

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

**I TE KŌTI MATUA O AOTEAROA
KIRIKIROA ROHE**

**CRI-2017-019-3773
[2018] NZHC 2363**

THE QUEEN

v

CORY SCOTT JEFFERIES

Hearing: 7 September 2018
Counsel: JN Foster for Crown
T Sutcliffe for defendant
Sentenced: 7 September 2018

SENTENCING NOTES OF FITZGERALD J

Solicitors: Almao Douch, Hamilton
To: T Sutcliffe, Hamilton

Introduction

[1] Mr Jefferies, you appear for sentence having been convicted by a jury of the murder of Kim Richmond, your former partner of some 26 years.

[2] As you are no doubt aware, and I am sure Mr Sutcliffe has explained to you, the sentence I must impose for murder is life imprisonment, unless I consider it would be manifestly unjust to do so.¹ I should say now that neither the Crown nor the defence have suggested it would be manifestly unjust for a sentence of life imprisonment to be imposed in this case. And I agree. I therefore will be sentencing you to life imprisonment today. But as you and those present here today will have heard, I must also consider what minimum period of imprisonment you should serve as a part of that life sentence.

Your offending

[3] Before I turn to the facts of your offending, it is appropriate to observe at the outset that this offending has been tragic for all involved. Not only for Ms Richmond herself, but your three children, Ms Richmond's parents and other members of her family, and the broader community in which you and Ms Richmond lived. So too, I am sure, for you and your family. You were in a relationship with Ms Richmond for 26 years. Your children are, I understand, now aged 10, 13 and 15. They have lost their mother and, in many ways, they have lost their father as well.

[4] I will now summarise the background to your offending, and I appreciate that this may be distressing to many here today, and indeed many already know much of what I am about to say. However, it is important that the public are aware of the basis upon which I will be sentencing you today.

[5] You killed Ms Richmond in the early hours of 31 July 2016, but it is necessary to briefly outline events leading to that date.

[6] Your relationship with Ms Richmond had been breaking down for some time, over the preceding several months. It seems she had formed a close relationship with

¹ Sentencing Act 2002, s 102(1).

a neighbouring farmer, and your views as to the nature of that relationship clearly troubled you greatly. You have also mentioned in the pre-sentence report what you say were associated financial pressures from the falling milk pay-out and costs associated with a new farm. I am satisfied, however, that the primary issue which led to tensions between you and Ms Richmond was your knowledge of and views about her relationship with your neighbour. You perhaps saw Ms Richmond slipping away from you, after 26 years.

[7] In connection with this, in the months and weeks prior to Ms Richmond's death you had expressed serious animosity towards her. Evidence was given by your neighbour that you confronted him in January or February 2016 and told him that you wanted Ms Richmond "gone" and wanted to kill her. At a function at the local hall in June 2016, you repeated that sentiment to him, and said you wanted to kill her. Again, in June 2016, you told your neighbour's wife at a party at their house, this time in the early hours of the morning, that you wanted to kill Ms Richmond. On some of these occasions, you had been drinking.

[8] In July, you again confronted the neighbour about his relationship with Ms Richmond. I note, however, that in none of these encounters did you become violent towards your neighbour, despite your views as to his and Ms Richmond's relationship.

[9] A few weeks prior to her death, Ms Richmond told you that your relationship together was over. This obviously affected you deeply. You wrote to her pleading for another chance. Whether she was going to give you that further chance, we do not know. However, despite the relationship being over, or at least in very serious trouble, you were still living together in the family home at the time of Ms Richmond's death.

[10] On the evening of 30 July 2016, you were at the local hall watching rugby with Ms Richmond and members of the local community. The evening was uneventful, giving no indication of the terrible events that were to unfold. You, Ms Richmond and a few others stayed at the hall drinking until the early hours of 31 July. While it seems you had had a number of drinks over the evening, there was no evidence to suggest that you were seriously intoxicated. You and Ms Richmond and one other were the

last to leave. You all helped clean up the hall, and then you locked the hall and began the short drive home, with Ms Richmond in the car with you.

[11] After Ms Richmond went missing, you told police that the two of you had argued on the way home in the car, over the radio station. You said you had arrived home and gone into the house, not wanting to continue the argument, and that shortly after that, she had driven away. You said you saw the car tail lights disappearing out of the driveway. You said you then went to bed. That was how you explained Ms Richmond's absence the next morning and over the following months.

[12] That was of course not true. In the lead up to and at the outset of the trial, you admitted that you had in fact caused Ms Richmond's death that evening. You now say, through your counsel's written sentencing submissions, that there was an argument in the car over the radio station, that a physical confrontation ensued while you were driving, which resulted in you striking Ms Richmond hard with a closed fist in a back-hand motion to her head. I must say that I am somewhat sceptical of this explanation, coming as it does at the last possible moment, at the point of sentencing.

[13] Turning back to the trial, you admitted manslaughter but denied you had the necessary intent to kill Ms Richmond at the time of her death. It is inherent in the jury's unanimous verdict that they were satisfied that the Crown had proved you did have the necessary intent.

[14] After killing Ms Richmond, you drove her body to a nearby lake. You somehow submerged the ute, with her body in the back seat, into the lake. You then returned home on foot, getting home not long before you had to start your daily chores on the farm, which you duly set about doing.

[15] Following Ms Richmond's disappearance, her family, the Police and the broader community in which you and she lived mobilised to look for her. You did not help with the search. Sadly, her body was not found for almost a year, during which you kept up the pretence of her disappearance as I have already explained. Police located Ms Richmond's body when data ultimately retrieved from your phone, and records associated with her phone, revealed that you had driven to the lake on 31 July

2016 at a time when you said you were sleeping. When the ute was recovered from the lake, it was apparent that Ms Richmond's body was in the back seat. Her necklace and Fitbit were both broken, and part of the broken Fitbit strap, but not the Fitbit itself, was located. Her clothes were also placed in a very unusual, and I must say, degrading way, being pulled right up over the back of her neck and with her bra unclasped, exposing her chest. I infer you put the clothing in that way, but whether this occurred before or after Ms Richmond's death is unknown. Due to the length of time Ms Richmond's body had been submerged in the lake, it was also not possible to determine the cause of death. You are the only person who knows precisely what happened that evening.

Victim impact statement

[16] I now want to address the victims of your offending. Ms Richmond herself is clearly the primary victim of your offending. But as you are aware, the effects of your offending extend much broader than that. Ms Richmond's mother read her victim impact statement here in Court today. That takes courage. I can only attempt, and poorly so, to summarise her words, and cannot do justice to the clearly devastating effect Ms Richmond's murder has had on her close family, including your three children.

[17] Mrs Richmond describes her daughter as a fun and loving mother — a member of a close family, who never missed a birthday or Christmas. As I say, the family has understandably been devastated by her loss, which has had a dramatic effect on their lives together and individually, mentally, physically and financially. Ms Richmond's parents have relocated to care for their grandchildren and to try to maintain some normality to their lives.

[18] The family is dismayed by the effect of your offending on your children. They also quite understandably resent your actions following Ms Richmond's death.

[19] Ultimately, and to paraphrase Mrs Richmond's own statement, no sentence imposed by me today can ever replace the time that will now not be spent with Ms Richmond.

[20] I am now going to turn to the sentence that I am going to impose today.

Life imprisonment not manifestly unjust

[21] As I mentioned at the start, Mr Jefferies, there is a statutory presumption that you will be sentenced to life imprisonment.² A lesser, finite, sentence may be imposed only when it would be manifestly unjust, given the circumstances of the offence and offender, to impose life imprisonment.³ This only applies in exceptional circumstances, and it is rightly not suggested in this case. As I said, I will therefore be sentencing you to life imprisonment.

[22] There has been focus today on what the minimum period of imprisonment ought to be. It is appropriate that I explain that concept a little further, as the media and members of the public sometimes report and think that the minimum period of imprisonment is the actual sentence which is imposed. It is not. The sentence to be imposed today is one of life imprisonment. The minimum period of imprisonment is simply the minimum period of time you *must* serve before you can even start applying for parole. And there is no guarantee of release after that point. Rather, it will be for the Parole Board to assess your suitability for release, after you have served the minimum period.

Minimum period of imprisonment

[23] In the case of murder, the minimum period of imprisonment cannot be less than 10 years.⁴ Where certain factors are present, the Court must make an order imposing a minimum period of at least 17 years.⁵ In my view this is not an appropriate case for a 17-year minimum period and the Crown has responsibly not pursued it.

[24] I must assess your offending against comparative cases, and determine if it is necessary to adopt a figure higher than 10 years:⁶

² Sentencing Act 2002, s 102(1).

³ Section 102(1).

⁴ Section 103(2).

⁵ Section 104(1).

⁶ Sentencing Act 2002, s 103(2)(a)–(d).

- (a) to hold you accountable for the harm to the victim and community;
- (b) to denounce your conduct — and it is stressed that this requires additional emphasis where the offending arises out of a domestic relationship;⁷
- (c) to deter others from committing such offending; and
- (d) to protect the community.

[25] I accept Mr Sutcliffe’s written submission that the key of these factors will be to hold you accountable and to denounce your conduct.

[26] I consider there are several aggravating features to your offending. The first is that it involved a gross breach of trust. You had been in a relationship with Ms Richmond for 26 years. That factor, combined with what I consider to be the second aggravating factor, namely your treatment of her body after you had killed her, characterises this offending as callous. The authorities are clear that actions taken toward a body after death can be aggravating.⁸ I find that to be the case here. In a display of indignity, you left Ms Richmond’s body in the back of the ute with her chest exposed,⁹ and submerged her in a lake where she was not found for almost a year. During that period, you maintained the fiction that she had voluntarily abandoned her children and family. You even encouraged your children to attempt to contact her about her return, knowing full well what had actually happened.

[27] Those actions, and the fact that you disposed of Ms Richmond’s phone and Fitbit, and your continuing pretext as to what had happened on the night in question, also had the effect of concealing your crime and significantly hampering the police investigation into Ms Richmond’s disappearance. You gave statements to police

⁷ See, for example, *R v Marsh* HC Christchurch CRI-2005-409-1635, 13 December 2005 at [17]; *R v Ngeru* HC Wellington CRI-2008-085-5996, 11 December 2009 at [27]; *R v Schofield* [2015] NZHC 2109 at [25].

⁸ *Carroll v R* [2018] NZCA 320 at [8], citing *Frost v R* [2008] NZCA 406 at [40]; *Te Awa v R* [2014] NZCA 615 at [38]; *Kumar v R* [2016] NZCA 329, (2016) 28 CRNZ 32; and *Robertson v R* [2016] NZCA 99 at [82].

⁹ See also *R v Bonner* [2012] NZHC 1581 at [25].

which, by your later admissions, were false. Such steps actively taken to cover up your crime are appropriately seen as a further aggravating factor.¹⁰

[28] The Crown also says that given the various threats you made in the months leading up to Ms Richmond's death, and what is said to be the careful and calculated steps to cover up your crime point to a degree of premeditation involved, being a further aggravating factor. Mr Sutcliffe on the other hand, in his written submissions, says these statements should be seen as merely expressions of frustration, in the context of your and Ms Richmond's deteriorating relationship.

[29] I do not accept either contention. I do not agree that the evidence demonstrates any real premeditation or thought-out plan on your part to kill Ms Richmond. Rather, having heard all of the evidence, I consider it was more a spontaneous event, albeit with the necessary intent at that time. But rather than mere statements of frustration, I consider your earlier statements about Ms Richmond evidenced your deep hostility to her, particularly when you had been drinking and in the context of what you saw as a developing relationship between her and one of your neighbours. This deep hostility no doubt contributed to whatever it was that triggered events which led to Ms Richmond's death that evening.

[30] I also accept that there is no evidence of extreme or sustained violence in this case, which would otherwise be an aggravating factor. Any murder of course involves a degree of violence, given a death results. But in this case, I accept Mr Sutcliffe's submission that there is no evidence of, for example, a sustained and severe attack, such as multiple or any broken bones, fractures to the skull or facial bones, or the use of a weapon evidenced by stab wounds or the like.

[31] The Crown says I should adopt a minimum period of imprisonment (before taking into account personal factors) of 15 years. It relies on three cases,¹¹ primarily a case called *Callaghan*. In that case, which involved a spontaneous attack, with at

¹⁰ See *R v Tamaka* [2014] NZHC 182 and, in the context of manslaughter, *R v Pakenham* [2013] NZHC 2088. See also *R v Brown*, CRI 2010-032-1028, 9 May 2011 (HC) at [24]; *R v Roper* [2013] NZHC 1687 at [27]; *R v Bonner* [2012] NZHC 1581 at [25].

¹¹ *R v Brown* HC Wellington, CRI-2010-032-1028, 9 May 2011; *R v Callaghan* [2012] NZHC 596; and *R v Roper* [2013] NZHC 1687.

least eight blows to the victim's head with a bat-like object, the Court adopted a starting point for the minimum period of imprisonment of 11 years. But there was a separate charge for attempting to pervert the course of justice for the later "cover up", which saw an additional four years added. That cover up involved extensive and indeed quite gruesome steps to conceal the death and the body, including dismembering the victim's body.

[32] The Crown's position is that your offending, Mr Jefferies, is similarly culpable and that a starting point of 11 years should be adjusted upwards in your case by drawing an analogy to the concealment in *Callaghan*.

[33] Having regard to the three cases relied on by the Crown, the cases to which Mr Sutcliffe has referred me and a number of other cases I have read,¹² I consider the offending in this case to be less serious than in the cases on which the Crown relies, including *Callaghan*. Of course, and as Ms Foster notes, comparing offending across different cases can only be a broad assessment, as the facts in each case are unique. All murders are extremely serious and involve violence which results in death. But it is nevertheless important to consider broadly comparable cases, to provide for consistency in sentencing.

[34] Taking into account the other cases I have read, and the aggravating factors in this case, I consider an appropriate starting point for the minimum period of imprisonment to be 12 years.

Personal mitigating factors

[35] I now turn to any personal mitigating factors that might reduce the minimum period of imprisonment. Mr Jefferies, you are 46 years old and you are a first-time offender. Prior to your offending, you had been a positive and active member of your community. A reference provided to the Court, which I have read, speaks of your contributions to society prior to your offending, as well as your broader character. I

¹² *R v Rajamani* HC Auckland CRI-2005-004-1002, 28 March 2006 (and a subsequent re-sentencing on 25 July 2008); *R v MHC* Christchurch CRI-2006-009-65, 7 September 2006; *R v Bonner* [2012] NZHC 1581; *R v Schofield* [2015] NZHC 2109; *R v Meads* HC Hamilton CRI-2009-019-8828, 31 March 2011; *R v Prole* [2013] NZHC 1267; and *R v Peach* HC Christchurch CRI-2008-009-13852, 3 December 2009.

have also read the Department of Corrections' pre-sentence report. You are assessed as being at low risk of reoffending, in light of your history and the particular circumstances of this offending. Both the Crown and the defence agree that you are entitled to a reduction for previous good character.¹³ I allow a reduction of nine months, or just over five per cent.

[36] Mr Sutcliffe also notes that you spent approximately one year on electronically-monitored, or "EM", bail.¹⁴ That is a mitigating factor which I must under the legislation take into account.¹⁵ But in my view, given the nature of the EM bail in this case, it warrants only a relatively small reduction from the starting point. A few months after bail was granted you were granted a variation that allowed you to drive from your bail address to work at a nearby farm for up to 10 hours a day. It follows that your bail was not as restrictive as many other defendant's EM bail can be, which often requires the defendant to be confined to a small home 24 hours a day. I allow a reduction of three months to reflect the time you spent on EM bail.

[37] I do not consider any separate reduction is warranted for remorse. You continue to deny that you murdered Ms Richmond. You told the pre-sentence report writer that you wished you could turn back the clock, but it was questioned whether your statements of remorse were in fact genuine. Simply put, I do not have sufficient evidence to satisfy me that there is deep and genuine remorse on your part.

[38] Accordingly, there will be a reduction to the 12-year minimum period of imprisonment by one year, to take into account your previous good character and the time spent on EM bail.

Result

[39] Mr Jeffries, would you now please stand.

¹³ Sentencing Act 2002, s 9(2)(g).

¹⁴ Bail was granted 18 July 2017 (*Jefferies v R* [2017] NZHC 1649) and the jury's verdict was delivered 30 July 2018.

¹⁵ Sentencing Act 2002, s 9(2)(h).

[40] Mr Jefferies, on the charge of murder, you are sentenced to **life imprisonment**. You are also ordered to serve **a minimum period of imprisonment of 11 years** before being eligible to apply for parole.

[41] You may now stand down.

Fitzgerald J