

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

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

**CRI-2018-044-001855
[2018] NZDC 26177**

THE QUEEN

v

ROUXLE LE ROUX

Hearing: 14 December 2018
Appearances: R McCoubrey for the Crown
B Sellars QC for the Defendant
Judgment: 14 December 2018

NOTES OF JUDGE NICOLA J MATHERS ON SENTENCING

[1] I note at the outset of this sentencing the presence of Nathan's parents, grandparents and other members of the family and friends. I note also the presence of your mother, Ms Le Roux, and friends who are here to support you.

[2] Ms Le Roux, you have pleaded guilty to a charge of dangerous driving causing death. You admit that on 18 May of this year you had consumed some wine and cannabis before you drove. We do not know the quantities because you failed to stop after the collision causing the death of Nathan.

[3] It is entirely clear that the combination of alcohol and cannabis had an influence on your driving such that when attempting to re-enter the motorway on the on-ramp you failed to see Nathan crossing on a pedestrian crossing on a small bicycle.

As a result you hit him, a 15 year old boy, and he died of his injuries at the scene. To your discredit you failed to stop. You failed also to report the incident until the following day, hence no reading as to the level of alcohol or drugs in your system.

[4] In this type of sentencing the focus inevitably turns to you the defendant. However, the tragedy is that a 15 year old boy has lost his life as a result of your actions.

[5] I have listened very carefully to the heart-wrenching words of Nathan's parents who have read out their victim impact statement today. I have also read the victim impact statement of one of his sisters. Nothing I say will of course bring back their young son or a brother or a grandson. What is important is that you are held accountable for your offending.

[6] Your sort of driving needs to be denounced most strongly. You need to be held to account for your offending and others must be deterred from similar type of offending. Having said that, I am required however to impose the least restrictive penalty in the hierarchy of sentences which is available to me.

[7] I have read all the various reports including the Crown submissions, those of your counsel, Ms Sellars QC and all the other documents that have been provided to me and your letter of apology.

[8] I have taken particular care in relation to what I will call your troubled childhood. I note you have had various mental disorders requiring treatment. I note that very shortly after this event you were hospitalised. I also note that your motivation in response to treatment has been positive and you have engaged in treatment with community drug and alcohol services and you remain engaged with their services.

[9] The [medical details deleted] that no matter what today's outcome brings it will be important for your ongoing mental health and well-being to be monitored with support. I accept that you are remorseful and as I have said I have read your letter and I hope that letter can be handed to Nathan's parents. You were willing to attend restorative justice.

[10] You accept in hindsight that the posting on social media was a very poor decision and you just did not think at the time. You have said that as soon as you realised the enormity of your actions you removed the posting. As you have heard, it has caused considerable distress to Nathan's parents and family.

[11] I accept, after having read your letter of apology and having read the comments in the pre-sentence report despite that posting that your remorse is genuine. I accept Ms Sellars' submissions which is noted in the summary of facts that Nathan had headphones in his ears. He was not wearing a bicycle helmet and he crossed against a red signal.

[12] Ms Sellars and Mr McCoubrey have helpfully referred me to a number of decisions which offer guidance but in the end cases are so very fact specific. I prefer to approach this matter upon a principled basis taking into account the requirements of the Sentencing Act 2002. Considering all the various authorities and the Sentencing Act, I am of the view that a starting point is in the vicinity of three to three and a half years' imprisonment and I fix a starting point at three years three months' imprisonment.

[13] I accept that you are entitled to a discount for your personal circumstances and your mental difficulties and that you are still very young being only 19 and you have no previous convictions. I am prepared to give you a reduction of five months for those matters.

[14] I accept that you are entitled to a discount for your early guilty plea of 25 percent. I also accept that you are remorseful and I will give you a further discount of two and a half months which brings the end sentence down to one of 23 months' imprisonment.

[15] The Crown urges me to impose a sentence of imprisonment and upon any basis a term of imprisonment must be considered.

[16] Ms Sellars urges me to impose a sentence of home detention. She says you are a young vulnerable woman who will live with your actions resulting in the death of Nathan for the rest of your life and I am sure Ms Le Roux you will.

[17] I am of the view that the public's right to deterrence and denunciation is outweighed by the need to impose the least restrictive penalty. In my view, a term of imprisonment should make way for a sentence which will still denounce your conduct and impose a very significant penalty but nevertheless help towards your continuing rehabilitation. I note that you have been able to graduate after studies and I note also as Nathan's parents have said that is something that he will never be able to do.

[18] In my view, no purpose would be served in sentencing you to a term of imprisonment bearing in mind your age and the various issues that I have referred to. A sentence of home detention is in itself a serious punishment with a significant element of deterrence.

[19] I am satisfied that the principles and purposes of the Sentencing Act can be met by a sentence of home detention coupled with community work. You will therefore be sentenced to 11 months' home detention along with 250 hours' community work which I hope will be able to be done through an agency.

[20] The conditions of home detention are set out in the pre-sentence report and they are that you are not to possess, consume or use any alcohol or non-prescription drugs.

[21] You are to attend an assessment for any programme and/or counselling deemed to be suitable for your given needs and attend if and as directed by a probation officer. You are to attend and complete any counselling, treatment or programme as recommended by the assessment as directed by and to the satisfaction of a probation officer.

[22] You are to notify a probation officer prior to commencing, terminating or varying any employment of voluntary work.

[23] You are not to associate with or contact the family of Nathan without the prior written approval of a probation officer.

[24] You are to reside at the address which is noted in the pre-sentence report and you are not to move to any new residential address without the prior written approval of a probation officer.

[25] You will also be disqualified from holding or obtaining a motor driver's licence for a period of two and a half years commencing today.

[26] I will also impose post-detention conditions for 12 months and they will be the same as they are in the pre-sentence report except for the residential address.

[27] So, that means that you will be subject to the conditions that I have read out for a total of 23 months and I will also impose judicial monitoring which means that not only will the Probation Service be keeping an eye on your progress, Ms Le Roux, but I also will and I would like to see you again on [date deleted] with a report from the Probation Service.

Nicola Mathers
District Court Judge