

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

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

**CRI-2018-009-005934
[2019] NZHC 806**

THE QUEEN

v

HEATH ERIC MORRIS

Hearing: 12 April 2019

Appearances: B Hawes and J Whitcombe for Crown
J R Rapley QC and K H Cook for Defendant

Judgment: 12 April 2019

SENTENCING NOTES OF DUNNINGHAM J

[1] Heath Morris, you are here today for sentencing, having pleaded guilty to the murder of Oliver Johnston.

[2] Murder as you know, carries the maximum sentence of life imprisonment and there is no suggestion that that sentence is not appropriate in this case. However, I am also required to determine the minimum period that you must spend in prison, and in particular, whether that should be a period of 17 years, or something else.¹

[3] Before I turn to the sentencing exercise, it is necessary for me to outline the circumstances of Oliver's death and your involvement in it.

¹ Section 104.

[4] You befriended Oliver Johnston in early June 2018 and the two of you began socialising and communicating, both in person and through social media.

[5] On Saturday, 23 June 2018, the two of you arranged to meet at a party held in a paddock in Webbs Road, Amberley. During the party, you socialised and drank, together with a number of associates. It seems that you drank up to 12 Bourbon and Cola pre-mix drinks. At some point in the evening, you and one of your associates were involved in a physical confrontation with other party goers and after this, you, Mr Johnston and three of your associates decided to leave the party together. Mr Johnston, you and one other person drove back to your home address at Woodend, arriving there at approximately 1.00 am in the morning of Sunday 24 June 2018.

[6] During the journey to your home, you were heard to say "Shall we kill Oliver?" You also said "Bro, no-one's going to miss him". You repeated this comment approximately five times during the journey. When the three of you arrived at your place, you all had something to eat, and then went to the sleepout, a small building 15 metres away from the family home. There, you and Mr Johnston played a video game together, while the third person went to sleep on a mattress nearby.

[7] At some point during the evening, Mr Johnston removed his shoes, got into a sleeping bag and he, too, fell asleep on the mattress on the floor of the sleepout. You then obtained an implement with a 30 millimetre round shaped end and struck him multiple times to the left side of his head and face. The force of those blows was sufficient to break Mr Johnston's skull in multiple locations. The injuries you inflicted were unsurvivable.

[8] You then removed Mr Johnston's body from the sleepout while the third person was still asleep. You dragged the body down a concrete path over the gravel driveway and through a gap in the fence into a small grass paddock adjacent to the driveway where you concealed the body by covering it with soil from an adjacent paddock and long grass. You then returned to the sleepout and began cleaning the floor and mattress using a spray disinfectant and a cloth.

[9] During the cleaning process, the other person woke up, saw the large amount of blood on the mattress and asked what had happened. You told him that you had “cracked Ollie on the lip”. When he asked you why you had done that, you said that Mr Johnston had been pestering you for a turn on the X-box and that a friend from town had come and picked him up.

[10] In the morning, after you both woke up at around 10.00 am, you were again asked if you had really hit Mr Johnston and you said that you had “cracked him twice”. You then had breakfast with your family and returned to the sleepout and continued to clean it.

[11] The injuries which you inflicted on Mr Johnston, were as I said, unsurvivable. His skull, cheekbone, and upper jaw on the left hand side of his head were broken and fractured from his eye to his ear and part of his skull was broken away and was found in the hood of his jacket.

[12] Initially, you denied the offending. You even, as we have heard, spoke to Oliver’s mother on the telephone, giving her a false story about her son’s whereabouts when you knew exactly what had happened to him.

Victim impact statements

[13] I have read, and we have heard in the Court today, the four victim impact statements from Oliver’s family. As I said they gave a wonderful insight into Oliver’s talents and personal qualities. His sister, Julia, described a brother who was enthusiastic and trusting and she spoke of the injustice of him being killed when he was at his most vulnerable. She is broken by the loss of her little brother. Equally, his sister Roseanna speaks of her charismatic and outgoing little brother and of the overwhelming physical impact of learning that he had been killed. Her willingness to focus on the blessing of having had Oliver in her life, rather than on being a victim of this crime, is quite inspiring. Then, there are the victim impact statements of his parents. His father, Hamish, talks of any hopes and dreams he had for his son being lost and of his dismay that his son’s life was discarded so cheaply by you and with no evidence of remorse.

[14] Oliver's mother, Jenny Greene, has given a detailed account of her son. She talked of his musical ability, his wit, his intellect, and his love of outdoor activities. She also spoke of his work with disabled skiers, his participation on the Spirit of Adventure sailing programme, and completing the Duke of Edinburgh gold award. Despite being devastated at the tragic loss of such a promising life, she showed a breadth of spirit, saying she hopes that you accept some benefit from support networks and training programmes in prison and that you can find a way to move forward responsibly with your life. However, it is clear that Oliver's family never want you placed in a situation where you might reoffend in this way again.

Personal circumstances

[15] I turn now to your personal circumstances. You were only 18 at the time of this offending. There is nothing in your background which sheds any light for me on why you have come to offend so seriously now. You appear to have come from a loving stable family, and I can only sense that they are as perplexed and traumatised by what has happened as everybody else is. You had a normal upbringing, you attended high school, you obtained NCEA level 1 and level 2, you were involved in sports. Indeed, your parents say that they had never witnessed you being violent. At the time of the offending you had left school and you were employed with a fencing company. While you had come to the attention of local police youth aid on a couple of occasions for minor events, nothing indicated you were capable of the crime which you have now committed.

[16] The only danger signals that are identified in the pre-sentence report are your binge drinking when you are with friends and some experimentation with drugs. You have mainly used cannabis, although you have also taken MDMA on two occasions which resulted in you needing medical intervention and hospitalisation. Your parents reported that you experienced paranoia for several months after these two episodes. The Alcohol, Smoking and Substance Involvement Screening test indicated that you were at medium risk of harm for your alcohol use and at the top end of medium harm for your drug use.

[17] Finally, it appears that you have suffered somewhat from depression and anxiety. Your parents report that you had been experiencing stomach pains. When those were investigated, they were found to have been brought on by stress and you were diagnosed with social anxiety and placed on anti-depressants. You had a few counselling sessions which reportedly were beneficial.

[18] However, the pre-sentence report writer observes that, at least initially in your interview, you did not grasp the severity of your offending. Your focus was mainly on parole. This was suggested to be possibly due to your age and stage of brain development. While eventually it seems you have been able to articulate some remorse, you did not show any emotion throughout your interview and the report writer concluded that you had a limited understanding of your own feelings and of empathy.

[19] What I find really troubling is that there is nothing in the report which provides a shred of an explanation for why you did what you did on that night.

Sentencing

[20] In light of that information, I turn now to the sentence I am going to impose. In sentencing you today I have to take account of the purposes and principles of sentencing in the Sentencing Act. These include holding you accountable for the harm you have done to the Johnston family, to your own family, and to the community, and promoting in you a sense of responsibility for an acknowledgement of that harm. I also need to recognise that your conduct must be denounced, that you and others should be deterred from such offending, and that the community must, at least for now, be protected from you. That said, I have to be aware that I should not impose a sentence that is crushing, particularly given your youth, and that, as far as possible, I must do what is required to assist in your rehabilitation and reintegration.

[21] As I have already said, there is no dispute that life imprisonment is appropriate. That means you will remain in prison for the rest of your life, unless and until the Parole Board determines that it is safe to release you into the community. If you are granted parole, you may remain in the community only while you comply with your

parole conditions and do not reoffend. If you re-offend you will be recalled to prison at any time to complete your life sentence.

Minimum period of imprisonment

[22] I also have to determine what minimum period of imprisonment you must serve before you are eligible to apply for parole.

[23] In this case, s 104 of the Sentencing Act 2002 requires me to impose a minimum period of imprisonment of 17 years unless that would be manifestly unjust. That section applies because of the number of aggravating features of your offending. These include that it was carried out with a high level of brutality and callousness. That was demonstrated by the extent of the injuries. It also involved the use of a weapon. Furthermore, the victim was utterly vulnerable as he was asleep. There was also a modest degree of premeditation because you suggested killing him on the trip between the party and your home. Even the fact that you lied to the victim's mother afterwards when she rang you desperate to know where Oliver was, shows a level of callousness.

[24] In my view, there are no mitigating features of this offending. It was a brutal unprovoked attack on someone who thought you were his friend. Even without the requirements of s 104, I would have thought a starting point of a 17 years was readily warranted. The question is whether a minimum period of imprisonment of 17 years is manifestly unjust taking into account, your personal circumstances and the mitigating features that relate to you.

[25] On this matter, the Crown and your lawyer were not far apart in their submissions. They both accepted that the combination of your youth, your guilty plea, and to some extent your mental health issues, including anxiety and depression, warranted a lesser minimum period of imprisonment. Mr Hawes, accepts that the minimum period of imprisonment of 13 years six months is appropriate, while your lawyer, Mr Rapley QC, had suggested at the sentencing indication, a lower amount. I am not going to impose a lower amount.

[26] I accept that the combination of your youth at the time of the offending, the presence of some mental health issues related to anxiety and depression have to be taken into account and I consider that two and a half years should be deducted from the minimum period of imprisonment to reflect that.

[27] I also accept that you pleaded guilty and this at least, brings some finality to the matter. It saves the Johnston family from having to endure a Court case. I consider a further discount of one year should be given on the minimum period of imprisonment to take account of that. That would lead to a minimum period of imprisonment of 13 and a half years being imposed and I accept that it would be manifestly unjust, particularly given your youth, to impose a minimum period of imprisonment of 17 years when otherwise, a minimum period of 13 and a half years would apply.

[28] However, of course, how much longer than the minimum period you will actually serve will be for the Parole Board to decide in light of whether you continue to pose a threat to the safety of the community. I expect that until the cause of your offending is understood and addressed, it will be difficult to reach that threshold.

Result

[29] Mr Morris, would you please stand. On the charge of murdering Oliver Johnston, I sentence you to life imprisonment and I order that you shall serve a minimum period of 13 years and six months' imprisonment.

[30] I am obliged to read you your stage one warning required under the three strikes legislation. Given your conviction for murder you are now subject to the three strikes law. I am going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which list the 'serious violent offences'.

1. If you are convicted of any serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment then you will serve that sentence without parole or early release.

2. If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

[31] Please stand down.

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