

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

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

**CRI-2022-009-2484  
[2022] NZHC 2365**

**THE KING**

v

**ELLIOT AJAY PRAKASH**

Hearing: 15 September 2022

Appearances: M N Zarifeh and P N M Brown for Crown  
K H Cook for Defendant

Judgment: 15 September 2022

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**JUDGMENT OF MANDER J**

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[1] Mr Prakash, I will get you to stand at the conclusion of my sentencing remarks. You may remain seated until that point.

[2] Elliot Ajay Prakash, you are for sentence this morning having pleaded guilty to the murder of Valerie Heaney following the provision of a sentence indication. As you are aware, murder carries the presumptive penalty of life imprisonment. There is no dispute that such a sentence is appropriate in this case and that will be the sentence. It is important to note, however, from the outset that such a sentence carries two important consequences. Firstly, if you are ever released it will be because the Parole Board is satisfied you no longer pose a risk to the community. Secondly, even then, you will remain subject to recall on account of any conduct indicating an emergence of risk.

## **The facts**

[3] It is necessary that I set out the factual basis upon which I sentence you. Ms Heaney was a 64-year-old caregiver who lived in her own property in Christchurch. You had boarded with Ms Heaney for some 16 months. It is suggested in the summary of facts that you had a sexual relationship with Ms Heaney. You deny that was the case, although in one report you admit at one time being intimately involved with her. The two of you maintained separate bedrooms. Whatever the position, it is apparent the relationship was of a closeness that went beyond one of landlady and tenant. You accept that was the case and that you often socialised together.

[4] The two of you were at home at around 3.30 pm on the afternoon of Sunday the 3rd of April this year, watching a rugby game on television. A heated argument developed. Despite your friendship there had been ongoing tension building between you over some time and you acknowledged to the pre-sentence report writer that there had been verbal aggression and hostility. As a result of this argument, Ms Heaney wrote out a letter advising that you had one week's notice to leave her property due to your "ongoing abuse and threats towards her". This was handed to you but you screwed it up and threw it into the corner of your room.

[5] Ms Heaney drafted another letter to you outlining reasons why she was only giving you one week's notice of eviction. In that letter she listed some of the threats you had made to her, including "I'll see you end up in the ground with your daughter". Ms Heaney's daughter passed away in late 2021.

[6] Ms Heaney was, at this time, sitting at her dining table with her back to the kitchen door. At around 5 pm, you attacked Ms Heaney while she was still seated at the table. She attempted to leave the house and moved through the kitchen to the front door. She managed to open the door before being forced back by you into the hallway where she succumbed to your attack. Ms Heaney fell to the floor, where you continued to strike her.

[7] Although it is not possible to determine the exact number of blows you inflicted to Ms Heaney's head during the attack, you struck Ms Heaney's skull at least

eight times with what is believed to be a hockey stick. This caused 10 blunt force trauma injuries to her head, including large lacerations of up to 9.6 cm in length to her scalp. Ms Heaney's skull was in many places fractured into small pieces, with one dislodged piece of her skull being located on the floor a short distance from her, such was the ferocity of your attack.

[8] In carrying out this assault you inflicted lacerations to her hands and caused numerous contusions or bruises to her hands and arms. These blunt force defensive wounds to the back of her hand included four fractures. Many of these injuries are likely to have been sustained while Ms Heaney was trying to prevent blows to her head. Ms Heaney died in the hallway of her home from her injuries.

[9] The next day, you left for work shortly before 6 am and returned to the address shortly before 5 pm, when you called the police. You said you had arrived home to find blood and fingerprints on the front door and had not gone inside. Attending officers entered the address and located Ms Heaney in the position where she had died from multiple blunt force injuries to her head.

[10] When interviewed, you maintained you had gone to bed after watching the rugby and had got up in the morning and gone to work. You denied having killed Ms Heaney and maintained this stance for some days.

### **Impact upon victims**

[11] Inevitably, the impact of your offending on others has been profound. I have received victim impact statements from Ms Heaney's mother, sister and nephew which have been presented this morning in your presence.

[12] The effect on Ms Heaney's 89-year-old mother has been devastating. Her health has declined as a result. She has lost her daughter at a time in her life when she needs her most. Her final years are now ones of grieving, loss and sadness. The shock and disbelief of the violent circumstances of Ms Heaney's death has also greatly affected other family members and has impacted on their mental wellbeing. They find it inconceivable that a person who their family member allowed into her own home and became a part of her life betrayed her trust. They remember a caring and loving

person who inexplicably has been the victim of a senseless act of violence; a woman you yourself have acknowledged in the pre-sentence report extended kindness to you. The content of the victim impact statements I have read and the number of family members and friends present today attest to how much Ms Heaney was loved.

[13] I acknowledge the depth of the family’s grief and the suffering that has been caused to them, which they must continue to endure. No sentence can redress such a loss. What I am obliged to do is to sentence you in accordance with the law in response to your grave offending.

### **Personal circumstances**

[14] Mr Prakash, you are a 43-year-old man of Fijian Indian descent who moved to this country at the age of 25 to work as a mechanic. You married in 2007 but that relationship ended in 2010 after incidents of family violence for which you were convicted in 2009, and resulted in you being estranged from a daughter that was born as a result of that relationship. You have reasonably regular contact with your elderly mother who lives in Fiji and she continues to provide you with support.

[15] Apart from a two year period in mid-2019, when you sustained a serious lower back injury, you have maintained a good record of employment and have been described as a loyal and valued worker with a good “work ethic”. However, you appear to have developed issues around the abuse of alcohol and you admitted to the pre-sentence report writer that your drinking had more recently worsened. There is likely to be a correlation between this development and an escalation in your capacity for anger.

### **Sentencing approach to murder**

[16] In providing my sentence indication, I canvassed the approach to be taken to sentencing you on the charge of murder, which I do not intend to repeat today.<sup>1</sup> My sentence indication decision will be annexed to my sentencing remarks and forms part of my sentencing decision. As you are aware, when sentencing you to life

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<sup>1</sup> *R v Prakash* [2022] NZHC 1647.

imprisonment the Court must also order you to serve a minimum period of imprisonment which may not be less than 10 years.<sup>2</sup> That minimum term of imprisonment must be one the Court considers necessary to hold you to account for the harm you have done to your victim and the community, to denounce your conduct, and meet the needs of deterrence and the protection of the community.<sup>3</sup> In imposing sentence today I must also be cognisant of the other purposes and principles of sentencing that include the impact of your offending on Ms Heaney's family, but also that takes into account your potential rehabilitation and reintegration.<sup>4</sup>

### **Aggravating features**

[17] In formally sentencing you today I need to reiterate the aggravating features of your murder of Ms Heaney that inform the starting point for the minimum period of imprisonment that I identified in my sentencing indication decision.

[18] There was Ms Heaney's vulnerability. She was attacked from behind while seated at the kitchen table, when she had no real opportunity to defend herself from the initial blows. The multiple defensive injuries to her arms and hands are testament to her inability to effectively defend herself, particularly, no doubt, after she had fallen to the floor where she was unable to escape. Ms Heaney was a 64-year-old woman, some 22 years older than you, who was alone at the time of the attack.

[19] There is the fact Ms Heaney was murdered in her own home where she was entitled to be safe. A hockey stick was used to bludgeon Ms Heaney to death. She was subjected to at least eight separate individual blows to her head. The 10 separate lacerations to Ms Heaney's head are described as severe blunt force injuries which were sufficient to cause multiple fractures across her skull. As I have already referred to today, the blows were sufficient to cause small pieces of the skull to be compressed into the brain and, in some areas, to expose the brain itself, such were their force.

[20] There is also your conduct after the murder. Your actions after murdering Ms Heaney exhibit a level of callousness which, while not sufficient to trigger s 104

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<sup>2</sup> Sentencing Act 2002, s 103.

<sup>3</sup> Section 103(2).

<sup>4</sup> Sections 7 and 8.

of the Sentencing Act, need to be acknowledged. These include making no effort to seek medical assistance, leaving Ms Heaney in the hallway overnight and throughout the next day, and your attempt to concoct a false story. Finally, there is of course the devastating impact of Ms Heaney's violent death on her family and friends, as detailed in the victim impact statements, including in particular on her elderly mother, and indeed on the wider community.

[21] As I have previously noted, many of these factors are present to some degree in a lot of murders and care is required when assessing the extent to which their presence aggravates this serious crime. However, what marks your culpability is the use of extended extreme violence on a woman in her own home. You did not desist in your attack until it must have been obvious you had taken Ms Heaney's life.

#### **Starting point for non-parole period**

[22] I do not intend to repeat my analysis of the appropriate starting point for the minimum non-parole period that must accompany your sentence of life imprisonment and which includes my review of previous relevant sentencing decisions that are set out in my sentence indication decision. It is sufficient to record that having reviewed those cases and the circumstances of your offending, I arrived at a starting point for the minimum period of 14 and a half years' imprisonment. From that, I allowed a one year deduction for your guilty plea that the Crown acknowledged was appropriate.

#### **Personal matters of potential mitigation**

[23] Since providing my sentence indication I have had the benefit of a detailed pre-sentence report and a s 27 cultural report prepared on your behalf. You have led a largely constructive life since coming to this country as a young man almost two decades ago. However, any credit that may be able to be extended to you is undermined by your previous convictions for family violence.

[24] Mr Cook has placed some emphasis on your upbringing in Fiji that is detailed in the reports. You describe your home life as both "good and bad". There is no doubt you had a loving mother but you describe being regularly beaten by your father as a youth. Although you never saw your father hit your mother, you divulged that she was

verbally abused by your father and intimidated and controlled by him. You deny being an inherently violent person or having a propensity for family violence, but the present offending and your previous convictions indicate otherwise.

[25] Mr Cook has submitted that there is a nexus between your offending and what he describes as “cultural norms, misogyny, violence in the home and alcohol abuse” which underpins your offending and resulted in a “normalisation” of family violence that impaired your ability to avoid unnecessary conflict and meant you more readily resorted to violence. The cycle of intergenerational family violence is well known, but your murder of Ms Heaney is of a quite different order. It was marked by extreme rage which you yourself find difficult to explain and is of a quite different dimension. There may be some relationship with your background but, in my view, it is tenuous.

[26] I accept that you have expressed remorse, which is best exhibited by your relatively swift guilty plea. The depth of an offender’s words are always difficult to gauge, but you are reported as having expressed hope that by having done so — that is, by having pleaded — and “taking your punishment” you can give Ms Heaney’s family some closure for offending that you are at a loss to explain. You have expressed a willingness to engage in restorative justice but that is presently unrealistic in the circumstances.

[27] It was argued on your behalf that you will be subject to a degree of social isolation in the prison given your ethnic background. However, your English is very good, you have been in this country for almost 20 years and over that period have been able to develop friendships and personal associations, and you have been successful in the work environment. I accept you may not have as much external support available to you as you may have had in your home country, but it is not apparent prison will be any more difficult for you than for most offenders. As I have noted, your mother has remained supportive of you, although it is unlikely she will be able to travel to New Zealand to visit you.

[28] Taking these factors into account that are personal to you, I apply a six-month deduction to the minimum term of imprisonment. I do not consider any greater adjustment is warranted. That results in a non-parole period of 13 years.

[29] Before formally passing sentence I need to reiterate the sentence that is being imposed on you today is one of life imprisonment. You must serve at least 13 years before you can be considered eligible for parole, which will ultimately depend on the Parole Board's assessment of the risk you pose to the community. You will remain in prison until the Parole Board can be so satisfied.

**Sentence**

[30] Mr Prakash, would you now please stand.

[31] For the murder of Valerie Heaney I impose a sentence of life imprisonment and make an order that you must serve a minimum term of 13 years.

[32] You may stand down.

Solicitors:  
Crown Solicitor, Christchurch

**NOTE: PUBLICATION OF THE JUDGMENT AND OF THE REQUEST FOR A SENTENCING INDICATION IN ANY NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY ACCESSIBLE DATABASE IS PROHIBITED BY SECTION 63 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL THE DEFENDANT HAS BEEN SENTENCED OR THE CHARGE DISMISSED. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3865734.html>**

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**CRI-2022-009-2484  
[2022] NZHC 1647**

**THE QUEEN**

v

**ELLIOT AJAY PRAKASH**

Hearing: 12 July 2022  
Appearances: P N M Brown for Crown  
K H Cook for Defendant  
Judgment: 12 July 2022

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**SENTENCE INDICATION OF MANDER J**

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[33] Elliot Prakash has sought an indication as to the sentence he will receive should he plead guilty to the charge of murdering Valerie Heaney. The sentence indication is provided on the basis of the following facts that have been agreed for the purpose of this exercise.

**Background**

[34] Ms Heaney was a 64-year-old caregiver who lived in her own property in Christchurch. Mr Prakash boarded with Ms Heaney. While they occasionally engaged in a sexual relationship, they maintained separate bedrooms.

[35] The two were at home together at around 3.30 pm on the afternoon of Sunday the 3rd of April this year, watching a rugby game on television. A heated argument developed between them. As a result, Ms Heaney wrote out a letter advising Mr Prakash he had one week's notice to leave her property due to his "ongoing abuse and threats towards her". This was handed to Mr Prakash, who screwed it up and threw it into the corner of his room.

[36] Ms Heaney drafted another letter to Mr Prakash outlining reasons why she was only giving him one week's notice of eviction. In that letter she lists some of the threats made by Mr Prakash, including "I'll see you end up in the ground with your daughter". Ms Heaney's daughter passed away in late 2021.

[37] Ms Heaney was, at this time, sitting at her dining table with her back to the kitchen door. At around 5 pm, Mr Prakash attacked Ms Heaney while she was still seated at the table. She attempted to leave the house and moved through the kitchen to the front door. She managed to open the door before being forced back into the hallway where she has succumbed to Mr Prakash's attack. Ms Heaney fell face-first to the floor, where Mr Prakash continued to strike her.

[38] Although it is not possible to determine the exact number of blows Mr Prakash inflicted to Ms Heaney's head during the course of the attack, he has struck Ms Heaney's skull at least eight times with what is believed to be a hockey stick. This has caused 10 blunt force trauma injuries to her head, including large lacerations of up to 9.6 cm long to her scalp. Ms Heaney's skull was in many places fractured into small pieces, with one dislodged piece of her skull being located on the floor a short distance from her.

[39] Mr Prakash's attack included the infliction of lacerations to her hands and numerous contusions or bruises to her hands and arms. These blunt force defensive wounds to the back of her hand included four fractures. Many of these injuries are likely to have been sustained while Ms Heaney was trying to prevent blows to her head.

[40] Ms Heaney died in the hallway of her home from her injuries.

[41] The next day, Mr Prakash left for work shortly before 6 am and returned to the address shortly before 5 pm, when he called the police. He said he had arrived home to find blood and fingerprints on the front door and had not gone inside. Attending officers entered the address and located Ms Heaney in the position where she had died from multiple blunt force injuries to her head.

[42] When interviewed, Mr Prakash maintained he had gone to bed after watching the rugby at 5 pm and had got up in the morning and gone to work. He denied having killed Ms Heaney.

### **Sentencing approach to murder**

[43] There is no dispute that should Mr Prakash plead guilty to the charge of murder he must be sentenced to life imprisonment. It would not be manifestly unjust to do so.<sup>5</sup> The Court must also order him to serve a minimum period of imprisonment which may not be less than 10 years.<sup>6</sup> In assessing the appropriate length of the minimum period of imprisonment, the Court is required to compare the culpability of Mr Prakash with other cases of murder that attract the normal statutory maximum of 10 years, and which serve as a benchmark for the sentencing exercise.<sup>7</sup> The minimum term of imprisonment must be that which the Court considers necessary to satisfy the sentencing purposes of holding the offender accountable for the harm done to the victim and the community, to denounce his conduct, and which meets the needs of deterrence and the protection of the community.<sup>8</sup>

[44] Both the Crown and defence are agreed that, notwithstanding some of the features of this murder, the statutory threshold required to be met for the imposition of a mandatory minimum period of imprisonment of 17 years, pursuant to s 104 of the Sentencing Act, is not met in this case. I agree.

### **Aggravating features**

[45] The aggravating features of Ms Heaney's murder are readily identifiable:

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<sup>5</sup> Sentencing Act 2002, s 102.

<sup>6</sup> Section 103.

<sup>7</sup> *R v Williams* [2005] 2 NZLR 506 (CA) at [49].

<sup>8</sup> Sentencing Act, s 103(2).

- (a) *Vulnerability* — It is apparent Ms Heaney was attacked from behind while seated at the kitchen table, with no real opportunity to defend herself from the initial blows. The multiple defensive injuries to her arms and hands are testament to her inability to effectively defend herself, particularly, no doubt, after she had fallen face-first to the floor after she was unable to escape. Ms Heaney was a 64-year-old woman, some 22 years older than Mr Prakash, who was alone at the time of the attack.
- (b) *Violation of home* — Ms Heaney was murdered in her own home where she was entitled to be safe.
- (c) *The use of a weapon* — A hockey stick was used to bludgeon Ms Heaney to death.
- (d) *Level of violence* — There were 10 separate lacerations to Ms Heaney's head which, as noted, were likely the result of at least eight separate individual blows. These injuries are described as severe blunt force injuries which were sufficient to cause multiple fractures across her skull. The force used was sufficient to cause small pieces of the skull to be compressed into the brain and, in some areas, to expose the brain itself.
- (e) *Conduct after death* — Mr Prakash's actions after killing Ms Heaney exhibit a level of callousness which, while not sufficient to trigger s 104, need to be acknowledged. These include making no effort to seek medical assistance for Ms Heaney and leaving her in the hallway overnight and throughout the day.
- (f) *Extent of harm caused* — Finally, there is the devastating impact of Ms Heaney's violent death on her family and friends, as detailed in the victim impact statements, including in particular on her elderly mother.

[46] Many of these factors are present to some degree in most murders and care is required when assessing the extent to which their presence aggravates this serious crime. In broad terms, what marks Mr Prakash's culpability is the use of extended extreme violence on a woman in her own home. Mr Prakash does not appear to have desisted in his attack on his victim's head until it must have been obvious he had taken Ms Heaney's life.

### **Competing views**

[47] The Crown contends for an approximate 16 year starting point for the minimum period of imprisonment. It accepts a year's credit should be provided for any guilty plea. While it acknowledges the benefits of avoiding the matter proceeding to trial, it submits any credit must be tempered by the strong Crown case which Mr Prakash faces.

[48] Mr Cook, on the other hand, submits the starting point for the minimum period of imprisonment should be around 14 years before a discount in the vicinity of one to two years is applied for a guilty plea, in addition to any further discounts that may be available for any personal mitigating considerations.

### **Previous sentencing decisions**

[49] Both the Crown and the defence have referred to previous sentencing decisions in support of their respective positions. In determining an appropriate sentence the Court needs to be cognisant of the importance of consistency in sentencing, but each case will inevitably differ and each will be dependent on their own particular circumstances.

[50] The Crown has referred to the approach taken by Whata J in *R v Ransfield*,<sup>9</sup> where the defendant struck his victim multiple times in the head with a metal pole while he was sitting on a couch, with sufficient force to break the pole. The victim suffered significant blunt force trauma to the back of his head. In setting a starting minimum period of imprisonment of 16 years, the Court had regard to the earlier case

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<sup>9</sup> *R v Ransfield* [2020] NZHC 2487.

of *R v Mete*,<sup>10</sup> where the offender struck his partner numerous times in the head. The sheer force of those blows caused fractures to her skull. The offender also used an extension cord to tie the victim's hands together in front of her and around her neck. That case did not involve an attack with a weapon but was an example of bad family violence that engaged the principles of deterrence and denunciation. Cooke J adopted the same starting point of 16 years.

[51] Other cases cited by the Crown include *R v Te Hiko*,<sup>11</sup> which was another case of family violence during which the offender flew into a rage and administered a prolonged and brutal attack on his victim — some 70 punches and kicks — that included striking her with a heavy metal pole. A number of the blows were inflicted while she was lying on the floor and it did not end until she was deeply unconscious. The defendant in that case turned himself in to authorities the following morning and confessed to the murder. A 17-year minimum non-parole period was imposed on the basis s 104 of the Sentencing Act was engaged, which was upheld by the Court of Appeal.<sup>12</sup>

[52] Mr Cook placed reliance on a number of different cases. These included *R v Schofield*,<sup>13</sup> that involved the offender striking his partner on the back of the head with a hammer. This caused her to fall to the ground, whereupon several further blows were administered to the back of her head. The offender in that case then drove to the police station and confessed what he had done. At least seven blows caused severe traumatic head injuries and there was an element of premeditation present. A starting point for the minimum term of imprisonment was adopted by Toogood J of 12 years and six months' imprisonment.

[53] In *R v Eddy*, the estranged partner of the victim drove to her address with a knife, where he punched his victim before stabbing her several times in the abdomen and then cut her throat.<sup>14</sup> A starting point of 15 years for the minimum period of imprisonment was applied by Ellis J. Mr Cook emphasises the premeditation present

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<sup>10</sup> *R v Mete* [2020] NZHC 1573.

<sup>11</sup> *R v Te Hiko* [2017] NZHC 1260.

<sup>12</sup> *Te Hiko v R* [2019] NZCA 41.

<sup>13</sup> *R v Schofield* [2015] NZHC 2109.

<sup>14</sup> *R v Eddy* [2014] NZHC 1543.

in that case and other features of the offending that he submitted were more serious than the present case.

[54] Both counsel referred to *R v Callaghan*, which involved the offender striking his victim, with whom he had previously been in a relationship, in the head and body with a baseball bat.<sup>15</sup> This occurred during the course of a discussion about their son. Eight blows to the victim's head and face were administered. The offender's actions after the killing, which involved the concealing of evidence, use of the victim's phone to respond to concerned friends, the dismembering of the victim's body before burying it and the disposal of her vehicle, attracted a separate charge of attempting to pervert the course of justice and resulted in a total starting point for the minimum period of imprisonment of 15 years. A minimum period of imprisonment of 11 years for the murder itself was uplifted by four years for the defendant's post-murder conduct. No doubt, totality considerations were applied in setting that minimum period of imprisonment.

### **Decision**

[55] Having reviewed these cases and the circumstances of Mr Prakash's offending, I have assessed the appropriate starting point for the minimum period of imprisonment to be one of 14 and a half years' imprisonment. From that, I would allow a one year deduction for his guilty plea.

[56] The Crown submitted any starting point needed to take into account Mr Prakash's previous convictions for domestic violence committed on another victim in 2009. He has previous convictions for two assaults on a female and one for threatening to kill or cause grievous bodily harm, which arose out of an episode of offending in December 2009. That offending, for which he was sentenced to supervision, was of a different order from that for which Mr Prakash is before this Court. However, those convictions would need to be taken into account when assessing any mitigating claims of good character.

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<sup>15</sup> *R v Callaghan* [2012] NZHC 596.

[57] That said, the sentence indication I provide today, apart from the discount applied for a guilty plea, would remain subject to any further credit that may be available to Mr Prakash on the basis of other material put before the Court at sentencing for its consideration.

### **Conclusion**

[58] Subject to that caveat, the sentence I indicate this afternoon, should Mr Prakash plead guilty to the charge of murdering Valerie Heaney, is one of life imprisonment with a minimum non-parole period of 13 years and six months' imprisonment.

Solicitors:  
Crown Solicitor, Christchurch