

**ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS,  
OCCUPATION OR IDENTIFYING PARTICULARS OF THE PERSON  
DESCRIBED IN THIS JUDGMENT AS “P” PURSUANT TO S 202 OF THE  
CRIMINAL PROCEDURE ACT 2011.**

**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR  
IDENTIFYING PARTICULARS OF THE PERSON DESCRIBED IN THIS  
JUDGMENT AS “L” AS ORDERED BY THE HIGH COURT.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA438/2019  
[2021] NZCA 318**

BETWEEN	THE QUEEN Appellant
AND	LORRAINE ANNE SMITH Respondent

Hearing: 24 June 2021

Court: Collins, Thomas and Muir JJ

Counsel: M J Lillico and C Ure for Appellant  
C P Brosnahan and L A Scott for Respondent

Judgment: 14 July 2021 at 3.00 pm

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**JUDGMENT OF THE COURT**

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- A The appeal is allowed.**
- B The sentence of 12 years’ imprisonment with an MPI of six years imposed in the High Court is quashed and substituted with a sentence of life imprisonment with an MPI of 10 years.**
- C We make an order under s 202 of the Criminal Procedure Act 2011 prohibiting publication of name, address, occupation or identifying particulars of the person described in this judgment as “P”.**
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## REASONS OF THE COURT

(Given by Collins J)

[1] After pleading guilty to a charge of having murdered her 13-year-old granddaughter, Ms Smith was sentenced by Cooke J in the High Court at Whanganui to 12 years' imprisonment with a requirement that she serve at least six years of that sentence before she is considered eligible for parole (MPI).<sup>1</sup> In sentencing Ms Smith, the Judge was satisfied that it would be manifestly unjust to sentence Ms Smith to life imprisonment.

[2] In her appeal, the Solicitor-General contends the Judge made a significant error in not upholding the presumption of life imprisonment set out in s 102(1) of the Sentencing Act 2002, which states:

**102 Presumption in favour of life imprisonment for murder**

- (1) An offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.

...

### Summary of events

[3] Ms Smith is now 61 years old. By any assessment she has had a very difficult life, most of which she has devoted to selflessly caring and providing for her own two children and her three mokopuna. Despite her own limited resources and a profound lack of support, Ms Smith consistently put aside her own needs to care for her dependents. Unfortunately, Ms Smith's efforts took an immense toll upon her own mental health and wellbeing. She developed significant anxiety and depression.

[4] On 15 March 2019, Ms Smith reached a tipping point. It would appear that a comment made by her 13-year-old granddaughter, Kalis, to the effect that Ms Smith never did anything for Kalis was the final straw. Ms Smith told Kalis to accompany

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<sup>1</sup> *R v Smith* [2019] NZHC 1910 [Sentencing notes].

her to a sleepout at the back of her Whanganui property on the pretext that Kalis needed to assist Ms Smith to shut the windows in the sleepout. In fact, Ms Smith asked Kalis to go to the sleepout because she did not want L, another of her grandchildren to see what was about to happen. Ms Smith took with her a necktie that was lying on the kitchen table. When Kalis entered the sleepout Ms Smith pulled Kalis's hoodie over her head, wrapped the tie around Kalis's neck and strangled her, by using her superior strength to pull as hard as she could until Kalis stopped breathing. Kalis fought back but was unable to prevent her grandmother from killing her. We have not seen the post-mortem report but Ms Scott, counsel for Ms Smith, accepted that the strangulation "must have taken minutes". Ms Smith said to the police that she knew her granddaughter wasn't breathing because she placed her finger over her nose to check for signs of life.

[5] After Kalis died, Ms Smith called her son and asked him to come to Ms Smith's home, saying that he needed to call the police. She then took a significant quantity of anti-depressant medication and drove to the hospital where she told staff, and later the police what she had done.

## **Background**

[6] It is necessary to explain in more detail the background leading up to the murder of Kalis.

[7] Ms Smith was born at Whanganui in 1959. She left school at 15 and worked first in a laundry and then in a clerical role at a factory. She also worked part-time in a dairy but for most of her life, Ms Smith has worked as a housekeeper, a nanny, a teacher aide and as a carer of young children.

[8] Ms Smith never consumed illegal drugs, and apart from a few instances in her late teens, she rarely consumed alcohol. Prior to the murder of Kalis, Ms Smith had never committed any criminal offence.

[9] Ms Smith became pregnant with her first son, Adam, when she was 18. Her boyfriend ceased to play any significant role in her life leaving Ms Smith to bring up Adam on her own. Adam soon showed signs of behavioural problems. He was

assessed by paediatricians and was trialled on Ritalin for Attention Deficit Hyperactivity Disorder (ADHD).

[10] When she was 31 years old Ms Smith entered into another relationship. She again became pregnant and gave birth to Jordan, her second son. The father of Jordan walked away from the relationship, leaving Ms Smith as sole carer of her two children. By this time Adam was about 12 years old.

[11] It soon became apparent Jordan suffered from major medical issues. Within a few months of his birth, Jordan was found to be effectively blind and that he had a major brain malformation, which meant he was never able to function beyond the abilities of an 18 to 24-month-old child. Jordan was never able to walk or talk. He was incontinent and developed intractable epilepsy and Addison's disease. From about the age of seven Jordan was fed by a gastrostomy tube directly into his stomach.

[12] Ms Smith was the primary carer for Jordan until he was accepted into a care facility in 2014 when he was 21 years of age. He passed away after Ms Smith was sentenced for the murder of Kalis.

[13] The attention Ms Smith gave to Jordan appears to have caused Adam to become resentful. One of the psychiatric reports placed before us explains that while Ms Smith devoted her energies towards caring for Jordan, Adam "went entirely off the rails, getting into crime and drugs, and later joined a gang. Ms Smith had difficulty managing him and Jordan simultaneously. She had little support from [other members of her family] ...".

[14] At about this time, Ms Smith entered into another relationship which lasted about four years. There are suggestions in the psychiatrists' reports that Ms Smith was the victim of abuse during that relationship.

[15] In his late teenage years, Adam entered into a dysfunctional relationship that was marred by methamphetamine use, alcohol abuse and crime. Adam's partner gave birth to three children, P, L and Kalis.

[16] In about 2003, Ms Smith agreed to care for P and L. At the time P was three years old and L about six weeks old. Ms Smith agreed to care for her two grandchildren because of the physical violence that Adam was inflicting upon his partner. Ms Smith was very concerned about the safety of P and L and agreed to care for them, even though she also had the responsibility of caring for Jordan.

[17] Kalis was born on 16 May 2005 and was uplifted when she was five weeks old and placed into foster care. When Kalis was five months old, Ms Smith agreed to also care for Kalis because no one else in the family stepped forward to accept responsibility for caring for Kalis.

[18] By 2005 Ms Smith was the sole carer of her three grandchildren, who ranged from a few months to six years of age. Ms Smith also continued to care for her profoundly disabled son, Jordan.

[19] All three of Ms Smith's grandchildren suffered behavioural and psychological issues. P developed behavioural issues that required the assistance of the "Yes to Youth" organisation. In later years there was a degree of violence in the relationship between P and Ms Smith. There are reports P punched Ms Smith and that, about three weeks before Kalis was murdered, Ms Smith threw a frying pan containing hot oil at P. After that incident P left Ms Smith's home.

[20] L was a particularly challenging child. When he was about four years old it was realised that he had Autistic Spectrum Disorder and mental health issues. He is described as being very intelligent but lacking an ability to connect with reality. Police became involved with L in 2015, when he was about 12 years old and became particularly violent at school. He was assigned a fulltime teacher aide but, despite the efforts of Ms Smith, L continued to exhibit serious behavioural problems. In 2018, L appeared in the Youth Court charged with threatening to kill and possession of an offensive weapon. L continued to exhibit disturbing behaviour when in late 2018, police were called to Ms Smith's home because L had become violent when his online girlfriend told him she would no longer play an online game with him. L responded by screaming and smashing his computer. A similar incident occurred in February

2019 when L had a “major meltdown” and started throwing items about his room. The police were again required to intervene to calm L down.

[21] Kalis also exhibited some behavioural issues. When she was 11, she was caught sending a photo of herself bathing to a boy she knew. The relationship between Kalis and Ms Smith became problematic when Kalis resisted Ms Smith’s efforts to impose a level of discipline upon Kalis and when Kalis exhibited emotional and behavioural difficulties, including threats of suicide.

[22] Unsurprisingly, Ms Smith’s own mental health began to suffer from the stress she endured in caring for Jordan and her three grandchildren. Additionally, Adam’s persistent pattern of criminal offending and his violent outbursts towards Ms Smith and his children contributed to the deterioration in Ms Smith’s health.

[23] We have had the benefit of two comprehensive psychiatric reports, which carefully document Ms Smith’s psychiatric history which dates back to 1977 when she took two overdoses of medication in the context of workplace stress and relationship issues. When Ms Smith was 40, she was prescribed medication in response to the depression she was suffering from caring for Jordan and because of the breakdown of the relationship we have referred to at [14].

[24] In 2013, Ms Smith sought help from her general practitioner. The records show that she was feeling overwhelmed, tired, stressed and “crying at the drop of a hat”. Her antidepressant medication was increased, and she sought counselling. Medical records show that in June 2014 Ms Smith was reaching breaking point as she tried to manage the stress of caring for Jordan and her three grandchildren. By that stage, each of her grandchildren had been allocated to a social agency and Ms Smith made the decision to place Jordan into permanent care.

[25] In April 2017, Ms Smith was referred for further counselling assistance by her general practitioner. She was described as struggling emotionally, particularly with Kalis who had recently threatened suicide. In February 2019, one month before Kalis was murdered, Ms Smith was seen by her general practitioner, who described Ms Smith as being “emotionally distraught and ... [in a] very low mood”. The general

practitioner recorded Ms Smith's behaviour was marked by "out of character anger". A depression assessment conducted by the general practitioner placed Ms Smith at the high end of the moderately severe range of depression. The general practitioner made a referral for further counselling and changed Ms Smith's antidepressant medication to improve her sleep.

[26] Since being sentenced to prison, Ms Smith's mental state has continued to be extremely fragile. Dr Davidson, a consultant psychiatrist, has provided us with a very thorough report in which she explains that Ms Smith has continued to suffer from significant depression in prison and that she has on occasions expressed thoughts of suicide and made suicidal gestures. Dr Davidson explains that in addition to suffering significant depression, Ms Smith has the symptoms of "carer burnout", a syndrome which is beginning to gain recognition in psychiatric circles. According to Dr Davidson, the enormity of the events of 15 March 2019 has "completely overwhelmed what little remained of [Ms Smith's] coping abilities" and that, the guilt she suffers means that Ms Smith is "unable to process and integrate the offence into her life ...".

### **The events of 15 March 2019**

[27] We have summarised at [4] the key events concerning the murder of Kalis. In addition to the matters that we have already described, the summary of facts, which was substantially based upon what Ms Smith told the police, explains that at about 5.00 pm on 15 March Ms Smith went and picked Kalis up from a sports event. When they got home Kalis and Ms Smith began arguing in Kalis' bedroom. According to L, he heard Kalis saying, "let go of me, stop pushing me down, I can't breathe I can't breathe" and that Ms Smith responded by saying, "[y]ou want to die anyway don't you." He heard Ms Smith telling Kalis to sit down. Kalis then went into the lounge. Ms Smith followed her and sat on the couch and started watching television.

[28] After dinner another argument developed between Ms Smith and Kalis when Ms Smith tried to confiscate Kalis's cellphone. Kalis threatened to run away from home.

[29] Soon after, Ms Smith told Kalis to help her collect washing from an outdoor clothesline and Ms Smith threatened to drag Kalis outside if she did not help her.

[30] At some point, Kalis uttered the barb we have referred to at [4]. Unfortunately, we cannot determine exactly when Kalis made that comment.

[31] After they gathered the washing, Ms Smith and Kalis went back inside where they continued to argue. At that point Ms Smith asked Kalis to help her close the windows in the outdoor sleepout because that was where she intended to kill Kalis. Thereafter, Ms Smith murdered Kalis in the way we have described at [4].

### **Sentencing decision**

[32] When sentencing Ms Smith, Cooke J referred to a detailed psychiatric report prepared by Dr Short, a very thorough cultural report written by Ms Hemi and a pre-sentence report. The Judge also referred to two victim impact statements from Ms Smith's sister and a cousin, who spoke of "a family who have suffered more than their fair share of tragedy, violence, drug addiction and mental disorders".<sup>2</sup>

[33] After setting out the key facts taken from the summary of facts and the contents of the reports we have referred to at [32], the Judge acknowledged that under s 102 of the Sentencing Act Ms Smith had to be sentenced to life imprisonment unless such a sentence would be manifestly unjust. He recorded:<sup>3</sup>

The threshold to displace the presumption of life imprisonment is a high one and met only in exceptional cases. Previous cases where that standard has been met have involved mercy killings, cases where the defendant is suffering from posttraumatic stress disorder relating to family violence, where the[re] is a major psychotic illness, or the defendant is very young ...

[34] The Judge then focused upon whether a sentence of life imprisonment would be manifestly unjust, by first considering Ms Smith's circumstances. The Judge referred to *R v Rihia* and *R v Wihongi*, in which finite sentences were imposed upon defendants who stabbed their partners to death in circumstances where the defendants had been the victims of prolonged and significant emotional abuse inflicted by their

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<sup>2</sup> Sentencing notes, above n 1, at [13].

<sup>3</sup> At [33]; footnotes omitted.

partners.<sup>4</sup> The Judge then summarised Ms Smith’s circumstances in the following way:<sup>5</sup>

Here I accept that Ms Smith was suffering from severe emotional, physical and mental exhaustion in the months leading up to the offending. Her mental health had continued to deteriorate and she presented with symptoms of a moderately severe recurrent major depressive disorder. The psychiatric report notes the offending was triggered by longstanding, cumulative stress from her role as [primary] carer for a profoundly disabled son and three grandchildren who suffered from significant mental health difficulties. Ms Smith was previously prosocial in her attitudes and does not consume alcohol or use illicit drugs. She has no previous offences and the victim impact statements indicate this offending was completely out of character. Up until the offending she had appeared to be a committed grandmother who cared for her sons and grandchildren despite their significant difficulties. She was overcome with remorse in interviews and suffers from profound grief and guilt for the circumstances of her granddaughter’s death. I consider the likelihood of her reoffending is low.

[35] The Judge also considered the circumstances of Ms Smith’s offending when he said:<sup>6</sup>

There are countervailing considerations that I need to take into account. Ms Smith’s mental health had not deteriorated to the extent that she was incapable of knowing that her actions were morally wrong. As the Crown points out in submissions, many people face difficult situations with family members. Those charged with responsibility for the care of others are accountable for their actions. The loss of a young life at the hands of the person entrusted to care for such a person is a matter of community concern. The victim here was particularly vulnerable, and there was an element of premeditation when Ms Smith told the victim to go to the sleepout because she planned to kill her there, away from her brother.

[36] The Judge acknowledged that the case was not “straightforward because of the elements of premeditation and particularly given the vulnerability of the victim”.<sup>7</sup> But, bearing in mind all of the circumstances he said that a sentence of life imprisonment would be manifestly unjust.<sup>8</sup>

[37] The Judge then determined the finite sentence by adopting a starting point of 14 years’ imprisonment, which he discounted by two years to reflect Ms Smith’s

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<sup>4</sup> *R v Rihia* [2012] NZHC 2720; and *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775.

<sup>5</sup> Sentencing notes, above n 1, at [35].

<sup>6</sup> At [36].

<sup>7</sup> At [39].

<sup>8</sup> At [39].

remorse and her guilty plea.<sup>9</sup> The Judge decided an MPI of six years had to be imposed to reflect the factors in s 86 of the Sentencing Act.<sup>10</sup>

### **Section 102 of the Sentencing Act**

[38] This Court has recently reaffirmed the four key elements in s 102 of the Sentencing Act.<sup>11</sup> In summary:

- (a) Parliament has enacted a strong presumption that those convicted of murder will be sentenced to life imprisonment. That presumption can be seen in the direction in s 102(1) that those convicted of murder “must” be sentenced to life imprisonment unless the presumption is able to be overruled by reference to the exception in s 102.<sup>12</sup>
- (b) The presumption in s 102 reflects the value placed by Parliament upon the sanctity of life and the sentencing objectives of accountability, denunciation, deterrence and protection of society.<sup>13</sup>
- (c) Before a court can conclude that a sentence of life imprisonment would be manifestly unjust under s 102, it must examine both the circumstances of the offence and of the offender. It is not sufficient to examine just the circumstances of the offender, or the circumstances of the offence. An examination of both sets of circumstances must be undertaken before the Court can conclude that a sentence of life imprisonment would be manifestly unjust.<sup>14</sup>
- (d) The manifestly unjust criterion in s 102 reinforces that courts will rarely depart from the presumption of life imprisonment for those who commit murder.<sup>15</sup>

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<sup>9</sup> At [42]–[43].

<sup>10</sup> At [44]–[47].

<sup>11</sup> *R v Van Hemert* [2021] NZCA 261.

<sup>12</sup> At [34].

<sup>13</sup> At [35]. See also Sentencing Act 2002, s 103(2).

<sup>14</sup> At [37].

<sup>15</sup> At [42].

## **Section 104 of the Sentencing Act**

[39] There is another important statutory provision relevant to Ms Smith’s case. Section 104 of the Sentencing Act requires courts to impose an MPI of 17 years or more for particularly serious murders unless the court is satisfied that it would be manifestly unjust to do so.

[40] Section 104(1) of the Sentencing Act sets out nine specific aggravating circumstances, which Parliament said must result in a sentence of 17 years’ imprisonment or more unless the manifestly unjust exception applies. Included in that list of aggravating circumstances is a reference to the vulnerability of a victim.

[41] Section 104(1)(g) states that the court must impose an MPI of at least 17 years’ imprisonment “if the deceased was particularly vulnerable because of his or her age, health, or because of any other factor” unless it would be manifestly unjust to do so.

[42] The importance that Parliament has placed upon protecting children from violence is reaffirmed by s 9A of the Sentencing Act, which provides that where a court is sentencing an offender in a case involving violence against a child under the age of 14 years, the court is to have regard to the aggravating factors set out in s 9A(2). Those mandatory considerations include:

(a) the defencelessness of the victim:

...

(c) the magnitude of the breach of any relationship of trust between the victim and the offender:

...

## **Interrelationship between ss 102 and 104 of the Sentencing Act**

[43] While the test of manifestly unjust is used in both ss 102 and 104, the test has to be applied in the context of the respective sections.<sup>16</sup> It is to be noted that the test of manifestly unjust in s 102 is firmly anchored to an assessment of the circumstances of the offence and of the offender. Section 104 is not limited in that way. This suggests that the assessment of manifestly unjust under s 104 may be a broad-based assessment, which enables the Judge to decide “as a matter of overall impression that the case falls outside [of] the scope of the legislative policy that murders with specified features are sufficiently serious to justify at least [a minimum term of 17 years’ imprisonment]”.<sup>17</sup> However the specified MPI must not be departed from lightly and personal circumstances would rarely displace the presumption.<sup>18</sup>

[44] In *Hamidzadeh v R*, this Court considered the interrelationship between ss 102 and 104 of the Sentencing Act and observed that where one or more of the factors in s 104(1) applies, it is less likely that the manifestly unjust threshold will be reached under s 102 because, any other approach risks undermining Parliament’s intention that the most serious types of murder should result in lengthy periods of imprisonment.<sup>19</sup>

### **Analysis**

[45] We agree with the Crown when it submitted that where s 104 is engaged it is appropriate to first reach provisional conclusions as to the impact of that section on the case, before considering s 102. This approach is preferable to any other because the decision on the implications of s 104 will usually influence, but not determine, the assessment of whether or not the presumption in s 102 is able to be displaced.

### *Section 104(1) of the Sentencing Act*

[46] Cooke J recognised that Kalis was a “particularly vulnerable” victim. He was right to do so because of her age and because of her own behavioural and psychological difficulties, which were evident through her threats of suicide. Kalis’s

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<sup>16</sup> *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR 602 at [74] and [98]–[99].

<sup>17</sup> *R v Williams* [2005] 2 NZLR 506 (CA) at [67].

<sup>18</sup> At [66].

<sup>19</sup> *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [69]–[70].

vulnerability was compounded by the fact she was dependent on Ms Smith and she should have felt safe in her home. This was therefore a case to which s 104(1)(g) of the Sentencing Act applied.

[47] The Judge did not, however, assess whether or not s 104(1)(g) of the Sentencing Act applied in this case. He may have thought it unnecessary to do so because, whilst the Crown argued s 104 was engaged, it also properly acknowledged that it would be manifestly unjust to sentence Ms Smith to 17 years' imprisonment. Instead, the Crown argued that a sentence of life imprisonment with an MPI of somewhere between 10 to 14 years was appropriate. Nevertheless, it was incumbent upon the Judge to consider the effect of s 104(1)(g) to Ms Smith's case and assess, at least on a provisional basis, what MPI less than 17 years was appropriate.

[48] Having agreed that s 104(1)(g) applies, we must undertake the task of provisionally considering the implications of that section in this case.

[49] We have no hesitation in concluding it would be manifestly unjust to impose an MPI of 17 years in this case. Our reasons for reaching this conclusion can be succinctly stated:

- (a) Ms Smith's offending was strongly influenced by her deteriorating mental health, which undermined her ability to appreciate her own vulnerability or respond appropriately when challenged by Kalis.
- (b) Ms Smith is not a risk to others in society. The psychiatric reports acknowledge she will continue to be at risk of harming herself, but there is no suggestion she is likely to hurt anyone else.
- (c) Ms Smith's remorse is profound. She is wracked with guilt.

[50] We do not underestimate the significance of Kalis's vulnerability, and that Ms Smith deliberately set out to kill her granddaughter in a distressing manner. Ms Smith's offending involved a gross breach of trust.<sup>20</sup> We believe, however, that

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<sup>20</sup> Sentencing Act, s 9A.

Ms Smith's personal circumstances must be recognised with a compassionate response.

[51] Setting the appropriate provisional MPI under s 104 is not an easy task. We have concluded, however, that the factors set out in s 103(2) can helpfully guide this part of our analysis. That is to say, we shall give primary attention to the need to:

- (a) hold Ms Smith accountable for the harm done to the victim and the community;
- (b) denounce her conduct;
- (c) deter others from committing the same or a similar offence; and
- (d) protect the community from Ms Smith.

[52] As we have noted at [49(b)], there is no concern about protecting the community from Ms Smith. We are also provisionally satisfied that the objectives of accountability, denunciation and deterrence are able to be achieved in this case by imposing the least restrictive MPI prescribed in s 103(2) of the Sentencing Act namely, a term of 10 years' imprisonment.

### **Section 102 of the Sentencing Act**

[53] Having provisionally concluded that a sentence of life imprisonment with an MPI of 10 years is appropriate, we now turn to consider whether or not the presumption of life imprisonment is able to be displaced.

[54] As we have previously noted, in *Hamidzadeh v R*, this Court recognised that where one or more of the factors in s 104 is engaged it is very unlikely that the manifestly unjust threshold will be reached under s 102. That does not mean, however, that a case that engages one of the factors in s 104 will never qualify for a sentence less than life imprisonment.

[55] What is required is for the Court to carefully assess both the circumstances of the offence and the offender in determining whether or not it would be manifestly unjust to sentence Ms Smith to life imprisonment.

[56] We recognise Ms Smith was herself in a vulnerable psychological state. Her case however is different from the “battered syndrome cases” referred to by Cooke J. In those cases, the victims were directly responsible for the psychological vulnerability of the defendant. It is also significant that the cases of *R v Rihia* and *R v Wihongi* did not engage s 104 of the Sentencing Act.

[57] If we were permitted to only focus upon Ms Smith’s personal circumstances, we would have reached the same conclusion as the High Court Judge. Her circumstances justify considerable compassion and leniency. Unfortunately, however, we must also have regard to the circumstances of the offence. We cannot minimise the vulnerability of Kalis, the gross breach of trust, the fact that Ms Smith set out in a determined manner to kill Kalis and did so, using a method of murder that would have been terrifying for Kalis.

[58] When we assess both the circumstances of the offending and Ms Smith’s circumstances we are driven to the conclusion that it is not manifestly unjust to sentence Ms Smith to life imprisonment.

## **Result**

[59] The appeal is allowed.

[60] The sentence of 12 years’ imprisonment with an MPI of six years imposed in the High Court is quashed and substituted with a sentence of life imprisonment with an MPI of 10 years.

[61] To protect the identity of “L”, whose identity is already suppressed by the High Court, we make an order under s 202 of the Criminal Procedure Act 2011

prohibiting publication of name, address, occupation or identifying particulars of the person described in this judgment as “P”.

Solicitors:  
Crown Law Office, Wellington for Respondent