

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

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

**CRI-2018-009-3102
[2019] NZHC 626**

THE QUEEN

v

PAUL POUNAMU TAINUI

Hearing: 28 March 2019
Counsel: P A Currie for Crown
R Buddicom and L Drummond for Defendant
Judgment: 28 March 2019

SENTENCING REMARKS OF MANDER J

[1] Mr Tainui, I will ask you to stand at the completion of my sentencing remarks, but you may remain seated until that point.

[2] Mr Tainui, you are for sentence this morning for the rape and murder of Nicole Tuxford. You pleaded guilty to murder before Christmas and in February pleaded guilty to the rape charge.

The facts

[3] On the morning of Saturday 7 April last year, you raped and murdered Ms Tuxford in her own home, having broken into her house the previous night and waited for her return the following morning.

[4] You and Ms Tuxford had worked for the same company for approximately a year and, despite your age differences, had socialised as part of a larger group of employees. It is apparent that Ms Tuxford knew about your past and, it is reported, was helping you with counselling and life coaching. In February 2018 Ms Tuxford left the company. By that time, you had indicated that you wanted more than simply friendship from Ms Tuxford. You wanted to develop a sexual relationship with her. She rebuffed those overtures.

[5] Over the course of March, you continued to pursue Ms Tuxford, telling her that you wanted to spend more time with her. On 26 March, you sent Ms Tuxford a text message telling her that you had just found out she was in a relationship with another man and that you were angry. In the days preceding 7 April, you told workmates that Ms Tuxford was being disloyal to you and referred to her in derogatory terms. You sought to contact her; texting her and driving to her home. Other than an exchange of text messages, you were not able to make contact with her. You were becoming increasingly preoccupied with Ms Tuxford, and jealous of her relationship with another man.

[6] On the night of Friday 6 April, Ms Tuxford stayed the night at her partner's address. She had arranged to meet an electrician at her property the following morning. That Friday evening, you spent a number of hours drinking in a local bar before driving to Ms Tuxford's address. You sent her a text message and attempted to contact her by phone. You did not make contact. Later that night, you were stopped by police at an alcohol checkpoint. You were processed for excess breath alcohol and forbidden to drive. You were not permitted to take with you two large knives which remained locked in the boot of the vehicle.

[7] After being released by the police, you caught a taxi to a location in close proximity to Ms Tuxford's address. You broke into her home, removing louvres from a window, and waited for her.

[8] On the Saturday morning, Ms Tuxford arrived to meet the electrician. Upon entering her home, you overpowered her. Despite your varying accounts, the sequence

of events and details of what then occurred are sufficiently discernible from the forensic evidence.

[9] You held Ms Tuxford in the spare bedroom of the house with the curtains closed and the door to the bedroom shut. It appears the electrician arrived at the address around this time. Ms Tuxford attempted to fight you off. She sustained defensive cut wounds to her hands and managed to bite you. You punched her in the face. In order to silence Ms Tuxford, you gagged her with a scarf and knotted it behind her head. You wrapped insulation tape which you had brought to the house around her head and mouth. You bound her wrists together with the tape before removing clothing from her lower body and raping her.

[10] While this was occurring, the electrician was walking around the house. He heard muffled noises coming from inside which it is believed was Ms Tuxford stomping on the floor, trying to fight you off, and trying to call for help.

[11] After raping Ms Tuxford, you stabbed her at least once in the shoulder before strangling her. You cut her throat multiple times with a large knife, almost severing her head from her body. You have then staged Ms Tuxford's body by cutting the tape away from her face and wrists and removing the scarf. You placed her arms across her body and covered the lower half of her body with clothing.

[12] You left the scene by taking Ms Tuxford's vehicle. A short distance from her house you crashed the vehicle and this resulted in you being admitted to hospital. It was not long before the connection was made between you and the death of Ms Tuxford, whose body had been discovered as a result of the electrician returning to the address because of his nagging concerns regarding her welfare.

[13] When spoken to by the police, you admitted breaking into Ms Tuxford's house, raping and killing her.

Victim impact statements

[14] The impact of your offending has been profound. I have read the victim impact statements supplied to me by the Crown, including a letter received from the Schroder

family this week. You have heard this morning first-hand the devastation you have brought to Ms Tuxford's family. You have re-traumatised another family – Ms Schroder's family – and caused more pain and grief to them. Ms Tuxford's family, her friends and loved ones must forever bear not only her loss but the circumstances of her death. They have been left bewildered and wrecked as to how such hateful violence could have been directed towards their gentle and caring Nicole.

[15] They remember Nicole as a beautiful, kind and happy young woman who sought to see the good in everyone. That goodness was extended to you. She sought to help you when few others would. Nicole's life was full of promise. For it to be taken in such dreadful circumstances has taken, and will continue to take, an enormous toll. There is little I can add to what Ms Tuxford's family have said to emphasise the despair you have caused, other than to acknowledge their heartbreak and loss. There is no sentence I can impose which can heal that suffering and pain or which can redress the harm that you have caused. My function is to sentence you in accordance with the law on behalf of the community.

Personal Background

[16] Mr Tainui, you are 55 years of age. There is nothing remarkable about your childhood or schooling. You have reported being the victim of abuse as a child, but this is unconfirmed, and you are noted as being an unreliable historian. You obtained a position at a local dairy factory and rose to a supervisory position. You maintained that employment until your first convictions for violence in 1992. Because your present offending effectively amounts to a repetition of your earlier murder of a young woman, and the issues I must address in sentencing you, it is necessary to set out the details of that earlier offending.

[17] In 1992, you were convicted of male assaults female and the commission of a crime with a firearm. Not long after the end of your relationship with your first victim, Ms Kim Schroder, you were drinking in a hotel where Ms Schroder was present. You physically prevented her from leaving. This resulted in other patrons intervening. You were in a highly agitated state and made threats to kill Ms Schroder. You returned to your home and retrieved a loaded shotgun and two knives before going back to the

hotel. When entering the bar, you were restrained before being arrested. You informed the police you were upset that Ms Schroder no longer wished to be in a relationship with you. You were sentenced to 10 months' imprisonment.

[18] The same year you were released from prison, you murdered Ms Schroder. You had become jealous when she commenced a relationship with another person. You went to her address. Ms Schroder was not at home, but her flatmate was. After holding a knife to the flatmates throat and taping his wrists and ankles, gagging him and tying him to a headboard in the bedroom, you waited for Ms Schroder. Upon her return home, you watched your victim without her knowledge for a further period before confronting her with a large knife while she was in the bathroom. Ms Schroder suffered a deep defensive wound to her hand when she physically struggled with you. You then took her to the bedroom where you gagged her and subjected her to a physical assault which was designed to humiliate her. This included cutting her clothes from her body and raping her. You then cut her throat, using a degree of force which caused her head to be partially severed from her body.

[19] There is no formal record of conviction of Ms Schroder's rape but you have made admissions to various psychologists and report writers over the years of raping Ms Schroder. While those admissions have also been mixed with various forms of denial, from the material I have viewed, claims by you of consensual sexual relations in the course of such a violent attack are fatuous.

[20] After serving 17 years in prison, you were released in January 2011. It appears that after release you developed a pattern of visiting local hotels and drinking heavily at the weekends. You gained employment and were engaged by various businesses for lengthy periods. In 2016, you gained employment with the organisation where you met Ms Tuxford, and were considered a good worker.

[21] During your previous period of incarceration you received intensive psychological treatment. Beginning in 2001, you engaged in extensive individual treatment with psychologists. By the time of your release you had participated in excess of 300 individual treatment sessions with five different psychologists.

[22] Despite your history of heavy drinking there is no evidence to suspect your use of alcohol caused significant functional or social impairment, nor that alcohol played any major role in your offending. You have a history of mood instability, and you were diagnosed with a major depressive disorder during your previous period of incarceration. However, those emotional difficulties are considered to be consistent with your maladaptive personality rather than any psychiatric illness, and there is no evidence of you suffering from depression at the time of the present offending. In prison you were diagnosed as suffering from post-traumatic stress disorder as a result of your last murder and childhood abuse, but there is no evidence of you currently experiencing such trauma. In fact, your presentation when describing your childhood and your offending was described by one of the reporting psychologists as superficial and a means to avoid engaging in meaningful dialogue about your violence.

[23] You are described in the psychological reports as having a significant personality dysfunction associated with psychopathic and antisocial traits, with abnormal levels of jealousy and anger.

Sentence issues

[24] On the charge of murder the sentence can only be one of life imprisonment. However, two interrelated issues arise from the imposition of that sentence. The first is whether life imprisonment without parole should be imposed, as the Crown contends it should. Second is the related issue of the length of the minimum period of imprisonment. Before considering those matters, it needs to be emphasised that, leaving to one side the possibility of the imposition of a life sentence without parole you will, in any event, spend the rest of your life in prison until the Parole Board concludes that you can be released safely into the community. Having regard to your offending that may well be never. The effect of setting a minimum period of imprisonment is to impose a period which must elapse before the Parole Board can commence any consideration of such a possibility.

[25] The starting point for the sentencing exercise is to compare your culpability with cases of murder that attract the normal statutory minimum period of imprisonment of 10 years and which serves as a benchmark for the sentencing

exercise. Taking into account aggravating and mitigating factors, I am required to decide whether an additional minimum period is required to satisfy the purposes of sentencing.¹

[26] In following that process, I am also required to give effect to the legislative policy of the Sentencing Act 2002, which in your case, Mr Tainui, means the minimum period of imprisonment which must be imposed is at least one of 17 years.² You have now been convicted of the murder of two women;³ your murder of Ms Tuxford was calculated and planned;⁴ it involved the unlawful entry and presence in her home and was committed in the course of committing rape;⁵ you committed this murder in cold blood, exhibiting a high level of brutality and callousness.⁶

[27] There can be no suggestion the imposition of a 17 year term would be manifestly unjust. Indeed, the factors I have identified combined with other aggravating features indicate a starting point substantially higher than one of 17 years.

[28] Despite your earlier conviction for murder, the three strikes regime does not apply to you because that legislation was not enacted until after the commission of your earlier offence in 1994 and you do not have a record of a first or final warning.⁷ However, the Sentencing Act provides that a Court may order an offender who is convicted of murder and sentenced to imprisonment for life to serve that sentence without parole if it is satisfied that no minimum term of imprisonment, regardless of its duration, would be sufficient to satisfy one or more of the purposes of sentencing.⁸

[29] Those purposes are to hold you accountable for the harm that you have done, to denounce your conduct, to deter you and others from committing the same or a similar offence, and to protect the community. I must be satisfied that at least one of those purposes can be met in no other way than by life imprisonment without parole.

¹ Sentencing Act 2002, s 103(2); *R v Williams* [2005] 2 NZLR 506 (CA) at [49].

² Sentencing Act 2002, s 104; *R v Robertson* [2016] NZCA 99.

³ Sentencing Act 2002, s 104(1)(h).

⁴ Section 104(1)(b).

⁵ Section 104(1)(c) and (d).

⁶ Section 104(1)(e).

⁷ Section 86A and B.

⁸ Section 103(2A).

It follows therefore that the focus must be on whether a sufficiently long minimum period of imprisonment can satisfy these sentencing objectives.

The aggravating features of the offending

[30] I turn to the aggravating features of your offending.

Premeditation

[31] Your offending was planned and premeditated. Your determination to kill Ms Tuxford was such that despite being stopped by police and being prevented from using your vehicle and having access to the knives that you had brought with you, you persisted with your plan. Taking a taxi to the locale of your victim's address, you broke into Ms Tuxford's house and located other knives. You brought with you electrical tape for the purpose of immobilising your victim, and lay in wait for your victim for some eight hours.

[32] I have no doubt that you coldly intended to repeat the extreme violence that you had perpetrated on your earlier victim in 1994, and so it proved. You demonstrated a calculated determination and persistence to exact revenge on a woman who you distortedly perceived as having slighted you, and to do so in a callously prolonged way to meet your need for vengeance.

Murder committed whilst on parole

[33] You murdered Ms Tuxford while being a life parolee. You are described in the psychological reports as being highly manipulative and are a person capable of deceiving others. Indicative of that trait is the way in which you knowingly hid your relationship and feelings towards Ms Tuxford from your probation officers. You knew full well that such a development would be viewed as a matter of serious concern. The supervision of parole provided no deterrence or protection. The excuses you have put forward in that regard I consider to be demonstrably false.

Unlawful entry into victim's home

[34] You broke into Ms Tuxford's home to rape and kill her – a place she, like all of us, was entitled to be safe.

Extreme violence and cruelty

[35] The violence you used was extreme. This was a brutal murder. It must have been a terrifying ordeal for Ms Tuxford as she fought for her life and was bound and gagged by you. The force with which you used the knife resulted in her near decapitation.

Rape

[36] The murder was preceded by a brutal rape. You raped Ms Tuxford in the knowledge that you would kill her. I have no doubt that the sexual violation of your victim was to punish, degrade and humiliate Ms Tuxford, motivated out of a desire to see her suffer. Your actions were sadistic and depraved.

Loss and harm

[37] The loss and harm you have caused is plain. A 27-year-old woman has lost her life. Not only is there the distress and grief caused to her family and friends both from the death of their loved one and the circumstances of her killing, but there is the additional anguish and trauma which you have caused to Ms Schroder's family as a result of the repetition of the murder of another innocent young woman. The damage is irreparable.

Previous conviction for an almost identical murder

[38] The predominant aggravating feature personal to you is the repetition of your offending. Your obsession with Ms Tuxford and the predatory lethal violence in which you engaged in such a cold and callous way to sate your vengeance parallels your offending against Ms Schroder. Your physical and sexual violence against both women was motivated out of immense jealousy, sourced from your distorted views.

Many of the aspects of the offending committed against Ms Schroder are almost identical to those of your murder of Ms Tuxford.

Risk

[39] The repetition of your offending bears out the very high risk you present to the community, and to women in particular. You are considered as being at a very high risk of committing a further relevant offence should you be allowed back into the community. Your previous apparent engagement in individual therapy and good record in prison were considered to mitigate the risk you posed. Those considerations were illusory. It is apparent the graduated acknowledgement of a greater level of responsibility for your prior offending, which marked your progress towards parole, reflected only a calculated and self-serving approach designed to gain release.

[40] Your presentation at that time reflected your manipulation of the process rather than any genuine treatment progress. In that regard, I note that you are described in one of the psychological reports as a pathological liar, which is demonstrated by your inconsistent reporting of information. You are described as having a glib interpersonal style which is a means by which you avoid the stark issues arising from your offending. You score highly for psychopathic personality characteristics which include superficiality, grandiosity and deceitfulness. You lack remorse and empathy, and have persistent anti-social behavioural traits.

[41] Your past offending points to a high risk of serious violence pertaining to a particular set of circumstances involving serious violence towards women with whom you consider to be in a close relationship and who you perceive to have been disloyal or have rejected you. Those circumstances, while specific, are, as noted by one of the report writers, "by no means random or unlikely to reoccur". This is particularly so because you actively seek out such situations. Neither psychological treatment nor the requirements of life parole have prevented you from reoffending in such a catastrophic way.

[42] The intent of your violent behaviour is, of course, to deliberately take the lives of others. The high risk you present of committing such a crime in the future is considered as being persistent over time. This is demonstrable from your history,

where, despite having been incarcerated for 17 years and having received extensive psychological treatment, you have actively avoided or hid underlying drivers of the risk that you present. This has resulted in you committing another murder in almost identical circumstances to that which you committed in 1994. Your high level of psychopathy, which, as I have observed, is marked by these manipulative features of your personality, is indicative of the enduring high risk of you reoffending. It is noted by both report writers that there can be no assurance that attempts at further intervention will result in any meaningful reduction in the risk you present.

Absence of mitigating factors

[43] I note that seven years elapsed between the granting of parole and your present offending. However, there are no mitigating factors arising, neither from the offending itself or that are personal to you. You purport to express remorse. I reject those claims. Despite superficial statements of responsibility, you maintain entrenched and highly distorted views of your offending. It is apparent you still believe your victim to be to blame or to be flawed, and that her behaviour drove you to react in the way that you did. Your efforts to plead remorse in respect of the present offending mirror your representations of remorse and empathy that was a feature of the manipulative approach you took to psychological therapy during your previous term of imprisonment.

[44] Your acceptance of responsibility for the present offending is simply an acknowledgement of the overwhelming evidence against you. There is a complete absence of emotion from you of the pain that you have caused and an obvious lack of insight. There is no emotional connection with the suffering which you have caused. There is an absence of empathy which is associated with your psychopathic personality.

[45] You display no symptoms associated with any major mental disorder or psychosis. There is no evidence of depression being present at the time of the current murder, nor prior to your previous offending. There is no evidence that would support a diagnosis of a substance use disorder. I do not consider there are any personal circumstances that would reduce the length of the minimum term.

[46] You have pleaded guilty to the charges and, obliged as I am, I take those pleas into account when calculating your sentence. As I have commented, you faced overwhelming evidence of your guilt, and entered a plea to the murder charge some six months after your arrest. The plea to rape was delayed until February this year despite your clear confession to police. I do not consider the entry of pleas marks contrition or remorse. Required as I am, it forms part of my sentence calculation, but having regard to the predominant considerations of sentencing that arise in your case, it counts for little, apart from the avoidance of a trial.

Sentence - Murder

[47] The Sentencing Act recognises that community protection may justify a longer minimum period of imprisonment.⁹ Notwithstanding that an offender will not be released unless and until the Parole Board considers the reoffending risk to have reduced to an acceptable level, it still remains the Court's responsibility to make its own assessment at sentencing, when the circumstances require it. This clearly is such a case.¹⁰

[48] Mr Tainui, you present as a person who is clearly capable of violent murderous actions. Your conduct must be denounced in the strongest terms and the minimum period of imprisonment must meet the need to hold you accountable for the harm that you have caused. The sentence must provide for deterrence. Taking the matters into consideration which bear on your offending against Ms Tuxford, I consider that standing alone a 22 year minimum non-parole period would have been appropriate after deducting a year for your pleas.

[49] However, your rape and murder of Ms Tuxford does not, of course, stand in isolation, it represents a continuation of the same murderous and sexual violence that you perpetrated on your earlier victim, Ms Schroder. It is not a case of punishing you again for that earlier offending, rather your repetition of the same offending against a second young woman requires that the sentence I impose protects the community from

⁹ Sentencing Act 2002, s 103.

¹⁰ *Robertson v R* [2016] NZCA 99 at [84].

a person who has minimal, if any, prospects of rehabilitation, yet whose risk to others, and in particular to woman, is grave.

[50] Moreover, while your present offending alone may not be sufficient, when your personal circumstances are brought into account, life without parole must be a realistic consideration. In respect to that issue, the question devolves to whether any minimum period of imprisonment would be adequate to meet the purposes of sentencing and, in particular, whether it would protect the community from the risk you present. I would need to be satisfied that no minimum period of imprisonment would be sufficient to meet the objectives of sentencing to order the sentence of life imprisonment to be served without parole.

[51] The Crown and your counsel have drawn my attention to the statutory regimes that apply in the United Kingdom and other jurisdictions. The focus is on the nature of the offending, including, for example, multiple killings involving substantial premeditation or sadistic conduct, child murders following abduction or as a result of sexual motivation, and murder after a previous like conviction. I am bound, however, by the terms of the New Zealand legislation, in respect of which I accept the circumstances of the offending and of the offender are both relevant factors. The latter, in light of your history, is a particularly acute consideration. The sentence of life imprisonment without parole has not as yet been imposed in New Zealand. It was sought in the case of *McLaughlin* but declined. The sentencing Judge on that occasion observed that cases which will meet the statutory test will be clear or obvious.¹¹ A minimum term of imprisonment of 23 years was imposed in that case.

[52] When considering an appropriate minimum period of imprisonment, I am required to have regard to other sentencing decisions and am constrained by the need for consistency in sentencing. Comparing the facts of other cases and the circumstances of other offenders, particularly where the offending involves atrocious crimes, is a difficult exercise. The features of individual cases will invariably be different. I am satisfied that because of the unique factors relating to the nature of your recidivism and the risk you pose, an additional six years must be added to the

¹¹ *R v McLaughlin*, [2013] NZHC 2625.

minimum period of imprisonment. That would result in a sentence of life imprisonment with a minimum period of imprisonment before any possible consideration of parole of 28 years. I consider such a term can be reconciled with other broadly comparable sentencing authorities largely because your present offending while on parole for murder marks almost the exact repetition of that earlier crime and the obvious risk you present to the community as a consequence.¹² Ultimately, however, each case is different.

[53] After very anxious consideration, I have concluded that a minimum term of 28 years' imprisonment is sufficient to meet the purposes of sentencing and in particular to protect the community. I have done so primarily on the bases that you are now aged 55 years and because of the somewhat discrete circumstances of your offending, which is marked by you developing a distorted view of your relationships with women, you will not be eligible to be considered for parole until you are over 83 years of age.

[54] In discharging my responsibility to ensure the sentence is one that adequately protects the community, I am satisfied the high risk that you present can be adequately allayed by the imposition of a minimum non-parole period of 28 years. I stress again, you remain subject to a sentence of life imprisonment. Whether, as an offender who presents such a high and persistent risk of such violent offending, you will ever be eligible for parole remains unknown. It seems unlikely, but it cannot even begin to be contemplated before you are an elderly man.

Preventive detention

[55] The Crown has sought the imposition of a sentence of preventive detention in respect of the charge of rape. Sexual violation is a qualifying offence. Murder is not.¹³ However, there are a number of cases where preventive detention has been imposed together with a sentence of life imprisonment where the offending has included both murder and rape. There is nothing wrong in principle to a sentence of preventive

¹² *R v Robertson* [2015] NZHC 1849; *R v Somerville* HC Christchurch CRI-2009-009-14005, 29 January 2010; *R v McKenzie* [2009] NZCA 169; *R v Burton* HC Wellington CRI-2007-085-736, 3 April 2007; *R v McLaughlin*, above n 12; *R v Howse* [2003] 3 NZLR 767; *R v Samoa and Johansson* HC Auckland TO23161, 19 February 2004; *R v Samoa and Johansson* CA85104 CA138104, 4 August 2004; *Brown v R* [2011] NZCA 95, [2011] NZSC 75; *R v Reid* [2009] NZCA 281; *R v McKenzie* [2009] NZCA 169.

¹³ Sentencing Act 2002, s 87(5).

detention being imposed on an offender who will be subject to a mandatory life sentence.¹⁴ The rationale for doing so has been articulated in a number of cases and does not require repeating.¹⁵

[56] The purpose of preventive detention is to protect the community from those who pose a significant and ongoing risk to the safety of its members.¹⁶ You meet the preconditions for the imposition of such a sentence, including that I consider it likely you would commit another qualifying sexual or violent offence if released following a finite sentence. The appropriate reports have been made available to me.¹⁷ I intend to impose a sentence of preventive detention in respect of the rape charge. I do so not for a punitive purpose but as a further preventive step which I consider should be invoked to protect the community from the ongoing significant risk you continue to present into the future by emphasising that risk through the imposition of such a sentence.

[57] In considering whether to exercise my discretion to impose preventive detention there are a number of matters which I am required to take into account. I consider there is a pattern of serious offending. Your victims have been young women, both of whom were sexually attacked before being murdered because they did not reciprocate your feelings for them. This proclivity to commit rape and violence shows a pattern of serious offending which now extends over a period of 24 years.¹⁸ Insofar as there is no formal conviction entered in respect of your sexual assault of Ms Schroder in 1994, I note that a prior conviction is not a prerequisite to the imposition of preventive detention. Imprisonment has not rehabilitated you. Your violent and sexual offending has only escalated since your first convictions in 1992.

[58] The seriousness of the harm caused to the community is marked by evident beliefs you have about women. You do not respect the right of women to reject your wishes. Your response to having lost control over your female victims is premeditated

¹⁴ *R v Mackrell* (1998) 16 CRNZ 1 (CA) at 10.

¹⁵ *R v Hotere* HC Auckland S23/00, 9 October 2000; *R v Waihape* HC Christchurch CRI-2005-009-14252, 17 August 2006; *R v Chaston* HC Christchurch CRI-2010-409-2389, 18 April 2011; *R v Cameron* HC Christchurch CRI-2008-009-6389, 24 August 2009.

¹⁶ Sentencing Act 2002, 87(1).

¹⁷ Section 87(2).

¹⁸ *Solicitor-General v Seu* CA15/98, 6 May 1998.

brutal sexual and physical violence. I have already canvassed your tendency to commit such further serious offences in the future. Despite the particularity of the circumstances in which you have reoffended, it is apparent that you are resistant to attempts to change the drivers that lie behind your offending. The level of risk you pose is considered to be persistent, and extensive previous psychological interventions have made no difference. Your very high risk of reoffending is considered to be enduring.

[59] Over the course of your previous 17 year term of imprisonment considerable rehabilitative efforts were made. I have already detailed those interventions which ultimately failed to prevent you from reoffending in such an extreme way. While a lengthy determinate sentence is to be recognised as preferable if it provides adequate protection for society, such a sentence would not be adequate. The imposition of preventive detention which will stand alongside your sentence of life imprisonment serves to underscore the ongoing danger you represent to the community.

[60] As noted, the practice of imposing preventive detention for rape concurrently with a sentence of life imprisonment for murder is well-established.¹⁹ Having regard to the grave and unfathomable nature of your offending, your criminal history and the significant and ongoing risk you present of future violent sexual offending, I consider the imposition of a sentence of preventive detention for your rape of Ms Tuxford is appropriate.

[61] Will you please now stand.

Conclusion

[62] On the charge of murdering Nicole Tuxford you are sentenced to life imprisonment. I impose a minimum period of imprisonment of 28 years.

¹⁹ *R v Hitchcock* HC Christchurch S10/96, 17 December 1996; *R v Hotene* HC Auckland S23/00, 9 October 2000; *R v Mikus* HC Wellington T5/02, 1 November 2002; *R v Randle* HC Whanganui CRI-2005-083-380, 11 May 2007; *R v Waihape* HC Christchurch CRI-2005-009-014252, 17 August 2006; *R v Sikuvea* HC Wellington CRI-2007-032-1449, 25 July 2008; *Stroobant v R* [2018] NZCA 10; *Cameron v R* [2010] NZCA 411.

[63] On the charge of sexual violation by rape you are sentenced to preventive detention with a minimum period of imprisonment of 12 years.

[64] On the charge of unlawfully taking a motor vehicle and driving with excess breath alcohol you are convicted and discharged. Mandatory disqualification applies.

[65] All sentences are to be served concurrently.

Strike warning

[66] Finally, the three strikes legislation applies to you. This is your first strike. Although it might appear an empty exercise, I am required to give you a formal warning. If you ever commit a further serious violent offence you will serve the resulting sentence without parole. If you are ever convicted of murder again you will be sentenced to life without parole. The full terms of this warning will be supplied to you in writing.

[67] You may stand down.

Solicitors:
Raymond Donnelly & Co, Christchurch
Ruth Buddicom, Barrister, Christchurch