

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

**I TE KŌTI MATUA O AOTEAROA  
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2020-063-1416  
[2022] NZHC 2438**

**THE KING**

v

**MOETU KAITAI**

Hearing: 23 September 2022  
Counsel: C Macklin and L Evans for Crown  
N Tahana, M Jenkins (and J Judge via VMR) for Defendant  
Sentence: 23 September 2022

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**SENTENCING NOTES OF MUIR J**

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Solicitors: Gordon Pilditch, Rotorua  
Kahui Legal, Rotorua

## **Introduction**

[1] Ms Moetu Kaitai, you appear before me today for sentencing following a jury trial which concluded on 25 August 2022 and as a result of which you were found guilty of one charge of murder and one charge of threatening to kill. The victim in respect of both matters was Mr Kelvin Kana.

[2] My sentencing decision will begin with a brief account of the factual background to your offending. I will then summarise the victim impact statements and discuss your personal circumstances. This will be followed by an outline of the approach I will adopt in sentencing you. Finally, I will address the Crown and defence submissions and determine your final sentence.

## **Facts of the offending**

### *Threatening to kill*

[3] On 8 May 2020, at around 11 pm, you were in the driver's seat inside a parked van with friends on a driveway in Tokoroa smoking methamphetamine. Mr Kana approached the van, rattled the rear door handle, which was locked, and then tried to open the front passenger's door. He was apparently attempting to re-engage about some unresolved issue between you or was possibly acting out of some misplaced loyalty to one of the other occupants in the car. The facts at trial were not entirely clear in that respect. He had also been using methamphetamine and was described by at least one of the witnesses as "scattered". In response, you grabbed a sawn-off pistol-grip shotgun, which you had in the vehicle, jumped out and threatened to kill Mr Kana. Witnesses at the scene saw you brandishing your firearm at him, they also recalled you making verbal threats to shoot him. Eventually and sensibly however, you relented and you and your friends left the scene.

### *Murder*

[4] On Sunday afternoon, two days later, on 10 May 2020, you used that same firearm to shoot Mr Kana dead. Earlier that afternoon, Mr Kana had arrived at an address in Tokoroa where he was socialising with two associates in a garage at the rear

of the property. Shortly thereafter, you too arrived, carrying the firearm concealed under either a coat or in a bag.

[5] You spoke briefly with several people in the main dwelling at the address and then proceeded to the garage. Once in the garage, you placed the firearm on a bar table, concealed under the coat.

[6] Mr Kana then approached you at the bar table. You exchanged a few words and an argument ensued. It escalated to a point where there was possibly some low level physical contact between you, although the evidence of an actual assault by Mr Kana on you was slight and confined to one, somewhat delayed reference, in your police interview. Certainly, however, I accept that he was, to use the colloquial, “in your face” and argumentative. You then reached for the firearm, and loaded it with a single 12-gauge shotgun cartridge. You told Mr Kana to get back.

[7] Mr Kana made an attempt to grab the gun, but you pulled it up and away, over your right shoulder, out of his reach. You then returned the firearm to aim at Mr Kana’s torso and discharged it at close range. The evidence was that Mr Kana’s hand was on the barrel at that point, but I accept the contemporaneous witness statement of Mr Jerry-Lee Lewis that discharge occurred, not in the context of Mr Kana trying to wrench it from you, but almost simultaneously with you returning the gun to the horizontal position. The gunshot struck Mr Kana in the abdomen. He died almost instantly. You fled the garage in clear distress, threw the firearm and spent shotgun cartridge onto the roof of a neighbouring property and subsequently escaped through a police cordon.

### **Victim Impact Statements**

[8] I have been provided with three victim impact statements by Ms Shakaiya Kana and Ms Sasha Kana, Mr Kana’s daughters, and Ms Rebecca Charlie, Mr Kana’s sister. Both Ms Shakaiya Kana and Ms Charlie read their statements in open Court this morning.

[9] Shakaiya is Mr Kana’s oldest daughter. She describes her father as a jovial figure. She speaks of the milestones in her life that he will now miss. Clearly

Mr Kana's death has resulted in a very debilitating level of sadness for her; she has lost both motivation and interest in her daily life, she suffers sleepless nights and is frequently overwhelmed with emotion, as she was in this courtroom today. Quite simply, your actions have torn her life apart.

[10] Sasha is Mr Kana's second oldest daughter. She describes Mr Kana as a loving, caring and protective father. Her loss has also caused her huge pain. She is heartbroken for her younger sisters who were aged only eight and ten at the time of Mr Kana's death and have been robbed of a future with their father. Sasha's deep religious faith has been a source of strength for her; she bravely opened her statement with sentiments of forgiveness. She invites you to share in her faith to become a better person.

[11] Finally, Rebecca described her brother as talented, athletic and funny. She said he was a "big kid at heart" and had an infectious laugh. She called him a loyal brother and friend, a loving son, the "best dad" and a "fun uncle". Rebecca recalled in detail the night she discovered her brother had been killed. Movingly, she tells of the anguish and grieving those events precipitated. It is clear your actions will forever impact the Kana whānau.

[12] I thank Shakaiya, Sasha and Rebecca for their statements. I also want to acknowledge Mr Kana's whānau and friends present in Court today. The sentencing process can never undo the pain and sadness caused to you by Mr Kana's passing nor can it right the wrong he suffered. Nevertheless, I hope that it can go some way towards providing closure in respect of this tragic chapter in your lives.

### **Ms Kaitai's circumstances**

[13] Ms Kaitai, I now turn to your circumstances. You are a 31 year old of Cook Island heritage. You have a young son who is, I understand, about to turn 15. Your sister has had day-to-day care of your son for many years. She has confirmed her willingness to support you and is a demonstrably pro-social influence in your life, holding a senior position in healthcare.

[14] You have a long criminal history which consists of property offences, dishonesty, drug offending, violence (four assaults and one aggravated injury) and multiple non-compliances with Court directives. You have previously received various types of sentences including electronic monitoring and imprisonment. This is your seventeenth appearance for sentencing since 2009.

[15] The presentence report writer records that you live an anti-social lifestyle and have a propensity for violence. You have admitted to active involvement in gang activities, including drug dealing, and to many violent interactions with people, particularly with men who you perceive as in any way threatening.

[16] The report writer concludes that your current offending represents the continuation of a pattern and an escalation in severity. The likelihood of you re-offending is assessed as medium.

### **Section 27 report**

[17] A s 27 report has been prepared and provided to the Court. It provides some insight into your background.

[18] From a young age you witnessed at least moderate family violence. You say that your father, who you nevertheless loved intensely, beat your mother up frequently. Your sister admits to some family violence but says it was “more like a hit, but not like a black and blue beating”. Nevertheless, she agrees there was “lots of emotional trauma”. On some occasions you and your five siblings were on the receiving end of beatings yourselves. You recall, for example, being hit when you cried or for failing in attempts at reading. Although he held down a steady job, your father was also a cannabis dealer and you remember him smoking the drug in front of you at an early age.

[19] At age nine your parents separated. The report writer identifies your belief that this had a significant effect on your subsequent life. You lost the stability of the home you knew, and you were sent to live with your grandparents. The subsequent death of your grandfather three years later sent you, in your own words, “off the rails”. It is at

this point that you began consuming cannabis frequently and this soon escalated to methamphetamine use.

[20] At age 15 or 16 you became pregnant with your son. Around this time your mother moved to Australia taking your siblings with her. You did not wish to go because of your relationship with your son's father, but this soon disintegrated and you were left effectively homeless. Three of your uncles took you in. They gave you a place to stay and some stability, but they were all Black Power Gang members, they were frequently violent, particularly towards the women in their lives, and they enlisted you into their drug dealing operations.

[21] At age 17 or 18 you lost your cousin to suicide. This was a traumatic event for you. It resulted in a further escalation in your drug habit with you soon consuming up to two grams of methamphetamine per day. You were unable properly to look after your son, spending most of your solo mother's benefit on drugs. Thankfully your sister and mother were able to take your son into their care but the consequent cessation of your DPB was an ongoing source of friction. By age 20 you had met an abusive and controlling partner, who, on one occasion, beat you with a crowbar. You went on to have three further abusive relationships with men. Once you were dragged from a moving car.

[22] The s 27 report records that you have been diagnosed with Post-Traumatic Stress Disorder (PTSD). A more accurate position is that you have been assessed as "presenting with some features suggestive of PTSD".<sup>1</sup> In any event, the report writer identifies almost reflexive responses to any demonstration of male aggression, exacerbated by long-term drug use, including in the period immediately before the offending.

[23] I will return to the contents of this report when I come to decide your sentence.

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<sup>1</sup> Psychiatric Report of Dr Shailesh Kumar (15 June 2020).

## **Approach to sentencing**

[24] In sentencing you today I must have regard to the purposes and principles of sentencing contained in ss 7 and 8 of the Sentencing Act 2002. In the context of your murder conviction, the purposes and principles that are particularly germane include holding you accountable for the harm you have done to Mr Kana and by extension his whānau, denouncing your conduct, deterring you and others from committing an offence of this nature and protection of the community.

[25] The sentence I impose on you must take into account the gravity of your offending and achieve consistency with the sentences imposed in other reasonably proximate cases of murder. The sentence must nevertheless be the least restrictive that is appropriate in the circumstances of your case.

[26] An offender who is convicted of murder must be sentenced to life imprisonment unless it would be manifestly unjust to do so.<sup>2</sup> The threshold for manifest injustice is very high and will be displaced only in the rarest of circumstances. The submissions filed two days ago by your counsel were prepared on the basis that this threshold had been met and that I should therefore sentence you to a finite term. That submission is now withdrawn. Your updated instructions to counsel were responsible in this respect.

[27] Assuming the presumption of life imprisonment is not displaced, I then need to decide what period you must serve in prison before you become eligible for parole. That period is called the minimum period of imprisonment (MPI) and in your case it cannot be less than 10 years.<sup>3</sup> In fixing the MPI, my primary focus will be on your level of culpability as compared with the culpability of others sentenced by this Court on the same charge. The question I must decide is how much more (if any) than the minimum 10 years is required to achieve the purposes of sentencing identified in s 103(2) of the Sentencing Act. I must take into account any aggravating or mitigating

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<sup>2</sup> Sentencing Act 2002, s 102(1).

<sup>3</sup> Sentencing Act 2002, s 103(2). There is no suggestion by the Crown that Ms Kaitai's offending meets the criteria in s 104 so as to attract a mandatory MPI of 17 years.

features of the offending and also, to the extent consistent with the purposes identified in s 103(2), may take into account personal aggravating or mitigating factors.<sup>4</sup>

[28] I will also need to deal with your conviction for threatening to kill Mr Kana. If I impose a sentence of life imprisonment, I cannot thereafter impose an additional sentence for threatening to kill, cumulative on the life sentence.<sup>5</sup> Instead the matter can be dealt with either by a concurrent sentence and/or an adjustment to the MPI. In the present case, I consider no adjustment necessary as the murder represented escalation of the earlier and very proximate offending involving the same victim. Accordingly, I intend to impose a concurrent sentence.

### **Submissions**

#### *Crown*

[29] For the Crown, Mr Macklin submits that there are three notable aggravating factors to the offending. First, there was the use of a weapon, specifically a 12-gauge shotgun which had been illegally shortened at the butt end to enable single-handed use.

[30] Second, the presence of premeditation. Mr Macklin acknowledges that while the offending does not show calculated or lengthy planning, the fact that you brought an illegal firearm, with live ammunition, to the address, combined with the fact you had made it known you had ill feeling towards Mr Kana, indicates that the offending was not merely opportunistic but contained a level of premeditation.

[31] Third, Mr Macklin emphasises the great extent of the loss and harm caused by your offending as illustrated in the victim impact statements.

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<sup>4</sup> The conventional discounting formula for personal factors does not apply to sentences of life imprisonment and MPIs (*Malik v R* [2015] NZCA 597 at [36]). Nevertheless, the ability to adjust an MPI for personal mitigating factors still remains in the discretion of the sentencing judge (*Malik v R* at [37] citing *R v Williams* [2005] 2 NZLR 506 (CA)).

<sup>5</sup> Sentencing Act 2002, s 23.



[32] Mr Macklin submits that there are no mitigating factors to the offending. He further submits the presumption of life imprisonment cannot be displaced and that an MPI between 11 and 12 years is appropriate to meet the purposes of sentencing.

### *Defence*

[33] For the defence, Ms Tahana acknowledges that use of a firearm is an aggravating feature of the offending. However, she rejects any suggestion that the offending was premeditated. In support of that position, she says you had no motive to kill Mr Kana, you were unaware that Mr Kana would be at the address before you arrived, and you were settled at that address before you realised Mr Kana was even present. Furthermore, Ms Tahana says that Mr Kana approached you in an aggressive manner, and it was only in response to this aggression that you presented and loaded the firearm. Together, Ms Tahana says, these factors lead to the conclusion that the shooting is best categorised as spontaneous and/or reactive.

[34] She submits there are two key mitigating factors relating to the offending itself: the presence of modest provocation as well as impulsive reaction and instant regret. Expanding on the submission of modest provocation she says that you would not have shot Mr Kana but for Mr Kana initiating an argument with you, that he approached you and effectively cornered you in the garage, that he refused to back off when asked to do so and reached to grab the firearm. Additionally, she says it is highly relevant that you had been attacked by another male who punched you to the ground less than 24 hours earlier, in exactly the same location.

[35] In respect of any aggravating and mitigating factors personal to you, Ms Tahana submits that the following factors warrant discounts: personal, whānau, community and cultural background; remorse; rehabilitation prospects; and the impact on your 14 year old son.

[36] As I have said, Ms Tahana initially submitted that a sentence of life imprisonment would be manifestly unjust but no longer maintains that submission. She relies, however, on the contents of your s 27 report and the mitigating factors I have identified above to say that the MPI that I should impose is 10 years.

## Discussion

### *Presumption of life imprisonment*

[37] In this section of my largely pre-prepared sentencing notes, I dealt with the earlier submission on the part of Ms Tahana that I should not impose a life sentence on you. Because, in dealing with that submission, I addressed some of the relevant facts which inform latter parts of my sentencing notes I will, in a foreshortened way, still cover this material. It is also ultimately for me as Judge and not for counsel to decide whether a sentence of life imprisonment should be imposed so that is appropriate in any event.

[38] In her written submissions Ms Tahana referred to two decisions of *R v Wihongi*<sup>6</sup> and *R v Rihia*,<sup>7</sup> which she suggested could displace that presumption. In my pre-prepared notes I accepted that there was some level of family violence in your upbringing and that this, together with a succession of abusive personal relationships, had left you displaying at least incipient PTSD with a particular susceptibility to over-reaction when confronted with any form of male aggression. These symptoms have clearly been exacerbated by long-term drug use. You acknowledge yourself that this had been a significant contributor to your offending over the years. You admit to being “high” on methamphetamine at the time of both offences for which are being sentenced today. Inevitably this would have impaired your judgment. It made you more confrontational, more “trigger happy” as events ultimately turned out.

[39] In your police interview you spoke of being “sick of males attacking you”. The events of the previous evening, when you were assaulted by another male at the same location, were obviously fresh in your mind on the day of Mr Kana’s murder. Mr Kana was a match to that tinder dry kindling. He was “in your face” and argumentative. I accept that. He wouldn’t back off when you told him to do so.

[40] My assessment is that you then sought to assert your own control over the situation and perhaps over what you saw as general male aggression by reaching for

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<sup>6</sup> *R v Wihongi* [2011] NZCA 592.

<sup>7</sup> *R v Rihia* [2012] NZHC 2720.

and loading your previously concealed weapon. The escalation from that point on followed an almost predictable trajectory.

[41] The series of conscious and reckless decisions you made that day, to my mind, count against any displacement of the presumption of a life sentence. When initially confronted by Mr Kana, you could have left the garage. You chose instead to be “staunch” and demand he go. You asserted your authority over the situation, as you had two days earlier, by producing and loading a weapon of intimidatory size and calibre and pointing it at the victim. You could have used the control you had over the situation at that point to have again managed your exit but you did not. When Mr Kana advanced to grab the gun off you, you lifted it in the air, returning it almost immediately to point it at his chest and then pulled the trigger. This, in turn, required conscious effort. The firearm had a particularly heavy trigger. You had simply “had enough”. The jury was clearly satisfied that you intended to cause injury of the requisite description. The response was totally disproportionate to the provocation.

[42] For these reasons, I consider that, in abandoning their submission that a sentence of life imprisonment not be imposed, defence counsel adopted a responsible position. I agree entirely with that concession and that I must sentence you today to a sentence of life imprisonment.

### *Setting the MPI*

[43] I now address the question of the MPI.

[44] I start with the aggravating and mitigating features of your offending.

[45] It is accepted by both the Crown and the defence that use of an illegal firearm is an aggravating factor. Mr Macklin is quite correct that the prevalence of gun violence and the public’s strong interest in its suppression justifies acknowledgement in the sentencing process.

[46] There is disagreement, however, in respect of whether your offending was premeditated.

[47] My view is that it was not. You did not actively seek out Mr Kana that day, nor do I believe that you in fact intended to kill him. Indeed, the Crown case did not proceed on that premise. To the contrary, its case was that this was a reckless homicide. I accept that you had been carrying the gun around for at least several days previously. Producing it when challenged had become part of your modus operandi. It gave you authority in the context of what had become increasingly a gangster lifestyle. But I accept you took it to the address essentially for defensive purposes. Your highly emotional reaction in the aftermath of the shooting is consistent with that conclusion and confirms the likelihood of instant regret for what you had done.

[48] I turn then to the mitigating factors personal to you which Ms Tahana submits justify imposition of the minimum statutory MPI.

[49] Beginning with the contents of your s 27 report; this concludes that your long-term drug abuse, experience of violence as a child, loss of a caregiver, loss of a cousin to suicide, and mental health issues were all contributing factors to your offending. Ms Tahana submits that the report establishes a clear nexus between what she calls “the circumstances of the shooting and the violence that triggers [your] PTSD”.

[50] I accept that submission in part, acknowledging, however, that in proceedings before this Court and in other jurisdictions, many appreciably more disadvantaged childhoods frequently feature. But your early exposure to drug culture and the dislocation which followed your parents’ separation and your grandfather’s reasonably proximate death were undoubtedly contributors to the path you set at a comparatively early age. The success which other members of your family have had in putting similar disadvantage behind them underscores, however, the element of agency and choice in your long criminal history.

[51] In the context of this particular offending, the most relevant background factor is, in my view however, the serial abuse to which you were subjected to by a succession of domestic partners. As the 2020 psychological report indicates, you now present with some features suggestive of PTSD. By the time of this offending, you were a potential powder keg — fuelled by rage from various physical assaults on you (acknowledging, as I must, however, that you too were well capable of assaulting

people and had been convicted of doing so on multiple occasions). The incident on the eve before the murder, in my view, brought you to the brink — your judgment significantly undermined by your prolonged methamphetamine use. Mr Kana’s, in my view, reasonably modest provocations tipped you over the edge.

[52] Ms Tahana is correct in describing the offending as ultimately quite spontaneous and reflexive and, as I have said, the key to why you reacted in that way probably lies in aspects of your former life. This is consistent with the instant regret and associated emotional response immediately after the event. In the holistic way in which I must approach this sentencing, I see these factors as tending to bring the MPI relatively closer to the statutory minimum than is suggested by Mr Macklin.

[53] I next consider the extent of your remorse which I regard as relevant to each of:

- (a) your rehabilitative prospects;
- (b) the impact of your offending on the wider group of victims, namely Mr Kana’s whānau; and
- (c) the extent of your acknowledgment of harm.

[54] In the s 27 report you are quoted as saying:

Every day I live with huge regret. But there’s nothing that I can say to make things all right. And there’s nothing that I can do to bring him back, but I’m ready to accept justice on my part on what happened.

[55] Further, in your letter of remorse to the Court you state that you are “sincerely sorry to Kelvin, his family and the community” and that you wish you could turn back time. Again, your response in the immediate aftermath of the shooting and the highly emotional nature of your police interview the next day are consistent with that stated remorse.

[56] You also indicated a willingness to participate in restorative justice should any of Mr Kana’s whānau wish to do likewise. I view this offer, and your sentiments of

remorse, as genuine. Although you and Mr Kana had your differences, you also had a long period of acquaintance and I am in no doubt that you now suffer a degree of personal anguish about what you have done.

[57] Ms Tahana also submits that your rehabilitative prospects warrant a lower MPI. She explains that you are willing to undertake any programme in prison, especially if it will teach you coping mechanisms to assist with life on release. Your goal is to become sober. Ms Tahana says you will be incentivised to effectively rehabilitate yourself because of your son.

[58] I am not at this stage able to make any sensible assessment of your rehabilitative prospects. Your general physical appearance is now clearly greatly enhanced from that in the photographs taken immediately after the arrest, no doubt as a result of two years with no or limited access to drugs. Remaining drug-free will be the most essential building block in turning your life around. There remains time yet to do so. You should enthusiastically embrace every course and therapeutic intervention available to you while in custody. I take into account the fact that you have already participated in counselling sessions and regard there as being at least a glimmer of hope that you will now take the further opportunities available to you on the road to rehabilitation.

[59] Finally, Ms Tahana says that I should take into account the impact the sentence will have on your son. She points to the case of *R v Ralph*, in which the High Court endorsed a considerable discount from a term of imprisonment to account for the defendant's six year old son who suffered from developmental issues and attachment difficulties.<sup>8</sup> The District Court had found that a sentence of imprisonment would have a significant and potentially life long impact on the defendant's child.<sup>9</sup>

[60] At present, your sister has day-to-day care of your son. He is also cared for from time to time by your mother. For large parts of his childhood, you have not fulfilled any or any adequate parental role. The fact that you will miss important events in your son's life is an inevitable consequence of your offending, but I am not

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<sup>8</sup> *R v Ralph* [2018] NZHC 794.

<sup>9</sup> At [38].

persuaded that imprisonment will cause a sufficient level of detriment to your son's wellbeing and development to warrant any discrete discount. He will, in my view, remain very well supported within the larger family unit.

[61] I have considered each of the cases referred to by the Crown and defence as potentially assisting with identification of an appropriate MPI.

[62] Of those I have found *R v Paewhenua*<sup>10</sup> to be the most helpful. In that case, the defendant, Mr Paewhenua, was highly agitated on the day of his offending. He had accused his partner of sleeping "with heaps of people" and that he was "gonna shoot them".<sup>11</sup> Later that day, Mr Paewhenua was in a parked vehicle with a friend, Mr Mahanga. While in the vehicle Mr Paewhenua pulled out a sawn-off shot gun and shot Mr Mahanga in the head at close range. Edwards J did not consider that the shooting was premeditated; there was no suggestion that the defendant had set out to kill Mr Mahanga nor was there any identified motive for doing so.<sup>12</sup> Rather, the evidence suggested that Mr Paewhenua was agitated, got into an argument with his associate and then picked up a firearm and discharged it. An MPI starting point of 11 and a half years was adopted.<sup>13</sup> The case is analogous to your own in that both you and Mr Paewhenua were on edge on the day of your offending, albeit for vastly different reasons. You were both short-fused — your ultimate responses representing a rapid escalation from seemingly quite pedestrian beginnings.

[63] In that case an uplift for personal aggravating factors was considered appropriate. By contrast, some discount for personal mitigating factors is, in my view, necessary in this case to reflect the overall requirements of justice.

[64] I have not much been assisted by the decision in *R v McNaughton*,<sup>14</sup> to which the Crown also referred me. That case concerned competing groups of young men who met at a local park for a prearranged fight. The defendant brought a shotgun to the park and in the midst of the ensuing brawl he shot an adversary dead. The obvious

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<sup>10</sup> *R v Paewhenua* [2018] NZHC 301.

<sup>11</sup> At [7].

<sup>12</sup> At [31].

<sup>13</sup> At [41].

<sup>14</sup> *R v McNaughton* HC Nelson CRI-2009-042-4391, 4 February 2009.

element of premeditation inherent in the planning of the fight distinguishes this offending from the present case.

[65] Ms Tahana relies on *R v Te Maru* in which an MPI of 10 years was imposed.<sup>15</sup> In that case the defendant was sentenced for the murder of his brother. The defendant and his brother had been arguing and the brother had responded by smashing the windows of the defendant's car with a concrete block. In a moment of rage the defendant uplifted a butcher's knife<sup>16</sup> and stabbed his brother in the chest.

[66] I accept that there are some similarities with this case given the victim's role in the offending (albeit dramatically more provocative in *Maru*) and the element of defendant impulsiveness. However, the Judge in that case was clearly more convinced of Mr Maru's rehabilitative prospects than I can be at this point, and here there is the additional significantly aggravating factor that you had for several days at least been carrying around a lethal weapon with live ammunition, deploying the gun at the first sign of perceived threat and then progressing to discharge it on the day in question. Although the shooting of Mr Kana was, as I have said, not premeditated as such, it occurred within a larger context where there were multiple opportunities to take stock and avoid the tragedy that became increasingly inevitable in your angry and drug-addled state.

[67] My overall assessment is that the appropriate sentence is one of life imprisonment with an MPI of 10 years and nine months. In doing so I recognise discounts of approximately nine months from what I would otherwise regard as an appropriate starting point. With that MPI in mind, I will impose a concurrent sentence of one year imprisonment for the subsidiary charge.

### **Sentence**

[68] Ms Kaitai, would you now please stand.

[69] On the charge of murder, I sentence you to life imprisonment, with an MPI of 10 years and nine months.

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<sup>15</sup> *R v Te Maru* [2020] NZHC 2084.

<sup>16</sup> He appears to have earlier attacked him with a knife sharpener.



[70] On the charge of threatening to kill, I impose a concurrent sentence of one year imprisonment.

[71] I note that the application for permanent name suppression has been withdrawn.

[72] Finally, I grant an order that the firearm is forfeited for destruction by the Commissioner of Police, pursuant to s 69 of the Arms Act 1983. Such order is to lie in Court for a period of two months pending exercise of any appeal rights against your conviction and is to be stayed pending disposition of any such appeal in the event such rights are exercised.

[73] Ms Kaitai, please stand down.

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Muir J