

R v TARRANT [2020] NZHC 2192 [27 August 2020]
IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY
I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE
CRI-2019-009-2468
[2020] NZHC 2192
THE QUEEN

v

BRENTON HARRISON TARRANT

Hearing:

24-27 August 2020

Appearances:

M N Zarifeh, B Hawes and P Norman (K Grau and H Lafraie on behalf of the victims)
for Crown Defendant in Person PHB Hall QC and C J Lange as Standby Counsel K
H Cook as Amicus Curiae

Judgment:

27 August 2020

SENTENCING REMARKS OF MANDER J

[1] Brenton Harrison Tarrant, you are for sentence this morning for the murder of 51 people and for your attempt to murder 40 other individuals. You are also to be sentenced for engaging in a terrorist act on 15 March last year.

The facts

[2] On that Friday morning you travelled from Dunedin to this city to attack two Christchurch mosques with the purpose of killing as many of the attending worshippers as you could.

[3] You had with you some six firearms, including semi-automatic shotguns and two military style semi-automatic rifles, and a large amount of ammunition. You carried four incendiary devices that you intended to use to burn down the mosques. You wore military style clothing and a bulletproof vest that contained at least seven magazines and a knife. On your helmet you mounted a strobe light to confuse your victims and a camera to provide a livestream to an online audience.

[4] After arriving in Christchurch and while in the vicinity of the Al Noor Mosque you sent a document, described as your “manifesto”, to an extremist website. You sent emails containing threats to attack the Christchurch mosques to the government and to various national and international media organisations, to which you also attached your manifesto. These messages were sent only minutes before your attack and provided no opportunity to the authorities to intervene.

[5] The ideological motivation for your attack is readily apparent from the people you sought to target and the document you distributed. On your weapons you wrote references to the Crusades and recent terror attacks, and marked them with various symbols, including those of the Nazi SS. Your extremist views and motivation were plain.

[6] You parked your vehicle in a driveway next to the Al Noor Mosque and made your final preparations. It is estimated that some 190 worshippers had gathered at the Mosque for prayers. Predominantly men of various ages, the congregation also included women and children. You chose Friday prayers because you knew a large number of people would be assembling at the Mosque on that day at that particular time.

[7] You took with you two semi-automatic firearms and multiple magazines and made

your way along the footpath to the Mosque. At that time four worshippers, Mounir Soliman, Syed Ali, Amjad Hamid and Hussein Moustafa, were at the Mosque's front entrance. Without warning you discharged the shotgun multiple times in quick succession, killing each of them. A wounded Mr Moustafa was despatched by you at point-blank range with shots to his back and head.

[8] As you made your way down the hallway of the Mosque to the main prayer area you shot Ata Mohammad Ata Elayyan and Ali Elmadani, murdering both men. You then entered the main prayer room at the rear of the building. There were over 120 worshippers present. They had heard the gunfire. Appreciating that something was very wrong, they moved to each side of the large open prayer area to where there were single exits in each corner.

[9] When you entered the main prayer room you initially fired at worshippers who were lying on the ground. You shot Ziyaad Shah. You then turned to the two large groups gathered on each side of the prayer area. There was little chance of escape. You fired your semi-automatic firearm into the mass of people on one side of the room. The rate of fire was extremely rapid. You repeatedly moved your weapon across that side of the room before turning to the other group of trapped people on the opposite side.

[10] As you turned your semi-automatic weapon on these worshippers, Naeem Rashid ran at you. Despite being shot, he crashed into you, forcing you down on one knee and dislodging a magazine from your vest. Mr Rashid had been hit in the shoulder and, as he lay on his back, you fired further shots at him. Mr Rashid died but his bravery allowed a number of his fellow worshippers to escape.

[11] By this stage you had emptied a 60-round magazine. You replaced that with another. Standing in the middle of the room, you fired rapid bursts towards each side of the prayer room where people were trying to hide or were attempting to escape. After reloading yet again, you continued to shoot at persons lying prone or trying to escape. You discharged rapid bursts across both sides of the room before approaching individual victims and shooting them. As Ashraf Ragheb sought to escape from a side room down the hallway to the main entrance, you shot and killed him. Already there were many dead.

[12] You moved closer to each now piled group of people lying deceased, wounded or feigning death on each side of the main prayer room. Worshippers, who were either crying out for help or who appeared to be alive, were systematically shot in the head.

One of those was a three-year-old child, Mucaad Ibrahim. He was clinging to his father's leg and you murdered him with two aimed shots.

[13] At this point you made your way out of the Mosque, checking prone victims as you went to ensure they were dead. Outside you shot at people attempting to flee. You shot Mohammad Faruk in the back, killing him. Wasseim Daragmih and his four-year-old daughter received life-threatening wounds. You fired in the opposite direction, hitting Sazada Akhter in the spine. She will be confined to a wheelchair for the rest of her life.

[14] Having run out of ammunition, you discarded your weapon and returned to your vehicle where you armed yourself with another military style semi-automatic firearm fitted with two 40-round magazines. You fired this weapon down a side driveway towards the back of the Mosque, murdering Muse Awale and Hamza Alhaj Mustafa, a 16-year-old boy who had escaped from the main prayer room and was sheltering behind vehicles. Another man, Mohammad Shamim Siddiqui, was critically wounded.

[15] You then returned to the main prayer room. As you entered you saw Md Hoq,

who was wounded, sitting up against a window. You aimed one shot at Mr Hoq, killing him instantly, before firing further shots at a group of people lying in one corner. There were some 30 deceased or critically wounded worshippers in this mass of people. You delivered fatal shots to those who were still alive.

[16] You then reloaded your weapon and walked over to the group of people lying in the opposite corner and fired into them. You noticed Haji Nabi attempting to shelter behind a small wall. With two carefully aimed shots you murdered Mr Nabi before walking to within a metre of the piled group and firing further shots into those who were either deceased or mortally wounded. Any persons who showed signs of life were shot.

[17] After exiting the Mosque for the second time you saw two women attempting to escape. You shot Ansi Karippakulam Alibava and Husna Ahmed. Ms Ahmed was killed. Ms Karippakulam Alibava was wounded. While she lay on the street, pleading for help, you murdered this defenceless young woman, firing two shots at her from point-blank range. You then returned to your vehicle and inflicted the indignity of driving over her body as she lay in front of the driveway from which you exited.

[18] As you drove away from the Al Noor Mosque you continued to shoot at anyone who you considered should be the target of your hate. You discharged a shotgun at two men who appeared to be of African descent. A short distance on you saw Muhammad Nasir and his son walking towards the Mosque dressed in traditional clothing. You again discharged the shotgun, seriously wounding Mr Nasir, before actioning the weapon again and pointing it directly at the boy who was trying to hide behind a wall. You pulled the trigger but it failed to fire.

[19] You then sped away, driving directly to the Linwood Islamic Centre. On the way you came abreast of another vehicle being driven by a Fijian man. You pointed your shotgun at him. Despite repeated attempts to discharge the shotgun it failed to fire.

[20] When you got to Linwood you approached the Mosque on foot down a long driveway, armed with yet another firearm. You saw three people in and around a car. You shot Ghulam Hussain in the head, killing him, before firing at and wounding Muhammad Raza who had got out of the other side of the vehicle. You shot another occupant of the car, Karam Bibi, before advancing up the driveway, where you saw Mr Raza attempting to find cover behind a fence. He attempted to retreat from you. Despite his pleas to spare him, you murdered him. A wounded Ms Bibi sought to hide in front of the vehicle. You walked to within metres of her as she lay prone with her head buried in her hands, stood over her, and killed her.

[21] You then advanced towards the Mosque. As you passed a window you saw the silhouette of Mohammed Khan. You murdered him with a single shot to the head. With your weapon now empty, you ran down the driveway back to your vehicle. As you reached the car, Abdul Aziz Wahabazadah, who had courageously followed you down the driveway, challenged you. You retrieved another semi-automatic rifle from your vehicle and fired at him. He dived between some parked cars, before you walked back up the driveway to the main entrance to the Mosque.

[22] There were several people standing inside the entranceway and further into the building at whom you repeatedly fired. You killed Musa Patel. Walking further into the Mosque, you shot and killed Linda Armstrong. People were huddled in corners of the room or trying to escape as you fired your weapon, killing Mohamad Mohamedhosen. You continued to fire the semi-automatic rifle until it ran out of ammunition, at which point you dropped it and ran back to your vehicle.

[23] Mr Wahabazadah chased you down the driveway, yelling at you. You removed the bayonet from your vest but retreated in the face of his advance. As you began

driving away, Mr Wahabazadah got close enough to throw one of your discarded weapons at your vehicle.

[24] After leaving the Linwood Mosque, your intention was to drive to Ashburton to attack another mosque, but your vehicle was rammed off the road by a police car and you were apprehended by two armed police officers. You were anxious not to be shot and offered no resistance.

[25] When interviewed by police, you told them that you had gone to both mosques with the intention of killing as many people as you could. You regretted not having the opportunity to burn the mosques down by using the incendiary devices, and that you had not been able to shoot more people.

[26] You confirmed to police the ideological motivation for your self-described “terror attacks”, which was reflected in the document you distributed immediately before committing mass murder.

Victim impact statements

[27] I have read all the victim impact statements from well over 200 victims and listened with much sadness to those who have presented their statements in court. In addition, I have received statements from the Muslim Association of Canterbury, the Islamic Women’s Council of New Zealand, the Federation of Islamic Associations of New Zealand, Cashmere High School and the Canterbury Interfaith Society, for which

I am grateful.¹ Mr Lafraie has presented a statement in court that reflects the impact of your dreadful offending on the Muslim community.

Murder victims

[28] Forty-four unarmed and defenceless people were murdered by you at the Al Noor Mosque.

[29] Among them were Khaled Alhaj-Mustafa and his 16-year-old son, Hamza. You grievously wounded another son, who was just 13 years old. He has been left with wounds and a bullet in his leg that will always remind him of the terrible day you killed his father and brother. His mother has been left to look after him and a younger child. She tells me that she often cries alone at night. Mr Alhaj-Mustafa’s widow is scared thinking of her children’s future and how she will be able to take care of them. This shattered family must somehow cope with life without their loved ones.

[30] Syed Jahandad Ali was a software engineer and the father of three children, all under five years of age. His wife is fearful for their children and for their future without him. She must now raise and support her family by herself.

[31] Amjad Kasem Hamid was a respected and skilled physician. An expert in cardiac care, he was a dedicated doctor and a compassionate man. He was a husband and a father. His wife of 24 years and their two sons are deeply affected by his murder. Their loss is unbearable — the circumstances of his death unbelievable.

[32] Ata Mohammad Ata Elayyan was a caring son and a devoted husband and father. He loved his family, neighbours and colleagues. He loved all people, and was loved by them. He represented New Zealand in his chosen sport of futsal and was a leader in his field of information technology. He was a gifted man. His family must now somehow go on and live without him. His wife, who came to this country to share her life with him, must now live with the indescribable pain of his loss and raise

¹ Victims’ Rights Act 2002, s 20. I have also received an affidavit from the Chief Executive of the Ministry of Foreign Affairs and Trade on the impact of the terrorism on New Zealand’s international profile and reputation.

their young daughter without him. She described him as a “good New Zealander” whose “legacy will live forever”.

[33] Ali Mah'd Abdullah Elmadani owned his own taxi after retiring as an engineer. He and his wife and children moved to this country more than 20 years ago. Mr Elmadani was “the pillar” of the family. His death has left his wife and his teenage son distraught. The family is broken and they are left struggling with daily life without him.

[34] Naeem Rashid was undertaking postgraduate study at Lincoln University and teaching at various business colleges after a career in international banking. Mr Rashid died defending his fellow worshippers and his 21-year-old son, Talha, who was also murdered that day. Mr Rashid was an honourable man. As his wife has told me, the brave way he and his son died was a reflection of his life. Talha had recently started his career as a civil engineer. He was, in his mother's words, an amazing son and older brother to his younger siblings. Both were fine men — their loss will hurt forever.

[35] Ashraf El-Moursy Ragheb's widow was also at the Mosque that day. She was able to get to a place of relative safety, but she experienced the terror of the attack, as so many other survivors did, and lived through the dread at the hospital of hearing that her beloved husband was dead — she has not felt safe since. Mr Ragheb was a kind and forgiving man who, I am told, always had a big smile on his face. He was deeply loved by his wife and two children.

[36] Mohammad Omar Faruk was a welder. He died before he could see his unborn daughter, and his widow is alone and shaken. Their child will never know her father, and Mr Faruk's mother has lost her only son. She is heartbroken.

[37] Muse Nur Awale was such a big part of his family's lives. They are at a loss without him. He taught them about the Quran, and his teaching and friendship is greatly missed. His wife has lost her lifelong companion. They will never again be able to share their love and happiness together.

[38] Md Mojammel Hoq was a trained dentist. He was a very gentle man — softly spoken — he worked hard to support his family. They have been left bereft by his murder.

[39] Haji Mohemmed Daoud Nabi was a 71-year-old who had been married to his wife for 46 years. He was a role model and leader to his family; a best friend to his children and to his wife. For them the pain and anguish never goes away. Mrs Nabi describes herself as “alive, but not living”. You effectively took her life as you took Mr Nabi's. She and her children suffer every day. As Mr Nabi's daughter said to me in her statement, they are living their own sentence.

[40] Ansi Karippakulam Alibava's husband found her lying on the road. He sat down beside her until police told him it was not safe. He knew when ambulance staff were not treating her that she had died. He is devastated. He finds himself constantly reminded of the events of that day and the loss of his dear wife. He can find no solace.

[41] Abukadir Elmi was at the Mosque that day with his wife, son, daughter-in-law and grandchild. The family have lost their mentor — the person they relied on for advice and support. Mr Elmi did everything for his wife. His son must now assume that responsibility.

[42] Abdelfattah Qasem was a kind-hearted, selfless and hardworking husband and father who helped his neighbours and friends. For 32 years he and his wife used to hold hands. She no longer has him to hold hands with — instead she faces retirement alone. Mr Qasem will never meet his grandson, who was born two months after he died. The family has lost their pillar and is forever traumatised by his death.

[43] Zakaria Bhuiya's widow has told me that he was her whole life. She has been

left alone in this country and her life is difficult. Mr Bhuiya was a caring person who looked after his family. He would send money to his parents in Bangladesh to help support them, but their lives and those of their family have now changed forever.

[44] Kamal Darwish had a wife and three young children. He worked on a farm in Ashburton and was soon to be joined by his family. They miss him so much. The children continue to ask for their father. Your actions have destroyed that family, as they have so many other families. At times his widow does not know how to go on. He came to this country because he thought it was a good, safe place to live. The day after attending her son's funeral, Mr Darwish's mother died — the family believe it was from a broken heart.

[45] Ozair Kadir was training to be an airline pilot like his big brother. His death has left a scar on the hearts of his proud parents. His murder haunts his father.

[46] Muhammad Suhail Shahid left a wife he had known from childhood and two little daughters, aged five and four. They keep asking for their "Papa". They cannot understand why he is not here. Mr Shahid's widow is alone and scared. She tries to be strong but she is in despair for her lost husband.

[47] Haroon Mahmood's wife has told me that the murder of her husband has turned her and their two children's lives upside down. They are devastated by the loss of their extremely loving and caring dad, but their mother is determined that they will not be bowed by your crimes.

[48] Lilik Abdul Hamid's widow wakes in the night terrified and afraid for her future without her husband. She is alone and her loneliness makes her depressed. Mr Hamid's daughter lives in fear of strangers and has become timid and untrusting of people.

[49] Junaid Ismail's wife and three children must live without the love, protection and care that he should have been entitled to provide as a husband and father. His bereaved mother must summon the strength to keep going without her respected, gentle and humble son. Mr Ismail's sister and brother are determined that his legacy will be carried on through his children and that they will become confident and proud New Zealanders, like their father.

[50] Ashraf Ali (Razak) was a forgiving man — a generous and caring person who loved to visit New Zealand to see his daughter, and his brother and sisters. His daughter has told me that he treated her like a princess. She may never come to terms with his passing.

[51] Osama Adnan Abukwaik's brother has told me of how he shared a room with Mr Abukwaik as they grew up together and watched him become a man and a father. He does not want to speak of him in the past tense and wonders if that will ever seem right.

[52] Tariq Rashid Omar was a fine young man — a geologist and a footballer. His family spoke of him with eloquence and grace — a fitting reflection of their love for him. So much of what they said applies to all who fell. The loss of their special son, brother and grandson is intolerable. I cannot do justice to their words.

[53] Sayyad Ahmad Milne was a precious 14-year-old boy with his whole life before him. His murder has left a huge hole in his parents' hearts. Despite his father's resilience and forgiveness, they grieve for him deeply.

[54] Mucaad Aden Ibrahim was younger still — a three-year-old infant. His father described him as "the happiness of the household" — a vibrant young boy who made friends with everyone he met. No family can recover from the murder of such a small child.

[55] Farhaj Ahsan was an engineer by profession. He was described to me as an

honest, sincere and noble son; a caring husband and devoted father; a gentleman, humble and much loved. His murder has caused enormous emotional damage to the health and wellbeing of his family.

[56] Ahmed Gamal Abdel Ghany's widow has told me that he was a kind and decent man who was much loved by his family. He had a sense of humour that I am told "makes you laugh from the bottom of your heart". His wife has been left lonely and hopeless. His son's life has changed completely.

[57] Hussein Al-Umari's proud father has told me of his son's love for his mother and his sister and of how Mr Al-Umari came to this country as a nine-year-old boy — their pain will never go away. I have seen a photo of Mr Al-Umari and his family enjoying a backyard picnic — it is such a Kiwi scene. His sister has described her brother and best friend as the backbone of their family — a person that would not hesitate to help someone in trouble. His mother weeps every day for her special young man, yet, in an extraordinary act of humanity, she offered you her forgiveness.

[58] Syed Areeb Ahmed was a chartered accountant. His family was very proud of him. He was a good son; kind, intelligent and handsome. He had a strong bond with his little sister. He cared and looked after them. Their small family has been broken by his loss.

[59] Maheboob Allarakha Khokhar was visiting family in New Zealand with his wife. They were an older couple — his widow cannot accept he is no more. His grandchildren still ask "where is Dada" and his son and daughter find the pain of his loss hard to live with.

[60] Matiullah Safi's death has left his wife, his children and his mother distraught. He was a loving and caring man who was a strong role model for his sons. He was much respected by them, and by the rest of his family and friends.

[61] Ramiz Arifbhai Vora spent the morning of 15 March with his parents visiting his wife in Christchurch hospital. She had recently given birth to their daughter. He never got to hold his baby. He and his father, Arif Mohamedali Vohra went to the Mosque where both were murdered. Ramiz had a dream for his family to have a life in New Zealand. Despite all the adversity, his wife is determined to honour her husband's wishes and make a life here for herself and their young daughter who will never have the opportunity to meet her father.

[62] Ashraf Ali would have celebrated his 40th wedding anniversary with his wife this year. They were both so happy. She cannot believe he is gone — she still waits for him to come home. Mr Ali was a well-respected man in the Muslim community who helped many people. He was calm, generous and kind. His loving family still cannot understand how he could be taken from them in such circumstances. They are heartbroken. Their family no longer feels whole.

[63] Mohsen Mohammed Al Harbi was a caring person, described by a friend as like a father to him. He loved New Zealand and believed that its people were kind and decent. He is greatly missed.

[64] Zekeriya Tuyan was an electronics engineer. Honest and hardworking, he was respected by all. He succumbed to his wounds in Christchurch Hospital and became the 51st martyr. He left two young boys who no longer have their beloved "Baba" to cuddle and jump over, as they did when they greeted him each day. He will not be there to lead and guide them. His wife has told me that he was the love of her life.

[65] Also murdered at the Al Noor Mosque and taken from their families and loved ones were Mounir Soliman, Hussein Mohamed Khalil Moustafa, Muhammad Abdus Samad, Husna Ahmed and Muhammad Haziq Mohd-Tarmizi.

[66] You murdered another seven people at the Linwood Islamic Centre.

[67] Ghulam Hussain and Karam Bibi were the parents of Muhammad Zeshan Raza — three members of the same family brutally murdered. Their daughter – Mr Raza’s sister — is the only one left. Their deaths have left a gaping emotional void that cannot be filled.

[68] Mohammed Imran Khan left a wife and a 14-year-old son. The impact of his death has been devastating on Mrs Khan. She now faces life with many fears, mostly for her son who needs his father. They will never be the same people again.

[69] Musa Vali Suleman Patel was a revered Iman, who has been described to me by his family as a wonderful man who provided an example to them of faith, strength and love; a man dedicated to supporting others. I am told he died in the embrace of his wife and the embrace of his faith, but that cannot ease the grief and shock of his wife and children who are trying to make sense of the killing of this warm and loving man who welcomed all people of all races and cultures.

[70] Mohamad Moosid Mohamedhosen was described by his sister as an adventurous man who came to New Zealand to enjoy this “serene place”. I am told he was a man who was full of life, peaceful and generous. His family rallied from all over the world to be with their lost loved one upon hearing the terrible news.

[71] Linda Armstrong was described by her daughter as vivacious and colourful.

Greatly loved by her family, she moved to Christchurch to be close to her two grandchildren and to their mother with whom she had such a strong bond.

Describing her as “a vibrant force for goodness”, her daughter struggles to cope with her murder and, as with all the families of those murdered that day, with not being able to say goodbye.

Attempted murder victims

[72] You inflicted gunshot wounds to 40 other people who you attempted to murder that day. Many of them suffered grievous and lifelong injuries.

[73] Mostafa Abdelmonem is a dairy farmer who was shot in the arm. He has had two surgeries and has suffered lead poisoning from the bullet fragments. Despite the hurt and the pain, he is now back at work. He has told me that he will not allow one person’s actions to stop him from praying to his God.

[74] Rahimi Ahmad was shot through his side and stomach. A bullet travelled to his spinal cord. Through three months in hospital, four surgeries, and many more months of rehabilitation, Mr Ahmad has fought to walk again but he remains in great pain. He agonises for his 11-year-old son who witnessed the terror of that day and who must carry those memories for the rest of his life.

[75] Osman Aweys Ahmed was shot in the back and, like so many others, will always have bullet fragments in his body. He remains in pain which at times is unbearable. He is haunted by the images he saw that day.

[76] Sazada Akhter was found lying on the road. She received a gunshot wound to her chest and her spine was fractured. This young woman is now confined to a wheelchair and will need special care for the rest of her life. She is only 26 years old. Both her and her husband’s lives have changed profoundly. The couple do not know if they can ever have children and they are distressed and fearful for their futures.

[77] Hisham Khalifa Al Zarzour was hit by two bullets. Complications from those wounds resulted in him suffering a heart attack and he has nerve damage to his leg. His recovery has been slow and he will likely have some degree of pain for the rest of his life. He has not been able to work and that has put financial stress on his family. He finds himself unable to put the horror of the terrorist attack behind him or to be able to plan for the future.

[78] Mohammad Atta Alayan was shot in the shoulder and head. Despite the

seriousness of his injuries, the pain pales compared to losing his beloved son, Ata: his “angel with a beautiful smile”.

[79] Basil Arsan Mustafa Ass’ad was shot four times and received wounds to his thigh, shoulder blade, arm and mouth. He has had multiple surgeries and will have to undergo further operations to remove shotgun fragments. He has been unable to work and this has caused considerable financial difficulties for his family. His inability to care for his young child has caused further stress, and he finds himself emotionally fragile. His wife feels vulnerable and continues to fear for her safety.

[80] Six bullets were removed from Temel Atacocugu’s body, three remain. He has required multiple long surgeries and, again like so many others, must bear the pain and mental anguish, not just from the permanent injuries with which he must now cope but from the horrific experience he lived through.

[81] Mustafa Boztas was shot in the thigh and shrapnel entered his liver. The nightmare of what he lived through and his leg injuries have prevented him from completing his welding training, and he has not been able to work.

[82] Wasseim Sati Ali Daragmih was shot three times as he sought to protect his little girl. He has undergone seven surgeries with the possibility of more to remove the bullet fragments.

[83] His daughter, a four-year-old girl at the time, received a gunshot wound that resulted in a massive haemorrhage, cardiac arrest and other critical complications. She was in a coma and had to be flown to Starship Children’s Hospital in Auckland. There

she remained in intensive care for a month. The little girl has had 14 surgeries for her injuries. No child should be subjected to such pain and such violence. She and her family have suffered terribly from what they have been through.

[84] Feroz Mohammed Ditta was shot three times. He has lost most of his calf muscle. Despite four surgeries there still remains shrapnel in his leg and Mr Ditta has had to sell his freight business.

[85] Ahmad Shah Feroz was shot three times in the back. He has more than 200 pieces of shrapnel remaining in his body which need to be removed by more surgery. His injuries and the process of recovery have been very painful. He has difficulty walking and sleeping, and now requires the assistance of a walking stick. His family are very worried for his health.

[86] Taj Mohammad Kamran was shot three times in the same leg — shrapnel will remain in his body and he has nerve damage that causes pain in his leg and back that cannot be eased. He too can only walk with the aid of a stick. The trauma and stress make him feel hopeless.

[87] Hazem Mohammed is a 65-year-old man who was trapped in the Al Noor Mosque when the shooting began. He was shot at point-blank range while lying on the ground, attempting to feign death. The bullet narrowly missed his head, going into his shoulder which is now damaged and painful. There is nothing more that the surgeons can do. Mr Mohammed struggled to sleep for months after the attack and his family has been under great stress. Like so many, he cannot get the images and sounds of what he experienced that day out of his head. He carries great sadness for those who died.

[88] A 13-year-old boy was shot by you in the thigh and spine, but the greatest loss for this teenage boy was the death of his father and his older brother. It is hard for his bereaved mother to watch him and his sister trying to cope without their father and brother. No one can replace them.

[89] Shah Nawaz has lost the full function of his leg and hip. He was shot three

times. Mr Nawaz was initially confined to a wheelchair and has now slowly moved to crutches. He is still undertaking therapy and fears he will not be able to walk the same way he used to. He, like many of those present at the mosques, cannot sleep because of the nightmares. His injuries and psychological scars have changed his life forever. He finds this difficult to accept and his family has gone through much trauma.

[90] Mohd Nazril Bin Hisham Omar was shot in both feet and in his back. He was unable to walk for three months and must still carry a walking stick with him. He finds it difficult to sleep because of the pain and the terrible memories. He must take pain medication and finds the physical parts of his job difficult. He is always worried that someone else will commit another attack and fears for his children's safety. The simplest tasks, such as dressing, are a struggle, and the nerve damage has left him shaking. At times he has become depressed and felt like giving up.

[91] Mark Anthony Rangi was visiting from Australia. He did not initially think he was wounded after running from the Al Noor Mosque, but he had been shot. He had bullet fragments in his leg and has suffered nerve damage. Mr Rangi struggled to walk for a long time and this resulted in him losing his job. Despite the damage to his leg he is no longer in pain, but at times he becomes very upset. He finds himself looking at people differently and not trusting people as he once did.

[92] Sheikh Rubel is married with a young daughter and newborn baby. He was shot three times. He suffered a broken pelvis, damage to his lower intestine and broken toes. He spent two months in hospital, and has been absent from his work for a long time. He may now have a permanent disability. He, too, has sleepless nights and bad dreams. He cannot lift his daughters or go out for a walk, and no longer has a normal life. When he watches his mates playing cricket and football he realises his life has changed maybe forever. He fears that because of the pain and the mental anguish, he may not be able to return to his accounting job which he enjoyed so much and he is worried for the future of his young family and their financial situation.

[93] Adeeb Ahmad Sami Adeeb received multiple gunshot wounds and required multiple surgeries to remove bullet fragments from his kidney, spleen and shoulders. He struggles with day-to-day tasks and knows there is a long way ahead to recovery, both physically and mentally. He will likely have to curb the travel he undertakes as part of his job as an engineer. He hopes that as the years pass you will reflect on your actions, see past the hate that is in you and find peace and love.

[94] Al Seenawi is a 63-year-old grandfather who spent six weeks in hospital and can no longer walk without the aid of crutches. It will take at least three years for the nerve damage in his leg to repair to allow him to walk again properly. If it does not heal he will be on crutches for the rest of his life. Mr Seenawi can no longer play with his granddaughters. His life and that of his family has changed forever.

[95] Ziyaad Shah was shot three times. He too finds it difficult to sleep because of the pain and the horrific memories. Only a few months ago he underwent yet more surgery. Mr Shah came to New Zealand to raise his children in a safer country. He refuses to be intimidated by your hatred.

[96] Fawad Sharifzai sustained multiple gunshot wounds. He still has bullet fragments in his lungs, liver and shoulder. The fragments in his lung cause him difficulty breathing and toxic elements from those fragments further endanger his health. Mr Sharifzai has been left depressed and psychologically scarred by the attack. He is haunted by the memories of those who were killed in front of him and seeing his best friend die. He finds himself at times very confused and disillusioned. Mr Sharifzai is heavily reliant on his family. He is deeply worried for their future and

fears not being able to take care of them.

[97] Mohammad Shamim Siddiqui has told me how he and his family's happy life in Christchurch has been shattered. Mr Siddiqui was shot in the arm. He has not been able to go back to work and his family have suffered financially, but it is the emotional trauma that has affected him and his family most deeply.

[98] Abbas Ashenafi Tahir was shot in the back. He remembers blood coming out of his mouth that day and handing his phone to a woman holding his wound to tell his pregnant wife what had happened to him as he could not talk. He woke up three days later in hospital. Days of intensive care and weeks in hospital led Mr Tahir to finally

being discharged, but he must now live with the pain of his wound. He has trouble sleeping. He thinks of the people who died in front of him and he often feels scared and worried for his family.

[99] Motasim Uddin was shot in the leg. He underwent four surgeries, including a bone graft, and spent three and a half months recovering at Burwood Hospital. He still needs help to shower, toilet and dress himself. He must use crutches and has not been able to return to his job as a welder. He fears not being able to support his family. He, too, cannot sleep well, both because of the pain and the vivid memories of witnessing people dying, and running and not being able to get out. He remembers all the blood.

[100] Mirwais Waziri was shot in the head. A piece of shrapnel remains there. Mr Waziri has experienced war in Afghanistan but, as he has said to me, this was different. This was not fighting — this was murder. Mr Waziri has felt a dreadful sense of loss and remains anxious and fearful. At night when he tries to sleep he hears the cries of the injured and dying.

[101] Shahzad Ali Zamurad is grateful that his injuries were relatively minor. He received a bullet injury to his ribs and bruises and cuts to his legs. He has, however, been deeply affected and struggles to deal with what happened to him. He is taking the small steps necessary to deal with his feelings and restore his health.

[102] Those also wounded at the Al Noor Mosque were: Azmat Hussain, who suffered multiple lacerations to his arm and a gunshot wound to his lower back; Muhammad Amin Nasir, who received a gunshot wound to his chest; Mohd Tarmizi Bin Shuib, who was shot in his lower back, as was Ahmede Yesuf; Aseel Sulaiman Alansari, who was shot in the leg; and MD Omar Jahid, who received a gunshot wound to his shoulder.

[103] At the Linwood Islamic Centre five people who you attempted to murder were left seriously wounded.

[104] Salwa Hossien El Shazly is a 68-year-old married woman with three adult children and five grandchildren. Since arriving in this country in 1996, she has been heavily involved in the Christchurch community. She was present at the Mosque with her husband, Ibrahim, and their youngest son, Mostafa. Mrs El Shazly was shot in the arm. She has physically recovered but, like all those present at the two mosques, she is deeply affected by having witnessed the murder of her friends and fellow worshippers. She is not the same person she once was, and because of the memories of what happened she is unable to return to the Linwood Mosque.

[105] Ahmed Iqbal Jahangir is still receiving ongoing treatment to repair nerve damage to his arm and will require further surgery. He has had to sell his restaurant and is unsure when he can return to work and to a normal life. He will likely have to take pain medication for the rest of his life, and remains deeply disturbed by what he experienced.

[106] Sahadat Mohammad was at the Mosque when he was shot in the shoulder. He has required four operations, including a bone graft. The injury is extremely painful and his shoulder will never be the same. Some pieces of the bullets are near his heart and some pieces in his lungs, which sometimes affects his breathing. They cannot be removed because the surgeons fear more damage will be caused by attempting to do so. Mr Mohammad is unsure whether he will be able to work as a chef again.

[107] Zulfirman Syah and his two-year-old son were shot. Mr Syah suffered a fractured back and ribs, injuries to his forearm and thigh and other life-changing critical injuries. The child was also hit by bullets and sustained internal injuries. Both carry fragments of those bullets in their bodies. Mr Syah lost consciousness while speaking to his wife on the phone from the floor of the Mosque as his little son lay with him for comfort on top of his seemingly lifeless body. The child is deeply traumatised from his experience. It is difficult to grasp the terrible physical and psychological impact on this family, and the resulting financial and emotional strain that has been inflicted upon them.

Terrorism victims

[108] The people who you killed and wounded were not the only victims. All those who were present or in the immediate vicinity of the two mosques have suffered deeply from their experience, as has the wider Muslim community.

[109] People witnessed scenes that no one should have to experience. They must live with those memories and the terrible fear they suffered that day. The severe debilitating effects of this lasting trauma and post-traumatic stress have been profound — anxiety, survivor guilt, fear, grief and anger are common. Many must also endure insomnia and nightmares and a continual deep sense of sadness. Some have been devastated from what they went through, and their lives forever altered.

[110] The mosques were places of sanctuary. This country too, considered internationally to be one of the safest and most secure in the world, was also seen as a place of refuge and safety by many who you targeted. I have little doubt that you chose to come to this country to target New Zealand's Muslim community for that very reason. As a result of your terrorism you have caused people to question their safety in their own community.

[111] The violation of houses of worship — places of peace reserved for prayer, family and community — has caused worshippers to doubt their safety at those places and people have lost confidence. Those intended effects of your crime must not be allowed to stand. Your victims have shown extraordinary resilience, but I cannot ignore the damage you have done to the sense of security and wellbeing of members of the Muslim community, both in Christchurch and more widely throughout New Zealand as a whole.

Personal background

[112] Mr Tarrant, you are a 29-year-old Australian man who travelled to live in Dunedin in 2017. You had no family or other apparent connections with New Zealand and have never sought employment here. Before or shortly after your arrival you began to plan a terrorist attack on people of this country.

[113] Your upbringing in a small New South Wales town was unremarkable. You have no criminal history. It appears that while travelling in Europe you developed deep-seated radical views regarding the migrant population of some Western countries and beliefs about the so-called "cultural displacement" of Europeans in those countries. You began formulating ideas of taking violent action against people — people you described as "the invaders", and in particular those of the Muslim faith.

You were attracted to and adopted the views of far right white supremacists.

[114] Having resolved to take violent action in furtherance of your extreme ideological beliefs, you used your time here to plan and prepare. Members of your family with whom you maintained some contact became increasingly concerned about your radical outlook and racist views. You adopted an isolated lifestyle, living alone in rented accommodation. Your focus appears to have been on following far right websites, acquiring high powered firearms — some of military specification, large amounts of ammunition of various calibres, and other military paraphernalia and equipment. You obtained a New Zealand firearms licence and practised the use of your guns at various rifle clubs. Apart from some further travel in December 2018, your sole objective was the planning and execution of your long-conceived plan to attack the Muslim community.

[115] You have no apparent mental disorders or psychiatric conditions, nor do you present with any clinically significant cognitive impairments. One of the psychiatrists who assessed you last year described you as proudly seeing yourself as a “white European ethno-nationalist” who has an “air of superiority and grandiosity which may reflect narcissistic traits”. However, there was insufficient information to make a formal diagnosis of any personality disorder. You are described as having held unusually racist beliefs since your late teens that have developed and intensified through your adult life.

[116] A clinical psychologist considered you displayed a range of traits akin to personality dysfunction but that they did not reach the level of severity to constitute a full-blown personality disorder or clinical syndrome. Your choice of violence as a solution to your anger at perceived so-called “population and cultural displacement” in Western countries was assessed as being an expression of distorted attitudes and impaired judgement that align with your maladapted personality traits and extreme overvalued beliefs.

[117] More recently you purport to have disavowed the political and ideological views that you sought to use to justify your crimes. You now claim to have abandoned these ideas completely and that you no longer believe in the things that led you to commit these terrible crimes. You have described those beliefs to the pre-sentence report writer as “not real”, that you were at the time in a “poisoned emotional state” and “terribly unhappy”. You said you felt ostracised by society and that you wanted to damage society as an act of revenge.

[118] In the weeks preceding your sentencing you told a psychiatrist that you were not thinking logically or rationally at the time of your offending and that you were acting on “delusional beliefs” that you referred to as “romantic or idealistic notions” that your death would be in the name of a cause. You suggested that as you descended into a more depressed state your thoughts became more extreme. You claimed, in going through with your plans, to have been seeking a violent end and this was the means to achieve it.

[119] This attempt by you to rationalise your actions is at odds with the account you willingly gave in the wake of your killings to police and health assessors, that your crimes were committed in the context of war against “invading” populations, and to whom you described yourself as a “partisan”. A psychiatrist who has recently interviewed you does not believe that depression was your dominant mood in the period leading up to the attacks. Far from the usually diminished interest or pleasure in almost all activities typically seen during a major depressive episode, in your case, you engaged in extensive research and planning during this time and wrote your manifesto. That exercise required you to concentrate for long periods and is

inconsistent with someone suffering from a major depressive episode. Whatever symptoms of a persistent depressive disorder you may have had, if any, they were not debilitating.

[120] While you may have contemplated the risk of your death in carrying out your crimes, it is striking that you were at pains to avoid being shot at the time of your apprehension and that you were determined to survive. Your plan was to be captured alive and to use your subsequent interactions with the police and the court process to advance your ideological cause. I accept that insofar as you may have thought to use your trial as a platform, you discarded that opportunity when you pleaded guilty and have taken no steps in the course of this hearing to advance the ideology that motivated you.

[121] You have also claimed that you are not racist or xenophobic and that you did not target your victims because of their ethnicity or religion. The facts show otherwise. You have held longstanding discriminatory views against ethnic minorities that clearly evolved from your own experience, research and interaction with likeminded individuals over a relatively long period, and developed to become violently focussed on a hatred towards Muslim people. Your misconduct while on remand, at least during the early period of your incarceration, has been described as involving offence-paralleling behaviour and is said to mirror the objectives of your offending.

[122] The reliability of your changing views is described by the health assessors as questionable and is viewed as evidence of the labile nature of your personality and related mood swings. Your recent self-generated denunciation of your extreme ideology requires circumspection. It is uncorroborated, self-serving and a relatively recent phenomenon. The Court must exercise caution in assessing the genuineness of your claims that a holder of such extremist views, who is capable of manifesting those beliefs with such homicidal violence, is prepared to abandon them so easily.²

[123] You have acknowledged that “nothing good” came from your crimes. While you accept what you did was — to use your words — “abhorrent and irrational”, it is not apparent, despite your claims, that you are genuinely remorseful beyond being regretful for the situation that now faces you. As far as I am able to gauge, you are empty of any empathy for your victims. You remain detached and appear entirely self-centred. You have not displayed any discernible distress at your offending, which you recollect to the health assessors in an abstract and unemotive fashion. Stripped of your warped ideological and political trappings, you present as a deeply impaired

² See *R v Mohamed* [2019] VSC 498 at [139].

person motivated by a base hatred for people who you perceive to be different from yourself.

Sentencing purposes

[124] Mr Tarrant, in sentencing you my prime objectives are threefold. First and foremost, to condemn your crimes and to denounce your actions. Second, to hold you accountable for the terrible harm you have caused — in plain terms, to attempt to impose some commensurate punishment. I do that on behalf of the whole community, which in particular includes the victims of your crimes and their families, all of whom are a part of New Zealand’s multicultural society. Third, there is the need to protect the community from a person capable of committing cold-blooded murder on such a scale and who presents such a grave risk to public safety.

[125] A predominant feature of your offending is that your homicidal actions constituted an act of terrorism and that your victims were targeted predominantly

because of their religion but also their ethnicity, their race and their colour. I am required to impose a sentence that appropriately takes into account and reflects those particular aggravating features of your crimes and the distorted motivations that lay behind them.³

The starting points

[126] On the 51 charges of murder the sentences can only be ones of life imprisonment.⁴

[127] Attempted murder carries a maximum sentence of 14 years' imprisonment.⁵ You have been convicted of attempting to murder 40 people. It is plain you tried to kill many more on 15 March. After your arrest you told police that you regretted not doing so. Of the 40 survivors who were shot by you and in respect of whom you were charged with attempting to murder, almost all suffered very serious life-threatening

³ Sentencing Act 2002, s 9(1)(h) and (ha).

⁴ Crimes Act 1961, s 172; and Sentencing Act, s 102(1).

⁵ Crimes Act, s 173(1).

wounds. Many would have died but for the actions of fellow worshippers, passing civilians, police and paramedics, and the doctors and nurses of Christchurch Hospital.

[128] Many of the surviving victims have suffered major and permanent life-altering physical injuries and deep disabling mental trauma. Their lives have fundamentally changed. The Sentencing Act (the Act) directs that the maximum penalty prescribed for an offence must be imposed for offending that is within the most serious of cases for which that penalty is prescribed.⁶ These are such offences.

[129] Similarly, because your act of terrorism comprised the deliberate taking of so many innocent lives and the wounding and maiming of so many people, I consider the maximum sentence of life imprisonment can be the only commensurate starting point for the commission of such a crime.⁷

Sentencing for murder and terrorism

[130] Where an offender is sentenced to life imprisonment for murder the Court must order the offender to serve a minimum period of imprisonment.⁸ That term must not be less than 10 years and must be the minimum term the Court considers necessary to hold you accountable for the harm you have done, to denounce your conduct, to meet the needs of deterrence and to protect the community.⁹ If no minimum term of imprisonment would be sufficient to satisfy any one of those sentencing purposes, the Act provides that I may order that you serve your sentence without parole.¹⁰

[131] Accountability, denouncement, deterrence and protection of the community must be the Court's focus. Those considerations are not to the exclusion of other purposes and principles of sentencing. However, the length of a minimum period of imprisonment for murder and the assessment of the adequacy of any such term is to be measured against those sentencing objectives.¹¹ Aggravating and mitigating factors are applicable to the extent they are relevant to those specified purposes.¹²

⁶ Section 8(c).

⁷ Terrorism Suppression Act 2002, s 6A(2); and Sentencing Act, s 8(c).

⁸ Sentencing Act, s 103(1).

⁹ Sentencing Act, s 103(2).

¹⁰ Section 103(2A).

¹¹ R v Walsh (2005) 21 CRNZ 946 (CA) at [28]; and Malik v R [2015] NZCA 597 at [28].

¹² Walsh, above n 11, at [26].

[132] Those sentencing objectives also reflect the primary sentencing considerations that have been taken into account for terrorism offending in Australia and the United Kingdom.¹³ Personal mitigating factors, including rehabilitation, are to be given less weight.¹⁴ Because of the ideological motivations of terrorism offenders, community protection and general deterrence are to be afforded greater importance notwithstanding that the force of such motivations may mean that such deterrence may not be effective.¹⁵ However, an order to serve a sentence of life imprisonment without parole can only attach, in this country, to a sentence imposed for murder. Sentence of life imprisonment without parole

[133] An order that a murderer serve their sentence of life imprisonment without parole has not previously been made in this country. This Court has taken the view in the particular circumstances of other cases that the requisite objectives of sentencing could be achieved by the imposition of a finite minimum term.¹⁶ That approach has been taken in the knowledge that the sentence of life imprisonment means just that. Unless after the elapse of the minimum period of imprisonment the Parole Board can be satisfied that an offender can be safely released into the community, a person sentenced to life imprisonment will spend the rest of their life in prison.

[134] The longest minimum non-parole period imposed in this country was 30 years for the murder of three people and the attempted murder of another during the course of an aggravated robbery.¹⁷ A sentence of life imprisonment without parole was not

13 R v Alou (No 4) [2018] NSWSC 221, (2018) 330 FLR 402 at [165], as cited by Taylor J in R v Shoma [2019] VSC 367 at [54]; R v Lodhi [2006] NSWSC 691, (2006) 199 FLR 364 at [92]; Lodhi v The Queen [2007] NSWCCA 360, (2007) 179 A Crim R 470 at [274]; and R v Khazaal [2009] NSWSC 1015 at [47].

14 Alou (No 4), above n 13, at [166]; R v Lodhi, above n 13, at [89]; Lodhi v The Queen, above n 13, at [274]; Khazaal, above n 13, at [41]; and Regina v Kahar [2016] EWCA Crim 568, [2016] 1 WLR 3156 at [19].

15 Alou (No 4), above n 13, at [167]–[169]; and Director of Public Prosecutions (Cth) v Besim [2017] VSCA 158 at [112]–[113].

16 R v McLaughlin [2013] NZHC 2625 at [32]; and R v Tainui [2019] NZHC 626 at [53].

17 R v Bell CA80/03, 7 August 2003. The next longest minimum periods of imprisonment (MPIs) imposed on life sentences in New Zealand to date are as follows:

(a) Tainui, above n 16 — 28 years. Mr Tainui broke into the victim’s home and waited overnight for her to return. He bound and gagged her before raping her, then stabbed her, strangled her, and cut her throat nearly to the point of decapitation. He had committed an almost identical murder in 1994.

(b) R v Tully [2016] NZHC 1133 — 27 years. Mr Tully was found guilty on two charges of murder and one of attempted murder after entering the offices of Work and Income New Zealand with a pump-action shotgun. He fired the shotgun at four employees,

available at the time. The ability to order that a murderer serve their sentence without parole was introduced in 2010 in response to a perceived societal concern regarding repeat violent offenders and the worst murder cases.¹⁸ An identified need was to relieve victims of the stress of having to attend parole hearings in the knowledge of the offender’s potential release.¹⁹

[135] At the time of its introduction the Government acknowledged that the

imposition of life imprisonment without parole would be infrequent. However, unlike other jurisdictions, little statutory criteria or guidance was prescribed for when such an order would be appropriate.²⁰ In the few New Zealand cases where the issue has been considered, this Court has observed that the grounds for making such an order need to be clear and obvious, and the objectives of sentencing not otherwise achievable by imposing a minimum period of imprisonment.²¹

[136] In the United Kingdom a sentencing court when imposing a life sentence for murder may have regard to whether the seriousness of the offence or combination of offences is exceptionally high. Cases that would normally fall within such a category include the murder of two or more persons where each murder involves a substantial degree of premeditation or planning, and a murder that is done for the purpose of advancing a political, racial or ideological cause — criteria that apply to your crimes.²²

[137] If the “exceptionally high” test is met, then the appropriate starting point is, as it is termed in the United Kingdom, a whole life order, being a life sentence served without parole. After considering any mitigating or other aggravating factors not already taken into account, should the sentencing court consider a whole-of-life sentence to be appropriate it may make such an order.²³

killing two and injuring a third.

Other lengthy MPIs imposed on charges of murder include: *R v Burton* HC Wellington CRI-2007-085-736, 3 April 2007 — 26 years; *R v Howse* [2003] 3 NZLR 767 (CA) — 25 years (for the murder of two young girls in their beds); and *Robertson v R* [2016] NZCA 99 — 24 years.

¹⁸ Sentencing and Parole Reform Act 2010, s 10(3).

¹⁹ Cabinet Paper “No parole for worst repeat violent offenders and worst murder cases” (5 December 2008) at [24]; (18 February 2009) 652 NZPD 1421; and (25 May 2010) 663 NZPD 11227.

²⁰ Cabinet Paper, above n 19, at [24] and [26]; and Criminal Justice Act 2003 (UK), s 269(4).

²¹ McLaughlin, above n 16, at [32]; and *Tainui*, above n 16, at [51].

²² Criminal Justice Act, sch 21 para 4.

²³ Criminal Justice Act, s 269(4) and sch 21 para 4; *R v Mair* (Crown Court, 23 November 2016) per Wilkie J and *R v Adebolajo* (Crown Court, 26 February 2014) per Sweeney J are two examples from England and Wales where whole life orders were made — *Mair* involved the murder of a

[138] In this country, Parliament has provided that a life sentence without parole can be imposed in the case of the worst murders if the Court is satisfied that no minimum term would be sufficient to satisfy the prescribed purposes of sentencing an offender for such a crime.²⁴ When that statutory criteria is met, the Court has a discretion to impose a whole-of-life sentence. However, the Court must not impose a punishment that is disproportionately severe — that is a sentence that is “grossly disproportionate” to the circumstances of the offending and the offender.²⁵

[139] There is European jurisprudence that indicates the imposition of a whole-of-life sentence in the absence of any effective review mechanism is incompatible with international human rights instruments.²⁶ The limited grounds afforded under our legislation for release on compassionate grounds may not be considered as providing

Member of Parliament who was stabbed and shot on her front doorstep by an offender to advance his ideology of “violent white supremacism and exclusive nationalism most associated with Nazism in its modern forms” (*Mair*, above, at 2). In

Adebolajo two offenders killed a British soldier in public near his barracks in an act of terrorism. Both espoused extremist religious views. In *R v Adebolajo* [2014] EWCA Crim 2779 the English Court of Appeal refused the offender's fresh application for leave to appeal his whole life order, rejecting his contention that his crimes were motivated by simple religious hatred or should be considered the equivalent of an ordinary murder of a police officer. It found the murder was committed for political and ideological purposes and said "we can see no conceivable basis upon which it can be argued that a whole life order was not the just penalty for such a horrific and barbaric crime" (at [45]). In *R v Abedi* (Crown Court, 20 August 2020) Jeremy Baker J sentenced an offender who played an "integral part" in the planning and preparation of his brother's suicide bombing of the Manchester Arena in 2017. His Honour sentenced the offender to life imprisonment but found himself unable to impose a whole of life sentence because the offender was under 21 at the time (Criminal Justice Act 269(4)). His Honour said (at [29]) that he had no doubt that but for the statutory bar, a whole life sentence would have been the only just sentence. He found minimum terms of 35 and 40 years on two of the counts were required. 24 Sentencing Act, s 103(2A).

25 New Zealand Bill of Rights Act 1990, s 9; *R v Harrison* [2016] NZCA 381, [2016] NZLR 602 at [78]–[83]; *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429 at [176] per Blanchard J, [91] per Elias CJ, [286] per Tipping J and [340] per McGrath J; and *Vaihu v Attorney-General* [2007] NZCA 574, (2007) 8 HRNZ 403 at [36]. In *Fitzgerald v R* [2020] NZCA 292, the Court of Appeal summarised the Supreme Court's discussion in *Taunoa* of the "high threshold" in s 9 of the Bill of Rights Act, as follows:

[42] ... the judgments delivered by the Supreme Court referred to punishment or treatment that is "grossly disproportionate to the circumstances", that goes "well beyond punishment or treatment which is simply excessive, even if manifestly so", that is "so excessive as to outrage standards of decency", that would "shock the national conscience", or the severity of which is "such as to cause shock and thus abhorrence to properly informed citizens". This assessment must be made by reference to the values and standards of New Zealanders.

[43] The threshold established by *Taunoa* is a high one. It is not enough that the punishment prescribed for Mr Fitzgerald is, as we concluded above, manifestly unjust or manifestly excessive. It must be grossly disproportionate, and such as to cause shock to properly informed citizens...

(Footnotes omitted)

26 *Vinter v United Kingdom* Grand Chamber, ECHR 66069/09, 9 July 2013; and European Convention on Human Rights, art 3 (prohibition on, relevantly, inhuman or degrading treatment or punishment).

a meaningful process of review of a life sentence without parole, but it remains unclear whether such a sentence without the possibility of review would in all circumstances breach the New Zealand Bill of Rights Act 1990.²⁷

[140] The Court of Appeal has examined the interpretation and application of the law, collectively referred to as the "three-strikes legislation", that provides the Court with the power to impose a whole-of-life sentence for murder notwithstanding there having been no previous offending.²⁸ The Court of Appeal's focus was on offenders convicted of murder who have received a first or final warning and who this Court must sentence to life imprisonment without parole unless satisfied it would be manifestly unjust to do so.²⁹

[141] In examining how that exception should be approached in the face of the

statutory presumption of a whole-of-life sentence, the Court of Appeal emphasised the essential need to comply with the constitutional requirement that the sentence must not be grossly disproportionate.³⁰ By this Court approaching its task in that way, the tension between the imposition of a sentence of life imprisonment without parole, as mandated by Parliament, and the need to avoid a disproportionately severe punishment can be reconciled.³¹

[142] There is no express presumption in favour of the imposition of a whole-of-life sentence once the Court is satisfied that no minimum term of imprisonment can satisfy one or more of the listed purposes to which it must have regard.³² However, while the discretion, once engaged, does not on its face appear to be constrained, the construction of the relevant section of the Act is such that once the Court has reached that position, the legislative intent that a whole-of-life sentence will be imposed appears plain.³³ Arguably, the language of the Act admits of no other interpretation,

27 Parole Act 2002, s 41; Harrison, above n 25, at [92]; New Zealand Bill of Rights Act, s 9 (prohibition on relevantly cruel, degrading or disproportionately severe treatment or punishment).

28 Harrison, above n 25.

29 Sentencing Act, s 86E.

30 Harrison, above n 25, at [110].

31 Harrison, above n 25, at [78], [107], [110] and [121].

32 Sentencing Act, s 103(2A).

33 Where an offender is sentenced to life imprisonment for murder under s 103(1)(a), the Court must either:

(i) order that the offender serve a minimum period of imprisonment under that sentence; or

in which case, if the Court is satisfied the statutory threshold is met, a whole-of-life sentence must be imposed despite the constitutional implications.³⁴

[143] I have chosen for the purpose of sentencing you to proceed on the basis that the Court retains its residual discretion.³⁵ The overarching question therefore remains whether it would be grossly disproportionate to impose a life sentence without parole in the extraordinarily exceptional circumstances of this case where one or more of the requisite purposes of sentencing for murder cannot otherwise be achieved.

[144] In that regard, I note the Court of Appeal has recognised, although it did not decide the point, that a life sentence without parole (and implicitly without meaningful review) might be necessary to satisfy the societal requirements of accountability, denunciation, or deterrence.³⁶ In making that observation it cited the examples of murders involving terrorism, or extraordinary sadism or cruelty, and the murder of multiple victims. The Court observed that the statutory power provided by the Act “provides an appropriate mechanism to achieve these purposes through open judicial assessment unaffected by a presumption”.³⁷

(ii) if subsection (2A) applies, make an order under that subsection ...

Under subs (2) the minimum term of imprisonment must not be less than 10 years and must be the minimum term the Court considers necessary to satisfy the prescribed purposes of sentencing. Under subs (2A), if no minimum term would be sufficient to satisfy one or more of those purposes the Court may order that the sentence be served without parole. It follows from the preceding requirement of subs (1)(a) that should the Court have concluded that no minimum term would be sufficient, the Court has no other option than to order the sentence to be served

without parole.

34 New Zealand Bill of Rights Act, ss 4, 5 and 6; *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1 at [92] per Tipping J, [57]–[60] per Blanchard J and [192] per McGrath J.

35 See RI Carter Burrows and Carter Statute Law in New Zealand (5th ed, LexisNexis, Wellington, 2015) at 233–234, on the principle that criminal statutes should generally be construed in favour of the individual, consistent with Parliament’s purpose (“the penal presumption”). While the learned authors note this presumption has lost some of its force with the growing emphasis on purpose in statutory interpretation (at 234), they say “in cases of genuine doubt as to the meaning and purpose of a provision, the accused ... [is] still likely to get the benefit of the doubt” (at 236, footnote omitted). Here, Parliament deliberately chose to use the permissive “may” in s 103(2A) of the Sentencing Act; it must have intended to reserve a discretion for the Court. Thus, the penal presumption (by default) and the inferred statutory purpose in the use of “may” both support an interpretation that leaves a residual discretion to the Court.

36 Harrison, above n 25, at [84]–[85].

37 Harrison, above n 25, at [85]; and Sentencing Act, s 103(2A). In Harrison at [122], the Court of Appeal noted the observations of the Supreme Court of Canada in *R v Lloyd* 2016 SCC 13, [2016] 1 SCR 130 that there were various ways of ensuring mandatory minimum sentences meet constitutional standards, one of which was to provide “[r]esidual judicial discretion for exceptional cases ...” (at [36]). McLachlin CJ specifically identified ss 86E, 102 and 103 of the Sentencing Act (NZ) as illustrative of that method (at [36]). The Judge noted that the laws of other countries, including New Zealand, reveal a variety of approaches to residual judicial discretion, with the only requirement being that this discretion allows for a lesser sentence where the application of the

The offending

[145] In order to assess the length of the minimum period of imprisonment required to meet the applicable purposes of sentencing and to determine whether any minimum period would be sufficient to satisfy one or more of those purposes, the aggravating features of your crimes must be assessed. There are no mitigating features. In making that assessment, the Court is entitled to take into account all the circumstances of your conduct and the totality of your offending, including the fact that, in addition to killing so many people, you attempted to murder very many others and left scores wounded and maimed.

[146] There can be no question that the statutory criteria mandating the imposition of a minimum period of imprisonment of at least 17 years has been met.³⁸ Each murder was the product of calculated and lengthy planning and was committed with a high level of cruelty and callousness.³⁹ Some of your victims were children, others were murdered by you as they lay wounded and incapacitated.⁴⁰ If a minimum period of imprisonment was to be imposed, that bare summary of aggravating features would indicate a starting point considerably higher than 17 years. A single murder committed in such circumstances would warrant such a minimum term. Your act of terrorism resulted in the murder of 51 people and the serious wounding of 40 more.⁴¹ That is perhaps the most salient feature of your offending, but there are other particular aspects of your crime that require further articulation.

Premeditation

[147] As I have previously observed, you undertook long and extensive planning. In addition to acquiring high-powered firearms, you purchased in excess of 7,000 rounds of ammunition and bought equipment solely for the purpose of carrying out

your attacks. You modified the military style semi-automatic rifles in order to improve their rate of fire, and practiced their use. You obtained information about mosques located

mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate (at [36]).

38 Sentencing Act, s 104.

39 Sentencing Act, s 104(1)(b) and (e).

40 Sentencing Act, s 104(1)(g).

41 Sentencing Act, s 104(1)(ea) and (h).

in this country, including plans and photographs of their interiors, and the details of Muslim holy days and the times when the most people would be gathering for prayer.

[148] In January 2019, you travelled to Christchurch to carry out reconnaissance of the Al Noor Mosque. You flew a drone over the building, recording an aerial view of the Mosque's grounds, including the points of entry and egress. After settling on the targeted mosques, you analysed their layouts and the likely exit routes worshippers may take to escape. The sole purpose of this preparation was to kill as many people at each mosque as efficiently and as systematically as you could.

The use of high-powered firearms

[149] In order to kill as many people as you could, you obtained and used a number of powerful firearms that were able to deliver high rates of fire. These included two AR-15 .223 calibre military style semi-automatic rifles.

Mass killing

[150] You committed mass murder. You slaughtered unarmed and defenceless people. You maimed, wounded and crippled many others. Your victims include the young and the old, men, women and children. At one stage during your online commentary you referred to what was happening as a "firefight" — the absurdity of that lie reflected your need to mask the truth of your cowardly massacre of people who had no chance to protect themselves.

Brutal, cruel and callous violence

[151] It is self-evident that your offending constituted extreme violence. It was brutal and beyond callous — your actions were inhuman. You deliberately killed a three-year-old infant by shooting him in the head as he clung to the leg of his father. The terror you inflicted in the last few minutes of that small child's life is but one instance of the pitiless cruelty that you exhibited throughout. There are countless more examples. You showed no mercy.

The vulnerability of victims at a place of worship

[152] Other children were present — a two-year-old boy was shot and a four-year-old girl was another of your victims — as were the elderly. Wounded people who were incapacitated and unable to escape were despatched by you in cold blood, often at point-blank range. You shot people in the back and ignored the pleas of the wounded to be spared. You advanced on them, stood over them, and viciously took their lives.

[153] Most of your victims were at prayer. You violated places of worship where people came together for peace and fellowship. Like the rest of the country, the worshippers had no inkling of the terror and carnage that was about to be perpetrated.

A terrorist act

[154] It is difficult to look beyond the wicked nature of each murder and the pain and suffering you have caused to individual victims, to their families and loved ones. However, you are not only a murderer but a terrorist.

[155] Your actions go further than demonstrating contempt for the sanctity of life. In the name of a political or ideological cause, you sought to violently intimidate the community, and coerce the country's peaceable form of government and social order — essentially to attack New Zealand's way of life. The beliefs upon which you rely to justify your crimes are rooted in religious and ethnic antipathy and intolerance. The hatred that lies at the heart of your hostility to particular members of the community that you came to this country to murder has no place here. It has no place anywhere.
A hate crime

[156] New Zealand rightly places great value on its diverse and culturally rich community. It recognises the contributions made by people of many racial and ethnic backgrounds and of varied faiths and cultures. Extremist beliefs and ideologies that seek to promote violence and hate are anathema to the values of acceptance, tolerance and mutual respect upon which our inclusive society is based and which this country strives to maintain. Where warped and malignant ideology manifests itself in such violence and causes such appalling harm, it is incumbent on the Court to respond in a way that decisively rejects such vicious malevolence.

[157] Your crimes were met by an unprecedented public outpouring of love and support for the people you targeted and the wider Muslim community. Your design was to divide, but the public's response was to stand with the people of their community — with their fellow New Zealanders — to demonstrate their unqualified repudiation of your hateful agenda. You failed, but the individual and personal cost of the lives lost and the grievous wounds inflicted are immense.

Harm

[158] You have caused enormous loss and hurt. The taking of one life and the suffering of one family is an unbearable tragedy in its own right, but the widespread distress and despair you have inflicted by your offending is without precedent. You have caused terrible grief and lasting pain to so many people. Bereaved families have been left desolate and bereft. The human cost of the extraordinary harm you have done to your victims, to their families, and to the whole community is beyond measure.

Factors personal to the offender

Guilty pleas

[159] In sentencing you, I am obliged to take into account the entry of your guilty pleas.⁴² However, any credit that is to be given for pleading guilty must reflect all the circumstances in which the plea is entered, including whether it is to be regarded as an early or late plea, and the strength of the prosecution case. All relevant circumstances must be evaluated in order to truly gauge the mitigating effect of having pleaded guilty.⁴³

[160] The core justification for providing credit to an offender for pleading guilty is said to be the benefits that accrue to the criminal justice system and to its participants — what is referred to as the utilitarian value of an offender's plea.⁴⁴ However, your

⁴² Sentencing Act, s 9(2)(b).

⁴³ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [74].

⁴⁴ *Moses v R* [2020] NZCA 296 at [17], citing *Hessell*, above n 43, at [45]–[46]. guilty pleas were not entered until over a year after the events of 15 March and in the face of overwhelming evidence, including a full confession. This considerable delay was a source of further distress to victims and victims' families.

[161] You have recently claimed to have abandoned the ideology that motivated you

and that your initial pleas of not guilty were based on a false premise of what you earlier thought you were “fighting for”. Your current stance is contrary to the reasons for your admissions to police that were essentially made in furtherance of your cause. They were a manifestation of the twisted pride you took in what you had done and were made with the same objectives that you sought to achieve from the livestreaming of your crimes.

[162] The entry of your pleas may indicate some level of insight. You have chosen not to oppose the Crown’s application that you serve your sentences of life imprisonment without parole and you gave instructions to standby counsel to that effect. You told one of the health assessors that you considered the best course for yourself and your victims was to remain silent and say nothing, and that you did not wish to come across as showing remorse in order to obtain mitigation for what you did. To my observation, however, you remain entirely self-absorbed. You have offered no apology or public acknowledgement of the harm you have caused. There is little to indicate that your pleas denote any deeply-held sense of remorse for your victims or that you are particularly distressed at having caused such terrible grief.

[163] Your focus appears to be on yourself and the position you find yourself in. While I accept you have forsaken the opportunity to use this proceeding as a platform and appear now to accept that what you did was wrong, you appear neither contrite nor ashamed. Your regret appears centred on the waste of your own life in the realisation that your crimes were irrational and unjustifiable, rather than for the innocent lives that you have taken.

[164] The recognition that is to be afforded to guilty pleas is not limited to the motivation of the offender for their entry. The Crown has properly acknowledged that, even if not a marker of true remorse, there remains a benefit to the justice system from

an offender pleading guilty, and merit in having saved victims the trauma of reliving events through a trial which I am required to take into account in sentencing you.

[165] For murder there is a statutory presumption that a life sentence will be imposed. The isolated fact that a murderer has pleaded guilty will not by itself be sufficient to disturb the imposition of that indeterminate sentence. It has been submitted that the only meaningful way of recognising your guilty pleas is for the Court to step back from the imposition of a sentence of life imprisonment without parole. However, I do not consider the entry of your guilty pleas in relation to such a binary issue has that effect.

[166] As with the aggravating features of your offending, all mitigating factors are required to be taken into account when assessing whether the prescribed purposes of sentencing in respect of the charges of murder can be satisfied. Having weighed all the relevant circumstances, I do not consider your guilty pleas, either alone or in combination with any other matters personal to you, would be capable of displacing a sentence of life imprisonment without parole, should that be the conclusion I reach. I do not consider that mitigating aspect is sufficiently strong to have such a profound influence on the final effective sentence. Should a minimum term of imprisonment be adequate, an appropriate adjustment can be made.

[167] For the same reasons, I consider a sentence of life imprisonment for a terrorist act that involves the massacre of so many people and that was undertaken in an attempt to kill so many more, cannot be moderated to any lesser finite sentence because the offender has finally faced the inevitability of his conviction and pleaded guilty. I reach that conclusion despite there being no statutory presumption that such an indeterminate sentence is to be imposed for that crime.⁴⁵

[168] If necessary, the benefit of the entry of your pleas can be marked by making an appropriate adjustment to the sentence that would otherwise be imposed on the 40 charges of attempted murder. That outcome may ultimately only be of symbolic effect, but I consider in the extraordinary circumstances of this case that such a result may be unavoidable.

45 Terrorism Suppression Act, s 6A(2).

Absence of prior offending

[169] When you committed these crimes you had no prior history of criminal offending. Whether an offender's otherwise clean record or good character can mitigate a sentence is heavily dependent on the offender's background and the circumstances of the offending. In your case, I consider any credit for prior good conduct would be entirely incongruous with the enormity of your crimes and the long period of their gestation, during which you took a series of careful preparatory steps in full knowledge of the harm you were seeking to achieve.

Prospects of rehabilitation

[170] It has been argued that your lack of prior offending, together with your guilty pleas and the claimed motivation for their entry, are relevant to your prospects of rehabilitation and to the core issue of whether life imprisonment without the possibility of parole is necessary in your case. It was submitted that your abandonment of your cause and change of plea is an indicator of a level of insight, and it is argued there is some hope of rehabilitation which of itself is an important purpose of sentencing.⁴⁶

[171] The objective of rehabilitation is to secure the eventual successful reintroduction of an offender back into society. Such an outcome will ordinarily provide a tangible benefit to the community and is one of the essential aims of an enlightened system of criminal justice. I accept that no matter how appalling the crime, the potential for rehabilitation must always give a sentencing court cause to pause. It is a further aspect that I have taken into account in making my overall evaluation of the appropriate effective sentence, but I remain unmoved.

[172] The distribution of your manifesto, the livestreaming of your crimes, during which you addressed your online audience and provided a running commentary; and the affectation of decorating your weapons and playing music, were all undertaken to obtain maximum attention and notoriety both to yourself and your cause. You saw your interview with police as an opportunity to boast about what you had done and to rationalise your actions. If anything more is required beyond your murder of innocent

46 Sentencing Act, s 7(1)(h).
lives, these features point to the depth of your motivation, as does the long period of time over which you planned this terrorism and the lengths you went to execute your ideologically-driven crimes.

[173] I am sceptical of your recent representations of having abandoned the ideology that motivated you. You have admitted having lied in the course of earlier assessments and both health assessors express reservations regarding the extent to which your most recent statements and changing motives can be relied upon. Your admission that you were aware that what you intended to do was wrong, and yet, that you went ahead despite such knowledge, points both to the hold your extremism had over you and its potential to continue to influence you in the most catastrophic of ways.

[174] While you have expressed a willingness to engage in some form of restorative justice process in the future, it is not apparent from the reports I have read that you have shown much interest in your victims, let alone any remorse or empathy for the

people you have killed and wounded, or for the wider harm you have caused. You have to date been dismissive of any potential rehabilitative interventions. While perhaps reflective of your fluctuating moods, your past responses have been that you do not want help; that professionals do not have the training or expertise to deal with your issues. More recently you have indicated an unwillingness to engage with the Department of Corrections.

Strict custodial conditions

[175] In sentencing you, I have also taken into account the undoubtedly stricter conditions of custody to which you will be subject. I accept that at least for the initial period of your sentence those custodial conditions will be onerous. They are of course to a large extent the product of the enormity of your crime but, in assessing the punitive effect of your incarceration, I am cognisant of their particularly restrictive nature.

Sentencing decision

[176] In assessing the question of sentence, I am mindful that a prime function of the criminal law is to protect the community from crime. Whether in seeking to punish an offender, or in trying to deter or reform, the purpose of imposing sentence is ultimately to protect society. The more damaging and grave the crime the greater that need becomes. That objective of the criminal law is not to be confused with protecting the community from a particular offender, although I consider you to be a highly dangerous criminal who demonstrably has no regard for human life and who represents a very high risk of harm to others.

[177] By having regard to the circumstances of the offence and the offender, the sentence should accord with the general moral sense of the community.⁴⁷ A crime is a public wrong, and the public dimension of sentencing and the maintenance of public confidence in the criminal justice system must be kept in mind. The sentence I impose must be one that reflects the community's repudiation of your crimes. It must represent a civilised reaction based not on emotion but justice and deliberation.⁴⁸ The Court cannot impose significantly heavier or more severe punishment than is properly justified nor beyond that required for the protection of the public interest. However, so long as the Court's response is proportionate, society is entitled to expect the most severe penalties to be imposed to mark its condemnation of the worst crimes.⁴⁹

[178] The retributive nature of the public punishment of crime represents a statement of society's indignation and condemnation of the offending. By the imposition of sentence, the Court's denunciation and, through the Court, society's abhorrence of particular crimes is demonstrated. While public opinion and populist urgings cannot be allowed to steer sentencing, the consequences of the crime for the victims and their families, and for the community as a whole, can be major factors that push accountability to the fore. The seriousness of the offending and the sanctity of life may leave little room for other than a denunciatory sentence that marks society's condemnation of the crime.⁵⁰ This clearly is such a case.

[179] Having given the matter much consideration, I am satisfied that no minimum period of imprisonment would be sufficient to satisfy the legitimate need to hold you

47 R v Cuthbert [1967] 2 NSW 329 (NSWCCA) at 330; and Regina v Howells [1999] 1 WLR 307 (CA) at 312.

48 R v Puru [1984] 1 NZLR 248 (CA) at 249.

49 Puru, above n 48, at 254.

50 Sargeant v R (1974) 60 Cr App R 74 (CA) at 77 per Lawton CJ, cited in Geoff Hall Sentencing Law and Practice (3rd ed, LexisNexis, Wellington, 2014) at 103.

to account for the harm you have done to the community.⁵¹ Nor do I consider that any minimum term of imprisonment would be sufficient to denounce your crimes.⁵² The nature and circumstances of your offending, unprecedented in this country, are such that I consider the requirement that you serve your sentences of life imprisonment for murder without parole is a necessary sanction that provides a proportionate response.

[180] If I was to impose a minimum period of imprisonment in an endeavour to meet the purposes that I am required to achieve in sentencing you for murdering 51 people, it could not be less than your natural life. If the murders at the two mosques were approached as separate attacks, each realistically would have to attract minimum terms in the region of 40 years. In the case of the Al Noor Mosque where you murdered 44 people, a significantly higher term would have to be imposed. Even after factoring in your guilty pleas, that feature is quickly superseded by the need to reflect the associated offending that includes your convictions for attempting to murder 40 other people, all of whom suffered serious gunshot wounds and, most, lasting life-altering injuries. In committing this terrible act you of course attempted to kill many more.

[181] Various invidious approaches and calculations could be undertaken to quantify the unquantifiable in an endeavour to fix a term that meets the statutory criteria. In my view the Court must stand back and assess whether a minimum term could be arrived at that meets the required purposes of sentencing and whether that assessment would not result in the same outcome as an order that you serve your sentences of life imprisonment without parole. I have concluded there is no minimum term of imprisonment available to me that would not otherwise equate to a whole-of-life sentence.

[182] The question that has arisen for me is how can a free and democratic society adequately respond to a crime of such exceptional seriousness — that takes the lives of innocent men, women and children on such a wholesale scale with such animus, and with such malice and callous indifference? Parliament has provided a sanction for such crimes in the form of a life sentence without parole that can only be imposed in the case of the very worst murders. Its use must be taken to have been intended

51 Sentencing Act, s 103(2)(a).

52 Sentencing Act, s 103(2)(b).

only when the circumstances clearly warrant its imposition. The unavoidable rhetorical question in sentencing you today is, if not here, then when?

[183] The need to make an order that you serve your sentence without parole does not primarily arise from deterrence nor from the need to protect the community from you, powerful as both considerations are when dealing with an offender capable of such terrible crimes and the necessity of delivering a cogent message that the commission of such an atrocity will be met with the most condign response.

However, I am mindful that as the years pass and you become a much older man, the risk you pose could be reassessed. The need for deterrence is also clear but the deluded motivation of zealots capable of such crimes, with their overvalued beliefs that feed such extreme violence, are less likely to be tempered by the fear of penal consequences no matter how severe.

[184] Your crimes, however, are so wicked that even if you are detained until you die, it will not exhaust the requirements of punishment and denunciation.⁵³ Those legitimate penological grounds for continued detention will remain.⁵⁴ At nearly 30 years of age, you are a relatively young man and the justifications for your continued

detention over time may shift as the years pass. Some may change but I do not consider, however long the length of your incarceration during your lifetime, that it could, even in a modest way, atone for what you have done. Ordinarily such an approach would be a poor guarantee of just and proportionate punishment, but I consider yours is one of those exceedingly rare cases which is different.

[185] For completeness, I record that if I am wrong to sentence you on the basis that the Court retains a residual discretion to decide whether to impose a life sentence without parole, despite having concluded that no minimum term of imprisonment would be sufficient to hold you to account for the harm you have done, or to denounce your conduct, a whole-of-life sentence would have to follow in any event.

In the

53 At [181]–[183].

54 Sentencing Act, s 103(2). *Regina v McLoughlin* [2014] EWCA Crim 188, [2014] 1 WLR 3964 at [14]–[17], citing Lord Judge CJ in *Regina v Oakes* [2012] EWCA Crim 2435, [2013] QB 979 at [9]–[10], summarising the views expressed by Lord Bingham CJ in *Regina v Secretary of State for the Home Department, ex parte Hindley* [1998] QB 751 (QB) at 769, and by Lord Steyn in *Regina v Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410 (HL) at 417.

absence of any rights-consistent meaning being able to be given to the relevant provision of the Sentencing Act,⁵⁵ the Court would be obliged to follow Parliament's directive to make such an order where the statutory criteria has been met, notwithstanding any inconsistency with the Bill of Rights Act.⁵⁶

[186] You will now stand.

Sentence

[187] On each of the 51 charges of murder (charges 1-51) you are sentenced to life imprisonment. I order that you serve the sentences without parole.⁵⁷

[188] On each of the 40 charges of attempted murder (charges 52-91) you are sentenced to concurrent terms of 12 years' imprisonment.

[189] On the charge of committing a terrorist act (charge 92) you are sentenced to life imprisonment.

55 Section 6 of the New Zealand Bill of Rights Acts binds the scope of a court's power to exercise a statutory discretion; see Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [7.13.5]–[7.13.6]. However, where there is no other “tenable” meaning (see Hansen, above n 34, at [5] and [25] per Elias CJ, [149] per Tipping J, [179] per McGrath J and [288] per Anderson J) than that meaning ascertained as “Parliament's intended meaning” at step 1 of the Hansen analysis (Hansen, above n 34, at [92] per Tipping J, [57]–[62] per Blanchard J and [192] per McGrath J), the discretion is as fulsome as expressed in the statute, regardless of any rights-inconsistency. As commented by the learned authors in Butler and Butler, above (at [7.13.1]):

The deployment of s 6 of BORA is particularly likely to occur in the context of generally-worded statutory discretions. This is most likely to occur where the application of BORA rights will add to the range of relevant considerations, or recalibrate the weightings to be given in exercising statutory discretion, so long as it does not destroy the perceived purpose and range of the discretion.

(Emphasis added)

As this Court said in *Re AMM* [2010] NZFLR 629 (HC) at [32], “the Court must approach a s 6 exercise with due regard to the principle of Parliamentary sovereignty that underlies s 4 of BORA”. Here, Parliament clearly intended a whole-of-life

sentence to be available to the Court where the statutory trigger was engaged. Section 103 of the Sentencing Act was specifically amended, in clear terms, to introduce the discretion to impose life without parole. On this analysis, s 4 of the New Zealand Bill of Rights Act entitles the Court to exercise that discretion in the very worst cases of murder, regardless of any potential rights-inconsistency.

56 Sentencing Act, s 103; New Zealand Bill of Rights Act, s 4.

57 Sentencing Act, s 103(1) and (2A).

Destruction of exhibits

[190] There will be an order for the destruction of exhibits listed in the schedule attached to the summary of facts save for item 50241, the disposal of which is reserved.

Health assessors' reports

[191] I also direct that the four psychiatric and psychological reports prepared for this proceeding be made available to the Department of Corrections.

Strike warning

[192] Because you have been convicted of murder and attempted murder, the three-strikes legislation applies to you. Although it is an entirely empty exercise, I am required by the Sentencing Act to give you a formal warning about the consequences of further violent offending, though the reality of your sentence today is that it will have no practical effect.⁵⁸ Nevertheless, the warning is this: if you commit a further serious violent offence, you will also serve the resulting sentence without parole. If ever convicted of murder again, you will be sentenced to life imprisonment without parole. The full terms of this warning will be supplied to you in writing.

[193] Stand down.

Solicitors:

Crown Solicitor, Christchurch

Copies to:

Mr Tarrant

Philip Hall Queen's Counsel, Christchurch

Kerry Cook, Barrister, Christchurch

58 Sentencing Act, s 86B.