IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-004-008489
[2026] NZHC 1322

THE KING

v

KAEL AUSTIN LEONA

Hearing:	13 May 2026
Appearances:	W Te Hiko, F Culliney and C Paterson for the Crown J Scott, E Kim and O Salt for the Defendant
Sentence:	13 May 2026

SENTENCING NOTES OF HARVEY J

Solicitors:
Crown Solicitor, Auckland
Public Defence Service, Auckland

Introduction

[1] Kael Leona, at the age of 38, you appear today for sentencing having pleaded guilty to the murder of Bernice Marychurch,[1] and to a charge of strangulation of [C}.[2] Before continuing with sentencing, I would like to acknowledge the family and friends of Ms Marychurch and [C]. Some of you have provided me with victim impact statements, which I will refer to later. I extend the Court's sympathies and thank you all for your attendance today. I must warn you, however, that some of what I must describe will be deeply distressing.

[2] Mr Leona, life imprisonment is the mandatory sentence for murder unless that sentence would be manifestly unjust.[3] Both counsel accept that there are no circumstances making a sentence of life imprisonment manifestly unjust. I agree. There is no reason why the presumption of life imprisonment should be disturbed.[4] You will be therefore sentenced to life imprisonment.

[3] There is a further decision that has to be made and that is the minimum period of imprisonment (MPI) you must serve before becoming eligible for parole. The Crown says that a starting point for that MPI should be 17 years whereas your counsel says it should be 10 years. I will now set out the reasons for the minimum period of imprisonment you must serve.

The facts

[4] Mr Leona, you will know what happened on 23 October 2024 better than most. However, it is important that I address the facts during this sentencing since the law requires that it must be done in public, and that I refer to those facts that are directly relevant when setting the sentence that will be imposed. I will therefore refer in this sentencing to parts of the evidence.

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1 Crimes Act 1961, ss 167 and 172. Maximum penalty: life imprisonment.
2 Section 189A. Maximum penalty: seven years' imprisonment.
3 Sentencing Act 2002, s 102(1).
4 The threshold for displacing the presumption of a sentence of life imprisonment for murder is "a high one". See Mathew Downs (ed) *Adams on Criminal Law* (online ed, Thomson Reuters), at [SA102.02].

[5] According to the summary of facts, on 23 October 2024, you and Ms Marychurch met outside Woolworths in Onehunga and boarded a bus for Panmure. You say in your interview with Department of Corrections staff that this was the first time you met, so you were strangers to each other with no previous history. On arrival to an address in Panmure you unsuccessfully went looking for methamphetamine. After meeting some associates there, you travelled to Point England where you secured a point bag of methamphetamine. After that was consumed you travelled to Glen Innes. On arrival, you separated from Ms Marychurch and walked around Glen Innes before rejoining her to board a bus at the Panmure bus station.

[6] You both sat near the rear of the bus with Ms Marychurch sitting in the left corner while you moved to sit in the rear right corner. You took a bag that you had slung over your shoulder and placed it on your right side. During the ride you appeared agitated, continually rocking back and forth, side to side in your seat while attempting to engage Ms Marychurch. She had headphones on and was using her cellphone for much of the ride and did not respond to you.

[7] As the bus travelled along Church Street in Onehunga, you became more agitated and at approximately 2.27 pm you drew a knife from your bag and moved across the seat toward Ms Marychurch. At the time, along with the driver, there were eight other passengers on the bus. You then stood up and knelt your left leg on the seat and began to stab Ms Marychurch in the upper body. You then pulled her onto her right side and plunged the knife into her upper back. Moving across the back seat, you dragged Ms Marychurch while continuing to stab her around the torso. Ms Marychurch fell to the floor where you continued to stab her in her torso and stomach and began to slash the left side of her face, causing serious injuries.

[8] Passengers yelled for the driver to stop the bus and open its doors. Understandably, fearing for their own safety, some passengers then exited the bus. Ms Marychurch tried to defend herself by raising her knee but you pushed that aside and drove the knife into her stomach. She also had defensive stab wounds as a result of using her hands to try to block the blows you were delivering. In total, you stabbed Ms Marychurch approximately 20 times and several times you twisted the blade around while it was inside her body. Despite receiving help from other passengers

once you had stopped and left the bus, the injuries you inflicted were not survivable. Ms Marychurch was taken to hospital and died soon after.

[9] After fleeing the scene, you then followed another passenger for around 100 metres, making a threat that he was next. Thankfully, the passenger was able to evade you. You then made your way to a family address in Onehunga. A family member took you for a walk due to your agitated state.

[10] You then went to a family friend's address in Onehunga, where you knocked on the locked door screen until [C] presented herself in response. You demanded her car keys, but [C] refused. You then tore the security screen door from its frame, entered the dwelling and grabbed [C]'s hair, throwing her to the ground causing her to hit her head. While [C] struggled you said to her "I will kill you" before impeding [C]'s breathing, covering her mouth and nose. [C] continued struggling and broke free before others arrived and intervened. You stopped and then left the address.

[11] After leaving you were seen on various CCTV cameras around Mount Wellington. The next day, you were caught on CCTV in the Auckland CBD where you walked to H&M, Commercial Bay, taking clothes without paying, no doubt to change your appearance. You left your own clothes in the changing room. You then went to OK Gift Store, Quay Street and stole a hooded sweatshirt before catching a bus destined for Albany. After catching several buses, you then arrived at Constellation Bus Station and walked to the North Shore Police Station where you handed yourself in.

Victim impact statements

[12] I have received victim impact statements from Bernice Marychurch's sister, Larna Marychurch; Bernice's father, John Marychurch; Bernice's children, Joan and Tamika Tamale, and Sosefina Fanguna; and her cousin, Mark Hiini. They remain completely distraught despite the passage of time. As a result, some have decided not to attend this sentencing because it would be too painful for them to be here today. Those who could attend, I thank them for finding the strength to be present and to share a small insight into their despair at the loss of Bernice.

[13] I have also received a victim impact statement from [C] — the victim who you strangled. [C] I thank you for your courage in providing a statement to the Court.

[14] There is no doubt from the victim impact statements that Ms Marychurch was a loved and respected daughter, sister, mother and friend within her immediate family. They have all said so and I have no reason to doubt them. Ms Marychurch maintained the affection, love and support of her family and friends, despite her own personal challenges from time to time.

[15] There is nothing I can say that will change what has happened. The ongoing impact and toll of Ms Marychurch's death and the circumstances of it will remain embedded in the family indefinitely. The grieving of Ms Marychurch's father, sister, children and grandchildren, continues to the present day. They may never get over the loss of the daughter, sister, mother, grandmother and friend that they have been deprived of in such tragic circumstances.

[16] [C] continues to suffer from the trauma of what happened to her that day when her home was invaded and she felt her life was in the balance. To this day she feels unsafe in her own home and has to deal with the ongoing effects of your actions both physically and psychologically.

[17] I also have before me a statement from one of the passengers on the bus that day — John Nacario. The members of the public who were on the bus and witnessed the stabbing of Ms Marychurch must have been deeply shocked by what they experienced that day. I thank all of them for their presence today and I acknowledge the heartfelt and sincere victim impact statements as part of this sentencing.

Pre-sentence and expert reports

[18] I now turn to the pre-sentence reports. Mr Leona, the report prepared by Department of Corrections staff to assist with your sentencing records that you are of Niuean ancestry of your father's side of the family and European on your maternal side. You were brought up by your parents and have two brothers and two sisters. The report also records that you were not exposed to violence in the home and that you never witnessed intimate partner violence. However, for a pre-sentence interview in

2022, you told the report writer that you were disciplined by your father in "the island way". Around the age of four you said you were abused by someone outside the family. You said that your father worked in a factory and that your mother worked at the Panmure RSA.

[19] You told the report writer that you have never spent time in boys homes or state care and have never been affiliated with any gang or criminal group. As to your education, you said it was, "okay". Your mother said that at around the age of five or six, she asked your teachers to "observe him", as she said, you sometimes appeared distracted whereas your teachers felt you were fine. You attended Penrose High School and left at the age of 16 without any formal qualifications. At the time of the offending, you were on a benefit and your last job was through a labour hire agency in 2018.

[20] You told the report writer that you are single and have never been married. You have two sons and a daughter, the oldest being 15 and the youngest two. You have no other children outside that relationship. You said that the relationship ended when you were imprisoned. You were also linked to 29 family harm incidents between 17 January 2020 and 24 October 2024. The day prior to the offending, as a result of a family harm matter, you had been discussed. You had been non-compliant and had recently been remanded in custody for 20 days. As your whereabouts were unknown at the time it was recorded that a home visit needed to be completed with urgency. The last time Community Probation had in-person contact with you was on 10 September 2024. You told them you were going to Manaaki House for help with your mental health. You reported in to a Community Probation office on 15 October 2024 but left without being seen.

[21] At the time of the offending, you said that you had been living under Grafton Bridge for a few weeks, after being released from custody. Your mother confirmed this and said you were homeless at the time of the offending. She also said that living with you was very difficult but that now you are medicated the difference is remarkable. Your mother commented that in the past you would often hurt yourself in front of her. In the weeks leading up to the offending, she noticed that your reactions were, "more angry and violent". She said, "he was taking P and it was affecting his

mental stability". On the day of the offending, after arriving at her home, your mother said that she thought you were on methamphetamine and believed that you had been drinking.

[22] You told the report writer that you did not start using methamphetamine until the age of 34 but when you did, that use quickly escalated to daily. At the time of the offending, you said that you were smoking and injecting methamphetamine as often as you could and that you were smoking cannabis daily. While saying that methamphetamine use made you feel better, it caused problems between you and your parents. You also acknowledged that while you have never been to a residential drug treatment facility, you would consider that when appropriate. At the time of the pre-sentence interview, you said you had been sober for 17 months. You also have Type 1 insulin dependent diabetes and the expert reports have noted how this has impacted your anxiety and wellbeing over the years.

[23] You told the report writer that you met Ms Marychurch for the first time, that day, outside Countdown Onehunga and you were sober. You began talking and caught the same bus to Glen Innes in the hope of buying methamphetamine, which you did. After that you said you both went to some church shops. Later during the interview, you told the report writer that you thought Ms Marychurch was setting you up to be murdered. You then said that you had had thoughts like that, of people wanting to murder you, on previous occasions.

[24] Regarding [C] you told the report writer that she was a family friend and that you were trying to take her car so that you could see your parents because you knew you would be incarcerated.

[25] You said that the only mental health diagnosis that you are aware of is that of anxiety. Corrections records confirm that you have been under the care of the Mason Clinic staff while in custody. You were taking medication at the time of the presentence interview. Your mother noted that the only formal diagnosis you had received was for anxiety. However, she noticed your mental health deteriorating from the age of 16 or 17 and that your paranoia began to increase from the age of 20. Your

mother also confirmed that previously you have been under the care of Manaaki House but that you were not willing to engage with them at that time.

Approach to sentencing

[26] Mr Leona, as foreshadowed, Ms Scott, your lawyer, has accepted that the presumption in favour of life imprisonment applies under the Sentencing Act (the Act), and accordingly I will impose a sentence of life imprisonment.[5] I must then decide what the minimum period of imprisonment (MPI) should be, taking account of the aggravating and mitigating features of the offending. I will then apply any uplifts or discounts to reflect personal factors.

[27] In doing so, I must also consider the purposes of sentencing.[6] Important purposes include holding you accountable and promoting in you a sense of responsibility, denouncing your conduct, deterring you and others from committing similar offending, protecting the community, and assisting with your rehabilitation and reintegration. I will also have regard to the principles of sentencing.[7] I must take account of the gravity of your offending, your degree of culpability or blame, the seriousness of the offending in comparison with other types of offending, and the need for consistency with sentencing levels, and the effect of the offending on the victims and their families. I then consider your personal, community and cultural background.

Minimum period of imprisonment

[28] Where life imprisonment for murder is imposed, I have to fix the minimum period of imprisonment by reference to your culpability or responsibility. In doing so, I must consider any aggravating and mitigating aspects of your offending. The sentence that I impose should also be consistent in kind and length with other comparable cases for persons who have committed similar offences. The minimum period of imprisonment must not be less than ten years.[8] This must be the minimum term required to satisfy any of the sentencing purposes for murder, which include:[9]

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5 Sentencing Act, s 102(1).
6 Section 7.
7 Section 8.
8 Sections 103(1) and 103(2).
9 Section 103(2).

(a) Holding you accountable for the harm you have caused to the victims and to the community.

(b) Denouncing the conduct in which you were involved.

(c) Deterring you against any future offending. It must also deter others.

(d) Protecting the public.

[29] In addition, if one or more specified aggravating factors are present in your offending, then an MPI of at least 17 years must be imposed unless it would be manifestly unjust to do so.[10] Crown counsel say that s 104 of the Act is engaged for the imposition of a 17-year minimum period of imprisonment. Your counsel says that it is not, and even if it was, at the time you committed these offences, as well as being affected by methamphetamine, you were labouring under a disease of the mind.

[30] The issue for me to decide is what length of MPI, at or above the ten-year minimum, I must set in order to achieve the relevant purposes of sentencing. I will now set out the relevant arguments on these points. There are two steps involved.[11] First, I must identify the MPI I would ordinarily impose on you, taking account of the aggravating and mitigating factors and also consider cases that are similar to yours.[12] Second, if an MPI of less than 17 years is justified, I must then decide whether an MPI of 17 years or more would be manifestly excessive.

Aggravating factors

[31] The Crown contends there are multiple aggravating factors present in your offending. Mr Te Hiko argued that but for s 104 of the Act being engaged, an MPI in the vicinity of between 15 and 16 years' imprisonment is appropriate. Your counsel accepts that three aggravating factors are present to some degree:

(a) First, the use of a weapon. You were in possession of a knife and used it to commit the attack on Ms Marychurch.

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10 Section 104(1).
11 *R v Williams* [2005] 2 NZLR 506 (CA), at [52]–[54].
12 Sentencing Act, s 103.

(b) Second, brutality. You stabbed Ms Marychurch no less than 20 times, and you were relentless as she attempted to evade you and protect herself. You also slashed the side of her face, leaving deep lacerations from her ear to her lower jaw. The terror Ms Marychurch must have felt during the attack cannot be understated. Mr Te Hiko argued that your actions went beyond the violence implicit in a conviction for murder. You and Ms Marychurch had not previously been known to each other, and you told police you did not think Ms Marychurch was a threat, but that she was "spying" on you as part of an orchestrated plot to kill you.

(c) Third, vulnerability. Ms Marychurch was unarmed and unsuspecting at the time. She was alone, and effectively trapped sitting by herself in the back of the bus. The Crown referred to the cases of *Burns-Wong-Tung v R* and *R v Singh*.[13]

Your counsel argued that the vulnerability of the victim in *Burns-Wong-Tung v R* was greater, because he was held captive in the back of a car at the time of his stabbing, and the offender planned to hold him captive. Your counsel contended that the victim in *R v Singh* was more vulnerable because the offender had previously sent threats and physically tracked her, and intentionally intercepted the victim at a time and place where he knew she would be on her own and powerless to resist.[14] Ms Scott submitted that Ms Marychurch was not inherently vulnerable by virtue of her age, health, or relationship to you, and the factors present in *Burns-Wong-Tung v R* and *R v Singh* were absent. Your counsel argued that to consider Ms Marychurch's vulnerability was heightened by you wielding a lethal weapon would result in double-counting of the aggravating factor of use of a weapon.

[32] The Crown submitted that a fourth aggravating factor was present:

(d) The harm suffered by witnesses and members of Ms Marychurch's family. While Mr Te Hiko recognised that harm "is usually a foregone conclusion" in

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13 *Burns-Wong-Tung v R* [2024] NZCA 597; and *R v Singh* [2023] NZHC 2040.
14 *R v Singh*, above n 13, at [26].

a case of murder, the harm in this case is particularly evident. For example, one of the passengers on the bus, Mr Nacario, who provided a victim impact statement, described the deep and lasting impact the traumatic event had on his life. Ms Marychurch's sister, Ms Larna Marychurch, described the "life sentence of grief" she now faces. However, your counsel argued that it is difficult to conceive of a murder where this factor would not be present, and that the Court should refrain from placing undue weight on this factor.

Section 104

[33] Mr Te Hiko submitted that two of the factors in s 104 of the Act apply. First, murder was committed with a high level of brutality, cruelty, and callousness,[15] and second, that the deceased was particularly vulnerable because she was captive in a confined space.[16] I consider each of these factors in turn.

Brutality, cruelty, and callousness

[34] Regarding brutality, cruelty, and callousness under s104(1)(e), the nature of your offending exhibits these factors to a high level. Mr Te Hiko referred to the Court of Appeal's decision in *R v Gottermeyer*, highlighting four key points.[17] First, there is no particular difficulty, or special meaning, involved in the words "brutality", "cruelty", "depravity" and "callousness". Second, the meanings of "cruelty" and "callousness" overlap, to some extent. Third, the words describe the nature of the murder in objective terms. The focus is on the manner in which the murder was committed. Issues of planning and victim vulnerability are covered separately in s 104, and are not at the forefront in the context of s 104(1)(e). Fourth, the brutality must be at a "high level". Many murders will involve elements of brutality, cruelty, depravity or callousness, but only those that involve one or more of those elements to "a high level" will fall within s 104(1)(e). The courts are therefore required to distinguish between different murders depending on the level of brutality, cruelty, depravity or callousness involved in them.

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15 Sentencing Act, s 104(1A)(e).
16 Section 104(1A)(h).
17 *R v Gottermeyer* [2014] NZCA 205 at [79].

[35] Your counsel submitted that this case does not meet the threshold of a high level of brutality. Ms Scott says that your mental state at the time mitigates or lessens your responsibility or culpability.

[36] The Crown position is that the murder exhibited those features. You stabbed Ms Marychurch approximately 20 times. You continued to stab her as she fell onto the floor of the bus, bringing her legs up to protect her, and you stabbed her in the hands as she put them out to protect herself. You stabbed her in the face, slashing around from her ear to her jaw. You focused the blows around Ms Marychurch's head, neck, and torso, harbouring the vital organs, and you did so with enough force to leave several deep wounds. You twisted the knife while it was inside her body several times. There was also no reasonable justification for any violence against Ms Marychurch, given a lack of any perceived immediate threat.

[37] Mr Te Hiko referred to *Burns-Wong-Tung v R* and *R v Singh*.[18] In both cases the courts found that s 104(1)(e) was met. In *Burns-Wong-Tung* while the attack was not prolonged, the Court of Appeal found the attack was brutal, with eight wounds inflicted in 15 seconds.[19] One of the wounds penetrated the deceased's pleural cavity into the lung, and another was 13 cm deep into his chest.[20] Your attack on Ms Marychurch was more prolonged, lasting around 30 seconds, and you inflicted more than twice as many stab wounds. In *Singh*, the offender followed the deceased and approached her with a large knife, stabbing her 12 times.[21] During the attack, the deceased had raised her hand to protect herself, and the thumb was partly severed.[22] This Court considered that s 104 factors of calculated and lengthy planning and the particular vulnerability of the deceased justified an MPI of 17-and-a-half years.[23]

[38] Your actions after the murder also demonstrated a cold-blooded, callous disregard. After stepping over the severely injured Ms Marychurch on your way out of the bus, you followed another passenger who had left the bus and who, thankfully, was able to evade you. You then went to a family address, before going to a family

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18 *Burns-Wong-Tung v R*, above n 13, and *R v Singh*, above n 13.
19 *Burns-Wong-Tung v R*, above n 13, at [115].
20 At [16].
21 *R v Singh*, above n 13, at [15].
22 At [15].
23 At [59] and [24]–[36].

friend's address where you strangled [C] and told her you were going to kill her. The next day, you stole clothes from stores in the Auckland CBD to change your appearance, before eventually handing yourself into police. While I accept the submission of Ms Scott that your choice to hand yourself in to police the next day is mitigating, it does not diminish the brutality and callousness of your actions. Therefore, I consider the factor of brutality, cruelty, depravity or callousness under s 104 is engaged. I consider any effect that your mental health might have had in mitigating the gravity of your offending in the next section.

Vulnerability

[39] Second, in respect of vulnerability, I am not convinced that this factor is engaged to the extent that an uplift in the MPI is required under s 104 of the Act. The Court of Appeal has previously observed, that as with brutality and callousness under s 104(1)(e), vulnerability under s 104(1)(g) is a high threshold, and will usually involve victims who are particularly vulnerable because of their age or health.[24] Assessing vulnerability requires an objective evaluation of the victim and their surrounding circumstances at the time.[25]

[40] While I accept the submissions of Mr Te Hiko that the deceased had no means of escape, and that there was no forewarning or reason to suspect that you would have attacked her repeatedly with a knife, I do not find that this case exhibits the degree of vulnerability necessary to engage s 104. This case is somewhat different from *Burns-Wong-Tung*, where the Court found that the deceased was captive in the back of his car when the murder took place.[26] While Ms Marychurch's ability to evade you was limited, other factors of vulnerability such as coercion, age or health were absent. I also note the finding of this Court that vulnerability will usually involve a victim being physically prone to attack, "rather than being in a place where they might be attacked unexpectedly."[27] Almost every murder, by nature of the crime, exhibits some degree of vulnerability.

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24 *Phillips v R* [2023] NZCA 588 at [19].
25 At [19].
26 At [115].
27 *R v Beazley* [2019] NZHC 672 at [38].

Mitigating factors

[41] Most significantly for the purpose of sentencing today, is any mitigating effect that might have resulted from your mental unwellness at the time of your offending, and how this was affected by your consumption of methamphetamine and the effect this might have had on you. The Crown argued that while you were experiencing methamphetamine-induced psychosis at the time, there are no mitigating features of your offending. On the other hand, Ms Scott submitted that you were suffering from a disease of the mind such that your culpability should be seen as being significantly reduced. Counsel argued that this justifies imposing the minimum period of imprisonment of 10 years. Your counsel contended that the Crown must negate beyond reasonable doubt any disputed mitigating fact raised by the defence.[28]

[42] Ms Scott elaborated that you were suffering a disease of the mind beyond and independent of methamphetamine-induced psychosis, leading you to develop paranoid and persecutory delusions about a conspiracy to have you killed. You believed Ms Marychurch was part of that conspiracy. Ms Scott referred to the expert reports which diverge in their conclusions about whether you were suffering from a methamphetamine-induced psychosis at the time of the murder, or whether you suffered from a "disease of the mind" or an underlying psychotic illness that mitigated the culpability of your actions. Counsel contended that while the reports all differ in some respects, all except for that of Dr Goodwin agree that you were suffering from a disease of the mind at the time of your offending.

[43] Ms Scott referred to this Court's decision in *R v Brackenridge*.[29] The Court found that a discount of 20 per cent was appropriate to reflect the "strong causative link" between Mr Brackenridge's mental illness and offending. This was despite the Court acknowledging the "self-induced aspect" of the offender's illness, who suffered from drug-induced schizophrenia.[30] An overall MPI of 10 years' imprisonment was imposed, taking into account the mitigation of mental illness and remorse.[31] The Court of Appeal later observed that Mr Brackenridge did not have an underlying psychiatric

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28 Sentencing Act, s 24(2)(c).
29 *R v Brackenridge* [2019] NZHC 1627.
30 At [32]–[33].
31 At [35].

condition that was exacerbated by drug abuse, but rather that the drug use triggered the psychotic state that led to his offending.[32]

[44] Ms Scott submitted that the Crown has not proved beyond a reasonable doubt that you were not suffering from a disease of the mind at the time of the murder beyond mere methamphetamine-induced psychosis.

Discussion

[45] The law in s 9(3) of the Sentencing Act is clear: the Court must not consider as a mitigating factor the fact that at the time of committing an offence, the offender was affected by the voluntary consumption or use of methamphetamine, even where it may diminish the capacity of the defendant. The Court's engagement with this issue has developed a differentiation between the effects of methamphetamine use leading to drug-induced psychosis, and where the defendant suffers a disease of the mind beyond that psychosis. The latter has been found to mitigate an offender's culpability.

[46] The case of *Smith v R* outlines that a discount can be given for psychosis secondary to drug consumption developing over a period of time, but not for the immediate effects of drugs or alcohol at the time of offending.[33]

[47] The Supreme Court in *Van Hemert v R* outlined that where mental impairment is a direct cause of criminal offending and where the defence of insanity does not apply, the accepted approach under the Sentencing Act is to allow a discount for this factor.[34] The Court confirmed that mental health issues may diminish moral culpability for the offending, and in turn, reduce the prominence of purposes of

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32 *Brackenridge v R* [2024] NZCA 462 at [23]. The Court of Appeal heard an application for leave to withdraw a notice of abandonment of appeal against conviction and sentence. The application was declined.

33 *Smith v R* [2014] NZHC 3033 at [26].

34 *Van Hemert v R* [2023] NZSC 116, [2023] 1 NZLR 412 at [79].

deterrence, accountability and denunciation.[35] Discounts of between 12 and 30 per cent have been seen as appropriate.[36]

[48] The key issue before me becomes whether, Mr Leona, you were merely experiencing methamphetamine-induced psychosis, as argued by the Crown — in which case the culpability of your offending is not mitigated — or whether, as Ms Scott argued, you were suffering a disease of the mind beyond and independent of methamphetamine-induced psychosis.

[49] Several expert reports were before the Court and three of them gave evidence earlier today either in person or via VMR:

(a) Dr Ryan considered that you met the criteria for a diagnosis of schizophrenia, and that your symptoms did not appear to resolve after ceasing consumption of methamphetamine. She concluded that your psychotic symptoms were not solely the direct result of substances of abuse, and that you suffered from a disease of the mind — either schizophreniform disorder or Schizophrenia — which may be considered a mitigating factor. Dr Ryan observed that you continued to experience persecutory delusions at least four months after you stopped using methamphetamine and were still experiencing negative symptoms of psychosis after six months. She considered a diagnosis of methamphetamine-induced psychosis was less likely. Dr Ryan also identified historical instances in your record where you had exhibited symptoms of paranoia and psychosis, including in 2007 where you reported to a psychologist "fears people would break into the house and kill him", and you were recorded as exhibiting a "possible prodrome of a psychotic illness" in 2010. These records predate the time you first consumed methamphetamine in 2021. Overall, while Dr Ryan acknowledged that you developed delusional beliefs in the leadup to the murder in the context of regular methamphetamine use, she

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35 At [79] citing *Orchard v R* [2019] NZCA 529, [2020] 2 NZLR 37 at [46].

36 At [79] citing *Orchard v R*, above n 35, at [48]. Counsel also referred to *R v Krishna* [2023] NZHC 1205 at [52] which affirmed that a discount cannot be applied for an offender's voluntary consumption of methamphetamine. However, Andrew J at [53] allowed a discount for the defendant's drug addiction and existing mental health issues, finding that "[t]he use of methamphetamine over several days and your predisposition to psychosis does help to explain in some rational way why the offending occurred here".

emphasised the evidence of your history of delusional beliefs prior to ever using methamphetamine, and the persistence of those symptoms since ceasing use of methamphetamine.

(b) Dr Whiting recorded that you were suffering from schizophreniform disorder and delusional disorder, or in the alternative, the term 'psychosis not otherwise specified' may be applied. He concluded that the Court may consider your persecutory delusions at the time of the offending constituted a "disease of the mind". While those delusions happened in the context of heavy methamphetamine use in the days leading up to and of the murder, several factors suggest that your "persecutory delusions cannot be solely attributed to the effects of methamphetamine use". Dr Whiting made this finding based on your psychotic symptoms remaining for at least three months after ceasing methamphetamine, and how a high dose antipsychotic medication was required to resolve your symptoms. You also have a background of a strong family history of psychosis and genetic vulnerability. Therefore, Dr Whiting suggested that you exhibited an evolving pattern of beliefs that indicate underlying psychosis and gradual deterioration over the last 20 years.

(c) Dr Pillai's reports also concluded that you were likely suffering from a disease of the mind at the time of the offending. He concluded that while your delusions have arisen in the context of long-term methamphetamine use, they appeared to persist for months after you stopped using methamphetamine, and therefore do not appear dependent upon substance use or intoxication. In his report examining the possibility of an insanity defence, Dr Pillai preferred a diagnosis of "substance (methamphetamine) induced psychotic disorder". He found that your delusions persisted for three to six months after using methamphetamine, and while the delusions depended on methamphetamine:

> the persistence of delusional thinking for months in the absence of methamphetamine use suggests that the use of the substance has caused a persisting abnormality of brain function which can be described as a disease of the mind.

(d) Dr Goodwin's report, conversely, attributed your delusions at the time of the murder to "methamphetamine related psychosis" and also acute intoxication

with methamphetamine. Dr Goodwin concluded that you did not suffer from an underlying psychotic illness such as schizophrenia. He referred to your psychiatric history, which was absent previous diagnoses of psychosis. He also observed that your mental state has improved considerably in custody with abstinence from methamphetamine, and treatment with antipsychotic and antidepressant medication. However, Dr Goodwin found that you qualify for historic diagnoses of methamphetamine abuse and dependence disorders. Ultimately, he concluded that while you were suffering from paranoid delusions at the time of your offending, these were secondary to methamphetamine use and acute intoxication.

[50] Standing back, I accept the overall conclusion outlined in the expert evidence that at the time of the offending you were suffering from some form of mental unwellness or disease of the mind. However, the extent to which this mitigates your culpability in your particular circumstances is less clear.

Comparison with other cases

[51] I now turn to consider several comparable cases cited by counsel. Like this one, these cases involve tragedies. Mr Te Hiko submitted that the cases of *Burns-Wong-Tung* and *Singh*, which I have discussed already, and *Purutanga* are most similar to your offending.[37] Counsel contended that the number of stab wounds you inflicted is greater than in all of those cases, and that the degree of vulnerability of the victim is almost identical to that of the deceased in *Burns-Wong-Tung*. Mr Te Hiko argued that the nature of the injuries is equally similar, given the areas of the body attacked in all of the cases, and the duration of the attack. Overall, Mr Te Hiko submitted that having regard to the aggravating factors present in your offending, and the comparator cases referred to, if s 104 was not found to be engaged, the appropriate MPI would be

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[37] *Burns-Wong-Tung*, above n 13, *R v Singh*, above n 13, and *Purutanga v R* [2023] NZCA 442. In *Purutanga v R*, the offender stabbed the deceased in a "frenzied attack", inflicting 17 stab wounds to the deceased's neck, chest, abdomen and limbs. The offender's two young children were present for the duration of the attack. The offender and the deceased had been in a long-term relationship and on day of the murder the offender had badly beaten the deceased. The offender's mother attempted to intervene, suffering a cut to her hand. The Court of Appeal identified aggravating factors under s 104 the victim's vulnerability, the breach of family trust, the degree of premeditation, and the use of the large boning knife. A notional MPI of 17 years six months was adopted. See *R v P* [2022] NZHC 2197 at [9]–[14] and *Purutanga v R* at [37] and [40].

somewhere in the vicinity of 15 to 16 years' imprisonment, consistent with the principles contained in s 103(2).

[52] Your counsel, Ms Scott, submitted that the cases of *Van Hemert v R*, *Wheeler v R*, and *R v Brackenridge* are more similar to your offending.[38] In those cases, an MPI of 10 years' was imposed. Ms Scott emphasised that the offenders in the cases referred to by the Crown did not suffer from mental impairment that materially drove their offending or diminished their culpability. The absence of this factor, counsel argued, places the culpability of the offenders in those cases significantly higher than yours.

[53] Overall, I consider that the cases of *Van Hemert v R* and *Wheeler v R* are most informative in assessing the appropriate MPI for your offending.[39] In *Van Hemert v R*, Mr Van Hemert murdered a young female sex worker.[40] The attack was described as "a vicious, sustained, and frenzied knife attack, supplemented, it seems, by the use of a rock to inflict blunt force trauma to the victim's head."[41] The murder occurred inside Mr Van Hemert's vehicle, and he stabbed the deceased in the arms, hands, thigh, abdomen, chest, face and throat.[42] She also suffered blunt force injuries to her head.[43] Mr Van Hemert was experiencing a severe psychotic episode at the time, triggered when he learnt that a former partner had entered a new relationship.[44] The Supreme Court found that Mr Van Hemert's mental impairment was not caused by, but was exacerbated by, his substance abuse.[45] He was sentenced to life imprisonment with an MPI of 10 years, with the Court referring to the causal nexus between Mr Van Hemert's mental impairment and his offending.[46]

[54] In *Wheeler v R*, Mr Wheeler murdered the 70 year old Mr Wallace in his home by stabbing him three times with a steel knife.[47] Mr Wheeler said he acted in a "fit of

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38 *Van Hemert v R*, above n 34; *Wheeler v R* [2023] NZCA 563; and *R v Brackenridge*, above n 32.
39 *Van Hemert v R*, above n 34; and *Wheeler v R*, above n 38.
40 *Van Hemert v R*, above n 34.
41 At [101].
42 At [8].
43 At [8].
44 At [1].
45 At [26] and [88].
46 At [97].
47 *Wheeler v R*, above n 38, at [3] and [7].

rage" and left the deceased on the floor in a pool of blood making "gurgling noises", making no attempt to call for medical assistance.[48] Mr Wheeler turned himself into police two weeks later.[49] The Court of Appeal recognised that Mr Wheeler had "a lengthy history of mental health issues", reporting hearing voices and experiencing suicidal ideations as early as 16 years old, and being admitted to impatient care at 23 years old for detoxication.[50] Mr Wheeler's record detailed many admissions to hospital and contact with psychiatric services.[51] He was 52 years old and living in his car at the time of the murder.[52] Earlier in the day, he travelled to Wellington Hospital, seeking medication for mental health issues, but became frustrated and left before he received treatment.[53] An MPI of 10 years was upheld.[54] Ms Scott accepted that Mr Wheeler stabbed his victim fewer times than you did but argued that his offending was of greater seriousness because the stabbing took place in the victim's home.

[55] However, I also consider the cases of *Burns-Wong-Tung* and *Singh*, which I referred to in my discussion of the brutality, cruelty and callousness of the murder, have bearing on the appropriate sentence in this case.[55] To reiterate those points, *Burns-Wong-Tung* and *Singh* both involved brutal stabbings. The offenders in those cases inflicted fewer wounds than you did in this case. However, additional aggravating factors were also present in those cases.[56]

[56] Overall, as discussed above, I accept the submissions of your counsel that you were suffering from some form of mental unwellness or disease of the mind at the time of your offending. However, as previously stated, the extent to which this mitigates your culpability in the circumstances is less clear than in the cases of *Van Hemert v R*, *Wheeler v R*, and *R v Brackenridge* referred to by your counsel. Therefore, I consider the MPI of 10 years' imposed in those cases would not appropriately reflect the gravity of your offending. On the other hand, the cases referred to by Mr Te Hiko, as your

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48 At [7]–[8].
49 At [9].
50 At [14].
51 At [15]–[16].
52 At [10].
53 At [5] and [19].
54 At [41].
55 *Burns-Wong-Tung*, above n 13; and *R v Singh*, above n 13.
56 In *R v Singh*, above n 13. the Court identified particular vulnerability of the victim and calculated and lengthy planning under s 104: see [24]–[28] and [33]–[34]. In *Burns-Wong-Tung*, above n 13, the offending was premeditated: see [114] and [118].

counsel pointed out, all occurred in quite different circumstances to that of the present case and are absent the factor of mental impairment. On balance, having regard to those comparator cases, and the aggravating factors present in your offending, I find that absent the operation of s 104 of the Act, a starting MPI in the vicinity of 14 years' imprisonment would be appropriate.

Would it be manifestly unjust to impose a minimum term of 17 years' imprisonment?

[57] Because I have earlier found that your offending exhibits brutality, cruelty, and callousness under s104(1)(e), I must then consider whether imposition of the presumptive minimum of 17 years would be manifestly unjust.

[58] Mr Te Hiko accepted that the issue of whether you were labouring under a "disease of the mind" at the time of the murder will be an important consideration for the Court at this point of the assessment. The Crown position is that the murder was committed with a high level of brutality, cruelty and callousness, and that the methamphetamine-induced psychosis you were experiencing did not diminish your culpability. Therefore, counsel contended that the MPI of 17 years is justified.

[59] Ms Scott submitted that even if the applicable aggravating features were present, after considering the relevant case law, it would be manifestly unjust to impose a minimum period of 17 years' imprisonment. Counsel referred to *Van Hemert v R*, where the Supreme Court found that despite aggravating factors of a high level of brutality and particular victim vulnerability, it would nonetheless have been manifestly unjust to impose an MPI of 17 years', given the offender's mental impairment.[57] Ms Scott also referred to *R v Bax*, where the Court found three of the s 104 aggravating factors were present, being unlawful entry into a dwelling house, a high level of brutality and callousness, and victim vulnerability.[58] The Court found that while there was no evidence to suggest the offender's past or present mental health issues were causative to the offending, it would have been manifestly unjust to impose

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57 *Van Hemert v R*, above n 34, at [97].
58 *R v Bax* [2018] NZHC 411 at [28]–[35].

a minimum period of imprisonment of 17 years', given the offender's guilty plea and remorse.[59]

[60] In a case called *Clarke v R*, the difference between a notional MPI of 15 years and the statutory MPI of 17 years was found to be "not sufficiently great to give rise to a manifest injustice."[60] Then in a case called *R v Dodds*, the Judge decided that a 17 year MPI would be unjust for an offender who would otherwise have had an MPI of 12 years imposed.[61] More recently, a 17 year MPI was considered unjust for an offender who would otherwise have been given an MPI of 13 years.[62] Yet in another case, it was decided that it would not be unjust where a nominal MPI of 13 and a half years was adopted.[63] In *R v M*, a 17 year MPI was not considered manifestly unjust for a 21-year-old offender who would have otherwise received a 14 year MPI.[64]

[61] On balance, I am persuaded that a 17-year minimum period would be manifestly unjust. The factor of mental illness which causatively contributed to your offending, while linked to your methamphetamine consumption, mitigates your culpability to a degree where s 17-year minimum period of imprisonment would not be appropriate. A 14-year minimum period emphasises the role played by your mental health in the offending, while also acknowledging its brutal, cruel and callous nature.

Strangulation uplift

[62] Mr Te Hiko submitted that an uplift between nine and 12 months is warranted for the strangulation charge. Your counsel contended that an uplift of up to six months was justified. Ms Scott argued the strangulation arose soon after the murder and occurred when you were still suffering from psychosis. Taking account of the circumstances, the submissions of counsel, and the principle of totality, I consider that an uplift of eight months imprisonment for the strangulation charge is appropriate. In this context, I also accept the submissions of Mr Te Hiko that the added dimension of

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59 At [46]–[51].
60 *Clarke v R* [2021] NZCA 151 at [41].
61 *R v Dodds* [2024] NZHC 1419 at [40].
62 *R v Richards* [2025] NZHC 3889 at [81].
63 *R v Faataape* [2025] NZHC 3774 at [93].
64 *R v M* [2024] NZHC 2149 at [65].

you invading [C]'s home before strangling her makes this offending even more serious.

Mitigating factors and personal circumstances

[63] Counsel for the Crown submitted that there are no personal aggravating factors relevant to your personal circumstances. While you have historic violence convictions, none come close to the nature of this offending. As a result, the Crown does not seek any uplift. Your counsel agrees.

[64] In respect of mitigating factors, Crown counsel submitted that you are entitled to discounts of up to six months for remorse; up to 12 months for cultural and background factors; and up to one year for your guilty pleas. Ms Scott contended that the full discount available for guilty pleas should be applied in your case. She also argued that, in addition to discounts for cultural and background factors and for remorse, that you should be entitled to a separate discount for addiction and for having a disease of the mind at the time of the offending. Counsel also submitted that a discount for the effects of imprisonment on your children is justified.

Guilty plea

[65] Counsel agree that a discount to recognise your guilty plea is appropriate. Your counsel submitted that you indicated that you wished to plead guilty at an early stage, and that you were urged to await the outcome of a psychiatrist report to assess if insanity was an available defence. Therefore, Ms Scott argued you entered your plea at the earliest opportunity and should be afforded a full discount for this factor.

[66] Mr Te Hiko submitted that the standard approach adopted by the courts has been to allow for a discount of between one and two years applied to the MPI.[65] Counsel also referred to *Frost*, where the Court of Appeal found that more substantial discounts would be excessive if they were to undermine the legislative policy of s 104 of the Act.[66] Counsel also referred to *Singh*, where, similar to the present case, the offender pleaded guilty several months after being charged once psychiatric reports

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65 *Frost v R* [2023] NZCA 294 at [43] and [52].
66 At [83].

had been received.[67] There, a discount of one year was allowed.[68] Counsel argued that a discount of one year should similarly be granted here. I agree that a discount of one year is appropriate for this factor.

Remorse

[67] Both counsel agree that you have expressed genuine remorse for your actions. Dr Goodwin recorded that in an interview he conducted with you your "thought content" was dominated by expressions of regret and remorse for your actions. You recognised that your delusions at the time of the murder were an illusion, and you recognise that your conduct was wrong. Mr Te Hiko submitted that a discount of up to six months would be appropriate to reflect your remorse. Counsel referred to several cases where offenders who had expressed genuine remorse for their actions had been granted discounts of six months.[69] I agree that a discount of six months is appropriate in the circumstances.[70]

Background factors and addiction

[68] Counsel agree that a discount is appropriate to reflect your background factors and addiction. The Court of Appeal in a case called *Hohua v R* found that the discretion available to the Court to adjust an otherwise appropriate sentence to take account of an offender's background is limited when sentencing someone for murder, and particularly brutal or callous murder.[71] The Court observed that the minimum period of imprisonment must accurately reflect the seriousness of the crime and the need to give effect to the minimum period of imprisonment required by statute.[72] Mr Te Hiko submitted that a discount of around 12 months' is appropriate to recognise your personal background and struggles with addiction. Counsel noted the expert reports provided to the Court, which detail your troubled upbringing.

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67 *R v Singh*, above n 13, at [55].
68 At [57].
69 *R v Callaghan* [2012] NZHC 596; and *Lackner v R* [2016] NZCA 29 at [5].
70 I note the finding of *Lackner v R*, above n 69, at [7] that guilty plea and remorse discounts applicable to a determinate sentence do not apply directly to the calculation of minimum periods for murder.
71 *Hohua v R* [2019] NZCA 533 at [44].
72 At [44].

[69] Having read the reports before the Court, I agree that a discount to reflect your personal background is appropriate. You experienced abuse at a young age, and alcohol and drug use played a significant role in your life. The Court of Appeal in *Zhang v R* affirmed that discounts for addiction will be appropriate where addiction mitigates moral culpability for offending.[73] However, I consider that because your mental impairment has been taken into account at the earlier stage of setting the starting MPI, and as discussed this mental impairment is linked to some degree with your use of methamphetamine, I consider that the appropriate discount for this factor is somewhat reduced. Overall, I consider a discount of eight months is appropriate.

Interests of Mr Leona's children

[70] Ms Scott submitted that a discrete discount should be allowed to recognise and ameliorate the impact that your sentence will have on your children. The oldest of your children is 15 and the youngest two. Your three children will continue to live with your former partner, while you are incarcerated. Counsel referred to the case of *Philip v R*, where the Supreme Court held that discounts for the impact of a sentence on children should not be characterised as "rare" or only available where a defendant is the primary caregiver, but that all of the relevant circumstances should be considered.[74] Mr Te Hiko accepted that a discount for this factor may be appropriate. I accept that a discrete discount for impacts of imprisonment on your children is warranted. Therefore, I allow a discount of six months for this factor.

End sentence

[71] Overall, I consider that, taking account of counsels' submissions, the effect of your mental health at the time of the offending and of the discounts that have been applied, a minimum period of imprisonment of 12 years is justified.

Supplementary orders

[72] The Crown also seeks several supplementary orders in respect of your offending, and I have decided to grant each of those. The Crown seeks that [C] be

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73 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [149].
74 *Philip v R* [2022] NZSC 149 at [56].

paid reparation for the property you damaged during your attack on her, along with reimbursement for the counselling sessions she has had to engage in as a result of your offending against her. This amounts to $1,045. However, given the lengthy period of imprisonment you must serve this request may prove impractical.

[73] The Crown also seeks:

(a) An order that the drug paraphernalia found in the course of the police investigation be destroyed.[75]

(b) An order that the broken silver knife located by police be destroyed.[76]

[74] I make orders accordingly.

Decision

[75] Mr Leona, please stand. For the murder of Bernice Marychurch, I sentence you to life imprisonment, with a minimum period of imprisonment of 12 years. I sentence you to 12 months imprisonment for the strangulation of [C], to be served concurrently.

Please stand down.

Harvey J

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75 Misuse of Drugs Act 1975, s 32(1)–(3).
76 Sentencing Act, s 142R.