

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

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

**CRI-2019-083-1448
[2022] NZHC 2390**

R

v

ZANE WALLACE

Hearing: 16 September 2022

Appearances: C B Wilkinson-Smith and J J Harvey
D M Goodlet and J H C Waugh for the Defendant

Judgment: 16 September 2022

SENTENCING OF COOKE J

[1] Zane Wallace, you are here today to be sentenced for the murder of Jasmine Wilson.¹ You will also be sentenced on a number of other charges to which you have pleaded guilty, including:

- (a) two charges of injuring with intent to injure;²
- (b) two charges of assault with intent to injure;³
- (c) four charges of threatening to cause grievous bodily harm, one of which is representative;⁴

¹ Crimes Act 1961, s 167(b); life imprisonment.

² Section 189(2); maximum penalty of five years' imprisonment.

³ Section 193; maximum penalty of three years' imprisonment.

⁴ Section 306(1)(a); maximum penalty of seven years' imprisonment.

- (d) one charge of demanding with menace;⁵
- (e) two charges of threatening to kill, one of which is representative;⁶ and
- (f) one charge of assault;⁷ and
- (g) one charge of male assaults female.⁸

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

The facts

[3] You were in a relationship with Ms Wilson. Prior to her relationship with you she had a long-term partner with whom she had two children, Mr D. She also had a relationship with Mr T. Both of these men are also victims of your offending.

[4] On 13 November 2018 you saw Ms Wilson in a vehicle with a friend at a Caltex in Whanganui. You pulled your car in near to them and started yelling at Ms Wilson. When she drove off away you followed her. You forced her to pull over. You then approached the vehicle and opened the driver's side door, pulled out the ignition, and kicked Ms Wilson with force in the side of her chest. You took the car keys and left.

[5] On 16 November 2018 Mr T was visiting Whanganui. He contacted Ms Wilson to obtain keys for a vehicle left at his home in Auckland. He received a text from Ms Wilson asking him to go to her grandmother's house. When he did so he was met by you. You approached Mr T who was seated in the driver's seat of his vehicle with the window rolled down. You accused Mr T of texting Ms Wilson. You asked for his cell phone. He told you it was out of battery. You then asked Mr T if he

⁵ Section 239(2); maximum penalty of seven years' imprisonment.

⁶ Section 306(1)(a); maximum penalty of seven years' imprisonment.

⁷ Section 196; maximum penalty of one year imprisonment.

⁸ Section 194, maximum penalty two years' imprisonment.

knew who you were and he told you he did not. You then punched Mr T three times in the right side of his face, targeting the same area and pausing in between.

[6] While you were in Linton Prison between 24 January 2019 and 15 April 2019, and between 27 June 2019 and 9 July 2019, you were recorded as making a number of threats to Ms Wilson over phone calls. These phone calls had been monitored and recorded. Those threats included your saying:

- (a) “I’m going to kick your ... head in when I get out”.
- (b) That Ms Wilson better be the best girlfriend or she will be dead, and that she better love you or you will get out and stomp her.
- (c) That “when I get out, I’m going to kill you. I’m not a nice guy”.
- (d) That you would kill her by stabbing her.
- (e) That you would get out and bash her face up.
- (f) That you would send someone over to beat her up.
- (g) That you would kick her head in (repeatedly threatened), bash her and punch her in the mouth.
- (h) That you were going to slap her face.
- (i) That you were going to “backhand” her.
- (j) That she was going to “get it” and that she was “going in the ground”.
- (k) You then described various explicit and gruesome ways in which you would kill her.
- (l) And that you would kill Ms Wilson’s sister, her child and her whole family.

[7] You also made threats to beat up Ms Wilson's ex-partner Mr D and to kill him, as well as threats to Ms Wilson's family.

[8] Before Ms Wilson's murder, you injured her on multiple occasions. Ms Wilson was observed to have bruising to her eyes, cheeks, face, torso, upper chest area, on her upper arms and on her upper legs.

[9] In May 2019 Ms Wilson and yourself, along with five others were drinking together at your father's address in Whanganui. As alcohol ran out, the group decided to go to Whanganui Hells Angels clubhouse in Aramoho. Here you entertained yourselves drinking at the bar and playing pool. You were situated behind the bar. An argument ensued between you and Ms Wilson. You punched her face with a closed fist causing her to fall to the ground. You and Ms Wilson subsequently left the bar.

[10] On 8 July 2019 you found yourself back in prison. You told Ms Wilson over the phone that you required her to financially support you in prison and that you would take money from her account.

[11] On 30 July 2019 while you were bailed with a 24-hour curfew, you and Ms Wilson were heard arguing. The door slammed and you went outside and stood by a shed and then returned inside. You then assaulted Ms Wilson with a number of blows to her head area. At this stage Ms Wilson remained conscious and you two talked before going to bed.

[12] The next morning there was another verbal argument. This followed with you punching Ms Wilson in the face. You then held on to her shoulders and forcibly pushed her backwards into the wall on two occasions. As a result, her head struck the wall. On the second time her head struck the wall and she became limp, having lost consciousness.

[13] You then made contact with your father and asked him to help you. Your father took Ms Wilson to Whanganui hospital where she was admitted shortly thereafter by another family member as your father did not wish to take her inside himself. She was

subsequently airlifted to Wellington Hospital where she died after two days of medical intervention. She never regained consciousness.

[14] Less than a month later you inflicted more violence. On 24 August 2019 you were at Millward Street with several people including Ms A and Mr B. You accused Ms A of lying to you and assaulted her. You then accused Mr B of lying to you and assaulted him too.

Victim impact statements

[15] The Court has heard from a number of Ms Wilson's whanau and friends today. I acknowledge the strength and courage it has taken for you all to be here today. I acknowledge also the deep loss suffered by Ms Wilson's whanau, friends and community. I note particularly the loss to her tamariki, who will grow up without both parents. It is appropriate that you have heard directly from them in their own words how your actions have impacted on them.

Approach to sentencing

[16] In sentencing you today Mr Wallace I will have regard to the principles and purposes of sentencing. This includes that I must take into account the gravity and seriousness of your offending, the degree of your culpability, the effect on the victims of your offending, and your personal circumstances. In doing so I will have regard to the need to hold you accountable for the harm that you have done to the victims and the community and to denounce your conduct and deter you or others from committing the same or similar offending.

[17] Murder is the most serious and leading charge. You also face several charges relating to other victims, as well as other charges relating to Ms Wilson. Those charges are also very serious.

[18] The murder offence attracts a presumption of life imprisonment which is an indeterminate sentence. Under s 23 of the Sentencing Act 2002 cumulative sentences cannot be imposed on an indeterminate sentence of imprisonment.⁹ This means that I

⁹ See *Broughton v R* [2018] NZCA 70.

do not add further periods of imprisonment to your sentence of life imprisonment for the other offending. The Crown has proposed, and I accept, to sentence you for the charge of murder and to adjust the minimum period of imprisonment that will apply to that sentence to reflect your other offending. That is the approach followed in *R v Marsters*, and I agree it is appropriate.¹⁰

Murder

[19] Everyone who commits murder is liable for life imprisonment unless that would be manifestly unjust. The exception applies in rare circumstances and it is not suggested it applies here. This will mean that you will spend the rest of your life subject to this sentence, even if you are not physically in prison.

[20] The main issue I need to consider is what the minimum period of imprisonment should be for you. That means the minimum period of imprisonment you must serve before becoming eligible for parole. That does not mean you will be released at the end of that period. When life imprisonment is imposed, s 103 of the Sentencing Act says that the Court must order a minimum term of imprisonment of at least 10 years.¹¹ If certain criteria are met the Court must impose a minimum period of 17 years or more. The criteria includes:

- (a) when the murder was committed with a high level of brutality, cruelty, depravity, or callousness;¹² or
- (b) if the deceased was particularly vulnerable because of his or her age, health, or because of any other factor.¹³

[21] The Crown does not suggest, however, that these criteria apply given the way that they have been interpreted by the Court. In those circumstances the appropriate section to apply is s 103 which requires a minimum period of imprisonment of no less than 10 years, but set at the period that is necessary to hold you accountable for the

¹⁰ *R v Marsters* [2021] NZHC 2117.

¹¹ Sentencing Act 2002, s 103(2).

¹² Sentencing Act 2002, s 104(2)(e).

¹³ Section 104(2)(g).

harm done to the victim and the community, to denounce your conduct, to deter you and other persons from similar offending, and protecting the community.

[22] There is no doubt that a high minimum period of imprisonment is required for those factors. Your conduct involved terrorising Ms Wilson over a sustained period of time, and ultimately killing her after threatening to do so. Domestic violence of this kind is a significant problem in New Zealand, including in this community. This community has understandably sought to take a stand against domestic violence of this kind. Those factors are reflected in the factors referred to in s 103.

[23] In considering what the appropriate minimum period of imprisonment is I first consider comparable cases.

- (a) *R v Marsters* is similar to your offending.¹⁴ In that case the relationship between the defendant and the victim was short, and also marred by violence. Separate instances of violence occurred before the murder itself, which occurred by stabbing. The defendant then set his vehicle carrying the victim ablaze. The Judge determined that an MPI of 14 years was appropriate after characterising the offending as a “short, vicious, and lethal assault on a defenceless woman, with a weapon but without proof of premeditation or ulterior motive, while on bail for related offending”.¹⁵
- (b) *R v Mete* was another case in this Court. The defendant and the victim had been in a relationship on and off for six to eight months.¹⁶ One afternoon an argument broke out and the defendant became enraged and struck the victim numerous times in her face, causing multiple fractures to her skull. The victim became unresponsive and the defendant realised she was dead. The defendant then consumed methamphetamine and cannabis, eventually falling asleep. The next night he used an extension cord to tie the victim’s hands together in

¹⁴ *R v Marsters*, above n 10.

¹⁵ At [32].

¹⁶ *R v Mete* [2020] NZHC 1573.

front of her and around her neck, and dragged her body to another room and attempted wipe up the blood on the floor. Four days later the defendant told a family member that he had killed the victim, and the police were subsequently involved. In that case I imposed a minimum period of imprisonment of 14 years.

- (c) In *R v Te Hiko* the defendant and victim had a volatile relationship with a history of violence, however the defendant had recognised he needed help for his addiction and anger issues.¹⁷ At the time of the offending he had been on the waitlist for a residential programme. However on the night of the murder he and the victim broke into an argument which caused the defendant to fly into rage. He maintained a prolonged and brutal attack against her, striking her repeatedly with his closed fist and striking her head and body with a heavy metal pole. The attack did not end until the victim was unconscious. The defendant ultimately turned himself in. The required minimum period of imprisonment of 17 years was not considered manifestly unjust, including on appeal.¹⁸

[24] The Crown here has submitted a minimum period of imprisonment of 16 to 17 years is appropriate taking into account your other offending. Your counsel suggest a period of 15 years.

[25] I accept that given the cases mentioned, the murder itself appropriately attracts a minimum period of imprisonment of 15 years. I then need to consider how this starting point should be uplifted given your other offending and your history of significant offending.

[26] The other charges you face are serious. For example threatening to kill and threatening to do grievous bodily harm both carry maximum terms of imprisonment of seven years. The threats you made by themselves were serious. I referred to them earlier when describing your offending. The threats were spoken with real intent in the context of ongoing domestic violence. And in the end you carried through with

¹⁷ *R v Te Hiko* [2017] NZHC 1260.

¹⁸ *Te Hiko v R* [2019] NZCA 41.

the threats. Similarly assault and injuring with intent are violent offences. You have also offended violently against several individuals.

[27] In those circumstances the appropriate uplift, adjusted for totality, needs to be two years. If it were not for the fact that you are subject to life imprisonment, it might have been more. This increases the minimum period of imprisonment to 17 years.

[28] This means that the minimum period of imprisonment is equivalent to what it would have been had the offending been within the category involving a 17 year minimum period because of the high level of brutality, cruelty, depravity or callousness, or the particular vulnerability of the victim. In my view that provides an appropriate cross check on the appropriate minimum period of imprisonment. I see your conduct as equivalent to those categories of offending, even though the Crown accepts that those categories do not arise.

Discount

[29] The next step in the sentencing exercise is to consider the potential discounts.

[30] The first potential discount arises from your guilty plea. Guilty plea discounts of up to 25 per cent of a finite period of imprisonment can be available if they are entered at an early stage. Here the guilty plea was not entered at an early stage. It was entered on the eve of trial. That obviously diminishes the availability of such a discount.

[31] The Court of Appeal have also made it clear in cases such as *Malik v R* that discounts for factors such as guilty pleas should not be given on the same basis as they are with finite sentences.¹⁹ But they still influence the length of a minimum period. Your guilty plea means that the minimum period need not be as high to hold you accountable for what you have done, which is one of the key purposes of a minimum period. The admission of your guilt means you have accepted accountability, at least to some extent, and avoided the need for a lengthy trial. It would have been a trial that would have caused considerable distress to those associated with your offending. Your

¹⁹ *Malik v R* [2015] NZCA 466 at [35].

guilty plea avoided the need for them to go through that process. A meaningful discount should be given accordingly. I will deduct one year from the minimum period for that reason.

[32] The final consideration arises from the comprehensive cultural report I have received under s 27. Again it is established that discounts on finite sentences can be given for cultural reasons. Again that approach does not apply in the same way here. It nevertheless goes to the minimum period factors. The report writers indicate that you have become disconnected from your cultural background. You have connections to Ngāti Hauā. But you no longer have connections reflecting this background. The report writers describe a background of deprivation, drug abuse and violence. Your father first exposed you to cannabis when you were aged nine and then methamphetamine at around 15. You received your first sentence of imprisonment when you were 17. The fact that you are here now facing the more serious of offences is perhaps no surprise. Although I have read more compelling reports I am nevertheless satisfied that there is a causative link between your cultural and social deprivation and your offending.

[33] None of the background excuses, in any way, your offending. But when the community responds to terrible offending such as that committed by you, including when the community takes a stand against matters such as serious domestic violence, it is necessary to recognise that people such as yourself have ended up where you are partly because of a background of deprivation and cultural dislocation. Such factors are also relevant when the Court assesses a sentence of imprisonment. It is accordingly appropriate to recognise this in your sentence.

[34] Again because this is not a finite sentence any discount needs to be taken from the minimum period of imprisonment. This discount is not approached on the same basis as a finite sentence. But in addressing what the minimum period is directed to it means that the period imposed to denounce and deter should reflect how social and cultural factors have played a part. In the circumstances of your case it is appropriate to deduct a further six months from the minimum period.

[35] These deductions involve deductions of one year and six months from the minimum period of imprisonment leading to a minimum period of 15 years and six months.

[36] I also need to set sentences for each of the other offences to which you have pleaded guilty. Those sentences will be served concurrently so that they do not increase your sentence in real terms. The substantive impact of this offending has already been addressed in the increases to the minimum period of imprisonment. On the charges of threatening to kill, threatening to cause grievous bodily harm and demanding with menace, you are sentenced to one years' imprisonment on each charge. And on the charges of injuring with intent to injure, and assault with intent to injure you are sentenced to two years' imprisonment on each charge. On the charges of assault and male assaults female you are sentenced to three months' imprisonment on each charge.

Result

[37] Mr Wallace will you please stand. For the murder of Jasmine Wilson I sentence you to life imprisonment with a minimum period of imprisonment of 15 and a half years. On the other charges you are sentenced to the concurrent sentences I have just indicated.

Cooke J

Solicitors:
Wilkinson Smith Lawyers, Whanganui for the Crown
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