reflector to the rear of the vehicle. The tow bar assembly and spare wheel were located hidden in bush near railway lines within sight of your Ohura Road property, along with other items of property which you admitted you owned.

- (j) You lied to your friend Mr O'Dwyer about your movements on 19 March 2013, saying first that you could not drive your vehicle after you collected it from the panelbeater because it had a flat battery. You admitted to Mr O'Dwyer a few days later that the Police had identified your vehicle from a camera in Taumaranui. You lied to Mr O'Dwyer again by telling him that you had heard about the murder on the radio and panicked when you heard that the Police were after a blue Jeep Cherokee and a .22 rifle. In fact, the Police had not made any public announcement about a .22 rifle having been used to kill Mr Taiaroa; only Mr Taiaroa's killer and the members of the investigation team closely associated with the inquiry into Mr Taiaroa's death knew that fact at that time.
- (k) On the basis of the appearance of the bullet fragments removed from Mr Taiaroa's head, the evidence of ballistics experts proved that the bullet which killed Mr Taiaroa was fired from a barrel that was machined by the same tool in the Winchester factory in Canada that had machined the barrels on .22 calibre Cooley Winchester Model 39 rifles with serial numbers which were in close sequence to yours. Those two firearms were shipped to Australia at the same time as the .22 calibre Cooley Winchester Model 39 rifle which was registered in your name in 2008. One of them was on-shipped to New Zealand at the same time as your rifle.
- (l) Although the weapon used to kill Mr Taiaroa has never been found, I have no doubt that it was the rifle registered in your name.

Evidence of a pattern of violent behaviour or aggression in response to minor incidents or disagreements

[7] I am also satisfied that the evidence of four incidents described at the trial as having occurred between January 2009 and April 2012 proved beyond reasonable doubt that, on those occasions, you deliberately fired rifle shots at or in the direction of persons you knew to be in the vicinity in an inappropriate over-reaction to events of a trivial nature, and that those incidents demonstrate a propensity on your part to

behave in that manner. I accept that, in one of the incidents, the evidence established that the shots fired were in the nature of warning shots into trees well above the witness.

Victim impact statements

[8] Mr Taiaroa was not the only victim of your crime – it has also affected a much wider group of people.

[9] Before you came into Court this morning, I acknowledged the two families who have been devastated, tragically and irrevocably, by what you did. I said shortly after the delivery of the jury's verdict that your family were victims in this case and that remains true. The last three and a half years must have been terrible for them.

[10] I particularly want to repeat my expression of the Court's sympathy to Mr Taiaroa's whanau, who maintained a dignified presence in the courtroom throughout the trial:

E aroha nui atu ana kia koutou i tēnei wā.⁴

[11] I have had the benefit of reading three statements from Mr Taiaroa's tamariki, one of them read by Rochai in Court today. They described their late father as warm and funny; a man who lived life to the full. They spoke about how he was a social butterfly; how he treated everyone he met as family. He was a highly valued employee and work colleague. We heard of his belief in education: he encouraged his children to do well at school, and all of them attended and graduated from university.

[12] It is clear that George Charles Taiaroa was a generous, compassionate and caring man and that he loved his wife, his children and his mokopuna deeply. They have expressed eloquently and movingly just how keenly they feel his loss, and how the circumstances of his death and the public speculation about it made the grieving process all the more painful and difficult for them. Dr Helen Taiaroa, George's

⁴ My thoughts and deepest sympathies are with you at this time.

widow, was reported as saying after the verdict that her much loved husband should be judged by the life he led and the family he created.⁵ By those measures, he was the finest of men; a true taonga.

Personal circumstances

[13] Mr Winders, you are 46 years old. You were born in Rotorua to farming parents, and I understand you to have been a loved son and brother. You were provided with excellent educational opportunities for your primary and secondary education as a boarder at Southwell School and King's College. You also attended Massey University in Palmerston North but you left without graduating, only one paper short of completing your qualification.

[14] You are single and have no dependents. For much of your working life, you have been self-employed, and in recent years, you have lived and worked on farms deep in the Taranaki backcountry. It is my impression that you are a loner and that, for the most part, you prefer your own company to that of others. The author of your pre-sentence report and the health assessors indicate that you have a strong work ethic and that you have never had issues with alcohol or drugs. You have no prior convictions.

[15] Because this terrible crime cannot be explained by your background, I sought the views of experts. Regrettably, they have not assisted me to understand what led you to offend in this way. A psychiatrist has concluded that you do not suffer from any psychiatric condition. A psychologist holds the same view and says there is nothing in your current presentation or history pointing to the presence of a personality disorder. She says there is nothing in your history or background to suggest a disposition to violent or any other offending.

[16] I have referred, however, to the evidence which shows that you have an unusual propensity to overreact and use firearms in circumstances involving potential poachers. You appear to have persuaded the report writers that there was nothing sinister in those incidents and that you did nothing more than fire warning

⁵ The New Zealand Herald, Saturday 10 September 2016.

shots in a manner not uncommon in the rural community. However, I heard the witnesses describe the incidents in a pre-trial hearing and again at the trial. In one incident the bullets you fired landed very close to the witness; in two other incidents, the witness described hearing the bullets whizzing past him. As the Court of Appeal said in dismissing your pre-trial appeal about that evidence, the evidence presents “a disturbing picture of an individual who is prepared to endanger others with firearms for very little reason.”⁶

[17] I confess to being surprised that the psychologist suggested that such a person, who shot and killed Mr Taiaroa for no apparent reason other than in response to a minor incident, presents a low risk of reoffending. The probation officer’s assessment, that the nature of your offending means you pose a “potentially very high” risk of harm to others, strikes me as being more realistic.

Sentencing principles and purposes

[18] I am required to impose the least restrictive sentence available in the circumstances⁷ and to have regard to the need to rehabilitate you.⁸ But I must also impose the minimum term of imprisonment necessary to hold you accountable for Mr Taiaroa’s death and the pain you have caused, and will continue to cause, his family,⁹ and that denounces the cold-blooded, ruthless way in which you committed this grave crime.¹⁰ The sentence should act as a deterrent to you and others,¹¹ and protect the community from you.¹²

Minimum period of imprisonment

[19] Bearing those factors in mind, I have to decide what minimum period of imprisonment I should impose before you become eligible for release on parole. Parliament has said that that must be at least 10 years,¹³ but the law also says I must

⁶ *Winders v R* [2016] NZCA 350 (Reasons) at [23].

⁷ Sentencing Act, s 8(g).

⁸ Section 7(1)(h).

⁹ Section 103(2)(a).

¹⁰ Section 103(2)(b).

¹¹ Section 103(2)(c).

¹² Section 103(2)(d).

¹³ Section 103(2).

impose a minimum period of at least 17 years if certain circumstances exist, unless I am satisfied that would be manifestly unjust.¹⁴

[20] Ms Gordon submits for the Crown that a 17-year minimum period is required because the murder involved calculated planning by you.¹⁵ She submits, alternatively, that if the statutory minimum of 17 years is not triggered, a minimum period of imprisonment of 15–16 years is called for because:

- (a) the murder was premeditated;
- (b) the shooting of an unarmed man at close range was particularly violent and cruel; and
- (c) Mr Taiaroa was vulnerable in that he was taken by surprise with no opportunity to defend himself.

[21] On your behalf, Mr Temm disagrees with the Crown's view and submits that there is no evidence of any calculated or lengthy planning. He argues that the suggestion of premeditation over a few hours is speculative and insufficient to trigger the statutory minimum of 17 years. Mr Temm disputes the Crown's assertion that Mr Taiaroa was a vulnerable victim. He discounts also other circumstances of the offence, including the use of a firearm, as justifying a minimum of more than 12 years' imprisonment at most.

Discussion about minimum period of imprisonment

[22] I do not accept Mr Temm's submission that you must have come across Mr Taiaroa by chance. I am satisfied that you either knew that Mr Taiaroa was likely to be at that spot on Tram Road, having passed him when you were returning to Pohokura from Rotorua with your father the previous day, or that you believed him to be at or near the site of the accident on 12 March 2013 and that, when you were travelling towards that site, you were diverted to the Tram Road Bridge where Mr Taiaroa was working.

¹⁴ Section 104(1).

¹⁵ Section 104(1)(b).

[23] Mr Winders, I do not know when you decided to kill Mr Taiaroa. It may have been at some time during the week after the Atiamuri collision and before you collected your vehicle, or it may have been on the morning of 19 March 2013 when you collected your .22 rifle and ammunition from your farm, after returning there from the panelbeater in Stratford. At the very latest, it must have been when you left Taumarunui after registering your vehicle and headed east towards Atiamuri, rather than taking the more direct route north to Benneydale where you were expected to be working.

[24] Taking the most favourable view, the planning may not have been lengthy but you had plenty of time, over more than an hour as you headed towards the scene, to think about what you were doing and realise that you should stop. Your actions were calculated. At some point after you left Taumarunui, you removed the number plates from your vehicle to limit the risk of detection. At one stage you drove very slowly behind a tractor to avoid identification. You had your loaded rifle close to hand and you summoned Mr Taiaroa over to your vehicle in order to get a close shot that would inevitably kill him. I have no doubt also that you had planned your escape route through the Pureora Forest to the O'Dwyer farm at Benneydale.

[25] All deliberate killings are callous but I do not think the callousness reached the high level which would justify considering a minimum period of greater than 17 years. Nevertheless, this was a premeditated, cold-blooded execution.

Application for reduction in sentence for breaches of NZBORA

[26] There is nothing in the circumstances of your offending or in your personal circumstances which would make it manifestly unjust to impose a minimum period of 17 years' imprisonment. Prior to this hearing, however, Mr Temm told me that he would be submitting that I should reduce the minimum period as a response to the unlawful actions of the Police, in breach of s 22 of the New Zealand Bill of Rights Act 1990, when they arrested you and held you in custody for questioning on 4 April 2013. I need to explain that submission briefly.

[27] Following information received from members of the public, and after ascertaining that you were registered as the owner of two .22 rifles and a blue Jeep Cherokee, the Police formed the opinion that you were a strong suspect for the murder of Mr Taiaroa. They placed you under surveillance. On the night of 3 April 2013, you were followed for some distance late at night while travelling between Stratford and Rotorua. You were observed travelling at high speed. Subsequently, senior Police officers resolved that you should be arrested for reckless driving and taken into custody for questioning.

[28] On the morning of 4 April 2013 you were apprehended forcefully by a member of the Armed Offenders Squad while you were shopping in a store in Rotorua. Your mother was outside in the car. You were tackled and fell to the ground; plastic handcuffs were applied and you were then removed by Police car to the Rotorua Police Station where you were held for over two hours. During your period of confinement at the police station you were interviewed by a detective until you said you wanted to see your lawyer. Mr Temm was called and you were released; you were never charged with the driving offence.

[29] In judgments written before the trial, this Court¹⁶ and the Court of Appeal¹⁷ concluded that you were willing to speak to the Police and that there was no causal connection between your arbitrary arrest and the making of the statement on which the Crown subsequently relied at your trial. I do not condone the way the Police acted on that occasion, it was unlawful; but I do understand that they suspected on reasonable grounds that you were involved in a murder committed in circumstances which raised grave fears for community safety. Other remedies are available to you for the breach of your rights, if you wish to pursue them.

[30] You committed the most serious of crimes and I am satisfied that a lengthy prison sentence is necessary to meet the purposes and principles of sentencing to which I have referred. For the reasons which I gave in a written ruling, I have concluded that it would be wrong to reduce your minimum sentence on account of the April 2013 arrest.

¹⁶ *R v Winders* [2016] NZHC 1056 (Result); *R v Winders* [2016] NZHC 1147 (Reasons).

¹⁷ *Winders v R* [2016] NZCA 333 (Result); *Winders v R* (Reasons) above n 5.

[31] The minimum period of imprisonment I impose will be one of 17 years.

Effect of imposition of MPI

[32] I want to make it clear both to you and to others who have taken a close interest in this case that the imposition of a minimum period of imprisonment of 17 years does not mean that you will necessarily be released after that, or that I think you should be released then. Rather, I have decided that that is the number of years you must serve before release on parole is even a possibility.

[33] It will be a matter for the Parole Board to decide when you have been sufficiently rehabilitated, after serving that period, to justify releasing you, and that will occur only if you no longer represent a threat to society. If you are ever released, you will be liable to be recalled to prison at any time if it is believed you have become a threat once again.

[34] Those will be decisions for the Parole Board and not for me. But I offer you a piece of advice, Mr Winders. It is not unusual for offenders to deny their offending, even in the face of overwhelming evidence. You may find it difficult, however, to persuade the Parole Board that you are no longer a risk to the community if you do not admit your guilt, develop an understanding of the appalling way in which you acted, and change the attitude and views which have brought your life to its lowest point.

Confiscation of vehicle

[35] Because your Jeep Cherokee was used to facilitate your offending, the Crown seeks an order that it be confiscated.¹⁸ Mr Temm does not oppose that order but he asks that an order be made preventing the destruction of the vehicle pending other possible Court proceedings.

[36] I am satisfied that it is appropriate to make that order.

¹⁸ Section 128.

Sentence

[37] Please stand, Mr Winders.

[38] I sentence you to life imprisonment and order that you must serve a minimum term of 17 years' imprisonment.

[39] I order that your Jeep Cherokee motor vehicle, registration number DBT5, be confiscated, but it is not to be destroyed without the leave of the Court.

[40] I direct that these remarks on sentencing; the health assessors' reports; and the probation officer's advice to the Court shall be forwarded to the Parole Board.

[41] Please stand down.

.....

Toogood J

COMMENTS

Before I retire, I want to make some further remarks which are not relevant to Mr Winders's sentencing. First, although I have been critical of the actions of the Police in one respect, in all other aspects of the investigation into Mr Taiaroa's tragic death and the prosecution of Mr Winders for murder the Police have acted in accordance with the highest standards of policing. I estimate that thousands of hours of meticulous investigation and patient analysis went into producing the case which the Crown was able to present to the jury. Not least in importance was the co-operation our Police received from Police and ballistics experts in Australia. Our community can be grateful for the calibre of the work undertaken by the men and women who were responsible for bringing this case to court.

I acknowledge also, as the Police have done, that this case could not have been solved without the co-operation of hundreds of ordinary New Zealanders who came forward with information which they thought might assist. A large number of them

had to endure the inconvenience and the strain of giving evidence at the trial. We can be grateful to them also.

I thank the representatives of the news media who have been in Court for their co-operation throughout.

Finally, I acknowledge once more the assistance I have received from all counsel. Their conduct throughout has been exemplary.