

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2022-070-2205
[2024] NZHC 1228**

THE KING

v

**QUAYDE RICHARD DEAN HULBERT
BILLY TAMA RIELLY**

Appearances: A J Pollett and H J Speight for Crown
T F Rickard-Simms for Mr Hulbert
R E Nabney and W T Nabney for Mr Rielly

Sentence: 16 May 2024

SENTENCING OF COOKE J

[1] Quayde Hulbert, Billy Rielly, it is now my job to sentence you for the murder of Eli Johnson. In explaining the sentence that I am going to impose I will do three things:

- (a) first, I will describe the facts of the offending;
- (b) second, I will explain what the law says about sentencing you for the offence of murder in the circumstances of this case, and how what the law says influences the sentence that I will impose for each of you;
- (c) then third, I will outline your personal circumstances and how that affects the sentence that I should impose.

The offending

[2] First, I will describe the facts of the offending that arise from the evidence at your trial leading to the guilty verdicts from the jury. That is based on my assessment of the evidence.

[3] The victim of your offending, Eli Johnson, was known to both of you. He was particularly known to you Mr Hulbert as he had been a childhood friend.

[4] All three of you were associated with the Mongrel Mob gang. At the time of the offence you were a patched member Mr Hulbert, and Mr Rielly was your prospect. Mr Johnson had himself wanted to join the gang at one point and had been a prospect. Unfortunately for Mr Johnson he got himself involved in a situation where he was a prospect for Mr Rewiri, the captain of the Mongrel Mob Aotearoa Tauranga Chapter. Mr Rewiri was later charged with a drug offence as well as an offence of attempting to pervert the course of justice. The attempting to pervert charge arose from pressure being applied to Mr Johnson that he accept responsibility for the drug offending in place of Mr Rewiri. That case went to trial in March 2021 and Mr Johnson effectively gave evidence against Mr Rewiri. Mr Rewiri was found not guilty of the drug offending, but guilty of the offence of attempting to pervert the course of justice.

[5] The fact that Mr Johnson had effectively provided evidence against Mr Rewiri was the motivation for your offending. After Mr Johnson had given this evidence, he said to his mother that he was a dead man. Giving such evidence against a Mongrel Mob member, particularly the captain of the chapter, is contrary to the expectations of the Mongrel Mob.

[6] The two of you were the ones that undertook the expected response by implementing the plan to murder Mr Johnson.

[7] The week before he was murdered you made contact with him. Because you were a childhood friend Mr Hulbert that was easy for you to do. You pretended that you had an issue with a damaged car that you wanted Mr Johnson to help you with. You both attended his property the week before you killed him. The reason for doing

so was not to get help with the car, but to work out how you would go about the task of killing him.

[8] You then did so on the night of 12 June 2022. The offending was carefully worked out, including by planning steps that you would take to hide the evidence of your involvement. You both left in a vehicle from a gang address on Corrina Street, drove to Whakamaramara and parked some distance from where Mr Johnson lived. You then proceeded on foot. Each of you was armed with a knife.

[9] Mr Johnson lived in a small shed which he had built at the back of a family property. You approached the property late at night and surprised him in his shed. Both of you participated in stabbing Mr Johnson, and also helped each other to do so. Between the two of you, you stabbed, or sought to stab him 13 times. Mr Johnson's body was penetrated nine times. A number of the wounds were fatal. The number of wounds inflicted demonstrate that you were both intent on killing him. You then left the scene, returned to your car, and then took steps to hide your involvement, including by burning the clothes you were wearing. Mr Johnson did not die immediately and was able to get to his aunt's house nearby to seek assistance, but the number and extent of the stab wounds were fatal, and he died shortly thereafter.

[10] The repercussions of your actions not only took the life of Mr Johnson but have significantly affected his whānau. His aunt, mother, uncle and brother were present as he died, and they have had to deal with the implications of his death. I acknowledge their presence here today, and the statements they have made in Court describing the impact of the offending on them and the wider whānau.

Approach to murder

[11] I now deal with what the law says about sentences for murder, and how it affects your sentences.

[12] A person who is convicted of murder "must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of

imprisonment for life would be manifestly unjust”.¹ That exception is not suggested here. This means that you will both be sentenced to life imprisonment.

[13] When the sentence is life imprisonment, the offender must serve a minimum period of imprisonment or MPI — that is a period of time the offender must serve in prison before they can be considered for parole by the Parole Board. The purpose of a minimum period of imprisonment is to hold the offender accountable, to denounce their conduct, to deter others, and to protect the community.²

[14] For murder the Court must order the offender to serve a MPI of not less than ten years — there is no discretion to sentence below that figure.³ In certain cases, however, an MPI that is longer than ten years is necessary in order to satisfy all or any of the purposes of MPIs. Under s 104 of the Sentencing Act the Court must impose a MPI of at least 17 years in cases which involve one or more of the aggravating factors listed in s 104 unless it would be manifestly unjust to do.

[15] Several of the s 104 factors apply here. First, the murder involved calculated planning.⁴ Secondly, the offence involved unlawful entry into Mr Johnson’s home.⁵ I do not accept that the possibility that Mr Johnson was stabbed outside his shed means this factor was not engaged. Even if that was what happened you would have entered his shed, and then forced him outside. The evidence of noises of banging from the shed is consistent with this. Thirdly, and most significantly, Mr Johnson was murdered as retribution for the fact he had given evidence against the Captain of the Mongrel Mob Chapter with which you were associated. That has very serious implications for the maintenance of law and involves undermining the criminal justice system. This can either be treated as a factor under s 104(1)(a) or s 104(1)(i). To kill someone because they have given truthful evidence, and failed to give untruthful evidence in a court of law is a matter that will be responded to by the Court given that it involves undermining the criminal justice system. There is a strong need for deterrence, and denunciation for a killing of that kind.

¹ Sentencing Act 2002, s 102(1).

² Section 103(2).

³ Section 103(2); and *Hessell v R* [2009] NZCA 450, [2010] 2 NZLR 298 at [64].

⁴ Sentencing Act, s 104(1)(b).

⁵ Section 104(1)(c).

[16] Apart from the factors I have just referred to which are covered by s 104 there are the additional aggravating factors associated with there being two of you, each using a weapon, and the gang-related nature of the offending.

[17] This means that s 104 applies, and that the 17-year MPI should be imposed unless it is manifestly unjust to do so. The Court of Appeal has explained in a case called *Davis v R* that in order to decide whether it is manifestly unjust to impose the 17-year MPI the Court should first assess what the minimum period of imprisonment would have been apart from s 104, and then consider whether imposing the higher minimum period required would involve manifest injustice.⁶

[18] I do not consider there is any need to address whether a 17-year minimum period of imprisonment is manifestly unjust for you, however. That is because I have reached the view that an even higher minimum period is appropriate given the number and extent of the aggravating factors, including the fact that this was a pre-meditated execution because Mr Johnson had given truthful evidence against a leader of the Mongrel Mob.

[19] By themselves the aggravating circumstances, apart from the motive I have emphasised, would have warranted close to a 17-year minimum period irrespective of s 104. The fact that the killing was gang-related, involved a home invasion at night, with two armed attackers in a pre-planned attack with an intent to kill would by themselves warrant a minimum period at that kind of level. But the additional factor of this killing being a retribution for evidence given in criminal proceedings means that the minimum period must be higher in my view.

[20] The appropriate MPI for each of you may vary given your role in the offending. But these are largely the same for each of you. I do not accept your counsel's submission, Mr Rielly, that it was not proved that you partook in the stabbing. The fact there were two knives, and the number of wounds proves that you did. There is only one important difference in your roles. That is that you were the patched member Mr Hulbert and Mr Rielly was your prospect. That means your culpability is higher Mr Hulbert, as you were effectively in charge of Mr Rielly.

⁶ *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 at [25].

[21] I also do not accept your counsel's submissions that you did not know of the motive for the killing, Mr Rielly. You have not said that yourself — you have simply denied the offending to the pre-sentence report writer. But in any event it is inconceivable that you did not know that Mr Johnson was being killed because of the evidence he had given.

[22] Neither do I accept what you told the pre-sentence report writer Mr Hulbert. You admitted the murder but said that the motive was not the evidence Mr Johnson gave, but rather that Mr Johnson had disrespected you. That explanation is simply contrary to the evidence.

[23] In terms of comparable cases I think there are two that provide some guidance.

[24] First in *R v Webber* the offender and the victim were both members of the Nomads gang.⁷ The victim had failed to pay a modest debt. The offender had the role as the enforcer for the gang. He went to the victim's house and stabbed him 14 times. It was accepted that the offender did not intend to kill the victim, but was reckless as to whether or not he died. The Court found that s 104 did not apply, but a 15-year MPI was imposed having regard to the offence, but in light of mitigating factors, including a guilty plea. There are obviously parallels with the present case, but I consider your case is significantly more serious given the significant planning, that there were two attackers, that the killing was intentional, it involved home invasion, and that the murder was retaliation for Mr Johnson giving honest evidence in court.

[25] In *R v Manihera*, a case decided before the current Sentencing Act and the higher MPIs contemplated by s 104, the offenders had killed the victim because he had given evidence of an incident where Black Power members assaulted Mongrel Mob members. The High Court Judge had imposed minimum periods of imprisonment between 14 and 17 years. Those minimum periods were upheld by the Court of Appeal who described the High Court Judge's approach as well justified.⁸ The High Court Judge had said this:⁹

⁷ *R v Webber* [2020] NZHC 2328.

⁸ *R v Manihera* CA495/97, 30 March 1998 at 8.

⁹ At 4–5.

I do not think it matters greatly whether the motive in the killing was to prevent him giving evidence at the trial ... or in retaliation for having given evidence at the deposition hearing ... I accept that on the evidence the motive may have been a mixture of both. It is calculated to have exactly the same effect: that is, to deter citizens by terror from giving evidence. ... If the approach adopted by [the victim] to civic responsibility is undermined, if people are to be terrorised into not coming forward, the rule of law is undermined. Everyone will avert their eyes. Because the crime here sought to achieve that result, it is particularly abhorrent. No one would be safe in a society where terrorism of this sort rules. I accept that this feature of the case puts it in a category of its own.

[26] That reasoning applies here, even though here Mr Johnson was himself associated with the gang. Mr Johnson was killed because he had given evidence. Given that factor and all the other circumstances, and subject to your personal circumstances which I will next address, I consider that the appropriate minimum period of imprisonment given the circumstances of the offence for you Mr Hulbert is 19 years, and for you Mr Rielly is 18 years. The difference reflects your different personal roles.

Personal circumstances

[27] The last stage in the assessment involves considering your personal circumstances, and deciding whether they should reduce the sentence that is imposed. In the present case, given that you will both be sentenced to life imprisonment, that consideration is limited to whether your personal circumstances should reduce the minimum period of imprisonment. The primary information provided to the Court about your personal circumstances is contained in the pre-sentence reports.

Mr Hulbert

[28] In your case Mr Hulbert, I also have the advantage of a psychiatric report from Dr Davin Tan.¹⁰ Both his report and the pre-sentence report outline a violent and dysfunctional upbringing. You have explained that you were raised in a number of places in New Zealand, as well as spending some time in Australia. You only met your father twice, when you were seven and 16, and when you did he showed you his guns. You lived for a period with your uncle and aunt and were exposed to violence from family members. Dr Tan is of the view that you suffer from untreated PTSD as a

¹⁰ I direct that this report be made available to the Parole Board.

consequence and he has described some lasting behaviours that continue to affect you in your day-to-day life. You were diagnosed with ADHD at the age of three. You report that the Ministry of Education considered you unfit for mainstream schooling and enrolled you into alternative education until you went on to polytechnic. Your mother confirms your very difficult upbringing. She reports that your ADHD meant that you were very hard to manage. She also says that she does not know how you ended up where you are now, that no other member of her family has been in gangs, and that you are the only one of her children who has gone down what she describes as a “destructive and violent path”. That is a good description. Dr Tan’s view is that in addition to ADHD and untreated PTSD, you exhibit several features of antisocial personality disorder.

[29] The report writer addresses drug abuse, including drug use on the day of the offending, although you say that you are not interested in methamphetamine and are not overly attracted to alcohol. The report writer indicates that you seem fixated on being perceived as staunch and not to be messed with.

[30] I accept that some discount is appropriate because of your personal circumstances, although there is a limit to the extent of that discount. You have had a very hard life, and your entry into a gang is perhaps characteristic of the path taken by some Māori men as a consequence of deprivation, and social and cultural dislocation. But you have nevertheless made choices of your own and you must live with the consequences.

[31] In all the circumstances I reduce your minimum period of imprisonment by one year to 18 years.

Mr Rielly

[32] Mr Rielly you have also had a very difficult life. You were removed from your mother’s care when you were four years old. Your time in what was then Child, Youth and Family Services and Youth Justice Services was traumatic. You have a dysfunctional relationship with your biological father who has recently passed away. Your mother is the biggest support person in your life and she continues to provide you with ongoing support. You also have loving relationships with your three

youngest sisters, a stepson aged seven and your own biological son aged six. Before being remanded in custody you used methamphetamine daily and you have previous convictions suggesting a propensity for violence. You grew up around gang culture, particularly with the Mongrel Mob. The report writer says that you are well entrenched in gang culture and described the gang as a “brotherhood of love and family”. That is not a good description. The report writer indicates that you say that you were not guilty of this offending.

[33] There is also the additional feature of your age given the recognised age-related neurological differences in young people.¹¹ You were 21 at the time of the offence. However I accept the Crown’s submissions that these factors are mainly relevant when the offending is impulsive and spontaneous.¹² For that reason I accept that a discrete discount for youth alone might not be justified. But what I do accept is that your youth, combined with your dysfunctional upbringing has impacted on your personal culpability, and again warrants a discount. This again recognises that deprivation and cultural and social dislocation can affect the choices that young men in your circumstances are capable of making. It is no surprise that you have ended up as a gang member. For that reason I also consider there should also be a one-year reduction of your minimum period of imprisonment. I consider that your minimum period should be adjusted to 17 years.

Sentence

[34] Mr Hulbert, Mr Rielly, can you please stand.

[35] Mr Hulbert, for the murder of Eli Johnson, you are sentenced to life imprisonment with a minimum period of imprisonment of 18 years.

[36] Mr Rielly, for the murder of Eli Johnson, you are sentenced to life imprisonment with a minimum period of imprisonment of 17 years.

¹¹ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405.

¹² *Huata v R* [2013] NZCA 470 at [35].

[37] Please stand down.

Cooke J

Solicitors:
Pollett Legal, Tauranga for Crown
Pacific Coast Law, South Waikato for Mr Hulbert