

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

**I TE KŌTI MATUA O AOTEAROA  
TŪRANGANUI-A-KIWA ROHE**

**CRI-2019-065-91  
[2021] NZHC 675**

**THE QUEEN**

v

**TIHEI PATUWAI and REUBEN WAYNE HIRA GIBSON-PARK**

Hearing: 30 March 2021

Appearances: S B Manning and A Bryant for Crown  
E J Forster for Mr Patuwai  
M W Ryan and J Hudson for Mr Gibson-Park

Sentence: 30 March 2021

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**SENTENCE OF COOKE J**

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[1] Tihei Patuwai, Reuben Gibson-Park, you are here today to be sentenced for the murder of Raymond Neilson following the verdict of the jury on 25 November 2020. Mr Gibson-Park, you are also to be sentenced on the charge of arson for which you were also found guilty.

[2] In explaining the sentence that I am going to impose I will first outline the facts of your offending and I will then explain the approach that is taken to the sentence for murder. I will then address circumstances that are relevant to your sentences before formally imposing them.

[3] There is a strict approach followed in relation to the sentence for murder. The required sentence is life imprisonment except in limited circumstances. It is not

suggested that those limited circumstances could apply here. There is then a question of the minimum period of imprisonment that accompanies that life sentence – that is the time you must spend in prison before you can be considered for parole. The circumstances of your offending involve a minimum period of 17 years unless imposing that period is manifestly unjust, and I will consider whether that could be the case here.

### **The facts**

[4] I deal first with the facts. The murder of Mr Neilson arose as a consequence of a chance encounter with him. Mr Gibson-Park, you did not know Mr Neilson. Mr Patuwai, you only knew him from your youth as you both grew up in Tokomaru Bay. On 14 December 2019 both of you were attending an end of year function for your logging crew in Tokomaru Bay. There was an open bar and you both consumed a significant amount of alcohol. At the end of the function you were in two vehicles with others that left the function driving around looking for further activity. As the vehicles travelled along Waima Road you came across Mr Neilson who was walking home after the evening out.

[5] Mr Gibson-Park, as you drove past Mr Neilson, Mr Neilson called out and hit the side of your vehicle. This angered you, and you did a U-turn and returned and parked in front of Mr Neilson, got out of your vehicle and confronted him. The other vehicle followed you. You then attempted to assault Mr Neilson but because you were in an intoxicated state you were not able to get hold of him. One of the passengers in the vehicles tried to persuade you to stop but to no avail. Mr Neilson then ran off and up Tawhiti Street which was nearby and which was where he lived. You initially ran after him but the combination of the upwards slope and your intoxication quickly tired you and you returned.

[6] When Mr Neilson got to his home on Tawhiti Street he could be heard calling out to you. This further angered you. At that stage a group comprising both of you and two teenagers – Mr Kenworthy and Mr Reedy, decided to go up to Mr Neilson's house to deal to him. The remaining occupants of the two vehicles then drove them away.

[7] Your group then went up to Mr Neilson's house. Mr Neilson was initially holding a baseball bat, but by the time the group came up the steps to the front deck of his house he had put that down and he was holding a knife. Mr Gibson-Park, you persuaded him to put the knife down. Mr Patuwai, you then commenced the assault of Mr Neilson by punching him. There were then punches and kicks from both of you. There was also kicking from Mr Kenworthy. Mr Neilson was originally assaulted on a couch on his deck, but was subsequently pinned down on the deck itself by you Mr Gibson-Park and punching, kicking and elbowing continued with him in that position. At this point Mr Gibson-Park, you were passed the baseball bat which Mr Neilson had originally discarded and you used the butt end of the bat to hit Mr Neilson as you pinned him down.

[8] The assault on Mr Neilson at this stage was serious, with him receiving heavy blows resulting in significant blood loss from his injuries. There was some searching of Mr Neilson's property at this point, and then the two teenagers decided to leave.

[9] Your joint assault on Mr Neilson then continued. It moved from the deck inside Mr Neilson's lounge. At this stage the punching, hitting and stomping continued and the baseball bat was used with a swinging motion to inflict blows on Mr Neilson's body. The assault ultimately concluded with Mr Neilson lying on the floor on his back with his head resting on the raised area around his wood burner. Significant blows were administered to him when he was in that position.

[10] The overall assault was brutal with multiple blows inflicted. It lasted for some half an hour. Mr Neilson cried out for you to stop while he could but you both continued. The assault could be heard at some distance by neighbours. Ultimately he died as a consequence of the combined effect of the blows. The cause of death was asphyxiation as a consequence of the injuries to Mr Neilson's face and neck area, including the fractures to his face and neck bones causing him to suffocate on his own blood. There is no evidence that he was rendered unconscious, although that is possible. He may simply have died because the effects of the injuries on him were over-whelming.

[11] His death arose from the combined effect of the injuries that you each inflicted. I accept that neither of you intended to kill Mr Neilson and you may not even have expected him to die. But he was very seriously injured and you continued with the assault upon him knowing that if you continued to do so in that state that he may well die from his injuries. You continued with punches, kicks and/or stomping nevertheless, and you killed him. You are both responsible for his murder in those circumstances.

[12] After you realised Mr Neilson had died you left his house. You went down to a nearby house where Mr Patuwai's brother lived. Mr Patuwai, you woke your brother and asked him to drive you both back home. While you were in the back of the car Mr Gibson-Park, you raised the idea that you both should return and set fire to Mr Neilson's body. This idea had occurred to you as you appreciated you had killed Mr Neilson and wished to hide the evidence that you were responsible. That thought remained with you after you returned home and Mr Gibson-Park, you decided that this was a good thing to do.

[13] You then drove back to Mr Neilson's house with another person. That other person was not Mr Patuwai. You re-entered the house, disabled the smoke alarm, turned all the elements and the oven on full, put a stereo speaker and other debris on top of Mr Neilson's body, doused it with accelerant and set fire to him. You then left.

[14] The fire took hold to some extent on Mr Neilson's body causing it to be badly burned in places. There was also some damage, particularly smoke damage to the house. But the fire did not take hold of the house overall by the time it was extinguished by the Fire Service. It was these events that caused you to be guilty of the further offence of arson Mr Gibson-Park.

### **Victim impact statements**

[15] It is important to record the devastating impact of this offending on Mr Neilson's family. Victim impact statements have been provided by his fiancée and each of his children, as well as his sister and brother-in-law. I acknowledge the members of the family who are here, and those observing from Australia. The family have been devastated by their loss and speak of the love and respect that they had for

Mr Neilson. Both of you will need to live with what you have done for the rest of your lives, not just because you took Mr Neilson's life, but because of the impact you have had on his family.

### **The approach to sentencing for murder**

[16] As I indicated, the law in relation to sentencing for murder is clear-cut. Under s 172 of the Crimes Act 1961 and s 102(1) of the Sentencing Act 2002, I must sentence you to life imprisonment unless it is manifestly unjust to do so. It is not suggested that the sentence of life imprisonment is unjust and so that is the sentence which you will both receive.

[17] Under s 103 of the Sentencing Act, the Court is required to impose a minimum term of imprisonment for murder of not less than 10 years having regard to the factors of accountability, denunciation, deterrence and community protection. Under s 104, that minimum period of imprisonment must be at least 17 years if there are certain factors involved.

[18] There is no dispute that those factors apply in the present case. First, the murder involved you unlawfully entering into Mr Neilson's home so that s 104(1)(c) applies. Secondly, the murder involved a higher level of brutality, cruelty, depravity or callousness under s 104(1)(e).

[19] Your actions involved a higher level of brutality given the relentless beating that you both administered. It also involved a high level of cruelty given that Mr Neilson was lying on the ground defenceless and was calling out for you to stop while he still could.

[20] It also involved a high degree of callousness. There was no attempt to save or help him once it must have been apparent to you that he had stopped breathing. You just let him suffocate on his own blood as a consequence of the beating and then left. Mr Gibson-Park, in your case the callousness became all the more extreme because of your actions to later return to his home and attempt to conceal your offending by setting him on fire.

[21] All these factors mean that under s 104, I must impose the 17 year minimum period unless it would be manifestly unjust to do so, and I will now consider that question.

### **Is a 17 year MPI manifestly unjust?**

[22] The Court of Appeal has explained the approach that should be adopted to this question in *R v Williams* and more recently in *Davies v R*.<sup>1</sup> There are alternative ways of approaching the exercise, but they essentially require the Court to consider what the minimum period of imprisonment would have been but for the 17 year presumption under s 104, and then require a consideration whether the higher minimum period would be manifestly unjust in all the circumstances, taking into account the legislative intention to signal out murders having the factors referred to in s 104 as deserving the higher minimum periods of imprisonment.

[23] There are factors relevant to your personal circumstances that justify me considering the exception in s 104. I have the advantage of cultural reports for each of you. You both have had challenges in your lives but have done well despite those challenges. For both of you, the offending is out of character.

[24] Mr Gibson-Park, you have some prior offending, but it is not violent offending. You had a good job with a responsible position. Your employer and others have spoken highly of you. You come from a well-respected family in this community. You had a good home, a relationship with your partner, and a loving relationship with your children.

[25] Mr Patuwai, you also have limited previous convictions and none for violence. You also occupied a senior position in your employment. Again, several people have spoken highly of you. You have similar support from your whanau. You describe your mother as your backbone and you plainly have the support from your other whanau, including your brother.

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<sup>1</sup> *R v Williams* [2005] 2 NZLR 506; *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43.

[26] Both of you have expressed remorse. I accept that it is genuine. Your offending is very difficult to understand. So often this Court sees situations where offenders come from broken backgrounds and deeply troubled lives. That can provide some explanation for offending. Here there is no such explanation. The cultural reports do describe difficulties in your lives, but not such that provide a real explanation for your offending. In your interviews recorded in the pre-sentence reports, you have mentioned how drunk you were, but that provides no explanation.

[27] Your general good character prior to these events only takes the position so far, however. Mr Gibson-Park, in your case it has not been suggested that the exception to the 17 year minimum period of imprisonment could apply, particularly given your actions in returning to burn Mr Neilson's body. Even without s 104 the minimum period of imprisonment would have been approximately 17 years.

[28] Mr Patuwai, in your case your counsel does argue that the exception applies. But the cases put forward as comparisons where a lower minimum period are involved have involved differences from your case. In *R v Lewis*<sup>2</sup> the relevant offender had not actually participated in administering any blows and in *R v Adams*<sup>3</sup> and other cases the offenders were young. The factor of youth does not apply to you. So it seems to me these cases are in a different category. Indeed in the present case, the fact that both of you took two teenage boys along with you when entering Mr Neilson's house to assault him does not reflect well on either of you. The Crown has referred to other cases involving a similar situation of murder arising from a brutal beating of the kind for which you have been convicted – *Carroll v R*<sup>4</sup> and *R v Bush*,<sup>5</sup> - where the 17 year period was confirmed.

[29] I accept that were it not for s 104 your minimum period might have been lower than 17 years Mr Patuwai, but it would not have been significantly lower. And I am not satisfied that the imposition of 17 years as a minimum period would be manifestly unjust.

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<sup>2</sup> *R v Lewis* [2018] NZHC 1877.

<sup>3</sup> *R v Lo and Adams* [2014] NZHC 1117.

<sup>4</sup> *Carroll v R* [2018] NZCA 320.

<sup>5</sup> *R v Bush* [2018] NZHC 1217.

### **Increase from 17 years?**

[30] In your case Mr Gibson-Park the Crown seek a minimum period higher than 17 years because of the arson. This increases the callousness of your offending. A comparison is drawn with the case of *R v Gosnell* where the victim was not only killed by a brutal attack, but the defendant later desecrated the victim's body.<sup>6</sup> In that case, however, the victim was 15 years old and the Court considered that this factor alone justified the 17 year minimum period. The increase to 18 years was made in that case on that basis. In the present case, whilst this is a very difficult question, I am satisfied the 17 year minimum period sufficiently addresses the factors of accountability, denunciation, deterrence and community protection.

[31] There is a difference between you because of your conduct in setting fire to Mr Neilson's body, Mr Gibson-Park. But the approach required by s 104 means that you will both receive the same sentence. I do need to impose a separate sentence on the arson charge, however. For the charge of arson under s 267(1)(b) of the Crimes Act you will be sentenced to 4 years' imprisonment Mr Gibson-Park, but this will be served concurrently with your sentence of life imprisonment. That means that this additional sentence will not add to the total period of imprisonment imposed.

### **Sentence**

[32] Tihei Pautwai, for the murder of Raymond Neilson you are sentenced to life imprisonment with a minimum period of imprisonment of 17 years.

[33] Reuben Gibson-Park, for the murder of Raymond Neilson you are sentenced to life imprisonment, with a minimum period of imprisonment of 17 years. On the charge of arson you are sentenced to 4 years' imprisonment to be served concurrently with the imprisonment on the murder charge.

[34] Please stand down.

**Cooke J**

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<sup>6</sup> *R v Gosnell* [2013] NZHC 1313