

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2016-029-000177
[2018] NZHC 2600**

THE QUEEN

v

RAWDEN JAMES YATES

Hearing: 5 October 2018
Counsel: RB Annandale for Crown
NS Leader and KC Bailey for Defendant
Judgment: 5 October 2018

SENTENCING REMARKS OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Whangarei.
NS Leader, Whangarei.
KC Bailey, Paparoa.

Introduction

[1] Mr Rawden Yates, you were found guilty of murder after a three-week jury trial. Your victim, Mr Kimble Moore, was an acquaintance and member of the same gang, the Tribesmen. More importantly though, Mr Moore was also a father, step-father, sibling, son, partner and uncle.

[2] It is common ground I must impose a sentence of life imprisonment. Life imprisonment requires a minimum period of 10 years. The only issue is whether this should be increased. That said, most murderers are not released as soon as they are eligible for parole. I mention this because it is often overlooked. Now the facts of your case.

Facts

[3] Mr Moore and his partner went to your home in the early hours of 17 March 2016. You were on the run from Police at the time. More about that later. You arrived home a little after Mr Moore and his partner. Methamphetamine was consumed. And later, food. You encouraged Mr Moore to leave with you—alone. His partner did not want him to go with you. Her instincts were right. After leaving your home, you shot Mr Moore three times, killing him.

[4] Detail of the critical sequence remains unclear, because no one saw what you did, and because you hid Mr Moore's body. However, the sequence consistent with the evidence, the jury's verdict, and that which I find occurred is this:¹

- (a) At approximately quarter to seven the same morning, two witnesses encountered your distinctive car on the roadside. It had broken down. You asked for a jump-start. In the middle of all this, Mr Moore fell out of the car after opening the passenger's door. You put him back in very roughly, with what was described as a punch, or "boof".

¹ Sentencing Act 2002, s 24(1).

- (b) The witnesses thought Mr Moore was “really drunk”, “pretty stuffed”, or both. In fact, Mr Moore was seriously injured because you had shot him once to the abdomen.
- (c) After the witnesses left, you killed Mr Moore by shooting him twice. You did so from behind. Both bullets entered Mr Moore’s back, and passed through his body on a downward trajectory.
- (d) You used a different gun to inflict these shoots from that you used to cause the wound to his abdomen.
- (e) Whether you killed Mr Moore at the roadside, a short distance away, inside your car or outside, is unclear. However, your lethal shots to Mr Moore’s back were fired “a very short time” after you had shot him to the abdomen, as there was no blood in that wound but was in the two wounds to his back.²

[5] In short, you murdered an already injured man by shooting him twice more—to the back.

[6] After stopping because of more car trouble, you then drove to the home of an acquaintance. You directed him to buy spray paint, which you used to change the colour of your car from white to black. You cleaned the car with bleach, leaving tell-tale stains on your clothing. You also burnt evidence linking you to the murder. That night, or in the early hours of the next morning, you took Mr Moore’s body to bush down a gravel road. Your acquaintance came with you. You grabbed his head and pushed it against Mr Moore’s body, which was still in your car boot. With this action, you sought to buy his silence. You then dragged Mr Moore’s body away, and later buried it in the bush.

[7] You told Mr Moore’s partner a cruel lie: that you had dropped him, alive, near their home. She reported him missing. Mr Moore’s body was not found until 22 September 2016.

² Pathologist’s evidence

[8] Why you killed Mr Moore remains unclear. No obvious motive emerged at trial.

[9] You testified. You told the jury you killed Mr Moore as he had confronted you in your car with your firearm after leaving your home, and from then, abducted you at gunpoint. You said you shot Mr Moore first in the abdomen, and later in the back, as you believed he was trying to shoot you on each occasion. You said it was you or him, albeit you denied deliberately shooting Mr Moore. You told the acquaintance who had bought you paint, Mr Moore had tried to kill you.

[10] I have no doubt this statement—and your evidence I have just described—are fiction. Five reasons explain why.

[11] First, you said you used the same gun throughout. That cannot be true. A forensic scientist explained the bullet recovered from the abdomen wound could not have been fired by the gun that inflicted the two wounds to the back: the rifling marks were different. You shot Mr Moore with two guns, not one.

[12] Second, you said when the roadside witnesses helped you start your car, Mr Moore was angry. Implicit to your evidence was that Mr Moore was conscious, and a real threat to your safety. However, the witnesses described someone who was barely conscious, and if conscious, capable only of opening the car door; who fell onto the road, without breaking his fall; only for you to then roughly manhandle or punch him back into the car.

[13] Third, during your evidence, you demonstrated what you said happened in the car with Mr Moore. Your demonstrations approached farce. It was obvious what you were describing could not have happened given the location of the wounds to Mr Moore's body and trajectory of bullets.

[14] Fourth, you said once in the car, Mr Moore became violent—"almost like a different person". Your defence raised the possibility Mr Moore was going to remove your gang patch. True, there was evidence Mr Moore said he was going to remove your patch, but no evidence supported the proposition he was going to do so on this

occasion, or that he would do so violently. Moreover, the evidence revealed Mr Moore was one of the few people sympathetic to your plight. He had offered you support while you were on the run from the Police. And, only shortly before you murdered him, given you both money and methamphetamine.

[15] Fifth, your actions in concealing and disposing of evidence through paint, bleach and fire; in burying Mr Moore's body in the bush; and in threatening your acquaintance; are all inconsistent with self-defence.

[16] To summarise, this is not an instance of self-defence gone wrong, or use of excessive force in the context of self-defence. I have no doubt you were *not* defending yourself from Mr Moore when you shot him to the abdomen, and shortly thereafter twice in the back.

[17] While jury verdicts can be opaque in relation to matters of fact, I consider the swiftness of the jury's verdict supports these conclusions. After a three-week trial and more than 1000 pages of testimony, the jury found you guilty of murder in less than four hours.

Victim impact

[18] I have received five victim impacts. All were read aloud in court this morning. They were harrowing.

[19] Your offending has caused incalculable hurt. As observed, Mr Moore was a father, step-father, son, sibling, partner and uncle. The victims are correct in saying you robbed them of a loved one.

[20] Their statements made clear they found the trial particularly difficult. More so your treatment of Mr Moore's body. For six months, his family and friends did not know what had happened to him, or indeed whether he was alive. They looked for his body—without success. His brother described this period as "torture". His mother described the later discovery of his body as a "bitter blessing". All this because you said to Mr Moore's partner you had left him alive, when in fact you had murdered him

and hidden his body in the bush. They wonder how anyone could behave like this. You will have plenty of time to ask yourself the same question.

An especially bad murder?

[21] The law requires a minimum period of imprisonment of not less than 17 years if a murder is especially bad.³ The Crown argues your offending is especially bad because your offending exhibits a high level of brutality or callousness.⁴ This because you committed an “execution-style” killing. The Crown also argues this provision is engaged because of your treatment of Mr Moore’s body.

[22] I accept your offending exhibits at least an element of an execution. As I have said, you twice shot an already injured victim to the back. However, what the Crown *really* contends is that your offending was premeditated, and especially brutal or callous because of that.

[23] The evidence does not establish premeditation to the criminal standard. Moreover, the Crown did not advance an execution thesis at trial. Materially, it did not put this proposition to you in cross-examination.

[24] My factual findings approach the provision. And, your actions in respect of Mr Moore’s body were undoubtedly callous. However, overall, I am not satisfied your actions reach the high level required by law, albeit they come very close.

Aggravating factors

[25] All of which brings me to the things that make your offending more serious than many instances of murder. As observed, while your offending does not quite engage the especially bad murder provision, it is a very bad case nonetheless.

[26] First, it was callous:

³ Sentencing Act 2002, s 104.

⁴ Sentencing Act, s 104(1)(e).

- (a) You shot Mr Moore three times, including twice to the back. The sequence was interrupted by your car breaking down, which meant there was a short gap between the first shot and the remaining two. It is clear from the roadside evidence Mr Moore would have been barely conscious, if at all, when you administered the fatal shots to his back. He was described as collapsing on the ground when he fell out of your car after opening the car. There was no prospect he could defend himself.
- (b) Your disposal of his body was similarly callous. I have already spoken of the anguish this caused. You clearly hoped no one would find it, which is why you buried his body, wrapped in a tarpaulin, in an unmarked grave. I note you continue to deny this. You maintain, as you did in your evidence, your acquaintance disposed of Mr Moore's body. I have no doubt you did, and he did not. Your acquaintance's evidence rightly helped secure your conviction. His testimony was supported by other evidence and was, in my view, materially accurate.

[27] Second, you concealed and destroyed evidence. And, you implicitly threatened serious violence to your acquaintance in the hope he would remain silent. Fortunately, he did not.

[28] Third, you were already on the run from the Police when you murdered Mr Moore, and for shooting at someone with one of the guns you used to kill him. On 12 February 2016—and so just over a month before the murder—you shot at Mr Peter Waenga, a member of the rival Black Power gang. As you will recall, that shooting occurred in Kaitaia. Some of the bullets ricocheted off the footpath, and struck Mr Waenga's legs. He was seriously injured. You later pleaded guilty to wounding Mr Waenga with reckless disregard for the safety of others. Another Judge, Lang J, sentenced you to four years and one month in prison, with a minimum period of two years.⁵

⁵ *R v Y* [2017] NZHC 2236.

[29] It follows you have a propensity, meaning habit, to use guns to hurt others. And not just any gun. While you used two to shoot Mr Moore, the gun common to his death and your shooting of Mr Waenga was an automatic weapon, meaning, one that could be fired as a machine gun. The evidence revealed you prized this weapon. You took it to the forest and practised shooting it there.

[30] Fourth, you have a history of violence. In 2002, you wounded someone with intent to cause that person grievous bodily harm. You received a substantial term of imprisonment. Although that offence is now 16 years old, your recent offending in relation to Mr Waenga and your murder of Mr Moore imply you have a longstanding preference for violence.

[31] These four factors reveal the standard 10-year minimum period as inadequate to hold you accountable; denounce your offending; deter like offending; and protect the community.⁶ The last stands out. Unsurprisingly, you are considered to pose a “very high risk of harm to others”.⁷

[32] The lawyers have referred to many cases, all of which I have considered. I have considered other cases too. I will list all in a footnote to my written remarks.⁸ Comparison in this context is difficult, and in truth, largely a matter of impression.

[33] The Crown submits your minimum period should be 17 years, even though the especially bad murder provision is not quite engaged. Mr Leader submits this period should be 12 or 13 years, subject to personal aggravating and mitigating factors.

[34] Your offending has some similarity to a case called *R v Paewhenua*,⁹ but is much more serious. An 11-and-a-half-year minimum period was adopted there. Much

⁶ Sentencing Act 2002, s 103(2).

⁷ Pre-sentence report, p 2.

⁸ *R v Meads* HC Hamilton, CRI-2009-019-8828, 31 March 2011; *R v Moala* HC Auckland CRI-2006-092-461, 12 December 2007; *R v Lane* HC Whanganui CRI-2008-069-1389, 23 September 2009; *R v Te Tomo* [2015] NZHC 2671; *R v McNaughton* [2012] NZHC 815; *R v Korewha* [2015] NZHC 308; *R v McLean* [2017] NZHC 3183; *R v Fennell* HC Wellington CRI-2007-085-238, 13 June 2008; *R v Paewhenua* [2018] NZHC 301; *R v Oakley* HC Rotorua CRI-2004-087-1618, 19 August 2005; *R v Rewiri* HC Rotorua CRI-2006-063-2149, 22 February 2008; *R v Hudson* HC Palmerston North CRI-2008-078-372, 4 February 2010; *R v Mills* HC Palmerston North CRI-2009-054-3808, 16 June 2010; *R v Johnston* [2012] NZHC 387; *R v Wikaira* [2014] NZHC 1628; *R v Winders* [2016] NZHC 2964; *Swain v R* [2018] NZCA 259.

⁹ *R v Paewhenua*, above n 7.

closer in terms of seriousness is *R v Lane*,¹⁰ in which a 15-year minimum period was adopted. That case also involved kidnapping, but yours has aggravating features that case does not. And, your dangerousness is something I must consider.¹¹

[35] Your offending also has some similarity to a case called *R v Swain*.¹² Like you, Mr Swain repeatedly shot his victim, hid the body, and sought to disguise his involvement in the offence. The body was not found. There were additional charges too. But, the murder committed by Mr Swain was not hard on the heels of another serious shooting. The Judge adopted a minimum period of 14 years. The Court of Appeal held a longer period was open.¹³

[36] Against all this, I adopt a starting point of 15 and a half years' imprisonment: 13 and a half years for the murder, destruction and concealment of evidence and threat to your acquaintance; another year for your concealment of Mr Moore's body; and another year for your earlier shooting of Mr Waenga. As will be apparent, the 15 and a half year figure includes no discrete increase for your 2002 offending. Instead, I treat it as confirmation, if any were needed, of your dangerousness to the community, a consideration reflected in the uplift for the earlier shooting.

[37] I have been careful not to punish you twice for that. The four-year, one-month sentence imposed by Lang J is only a year old; he sentenced you on 15 September last year. But, you have been in custody since April 2016. Your two-year minimum period has presumably expired, but the balance of that sentence remains. Your statutory release date would have been in 2021. The sentence I impose today must, by law, be concurrent.

[38] Which brings me to the pre-sentence report and personal circumstances.

Pre-sentence report and personal circumstances

[39] You are 38. And Ngapuhi. You have children. Your eldest daughter is 19.

¹⁰ *R v Lane*, above n 7.

¹¹ Sentencing Act, s 103(2)(b).

¹² *R v Swain* [2015] NZHC 3241.

¹³ *Swain v R*, above n 7, at [102].

[40] You have long been a member of the Tribesmen gang. You were introduced to gang culture from a young age. You say you are no longer a member of the Tribesmen. That is hardly surprising.

[41] Mr Leader contends you are sorry for Mr Moore's death and should be given credit for this, even though you did not plead guilty. I do not accept you are remorseful. As Mr Leader acknowledges, you did not plead guilty. Your actions after the offence were inconsistent with remorse. Again, you concealed and destroyed evidence, and buried Mr Moore's body in the bush in the hope it would not be found. Your trial presentation implied concern only with your predicament. Put more simply, self-pity.

[42] Mr Leader also argues you should receive credit for arranging for your machine gun to be surrendered shortly before trial. He observes a dangerous weapon is now in the hands of Police. I accept your actions have had this effect, but I do not accept this was your motivation. I consider you arranged for the firearm's surrender for forensic advantage at trial.

[43] However, I accept Mr Leader's final submission, which is that your segregation from other inmates will make prison harder for you, particularly as this is likely to endure for the foreseeable future. I reduce the starting point by six months. This significant reduction reflects the proposition prisoners should be safe from other prisoners.

[44] There are no other mitigating factors.

Sentence

[45] Mr Yates, please stand.

[46] I sentence you to life imprisonment. You must serve at least 15 years before you will be eligible for parole.

[47] Stand down.

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Downs J