

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2017-004-011305  
[2018] NZDC 22948**

**THE QUEEN**

v

**PRUSHYA CHAICHUMPHON**

Hearing: 31 October 2018  
Appearances: J Murdoch for the Crown  
M Pecotic for the Defendant  
Judgment: 31 October 2018

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**NOTES OF JUDGE N R DAWSON ON SENTENCING**

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[1] Mr Chaichumphon, you appear in Court today for sentencing on two charges of dangerous driving causing death and two charges of dangerous driving causing injury. They respectively carry a maximum sentence of 10 years and five years' imprisonment.

[2] I note that you are now 23 years of age. You were 22 years of age at the time of the offending.

[3] On 23 October 2017, you drove a Volkswagen Golf motor vehicle at an excessive speed that caused it to crash. At about 12.30 am you were with the deceased [CT] and [SM] and companions [passenger 1] and [passenger 2] at an address at Auckland. After some discussion, the five of you decided to drive to a [restaurant] in New Lynn to get something to eat. It was agreed that you would drive the vehicle.

[4] [Passenger 1] sat in the front passenger seat while [CT] sat in the rear seat behind you. [Passenger 2] sat in the rear seat behind the front passenger seat and [SM] sat between the two persons in the rear centre seat.

[5] On arrival at the [restaurant] in New Lynn, you found it was closed so you decided to go to [the restaurant] in the Auckland City. You drove to the North-Western Motorway in Auckland and travelled north-east towards the city. As you drove passed the Waterview on-ramp you were seen by a stationary police car.

[6] The constable recorded your speed with a hand-held laser at 130 kilometres per hour in an 80 kilometre per hour zone. The police started to follow in an attempt to catch up with your vehicle. You continued to drive at speeds in excess of 130 kilometres per hour driving in the outside lane of the four-lane highway.

[7] As you passed the St Lukes Road off-ramp you were impaired by other vehicles in the three outside lanes. You did not slow down and moved sharply across the motorway, overtaking the vehicles using the near side lane. Witnesses driving along the motorway at the same time estimated your speed in excess of 150 kilometres per hour.

[8] You moved the vehicle back into the outside lane and continued to speed towards the Newton Road off-ramp. You took the off-ramp but were obstructed by a vehicle which you then overtook on the inside shoulder. You drove towards the traffic lights at the intersection with Newton Road where you ignored the red traffic light and turned right onto Newton Road heading towards Symonds Street.

[9] You drove along Newton Road with a police vehicle approximately 50 metres behind you with its lights and siren on. You turned right onto the motorway on-ramp. A vehicle travelling down Newton Road had to take evasive action as you were about to drive into his path.

[10] You continued down the on-ramp and back onto the North-Western Motorway heading westbound. You accelerated aggressively, pulling away from the police vehicle. You reached speeds in excess of 160 kilometres per hour and made a number

of dangerous manoeuvres across all four lanes of the motorway while overtaking other motorists. You took the St Lukes Road off-ramp at speed. You overtook another vehicle on the inside shoulder and made a left turn onto St Lukes Road.

[11] You accelerated away from the intersection down a one lane road. Your path was blocked by a slower vehicle and you attempted to pass it by driving up onto the grass median strip. You lost control of the vehicle on the wet grass, slid across the grass and collided with a large tree. The tree struck the rear driver's side door where Mr [CT] and [SM] took the full force of the impact.

[12] [CT] suffered severe head injuries and died in Auckland Hospital as a result of the blunt force trauma. [SM] received severe internal injuries and died in the Auckland Hospital as a result of her injuries. [Passenger 1] suffered minor injuries and [passenger 2] suffered a fractured collar bone.

[13] I have read the pre-sentence reports that have been prepared and I have also read the two restorative justice reports from the meetings you had with each of the families of the deceased. I have also heard the victim impact statements being read out in Court today and have seen and read other victim impact statements that have been filed.

[14] When I sentence you, there are a number of sentencing factors I need to take into account. The first is to hold you accountable for the harm you caused to all the passengers of the vehicle you were driving that night. I need to impose a sentence that will promote a sense of responsibility within you.

[15] I also need to provide for the interests of the victims and also their families and the loss each continues to endure. I also denounce your conduct. It is totally unacceptable to the community.

[16] The principal sentencing factors in my view are those of deterrence and the need for the protection of the community. The message needs to be sent to drivers that if they run from the police putting other members of the public at risk for their lives

and safety that will result in higher sentences being imposed. Both the gravity of your offending and your culpability were at the high end.

[17] There are a number of aggravating factors I need to take into account. The first is the extent of loss from the offence, which was high. Two people were killed, two others were injured. However, I note that it is an element of each of the offences and that is reflected in the maximum sentences for each of the charges.

[18] All four victims were very vulnerable. They relied upon you as the driver of the vehicle for their safety. The level of premeditation was relatively high. There was offending over a sustained period of greatly excessive speeding and of reckless driving and a failure to stop for the police and you continued the reckless driving to avoid the police. You had the opportunity to stop but you chose to continue.

[19] Finally, you were driving in breach of your driver's licence category without a supervisor and with passengers at a time of night when you are not supposed to be driving. In mitigation, you were 22 years of age at the time and you entered a guilty plea at the sentence indication stage.

[20] You have expressed remorse for your offending and that is reflected in your comments in the restorative justice reports and I accept the remorse you have expressed is sincere. You have made an offer of emotional harm reparation also.

[21] The pre-sentence report notes that your actions were impulsive and devoid of rational thought, a behavioural deficit that underpins much juvenile and teenage male offending coupled with a right of entitlement. It notes that despite your chronological age of 23, emotionally you come across as a younger person. It is assessed that you are of a low to medium risk of harm and a low risk of re-offending. It also provides information about your background and it confirms that you have expressed contrition and remorse at the interview for the offending.

[22] I have considered the written and oral submissions from the Crown and your counsel at the sentence indication hearing. Taking those submissions into account,

and in particular the case of *Gacitua v R*, I am of the view that your offending was worse than that expressed in that case.<sup>1</sup>

[23] In my view, an appropriate starting point, which I indicated at the sentence indication hearing, is a sentence of imprisonment of five and a half years. At that hearing, I indicated that a 13 month deduction would apply for a guilty plea at that stage. That reduced the sentence to four years and five months. I indicated that any further discounts would be taken into account once a guilty plea was entered, a presentence report was prepared and any other submissions were made to the Court. No further written submissions have been filed but I have heard oral submissions today.

[24] Taking into account all the information that is now available to me, for your remorse I deduct six months from your sentence and for your relative youth and your personal background, which I will not go into, I deduct a further five months.

[25] For your previous good character of not having any previous convictions, I deduct three months and for your attendance at the two restorative justice hearings I deduct a further three months which brings it down to three years' imprisonment.

[26] On all four charges, you are convicted and sentenced to three years' imprisonment to be served concurrently on each other.

[27] On each charge, you are disqualified from holding or obtaining a driver's licence for one year each making a total of four years' disqualification.

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Judge NR Dawson  
District Court Judge

Date of authentication: 16/11/2018  
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.

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<sup>1</sup> *Gacitua v R* (2013) NZCA 234