

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

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

**CRI-2021-043-98
[2021] NZHC 2450**

THE QUEEN

v

NATHAN GORDON FROST

Hearing: 17 September 2021
Counsel: J M Marinovich for Crown
P M Keegan and J M Woodcock for Mr Frost
Sentence: 17 September 2021

SENTENCING NOTES OF ELLIS J

[1] Mr Frost, there are a lot of things that I need to say before I get to final sentence; you can sit while I am talking, but I will get you to stand up at the end.

[2] Nathan Frost, you appear today for sentencing on two charges of murder. On 18 January 2021 you murdered your father, Stephen, and you murdered your half-brother, Regan. You pleaded guilty to those charges on 15 July.

[3] The sentence for murder is life imprisonment, unless such a sentence would be manifestly unjust. In your case, there is no suggestion that such a sentence would be unjust—so life imprisonment will be your sentence.

[4] The only question for me today is what minimum period of imprisonment (MPI) you should serve as a condition of that sentence. The MPI is the length of time

you must spend in prison before parole even becomes a possibility. I emphasise the word *possibility* because even *after* the expiry of the MPI you will *only* get parole if the Parole Board considers that is appropriate in terms of the risk that you pose.

[5] Although murder is always regarded as the most serious of crimes, the minimum period of imprisonment—the MPI—imposed in each case stands as a marker of the *relative* seriousness of a particular murder, compared with others.

[6] In order to determine the appropriate MPI in your case, Mr Frost, there are a number of things I must consider, and record. I need to begin by summarising what happened on 18 January this year.

The facts

[7] At that time, you were living with your father Stephen, your half-brother Regan who was 15, and your half-sister Grace, who was 14. In the early hours of the morning you were in your bedroom. You had been drinking excessively and were in a distressed state.

[8] It seems that at around 2.55 am, your father had heard you crying. He opened your bedroom door and went in, to see if you were okay. In your room was a large pipe wrench that you had taken there at some earlier time, with murder in mind. You struck your father multiple times in the head and arm. You broke his jaw in two places and knocked him unconscious. You continued to strike him with the wrench.

[9] You then unfolded the hunting knife with a 12 cm blade that you had bought not long before. You stabbed Stephen in the neck, fatally severing his carotid artery and jugular. Stephen died at the scene.

[10] Regan had overheard and overseen part of the attack and yelled at you to stop. He also yelled out to warn Grace, who was in a sleep-out outside, that you had a knife. You then went into Regan's bedroom and stabbed him many times in the back and shoulder, puncturing his lungs and causing massive internal bleeding. You then made a fatal attack on his head and neck. Regan died at the scene.

[11] You then got the keys to the sleep-out. Fortunately, Grace had heard Regan yelling and had escaped. She managed to hide nearby and called the Police. I have no doubt that Regan saved Grace's life that night.

[12] When Police arrived soon after, you immediately told them you had killed two people.

Victim impact

[13] We have heard today from members of your family who have spoken in a dignified, courageous and heart-wrenching way about the profound effect your actions have had on them. It would not do them justice for me to try and summarise what they said again now. I think you know in your heart—even if you cannot yet acknowledge it—what a precious, precious thing it was that you senselessly took from Stephen and Regan in those few drunken, self-pitying, moments. When you took their lives, you took all their potential and all their future. Regan, in particular, had so much life left to live. The pain you have caused to those left behind is unimaginable. As Grace put it this morning—they are stuck in a pitch-black room, under a rock full of thoughts.

[14] In the end, though, it is clear that your family remains strong and fiercely loyal to each other. They will not let what you have done defeat or break them. They will stand together, and I think they will survive.

Personal circumstances

[15] There is other material that has been provided to me for the purpose of sentencing today, in the form of various reports, including the usual PAC report, a cultural report and reports from the psychiatrists Dr Lehany and Dr Dean. I have read all of them and, to the extent I am able, take their contents into account. There is considerable overlap between all the reports, and I will not go through them one by one and nor am I going to go into much detail today. As I have said, I have read the reports carefully.

[16] There are a couple of things that come through reasonably clearly from the reports and I will mention those here. Those things cannot come *close* to excusing

what you did and they do not really even come close to explaining it, or at least not in any rational way. But I do think they need to be specifically acknowledged.

[17] Although the psychiatrists found that you were fit to plead and were not legally insane at the time of the offending you plainly do have mental health issues. But Dr Lehany says that the experts have so far been unable to get to the bottom of the exact nature of those issues, in part because you have engaged in only a limited way with them. Dr Lehany thinks that a diagnosis should become clearer over the next few years.

[18] For my part, I suspect that you have been reluctant to engage because you are deliberately avoiding having to confront, or fully process, the awfulness of what it is you have done. I also suspect that this is why—as the PAC report writer notes—you struggle to display remorse, guilt, or empathy about the murders. I would think that being able to squarely acknowledge the reality of killing Stephen and Regan so mindlessly and brutally, and the awful effect their murder has had on others, will be the most challenging thing for you to deal with over the years to come.

[19] It seems clear also that your mental health issues were largely triggered by your mother's death six years ago when you were 16. You were very close to your mother and she was plainly very loving towards you. By the time she died she had been seriously ill for a long time and I have no doubt that that was very hard for you. And you understandably found her death—both generally and in terms of its specific circumstances—very traumatic.

[20] Your mother and Stephen had separated when you were quite young and—rightly or wrongly—you harboured deep resentment and longstanding anger towards your father because of the breakdown of their relationship. And when Stephen's new partner gave birth to Regan and Grace, you formed the view that they “should not have been born”, because Stephen should never have left your mum. Although I think you are an intelligent person, Mr Frost, I can only say that that is not a rational way of thinking. By all accounts your Dad was a genuinely decent man who really cared for you and his actions just before you killed him support that view. And Regan and Grace

were barely more than children. They had done *nothing* to you; they were completely innocent. You had no good reason at all to wish them harm.

[21] But after your mother died, of course, you ended up living with Stephen, and with Regan and Grace. Although you were close to your older brother, Jaydan, he had left home by that time to live his own life.

[22] It may be that you thought that by drinking huge quantities of alcohol and consuming other drugs, you would numb your unhappiness or block out your misguided feelings of anger and resentment towards your family. But that is not the way those things work. Instead, the alcohol and drugs fed your dark thoughts and dangerously disinhibited you. I think alcohol, in particular, turned you into a ticking time bomb within the heart of your family. As I understand it, you had drunk a whole bottle of whisky on the night of the murders.

[23] While the consensus of the report writers seems to be that your risk of reoffending in a similar way in future is relatively low, it is also clear that if you did reoffend, the risk of you again causing serious harm is very high.

Section 104

[24] As I said at the beginning, you will twice be sentenced to life imprisonment for the murder of Stephen and the murder of Regan. But now I need to turn specifically to consider the question of the MPI.

[25] Although all murders are dreadful in their own way, there are some that have features that the law recognises as particularly serious. Where one or more of those factors are present, the law says that the MPI imposed must be at least 17 years, unless that would be plainly unjust.¹ Mr Marinovich and your lawyer, Mr Keegan, rightly agree that at least 17 years must be taken as the *starting* point for the MPI here. Mr Marinovich says that when *all* the aggravating factors are taken into account the MPI starting point should be between 23 and 24 years. Mr Keegan says 21 years.

¹ Sentencing Act 2002, ss 103 and 104.

[26] The fact that you murdered two people is sufficient to engage the statutory presumption that there will be an MPI of 17 years or more.² And as Mr Keegan referred to me in his written submissions there was a sentencing over 10 years ago where the Judge observed that for double murders arising out of the same sequence of events, the MPI starting points ranged from 18 and a half years to 25 years.³ Counsel have also referred me to several sentencings for double murder since then.⁴ Overall, the average MPI starting point in such cases seems to be around 22 years.

[27] But here, it is not just the fact that you killed two people that makes this case particularly serious. There are other aggravating factors too.

[28] First, I consider there was planning and premeditation here, evidenced by you buying the knife and taking the wrench to your room.⁵ As well, some of the reports I have referred to earlier clearly indicate that you had been brooding about—and taking active steps to prepare for—the murder of Stephen, Regan and Grace for some time.⁶ That said, I also take account of what Mr Keegan spoke about this morning in terms of matters of degree. The actual murders were, in the end, impulsive; equally, without the planning they would, in all likelihood, not have happened.

[29] Secondly, and as Mr Keegan also rightly accepted, the killing of both Stephen and Regan was undoubtedly brutal.⁷ As Mr Marinovich said, it occurred in the early hours of the morning in the victims' own home. I think the way in which you killed Regan—a 15 year-old boy who had the misfortune of seeing and then trying to stop you murdering his father—was particularly callous and cruel. And what the statement of facts says about your actions immediately after you had killed Regan suggests that

² Section 104(1)(h).

³ *R v Somerville* HC Christchurch CRI 2009 009 14005, 29 January 2010.

⁴ *R v Maheno* [2013] NZHC 2430: 21 years; *Dawood v R* [2013] NZCA 381: 19 years (second victim stabbed but did not die); *R v Tarapata* [2015] NZHC 1594: 20 years and *Malik v R* [2015] NZCA 597: 21 years.

⁵ Section 104(1)(b).

⁶ Dr Lehany's first report records that Mr Frost's account of the offending included that:
For about 1 week before the alleged offences he developed a plan to kill his father and half-siblings. He intended them all to be asleep. He took a heavy metal tool from the shed and had it in his room, intending to use it as a weapon. ... He went to get tape and plastic bags he had bought previously, to kill his half-sister ...
... It is noted that Mr Frost purchased gloves and black duct tape from Bunnings in early January.

⁷ Section 104(1)(e).

you were intending, next, to go after Grace. It suggests it was a little more than a matter of luck—and Regan’s quick thinking—that you are not being sentenced for three murders today.⁸

[30] In light of those factors, and having considered the comparable cases, I consider the starting point for the MPI in your case, Mr Frost, should be 23 years.

[31] The next question is whether that should be reduced at all on account of any positive things that are personal to you. The Court of Appeal has made it clear, though, that personal mitigating factors tend to have a much lesser role to play when setting an MPI for murder than they do when sentencing for other offences.⁹

[32] The relevant factors in your case, Mr Frost, are that you were (and are) only 21 years old and you have no previous convictions. You also pleaded guilty to the charges at an early stage, although it has to be observed that the case against you was overwhelming. Any recognition of your mental health issues is difficult because there has been no real diagnosis yet and, as I have said already, I think it was really the interplay between alcohol and your mental distress that was the real and immediate cause of what you did on 18 January.

[33] In the end I think that a global discount of no more than three years could be justified for the matters I have just mentioned. That would give an MPI of 20 years.

[34] I am satisfied that an MPI of 20 years could not possibly be described as manifestly unjust, given the circumstances of your offending. I have seen no case involving a double murder where personal factors have reduced the MPI to less than 17 years. And although Mr Keegan urged that your young age is what makes for potential injustice here, I am unable to agree. I have taken that into consideration already in the three-year discount. And I note that the defendant in *Ying*—another double murder case mentioned by counsel in their written submissions—was roughly

⁸ I note in passing that in the pre-Sentencing Act case of *R v Bell* CA 80/03, 7 August 2003, Mr Bell’s MPI of 33 years for the brutal murder of three people was reduced to 30 years on appeal.

⁹ See for example the recent discussion in *Webber v R* [2021] NZCA 133 at [33].

the same age as you and, after taking his age into account, the Judge ordered an end point MPI of 20 years.¹⁰

[35] In my view an MPI of the same length is necessary here to hold you accountable for and to denounce the dreadful harm you have inflicted on your family and to protect the community from you.¹¹

[36] So if you could stand now please, Mr Frost.

[37] For the murder of Stephen Frost, I sentence you to life imprisonment.

[38] For the murder of Regan Frost-Lawn, I sentence you to life imprisonment.

[39] The two life sentences will be served concurrently. There will be a minimum period of imprisonment of 20 years.

[40] You may stand down.

Rebecca Ellis J

Solicitors:
Crown Solicitor, New Plymouth

¹⁰ *R v Ying* (2004) 20 CRNZ 1078 (HC).

¹¹ Sentencing Act 2002, s 103(2).