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S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

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

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

**CRI-2025-004-009198  
[2026] NZHC 995**

**THE KING**

v

**MALCOLM REWA**

Hearing: 17 April 2026

Appearances: A M McClintock and E H Barnes for Crown  
M L Jepson and A D Beech for Defendant

Judgment: 17 April 2026

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**SENTENCING NOTES OF MOUNT J**

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*This judgment was delivered by me on 17 April 2026 at 9.21 am,  
Pursuant to Rule 11.5 of the High Court rules.*

*Registrar/Deputy Registrar  
Date: .....*

*Solicitors:*  
Meredith Connell, Auckland.

*Counsel:*  
M Jepson Barrister, Hamilton.

## Introduction

[1] Malcolm Rewa, at the age of 73 you appear for sentence having pleaded guilty to the rape of T M on 18 June 1988. At the time, Ms M was 16 years old. She is now aged 54.

[2] You are already serving sentences of:

- (a) life imprisonment for the murder of Susan Burdett;<sup>1</sup>
- (b) 14 years' imprisonment for the rape of Ms Burdett;<sup>2</sup> and
- (c) preventive detention for 37 offences that Anderson J described as an “entrenched pattern of violent predatory sexual offending”, based on your “remorseless compulsion to commit sexual crimes of a most violent nature”;<sup>3</sup>

## Facts

[3] Because this is a public process and everyone including later courts need to know the facts, I will begin by summarising what happened. The following summary is taken from the facts that you agreed when you pleaded guilty.

[4] In June 1988, you were aged 35. The victim was a 16-year-old girl. She was a stranger to you.

[5] On the evening of 18 June 1988, the victim went to an 18th birthday party. At a certain point she went outside to have a break and get some fresh air. She walked a short distance along the road and sat down.

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<sup>1</sup> *R v Rewa* [2019] NZHC 577 [Venning J decision]. Offence committed on 23 March 1992.

<sup>2</sup> *R v Rewa* HC Auckland T322/96, 20 January 1999 [Robertson J decision].

<sup>3</sup> *R v Rewa* HC Auckland T322/96, 3 July 1998 [Anderson J decision] at 14; and Robertson J decision. These offences were committed between 31 December 1987 and 12 May 1996. In respect of the Anderson J decision, there were 37 offences subject to the preventive detention sentence, and 39 offences in total. The parole eligibility date on those offences was 16 May 2018.

[6] You approached her from behind and tapped her on the shoulder. She said something like, "I'm not feeling good". You wrapped a rope around her neck. She tried to clutch at it and pull it away, but you held the rope so tightly around her neck that she could not breathe and lost consciousness.

[7] You then dragged the victim to the back of a property. The victim regained consciousness and you pushed her face down into the wet grass. In a state of panic, she started yelling and swearing. You pushed her further down until she was flat on her stomach. You grabbed her arms and pulled them behind her back.

[8] You removed the victim's jacket and tied her hands together with rope. She was unable to physically fight you and believed she was going to die.

[9] You rolled her onto her back. You told her to shut up and covered her mouth with your hand. You pulled off her boots and forcibly removed her pantyhose, which you tied around her head and used to gag her. The gag was so tight that it broke one of her teeth out of her mouth. Again, she struggled to breathe. You pulled her top up over her head, covering her face. You lifted up her bra and began licking her breasts. Any time she tried to make a noise, you pulled down on the pantyhose to muffle the sound.

[10] You raped her for approximately 10 or 15 minutes, as she lay vulnerable with her top covering her face, her hands tied, and her body exposed. You ejaculated inside her. You told her to stay where she was, or you would come back. As she lay there in fear, she could hear your footsteps walking away on the wet lawn.

[11] When she could no longer hear your footsteps, she got up. She could not see, but she stumbled until she found a tree she could rub against to remove the clothing covering her face. She ran back to the party and told the first person she saw that she had been raped. Her hands were still tied and her top was still pulled up.

[12] Her physical injuries included the lost front tooth, cuts, scrapes and rope burns around her neck and other parts of her body.

[13] That night the police arranged a forensic medical examination. It included a medical swab. At the time of the rape, there was no DNA databank available to compare against the sample. The databank became available in 1996.

[14] Remarkably, in 2025 the victim called the police and asked whether her medical swabs still existed, and whether police had compared the sample against the DNA databank. She was worried that the person who raped her could well have offended against someone else. Prompted by the victim, the police located the swabs and compared the DNA against the database. That showed that you were the person who had raped Ms M in 1988.

### **Victim impact**

[15] The victim has been dealing with the aftermath of the rape for almost 38 years. You heard her in Court today describe how your actions affected her.

[16] She eloquently explained that she lost part of herself on the night that you raped her, and will never get that back. Your actions stole her confidence, her joy, and her dignity and sense of self. You destroyed her faith and trust in other people, replacing it with shame, fear, darkness and despair.

[17] She replayed the events of that night over and over in her mind, trying to work out who would do such a despicable thing. She suspected friends, strangers, and it undermined her ability to trust other people.

[18] The physical injuries were obvious at first. They included bruises, cuts and scars around her neck, blood filled eyes and a missing tooth that plagued her throughout her life. Losing that tooth was an ongoing reminder of what you took from her. For years she hid her smile, insecure about how she looked, ashamed of herself and what had happened to her.

[19] The physical scars faded over time, but the real damage cut much deeper. She was often severely mentally distressed. The world no longer felt safe. She was frightened by the slightest noise, a knock on the door, a car in the street. She was

constantly on guard, scanning her surroundings for danger, trying to protect herself from further harm.

[20] Because no one was held accountable, she withdrew and carried the burden of this crime. Your actions profoundly changed her life: her mental and emotional wellbeing, her relationships, career and physical health.

[21] This also affected her family. It was the worst day of her mother's life. Her brother, husband, father, aunties, uncles, cousins, friends have all carried the weight as well. I acknowledge all of you who are here to support the victim today in Court.

[22] The accountability that will result from this process will hopefully give the victim something. But she would be perfectly entitled to consider it too little and far too late. It is to her credit, and unfortunately no credit to the authorities, that it was her own initiative that led to this prosecution.

### **Starting point**

[23] I will first consider the appropriate penalty based on standard sentencing principles.

[24] This was a rape committed in 1988. The law requires me to fix a starting point based on the maximum penalty and sentencing levels of the relevant time, recognising the aggravating features of the case. I must then make allowance for mitigating features, including the guilty plea. I must decide the starting point in the context of the sentencing regime of the era.<sup>4</sup>

[25] The maximum sentence for rape at the time of this offence was 14 years' imprisonment. Under the 14 year maximum, the starting point for a rape committed by an adult with no aggravating or mitigating features, was typically five years' imprisonment.<sup>5</sup>

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<sup>4</sup> *R v KJB* [2007] NZCA 292 at [34] and [20]. See also: *R v Accused* (CA 463/97) (1998) 15 CRNZ 602 (CA).

<sup>5</sup> *R v Clark* [1987] 1 NZLR 380 (CA) at 380.

[26] This was no ordinary rape. It was an extremely serious offence with several aggravating features. They include:

- (a) The age and vulnerability of the victim: Ms M was just 16 years old. She was alone in the street at night, having consumed alcohol. You were an adult male and your actions preyed on the vulnerability that arose from her age, condition, and the other circumstances. Contrary to the submission, I do not think that 16-year-old girls are inherently vulnerable, even on a footpath at night. They are only vulnerable in the presence of someone like you, who is prepared to dominate or exploit them.
- (b) The degree of violence: Your attack lasted approximately 10 to 15 minutes, and involved a high degree of violence and dehumanising indignity. Your actions also caused the victim to lose a tooth, which added to the serious violence of the rape in a lasting and tangible way.
- (c) Pre-meditation: Your offending was pre-meditated, at least to some degree. You had a rope, and you told the pre-sentence report writer that even though you couldn't remember now this specific attack, you were playing something you referred to as a "game" where you caught and attacked Caucasian women, to see how many you could get away with. I accept the Crown's submission that this involved a degree of pre-meditation. It was hardly a purely spontaneous event.
- (d) The harm to the victim: I have already described the harm you caused to Ms M. That harm has continued for almost 38 years, which makes it a very serious aggravating feature in my view.

### **Starting point — offending**

[27] Your counsel at the hearing submitted that I should consider imposing preventive detention for this offence. That was not advanced in the written submissions, where neither party submitted that would be the appropriate sentence.

[28] I will begin by considering a starting point on the orthodox principles. The Crown submits the appropriate starting point is in the range of 10 to 12 years' imprisonment. Your counsel submits the appropriate starting point is in the range of eight to nine years' imprisonment.

[29] Counsel referred to the cases of *R v Mitchell*,<sup>6</sup> *R v K*,<sup>7</sup> and one of your own previous cases, *R v Rewa*.<sup>8</sup> Taking those cases into account, and the serious aggravating features I have described, I consider a starting point of 10 years' imprisonment is appropriate.

[30] Your counsel submits that the 10 year starting point in *R v K* reflected the cumulative gravity of abduction, unlawful sexual connection, and rape. However, I accept the Crown's submission that despite those dimensions to Mr K's offending, the victim in this case was in the circumstances particularly vulnerable due to losing consciousness at the start of the incident, having her hands tied, her young age, and the fact she was 19 years younger than you. She also lost a tooth as a result of being gagged. I accept the Crown submission that overall the culpability involved in this case is comparable to the *K* case.

### **Personal factors**

[31] Mr Rewa, you pleaded guilty at your first appearance in the High Court, having indicated an intention to plead guilty in advance. The Crown accepts this was an early plea, which spared the victim the ordeal of having to give evidence at trial. I accept that a 25 per cent reduction from the starting point is appropriate.

[32] There will also need to be an adjustment to the sentence to reflect your convictions. They are extensive. Your sexual offending began in the mid-1970s, when you were a young adult. At the time of the offending against Ms M, you had already been convicted of rape, attempted rape, and two offences of unlawful sexual intercourse.

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<sup>6</sup> *R v Mitchell* [2018] NZHC 1112.

<sup>7</sup> *R v K* [2023] NZHC 726.

<sup>8</sup> Robertson J decision, above n 2.

[33] I accept the Crown's submission that it is also appropriate to take into account your convictions for offending after this offence.<sup>9</sup> As the Court of Appeal has said, it would be unrealistic to disregard the fact that an offender has gone on to commit further offences of the same or similar kind, indicating a trend or pattern of offending.<sup>10</sup> That is certainly the case here. I accept that the principle in the case of *Scott v R* is not limited to offenders who would otherwise be regarded as first offenders.

[34] You have 37 relevant convictions committed after this rape. They include:

- (a) the murder of Ms Burdett;<sup>11</sup>
- (b) 29 convictions for rape;<sup>12</sup>
- (c) three convictions for attempted rape;<sup>13</sup>
- (d) two convictions for assault with intent to commit sexual violation,<sup>14</sup>  
and
- (e) two convictions for abduction for sexual connection.<sup>15</sup>

[35] In my view, an uplift of two and a half years' imprisonment is appropriate to reflect the convictions you acquired both before and after this offence.

[36] There is nothing in your favour by way of personal mitigation. You have done nothing to make amends for this offending, and the pre-sentence report writer considers that you remain at high risk of sexual offending. By way of comparison, Fisher J said this about Joseph Thompson, another serial rapist, in 1995:<sup>16</sup>

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<sup>9</sup> *Scott v R* [2020] NZCA 448 at [66]–[67].

<sup>10</sup> At [66] citing *R v Barrett* [1999] 1 NZLR 146 (CA) at 150.

<sup>11</sup> Committed 23 March 1992.

<sup>12</sup> Committed between 30 December 1988 and 23 March 1992.

<sup>13</sup> Committed 14 January 1991, 1 April 1992 and 23 March 1996.

<sup>14</sup> Committed 27 October 1993 and 5 January 1995.

<sup>15</sup> Committed 9 March 1992 and 9 August 1992.

<sup>16</sup> *R v Thompson* HC Auckland S 88/95, 4 August 1995 at 3.

... there is your full acceptance of guilt and your insight into its causes and your desire to reform. I accept that as entirely genuine. You have been utterly frank and open from the moment the police apprehended you. You even admitted to crimes which the police did not know about. Without self-pity or an attempt to shift the blame from yourself, you have described your childhood and your present state with an objectivity and an insight which is rare among offenders. In fairness to you it should be accepted that your remorse is absolutely genuine.

[37] The same cannot be said for you, Mr Rewa. You must have known you committed this rape when you came before the courts in the 1990s. It would have been to your considerable credit, and would have saved the victim from years of harm, if you had taken the same approach as Mr Thompson.

[38] I conclude that 10 years' imprisonment is the appropriate sentence, subject to what I am about to say.

### **Totality**

[39] This case is unusual, because if the police had identified you as the offender in the initial years after the offence, or in the two years after the DNA databank became available in 1996, you would inevitably have come before Anderson J on 3 July 1998. On that day, in this Court, he sentenced you for offending against 24 women between December 1987 and May 1996. This rape, in June 1988, was in the early phase of that period, when you were committing crimes as a serial rapist, and murdered Ms Burdett. As I have said, Anderson J sentenced you to preventive detention on a total of 37 sexual charges. He imposed a minimum non-parole period of 22 years.

[40] The Crown accepts that if you had been sentenced for this offence in 1998 alongside the other sexual offences, there may not have been a material difference to the outcome. In all likelihood, Anderson J would have sentenced you to another concurrent term of preventive detention. He would not have had the power to impose a minimum period of imprisonment for this offence, because this rape happened before Parliament gave courts that power from September 1993.

[41] As your counsel has submitted, the orthodox approach when someone is sentenced for an offence that could have been included as part of an earlier sentencing exercise is to ask what additional penalty the Court would have imposed if all the

matters had been before it on the first sentencing occasion.<sup>17</sup> The later sentence must reflect an overall assessment of the total period of imprisonment for the overall offending.<sup>18</sup> That is what we call the totality principle.

[42] Your counsel has submitted that the present rape would have been “absorbed into the preventive detention framework without material additional consequence”. Your counsel initially submitted that I should not impose any further penalty on you today, but in the oral hearing submitted I should impose preventive detention.

[43] The non-parole period of 22 years that Anderson J imposed in 1998 expired in May 2018, taking into account a period of pre-sentence detention.

[44] Another feature of your case, Mr Rewa, is that you are already serving two indeterminate sentences: life imprisonment for the murder of Ms Burdett, and the preventive detention sentences I have just referred to. You will remain subject to those sentences for the rest of your life, regardless of the penalty I impose today.

[45] I have considered the option belatedly advanced today in the oral hearing of imposing preventive detention, however, I do not have reports before me and in the written material neither counsel addressed the relevant criteria and the interoperation of the Criminal Justice Act 1985 and Sentencing Act 2002 provisions. I accept for the reasons advanced by Crown counsel today, that preventive detention is not an appropriate option for you Mr Rewa.

[46] However, I accept that the practical impact of a finite sentence would be to affect the date on which you are eligible to apply for parole. At the moment, you are eligible to apply for parole from 6 February 2027. The effect of a 10-year sentence would be to extend that parole eligibility date to 17 August 2029. That would be an additional non-parole period of approximately two and a half years. Taking into account the 779 days you spent on pre-sentence detention it would amount to an effective non-parole period of 33 years and three months.<sup>19</sup>

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<sup>17</sup> *R v Tate* CA28/06, 15 September 2006 at [16].

<sup>18</sup> *Haywood v R* [2015] NZCA 551.

<sup>19</sup> The period would be around 32 years and five months, if 10 months is deducted to reflect the period between the end of the 22-year period in May 2018, and the start of the 10-year period in

[47] Venning J confronted a similar issue when he sentenced you for the murder of Ms Burdett in March 2019. At that stage, your parole period had expired on 16 May 2018. Imposing life imprisonment in 2019 resulted in an effective minimum non-parole period of approximately 30 years.<sup>20</sup>

[48] Venning J noted that normally a sentence of imprisonment is determined without regard to parole considerations.<sup>21</sup> However, in some circumstances it is appropriate to consider parole outcomes to ensure that the purposes of the Sentencing and Parole Acts are served.<sup>22</sup> The way he approached the issue was to ask what minimum non-parole period might have been appropriate if you had been sentenced at the same time for Ms Burdett's murder together with the sexual offending that came before Anderson J in 1998. He said:

[15] ... your previous offending for which you were sentenced by Anderson J was described by the Judge as a chronicle of remorseless, depraved and destructive cruelty towards the numerous victims of that offending. If you had been convicted of Ms Burdett's murder and sentenced at that time, and if a minimum non-parole period had been available to the Judge or otherwise prescribed by statute, it could not be said that a minimum non-parole period of 30 plus years would have been excessive for the totality of the offending.

[49] Approaching the matter on the same basis as Venning J, the question is whether an effective non-parole period of 33 years and three months would have been justified if you had been sentenced for this offence together with the rape and murder of Ms Burdett, at the same time as the offences that came before Anderson J in 1998. I do not overlook the fact that there was no power to impose a minimum non-parole period for this specific offence at the time, but inevitably the sentencing Judge would have had regard to the totality principle when sentencing you in that hypothetical exercise. Venning J was satisfied that a minimum period of 30 years plus would have been appropriate taking into account the murder of Ms Burdett.

[50] Mr Rewa you are now 73 years old, and you have been in custody for almost 30 years. Extending your parole eligibility date will have a real consequence. There is

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March 2019.

<sup>20</sup> Venning J decision, above n 1, at [9].

<sup>21</sup> *R v Stockdale* [1981] 2 NZLR 189 (CA) at 190–191.

<sup>22</sup> *Barnes v R* [2018] NZCA 42, [2018] 3 NZLR 49 at [65]–[76]; and *Paerau v R* [2018] NZCA 139 at [30].

no guarantee you will ever get parole, and there is nothing I have seen that should give you any optimism in that regard. But I accept that adding time to your parole eligibility date is a real consequence.

[51] On the other hand, the Sentencing Act makes it clear that the purposes of sentencing include holding you to account,<sup>23</sup> denouncing your conduct,<sup>24</sup> promoting a sense of responsibility for the harm you have caused,<sup>25</sup> providing for the interests of the victim,<sup>26</sup> and protecting the community.<sup>27</sup>

[52] Balancing all the relevant factors, I have concluded that a total effective minimum non-parole period of 33 years and three months would have been justified on a totality basis in 1998, taking into account this offence together with the murder of Ms Burdett and the other serious sexual offences for which you were sentenced. That in effect would amount to a further non-parole period of two and a half years. As I say, that will be a real consequence for you. But it is justified and required by the purposes and principles of sentencing, in my view.

[53] Your counsel rightly submitted that the totality question is central. But it is a principle not a rigid rule, and at the heart of the principle is the need for proportionality. These circumstances are unique. A mechanical or rigid approach to totality would require me to ignore the reality that Ms M has spent the last 38 years not knowing who raped her at age 16, and to pretend that you pleaded guilty to this crime in 1998, which you did not. In all the circumstances, I have concluded that imposing a sentence of 10 years' imprisonment is a proportionate outcome in the unusual circumstances of this case, and does not offend the totality principle.

[54] That means you will not be eligible to apply for parole for more than three years from now. As I have said, there is no guarantee that you would have been granted parole before then in any event. But you are now 73 years old, and I simply note that s 25 of the Parole Act could, in theory, allow you to be considered for parole before

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<sup>23</sup> Sentencing Act 2002, s 7(1)(a).

<sup>24</sup> Section 7(1)(e).

<sup>25</sup> Section 7(1)(b).

<sup>26</sup> Section 7(1)(c).

<sup>27</sup> Section 7(1)(g).

your eligibility date in the event of exceptional circumstances. I have no information that would enable me to assess whether or not the use of that section might be appropriate, but its existence provides a safeguard for someone of your advanced age.

**Result**

[55] Mr Rewa please stand. For the rape of Ms M you are sentenced to imprisonment for a period of 10 years.

[56] Please stand down.

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Mount J