

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CRI-2022-092-007005
[2023] NZHC 413**

THE KING

v

SUSANA MAKERITA LEOTA-LU

Hearing: 15 December 2023

Counsel: A F Devathasan and J Bragg for Crown
K S Holden and S Cassidy for Defendant

Sentence: 15 December 2023

SENTENCE OF ANDERSON J

Solicitors: Kayes Fletcher Walker Ltd, Manukau
K S Holden, Auckland

[1] Susana Leota-Lu, in the early hours of 3 September last year you murdered Samantha Whitehouse.

[2] It is common ground you must be sentenced to life imprisonment for your offending.¹ The issue is the number of years you must serve before you become eligible for parole. This is called a minimum period of imprisonment. It will be the focus of your sentencing today.

[3] Before I go any further, I would like to acknowledge the family of Ms Whitehouse and their supporters who are here or watching today. Any sentence I impose cannot in any way compensate you for the loss of Ms Whitehouse in such terrible circumstances. I extend the Court's deepest sympathy to you.

Facts

[4] Ms Leota-Lu, I first outline the facts of your offending as I have found them. You and Ms Whitehouse both lived in the Lakewood Plaza apartment complex: you on level 7 and Ms Whitehouse on level 1.

[5] You met each other around June 2022 when Ms Whitehouse went out of her way to try to help you when she saw you were walking past the apartment block looking upset and needing assistance.

[6] You and Ms Whitehouse started spending the evening of 2 September 2022 together, after a chance encounter at the lifts in the foyer of the apartment complex at about 7 pm. At about 8 pm the two of you met an acquaintance of yours at his car and went out to purchase and smoke some methamphetamine. While you were out, you had an argument with Ms Whitehouse over your insistence that she had stolen your phone on the first occasion you had met.

[7] The three of you arrived back at Lakewood Plaza at around 11 pm and went to your apartment. The acquaintance went home at around 11.45 pm. While he was still

¹ Sentencing Act 2002, s 102.

there, you and Ms Whitehouse had a further argument. The two of you smoked some more methamphetamine.

[8] At some point in the evening, you started accusing Ms Whitehouse of things you had imagined. You became angry with Ms Whitehouse, believing that she had wronged you in a number of ways, including having stolen your phone and been involved with your ex-husband. She seemed to you to be finishing stories you were telling about your family and then denying that she knew. You became increasingly frustrated and riled up. Ms Whitehouse tried to leave. You grabbed a knife.

[9] At around 3 am your neighbours in the opposite apartment heard you shouting. Your neighbour banged on the door of your apartment. You came up against the door, without opening it and told them not to call the Police. You said your husband's ex-girlfriend was stealing from you.

[10] At that point your neighbours heard another female voice from away from the door faintly asking for help.

[11] Your neighbours had interrupted your attack on Ms Whitehouse. You attacked her with at least three different knives and possibly a screwdriver, causing terrible injuries. For reasons I will come to, I completely reject your narrative that you were acting to defend yourself.

[12] When your neighbours left to call the police you resumed your attack on Ms Whitehouse until she stopped screaming and slumped. You realised she was dead.

[13] After that, you began to try to clean up and were getting ready to leave the apartment with two knives in your pocket and Ms Whitehouse's phone when the Police arrived.

[14] They got to your apartment just after 4.15 am. You initially lied to them, saying that you had had an argument with your husband's ex-girlfriend and she had left. You told them you did not want them to come in and find drugs. When they exercised their search powers to enter they found Ms Whitehouse's bloodied body lying between the

bed and the kitchenette. She was in a defensive position with two knives still lodged in her body.

[15] After the Police discovered Ms Whitehouse, you called her a “bitch” and a “cunt” and stated she had deserved what you had done. You told the police: “that’s what happens when you fuck with my family”. The police observed you had a lot of anger directed at Ms Whitehouse. You told police that you stabbed yourself on the arm in the process of attacking Ms Whitehouse and I find that this is the case. Apart from a nick to the finger that is the only wound you suffered.

[16] The objective forensic evidence tells a shocking story about what happened in your apartment.

[17] Ms Whitehouse suffered 94 sharp force injuries:

- (a) 20 of these were to Ms Whitehouse’s neck and her face including her eyes, nose, cheeks, lip and chin;
- (b) There were 13 to the rest of her head, a number of which were inflicted with sufficient force to penetrate the skull;
- (c) Ms Whitehouse also suffered 27 sharp force injuries to her chest, five of which were significant enough to have penetrated the chest cavity and injured vital organs;
- (d) Ms Whitehouse had 33 sharp force injuries to her hands, wrists and arms, of which 26 were defensive wounds.
- (e) There was one further stabbing wound to the hip.

[18] Ms Whitehouse also suffered blunt force injuries in the attack in the form of contusions and abrasions that were too numerous to count. They covered the majority of Ms Whitehouse’s body including bruising to her head. Ms Whitehouse’s blood was found in multiple areas and locations around the apartment.

Victim impact

[19] At the end of your trial for this offending, unsurprisingly the jury unanimously found you guilty of murdering Ms Whitehouse. Five victim impact statements were provided to the Court.

[20] Ms Whitehouse was much loved. Her father, her brother and her uncle and aunt express in their statements their profound grief and trauma at coping with her loss. I know Ms Whitehouse's sister is also watching today.

[21] In her statement Ms Whitehouse's daughter describes the pain she feels herself, and also her anguish at the effects on her young brother. Ms Leota-Lu, you have taken Ms Whitehouse away from them in a shocking way and deprived Ms Whitehouse of all the milestones that she will miss in her children's future.

[22] The death has devastated the family. It has also caused ongoing trauma for your neighbour who came to the door that night. These effects will be long lasting.

Minimum period of imprisonment

[23] The law requires I impose a minimum period of not less than 17 years if I conclude that your murder of Ms Whitehouse is especially bad, unless that would be manifestly unjust.² The Crown says your murder of Ms Whitehouse was especially bad because you committed the murder with a high level of brutality and callousness³ and because Ms Whitehouse was particularly vulnerable.⁴ The Crown says your minimum period of imprisonment should be not less than 18 years and 17 perhaps regarding your mitigating circumstances.

[24] On your behalf, Ms Holden says that the murder is not especially bad. She said in her submissions to the Court in writing that your minimum period should be 10 years. For the reasons, that I will give, I accept the Crown's submission that your murder of Ms Whitehouse was especially bad. I will explain why and then go on to

² Sentencing Act 2002, s 104 (e).

³ Sentencing Act s 104(g).

consider the various factors that lead me to an end sentence I consider to be appropriate.

[25] Ms Leota Lu, the brutality of the murder is clear from the number, nature and extent of the injuries inflicted. I accept the Crown's submission that focus on Ms Whitehouse's head, neck and torso as well as the force used, show the brutality of the attack. The attacks to her face show a high level of cruelty. The many defensive injuries suffered by Ms Whitehouse represent your violent persistence in attacking her and that she was unarmed.

[26] Bruising on Ms Whitehouse's thigh also suggests injuries with a camp chair or that because of what you were doing to her, she landed on it with significant force. There was also bruising on Ms Whitehouse's neck demonstrating you restrained her using your hands or forearm.

[27] You had opportunities to cease the attack, or to seek help for Ms Whitehouse but you did not take them. Ms Whitehouse was still alive and tried to call out for help when your neighbours came to the door but instead of seeking medical assistance, you asked the neighbours not to call the Police. At least once in the middle of the attack, you dropped your weapon so picked up another one. You continued stabbing Ms Whitehouse while she sought to defend herself with her hands and arms. You continued to stab Ms Whitehouse even after she had died. You callously left two knives embedded in her.

[28] Afterwards you failed to seek any assistance and instead began to clean up as well as expressing savage anger towards Ms Whitehouse when the Police arrived.

[29] Your counsel says your behaviour when your neighbours came to the door, reflected a delusional state of mind and your response when arrested was due to the trauma of what occurred and your disordered thinking. She says they do not indicate callousness. I disagree. You showed disregard for what you had done.

[30] As a further reason why this was an especially bad murder, the Crown says that Ms Whitehouse was particularly vulnerable.⁵ Ms Devathan refers to the dramatic difference in size. You were double Ms Whitehouse's weight and over 20 cm taller. The Crown says that as the attack took place Ms Whitehouse became increasingly vulnerable to you due to the injuries you were inflicting on her, as evidenced by the defensive wounds that she suffered. While I agree Ms Whitehouse was vulnerable on account of the size difference, and this may have made her particularly vulnerable including as the attack continued, it is not necessary for me to rely on this factor given the high level of brutality and callousness I have found. This was an especially bad murder.

Aggravating factors of the offending

[31] Ms Leota- Lu, to determine a minimum period of imprisonment I need to consider aggravating factors - the things that make your offending more serious; and mitigating factors, that is the things that make your offending less serious. I need to determine a minimum period of imprisonment that I consider appropriate relative to other cases in terms of what would ordinarily be justified.⁶

[32] There are four things that make your offending more serious. I have already referred to them in outlining why this is an extremely bad murder so to some extent I will be repeating myself.

[33] The first and foremost is the high level of brutality which stands out from the summary of the injuries you inflicted as I have just described. It was frenzied, brutal and showed callous indifference to your victim. It continued despite opportunities you had to stop.

[34] The second is your conduct after the attack. You failed to seek any assistance and instead started to clean up. When the Police arrived you continued to express your savage anger towards Ms Whitehouse. You continued to show anger towards her.

[35] Third, Ms Whitehouse was unarmed and half your size.

⁵ *Graham v R* [2011] NZCA 131; *K v (CA106/20) v R* [2020] NZCA 656.

⁶ *R v Williams* [2005] 2 NZLR 506 (CA).

[36] Fourth, you used several weapons to murder Ms Whitehouse. You used at least three knives to inflict the wounds and possibly a screwdriver, and possibly the camp chair.

Mitigating features

[37] As to mitigating things about your offending, Ms Leota-Lu, there are none.

[38] On your behalf, Ms Holden says that I should take into account that you initially defended yourself against the victim. I do not accept that this occurred.

[39] You had been accusing Ms Whitehouse of things you imagined she had done. This included arguments about your phone and your ex-husband and your brother. You didn't like what she was saying. You got angry. Ms Whitehouse tried to leave. You wanted her to stay. You told the Police when they arrived that Ms Whitehouse started saying "drop the knife, what are doing with the knife". You told Police: "well of course I'm going to have a knife if you're going to keep running your fucking mouth."

[40] Ms Leota-Lu what you said to the Police then is what happened. It is you that armed yourself with a knife. It was not Ms Whitehouse that picked up the knife.

[41] As I have described, you then attacked Ms Whitehouse. Of course Ms Whitehouse tried to defend herself during the attack. But it is you who was the aggressor. This is demonstrated by the nature and number of the injuries and their force. It is demonstrated by how unscathed you emerged from these events.

[42] I accept that there is a point at which you tripped and ended with Ms Whitehouse on top of you with Ms Whitehouse managing to get a knife. This is likely when your neighbours heard you shout the words "get-off". But tellingly you were able to disarm her and get back on top.

[43] The over-arching point is that I have no doubt you intended the terrible injuries that you inflicted on Ms Whitehouse. It was she, not you, that was trying to defend herself.

[44] In your Police interview later that morning you said many times words to the effect “I just kept stabbing her”. You said you just kept stabbing her because you were “seeing red”.

[45] The injuries you inflicted were not to disarm or diffuse a threat. You were not afraid. You were not under threat. You were angry.

Case law

[46] The Crown has referred me to a number of cases to assist in determining your minimum period of imprisonment.⁷ On your behalf Ms Holden has sought to dismiss that your offending is as serious as those. In particular, Ms Holden points to features of those cases – vulnerability due to long standing abuse, premeditation, unlawful entry to the victim’s house, and the presence of children, those sort of features as features which are not present here.

[47] While I accept some of the cases have different aggravating features, I agree with the Crown’s submission that this case involved significantly more wounds than any of the cases the Crown referred me to, including at least one wound you inflicted after Ms Whitehouse’s death. It also involved using several weapons and post-offence conduct reflecting a high degree of brutality and callousness.

[48] Ms Holden distinguishes some of the cases on the basis that the offending in them was unprovoked. That point has no relevance here because there is no relevant provocation here either.

[49] I am satisfied that on the basis of the case law, a period of imprisonment of 17 years is appropriate to reflect the offending.

Personal aggravating factors

[50] There is a factor personal to you that makes your offending here worse.

⁷ *R v Lamont* HC Greymouth CRI-2009-018-000702; *Purutanga v R* [2003] NZCA 442 [13 September 2023]; *R v Zhou* [2007] BCL 39; *Van Hemert v R* [2023] NZSC 116; *R v Hamidzadeh* [2023] NZCA 550; and *R v Wilson* [2023] NZHC 2376.

[51] You have a significant criminal history in Australia spanning from 2006-2018. Your offending involves violent offences which from earliest to most recent include involving assault with intent to rob; maliciously inflicting grievous bodily harm; another assault with intent to rob; assault occasioning actual bodily harm in the company of another; two common assaults; and assault occasioning actual bodily harm.

[52] The most recent conviction in 2018 was relied upon by the Crown as evidence of propensity at your trial. You attacked a flatmate with a knife and dragged him back inside when he tried to escape.

[53] I agree with the Crown's submission that this proven history of violence including using a knife in similar circumstances warrants an uplift to the 17-year minimum period by 12 months' imprisonment.

[54] However, the ultimate sentence depends on any personal mitigating factors to which I now turn.

Mitigating factors and personal circumstances

[55] The first mitigating factor your counsel relies upon is your stated remorse.

[56] Ms Leota-Lu you said to report writers who have filed reports for your sentencing that you did not mean to kill Ms Whitehouse. You continue to say Ms Whitehouse felt like a threat, like she was going to kill you and that you had to protect yourself. You say you are remorseful quote "for what happened to Sam" but that you felt that you needed to save yourself. Ms Leota-Lu, for the reasons I stated earlier I do not accept there is genuine remorse.

[57] These comments show me that you are not prepared to take responsibility for your offending. I do not consider any genuine remorse has been shown. No discount is available.

[58] Second, you say you have responded to the offending by finding your identity in Christ. This is outlined in the Cultural Report on your behalf. That does not support any further mitigation of your sentence here.

[59] Last, your Cultural Report outlines your background which your counsel says relates to the commission of the offence. The report outlines mental health issues with PTSD from childhood trauma being beaten as a child and being subjected to domestic violence. You say you suffered sexual abuse by family and that this continued into your adult years. There is also long-term methamphetamine addiction and intoxication and the report says you have a vulnerability to respond violently. You come from a dysfunctional home. The report says that you often experience delusions.

[60] I am aware that prior to trial you obtained a psychiatric report or reports. No evidence was then presented to the Court that delusions you were having or mental health issues impacted on your responsibility or were relevant to the jury. The Cultural Report writer is well qualified with a Masters in Social Science, and has a depth of experience in writing cultural reports. But she is not a psychiatrist or a clinical psychologist. She is not suitably qualified to comment on any clinical mental health issues. In addition, what she reports is recycled from what you have told her.

[61] Even though you appear to have been having delusional beliefs, your offending here was driven by anger, not fear. That you were having any delusional or disordered thinking could not and does not justify or mitigate the murderous violence you inflicted on Ms Whitehouse.

[62] I do accept that some mitigation from the 18 year minimum period proposed by the Crown is appropriate due to your background factors.⁸ In the round, I consider the 12 months' uplift for your previous convictions is effectively off-set by your personal background and circumstances outlined in the report.

[63] This does not support reducing a minimum term below 17 years. I find that a 17 year term is not manifestly unjust because of that background.⁹

⁸ *Hohua v R* [2019] NZCA 533; *Frost v R* [2023] NZCA 294 at [41]

⁹ *R v Williams* above n 6, at [66]

[64] That being the case, I come to a minimum period of 17 years. A 17 year minimum period of imprisonment is required to hold you accountable for an especially bad murder; to denounce your offending; to deter others from like offending and to protect the community.

Sentence

[65] Ms Leota-Lu could you now please stand.

[66] For murdering Samantha Whitehouse, I impose life imprisonment with a minimum period of 17 years.

[67] Please stand down.

Anderson J