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UNTIL FINAL DISPOSITION OF TRIAL**

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

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

**CRI-2017-063-003504
[2018] NZHC 2605**

THE QUEEN

V

MARTIN HONE

Hearing: 5 October 2018
Appearances: A Hill for the Crown
W Lawson for Defendant
Sentenced: 5 October 2018

SENTENCING NOTES OF VENNING J

Solicitors:
Lance Lawson, Rotorua
Crown Solicitor, Rotorua

[1] Mr Hone you may remain seated. I will tell you when you need to stand.

[2] You are for sentence this morning in this Court in relation to two charges of murder, two of threatening to kill and one charge of manufacturing methamphetamine.

[3] At the outset, I acknowledge the presence of members of the victims' families in Court. This morning I have heard the victim impact statement read by Ms Bronwyn Fleet but I have also read and considered the other victim impact statements that are on the file. As the Sentencing Act 2002 requires I have taken into account the effect Mr Hone's actions have had on you. The sentence I impose, and I want you to understand if at all possible, is imposed on behalf of the community in response to the serious offending that will be detailed. It is not meant to be and it never could be a measure of the value of Raymond and James' lives. In the course of the sentence it will be necessary for me to refer to the details which will be distressing to you. But I must refer to the relevant circumstances in open Court as part of this Court's public function in sentencing Mr Hone.

[4] I now deal with some preliminary matters.

Preliminary matters

[5] Mr Hone, you pleaded guilty to these charges following the sentence indication. As counsel noted in the pre-sentence report for today there is a suggestion that when the probation officer spoke to you, you denied being involved in the assault on the victims which led to their deaths. Counsel has clarified that with you. I understand you say that you told the writer that you pleaded guilty on advice and there was a miscommunication. Mr Lawson has confirmed to the Court the decision to plead guilty was your decision on advice and you are ready to proceed to sentencing on the basis of the guilty pleas entered.

[6] Next, counsel filed a memorandum seeking an adjournment of the sentencing to enable preparation of a "section 27 report". I declined that application. The provisions of s 27 of the Sentencing Act are clear. An offender may request the Court to hear from any person called by them to speak on matters referred to under s 27(1). Under s 27(5) the Court may also suggest it would be assisted to hear from such a

person called by the offender on any of the matters specified in subs (1). But s 27 does not provide a mechanism for judges to direct the preparation of cultural reports.

[7] Section 8(i) of the Act directs the Court as to the circumstances in which it must take into account an offender's personal, family or whanau, community and cultural background in imposing a sentence. The particular wording concerning cultural information generally is repeated in both s 26(2)(a) and s 27(1)(a). The structure of the Act suggests that where cultural and family information is required to be provided in a formal report to the Court it is to be provided in the pre-sentence report called for and provided for under s 26. Section 27 prescribes a quite different and more informal process.

[8] Of course a defendant may present information to the Court which they consider may be of assistance to the Court. Examples are medical and psychiatric reports, references and letters from their own family members.

[9] In the present case I have the pre-sentence report and a psychiatric assessment. Given the information in those and the circumstances of your offending, there is no suggestion that the Court would gain any further assistance from any further general information.

[10] The final preliminary matter is your appearance this morning. I should record that Mr Lawson had requested you appear by AVL. On your instructions you were suffering from a blood clot in your lung and had a posterior cruciate ligament tear in your knee. It is however important that sentencing for serious offending such as homicides be dealt with in person in the Court and in the community closest to where the offending occurred. I requested counsel to obtain a medical report to ascertain whether there was any impediment to your travelling to attend Court for sentence. He was unable to obtain such a report and I confirmed the interests of justice supported your attending in person.

[11] I turn to the brief following summary of the offending from the summary of facts.

[12] On or about 2 August last year an arrangement was made between members of the Rotorua Black Power Mangu Kaha Chapter and Raymond Fleet to manufacture or cook methamphetamine. The principal members of the gang were, in this case you, Mr Hone, together with a number of alleged associates. Before the manufacture Raymond Fleet arranged for the cook to take place at his son's, Darius Fleet's home. Part of the arrangement included Darius Fleet moving his partner and children to a motel for the duration of the cook. Sheen Holloway, a known methamphetamine cook and associate of yours, was asked to help. The manufacture took place over a few days.

[13] The first batch of the cook did not yield as much methamphetamine as expected. One possible factor was that Mr Holloway was not familiar with the Par Bomb method. The lower yield led you to suspect that either Sheen Holloway or one of the Fleets, Raymond or Darius, had taken some of the methamphetamine secretly.

[14] Ultimately, for a number of reasons, the clan lab was shifted to Raymond Fleet's home. While continuing with the manufacture there, you and your associates became increasingly paranoid about the possibility that methamphetamine was being stolen or taken during the process. You became aggressive towards Raymond Fleet and Sheen Holloway. The manufacture finished on 6 August 2017. It is difficult to estimate how much methamphetamine was actually produced from the cooks. The Crown suggested a conservative figure of 120 grams. You still suspected there was some methamphetamine missing and that it had been taken or stolen from you.

[15] On 7 August 2017 you and another person went to an address in Tarena Street in a Mazda MPV. Raymond and Darius were both at the address. They were taken by you to a location in Cecil Road, outside Mamaku, and there you demanded that Raymond Fleet tell you where the stolen product was. You threatened to kill them both. After some time the situation calmed and the Fleets were taken back to the township.

[16] Later that evening, early evening, you and your associates in the MPV and also in an Isuzu Bighorn went back to Darius Fleet's home. Raymond Fleet came outside to meet you. He got into his own car, a Toyota, and left in convoy with you. You went

round to his home where he parked the car and then got into the Mazda. At this stage the group separated. It is said one of the group took the Bighorn back out to Cecil Road to bury the clan lab.

[17] In the meantime you and your alleged associates with Raymond Fleet went to James Fleet's home. James Fleet came outside and left the address also with you. Raymond and James Fleet were then driven to the same area on Cecil Road.

[18] Over approximately the next hour a series of assaults took place in an effort by you and your associates to force the Fleets to locate the methamphetamine that you thought had been taken. James Fleet was violently assaulted while in the back of the Isuzu. Raymond and James were also driven about 300 metres back into the bush along Cecil Road. Once further in the bush the assaults continued. At one point, while you were assaulting Raymond Fleet, Raymond started to fight back and that enraged you. You took hold of a spade and smashed Raymond Fleet around the head and body with it. Raymond Fleet fell down unconscious. Raymond Fleet was then driven over several times in the Isuzu.

[19] You and your associates then turned on James Fleet. Again you used the spade to inflict head injuries. Those injuries ultimately caused James Fleet's death. He was left lying in the road in the same location as his uncle. He was killed simply because he had witnessed the death of his uncle.

[20] Ten days after the murders the police located the bodies of James and Raymond. Raymond was discovered to have suffered massive blunt force trauma to the head through multiple blows. His head was deformed. He had suffered multiple rib fractures and had a substantial amount of blood in his lungs, indicating he had received a violent beating.

[21] James also suffered massive blunt force trauma to the head. He had been hit approximately six times. He also suffered fractures to both cheek bones, bruising to the base of his neck and a fractured rib.

[22] Forensic examination of the Isuzu revealed a large amount of blood on the right rear seat and blood spatter throughout the vehicle and blood was also located under the vehicle.

Strike offences

[23] Mr Hone you are subject to the three strikes law. This is your second strike. In 2014 you were convicted of an unlawful sexual connection in relation to your former partner. You received a first-stage warning for that offending. You had an on again, off again relationship with her for approximately 10 years. At the time of that offending you were affected by alcohol and you were jealous of her contact with other people. You physically assaulted her and abused her in a despicable way and then inserted part of your finger in her genitalia. That was the first strike offence.

[24] Because your second strike offence is a murder offence, s 86E of the Act requires that you be sentenced to life imprisonment without parole unless the Court is satisfied that, given the circumstances of the offence and your circumstances it would be manifestly unjust to do so. If that is the case the Court must impose a minimum period under s 103 of the Act.

[25] Section 104 of the Act then provides the minimum period imposed must be at least 17 years in certain circumstances unless such a term would itself be manifestly unjust.

[26] The first stage is to determine whether it would be manifestly unjust to sentence you to serve life without parole.

[27] The Court of Appeal has considered the effect and application of the three strikes regime in relation to murders in *R v Harrison*.¹ The Court discussed the meaning of the words “manifestly unjust” in the context of life without parole as follows:

[106] Where we part company with the Solicitor-General’s submissions is the proposition that the test for manifestly unjust is likely to be reached only in exceptional circumstances. If that approach were to be applied, we consider

¹ *R v Harrison* [2016] 3 NZLR 602.

it would often give rise to grossly disproportionate sentences. The range and nature of the relevant factors surveyed above, as part of the statutory context, is broad and multilayered. While Parliament mandated a presumption of life without parole once the qualifying conditions for such a sentence were met, the inclusion of an exception for manifest injustice requires that it be given an interpretation that makes the legislation work consistently with the Bill of Rights Act. We are driven to the conclusion that the test for circumstances that are manifestly unjust must be of sufficient breadth to ensure that any sentence imposed under s 86E is not grossly disproportionate. The test requires a principled approach.

[107] The question then is what “manifestly unjust” should actually mean as used in s 86E of the Sentencing Act. Drawing together the threads of the earlier discussion, we recognise the mandatory nature of the whole-of-life sentences to be imposed in cases to which s 86E applies. But, when the qualifying requirements are met, regard must be had to the need to comply with the overarching constitutional requirement that the sentence must not constitute disproportionately severe punishment. The assessment, as noted, is different to that undertaken in respect of the application of the manifestly unjust exception in ss 102 and 104 because of the fundamentally different statutory purposes, context and consequences.

[28] Importantly the Court went on to note the following:

[108] ...

- (a) The judicial approach to the scope of the manifestly unjust exception is intended to avoid wholly disproportionate, that is, grossly disproportionate, sentencing outcomes.
- (b) The case for a finding of manifest injustice must be clear and convincing. This follows from the use of the word “manifestly”. However such cases need not be rare or exceptional.
- (c) The determination requires an assessment of the circumstances both of the offence and the offender:
 - (i) The fact that the case is a stage-2 murder as opposed to a stage-3 murder is relevant. This factor may inform the nature and extent of the recidivism involved.
 - (ii) The consequences of a whole-of-life sentence (without parole) are a relevant factor. Personal mitigating factors under s 9(2), including mental health, relative youth and a guilty plea, fall to be considered in the balance.
- (d) The sentence that would have been imposed but for s 86E is relevant to this assessment. The sentencing judge will consider, and give weight to, the applicable purposes and principles of sentencing in ss 7, 8 and 9 of the Sentencing Act.

The Court went on to note other non-exclusive factors.

[29] Mr Lawson has submitted that you are still relatively young, at 35, and life imprisonment without parole could see you serve a sentence beyond 35 to 40 years. He submits that considering that and the circumstances of the stage-1 offence, and your guilty plea, a whole of life sentence without parole would be manifestly unjust.

[30] In the present case the Crown also accepts, given your guilty plea and the acknowledgement that comes with that, it would be manifestly unjust to sentence you to imprisonment for life with parole noting this is a stage-two circumstance.

[31] I have referred to the circumstances of the current offending and your previous strike offence. It is also necessary to consider your personal circumstances.

Personal circumstances

[32] Mr Hone you are 35 years old. You have been a patched member of the Black Power but say you have left the gang. You have three children, two of whom are in the custody of your father. One is in Australia. You have no contact with the children's mother. At the time of the offending you were on prison release and subject to parole conditions for the offending against her. You are assessed as at a medium risk of re-offending based on static risk assessment tools and a high risk of harm to others given your previous offending. You deny the use of alcohol and drugs between your release from prison and the offending although there is a suggestion in the psychiatrist's report that you may have taken drugs at the time of the offending and of course your offending involves the manufacture of methamphetamine.

[33] Dr Tan assessed you in July this year. His psychiatric report diagnoses you as having an anti-social personality disorder and Post-Traumatic Stress Disorder. Dr Tan considers you would have been suffering from PTSD at the time of this offending and that you have serious mistrust, panic and paranoia. Your PTSD would have been exacerbated if there had been methamphetamine involved. Neither Dr Tan nor Mr Lawson suggested the condition justified your actions but nevertheless the fact you were suffering from the condition is a factor the Court is obliged to take into account.

[34] I return to consideration of whether life without parole would be manifestly unjust. Importantly, the case for manifest injustice must be clear and convincing but need not be rare or exceptional. The Court must have regard to the fact this is a stage-2 murder as opposed to a stage-3 murder and the consequences of a whole of life sentence. Your personal mitigating circumstances, including the mental condition I have referred to, the PTSD, and guilty plea, are particularly relevant and are to be considered. I have also considered and reviewed other cases involving second and third strike cases of murders.² In your case Mr Hone, despite your apparent lack of remorse I still consider the following factors would make it manifestly unjust to sentence you to life without parole:

- (a) the diagnosis of PTSD;
- (b) the fact this was a second-stage murder rather than a third-stage murder;
- (c) the circumstances of the first-stage offence, which were quite different to the present offending;
- (d) your guilty plea, which is an acceptance of responsibility; and
- (e) the fact that you will face a lengthy minimum non-parole period in any event.

[35] In fixing that minimum non-parole period the Court is required to have regard to the purposes and principles of the Act. In this case the overwhelming considerations are:

- (a) to hold you accountable for the harm done to the victims of your offending and the community as a whole;
- (b) denouncing your actions, namely the vicious and violent killing of others;
- (c) deterrence; and
- (d) the need to protect the community from you;

² *R v Heihei* [2017] NZHC 2243; *R v Puna* [2018] NZHC 79; and *R v Davis* [2018] NZHC 1162.

Victim impact

[36] The impact of the deaths on the Fleet whanau is apparent to the Court from the victim impact statements that I have read and heard and I hope that it has had some impact on you Mr Hone.

[37] Section 104 of the Act is engaged in this case in at least two ways. The murder of James Fleet was committed in an attempt to avoid the detection, or prosecution or conviction of you and others for the earlier murder of Raymond Fleet; and you have been convicted on two counts of murder.

[38] I have considered the cases referred to by counsel including other cases where sentences have been imposed for double murders: *R v Ogle* and *R v Doyle* in particular.³ In *Ogle* the offender murdered his estranged partner and a young roommate. The victims were killed by a brutal attack with a baseball bat. The Court took a starting point of 23 years' imprisonment for the minimum period of imprisonment but having regard to the guilty plea the final sentence was reduced to 19 years.

[39] *Doyle* also involved the two murders in the context of methamphetamine dealing. Mr Doyle planned to kill the victims. He armed himself and arranged to meet them. He shot the first victim at close range and then shot the second victim as she tried to get away. He then tried to dispose of the evidence. In that case the Court took a start point of 21 years but ended with a minimum period of imprisonment of 19 years to reflect the guilty plea.

[40] Both counsel in this case acknowledge the authorities I have referred to and submit the minimum period of imprisonment should be between 19 to 20 years.

[41] Mr Hone I regard your case as very serious. The murders of both Raymond and James Fleet were as violent as they were senseless. They were apparently driven by some mistaken paranoia about the poor yield from the manufacture of

³ *R v Ogle* HC Wellington CRI-2009-091-002763, 16 October 2009; and *R v Doyle* HC Rotorua CRI-2005-070-006451, 13 October 2006.

methamphetamine in an illegal cook of the drug. The murders highlight the dangers of becoming involved in the manufacturing and dealing in that pernicious drug.

[42] While I have accepted it would be manifestly unjust to impose life without parole, in my judgment it cannot be said to be manifestly unjust to impose a significant minimum non-parole period. As the Court of Appeal have observed the considerations are different when considering a fixed term.

[43] Having regard to the circumstances of these murders and your culpability, the totality of the other offending, particularly the manufacture of methamphetamine, and the further aggravating feature this offending was committed whilst subject to parole, I take as a start point a minimum term of 24 years' imprisonment. From that I deduct 15 months to take account of your personal circumstances, particularly your medical condition. Finally I reduce it by a further two years, nine months to take account of the guilty plea. There can be no further reduction for remorse given the pre-sentence report. That leads to a minimum term of imprisonment of 20 years.

Result

[44] Mr Hone, please stand.

[45] On the charges of murder in each case you are sentenced to life imprisonment, with a minimum non-parole period of 20 years on each count. On the charge of methamphetamine manufacture you are sentenced to imprisonment for seven years concurrent. On the charges of threatening to kill you are sentenced to imprisonment for two years in each case, again concurrent. Stand down.

Venning J