

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

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

**CRI-2019-090-3465  
[2020] NZHC 3419**

**THE QUEEN**

v

**MANCHAO LI**

Date of hearing: 18 December 2020

Appearances: N R Webby for the Crown  
SNB Wimsett and A O Graham for Mr Li

Date of sentence: 18 December 2020

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**SENTENCING NOTES OF JAGOSE J**

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*Counsel/Solicitors:*  
R M Mansfield Barrister, Auckland  
SNB Wimsett Barrister, Auckland  
Meredith Connell, Crown Solicitor, Auckland

[1] Mr Li, as you know, on 10 November this year, a jury found you guilty of both Zhimin Yang's murder,<sup>1</sup> and breaching the court's protection order over her.<sup>2</sup>

[2] I am now to sentence you for those convictions. In sentencing you, I must accept as proven all facts essential to your established guilt.<sup>3</sup> Because I was the trial judge, for sentencing, I also am entitled to make factual findings based on the evidence at trial, if consistent with the jury's verdict, whether or not adverse to your interests. I am not bound to accept a version of facts most favourable to you.<sup>4</sup>

[3] For your murder of Ms Yang, I must sentence you to imprisonment for life, unless the wider circumstances of your offending made that manifestly unjust.<sup>5</sup> If sentencing you to life imprisonment, I then must impose a minimum period before you may even be eligible for parole. That must be a period of at least ten years' imprisonment,<sup>6</sup> or at least 17 years if I find Ms Yang's murder to have been in specified circumstances – the latter period, again, unless manifestly unjust.<sup>7</sup> If you are then to be released depends entirely on you satisfying the Parole Board, if released, you do not pose an undue risk to the safety of the community.<sup>8</sup> If then released, you would be subject to release conditions for the rest of your life.<sup>9</sup>

[4] I have listened and read what counsel have had to say, both for you and for the Crown. The Crown recommends you be sentenced to life imprisonment, with a minimum non-parole period of at least 17 years. Your counsel also recommends life imprisonment, but with a minimum non-parole period of 13–14 years. I am not bound by their views; I have to come to my own decision. I must satisfy myself of the appropriate sentence for the gravity – the seriousness – of your offending, including your culpability – your responsibility – for it.

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<sup>1</sup> Crimes Act 1961, s 167 and 172. Maximum period of imprisonment: for life.

<sup>2</sup> Family Violence Act 2018, s 112. Maximum period of imprisonment: 3 years.

<sup>3</sup> Sentencing Act 2002, s 24(1)(b).

<sup>4</sup> Section 24(1)(a); *Edwardson v R* [2017] NZCA 618 at [105]–[107].

<sup>5</sup> Section 102(1).

<sup>6</sup> Section 103(2).

<sup>7</sup> Section 104(1).

<sup>8</sup> Parole Act 2002, s 7.

<sup>9</sup> Section 29(4)(b).

## Background

[5] I need first to cover off the background to your offending, to let people know the conduct for which I am sentencing you.

[6] At about 8.30 am on Monday, 29 July 2019, after following Ms Yang from her home to a bus stop on Westgate Drive in Auckland's Massey, you repeatedly and fatally stabbed her with a large knife. At the time, you were prohibited by court order from watching or loitering near her home, following her, physically or psychologically abusing her, or possessing any weapon.

[7] Your disaffection with Ms Yang has some history. You and she married in China in the late 1990s. It was a second marriage for both of you. You both moved to New Zealand in the early 2000s and bought a home in Auckland. The two of you separated in 2005, then selling the home. You kept most of the money from its sale to buy a property in Christchurch, acquired in the name of your first wife.

[8] In August 2007, Ms Yang brought a claim against you under the Property (Relationships) Act 1976. You twice were convicted for breaching the court order to protect Ms Yang from you on successive days the very next month (and once again in 2014, when you were discovered in possession of firearms). The Family Court divided your remaining property between you, and invited Ms Yang to apply for the Christchurch property's disposition to your first wife to be set aside.<sup>10</sup> She made that application. The Judge was satisfied the property's acquisition in your first wife's name was to defeat Ms Yang's claim to her share of the relationship property with you, and directed the property's sale by the Registrar for distribution of its proceeds between you.<sup>11</sup>

[9] In September 2016, after a five-day hearing, this court dismissed the appeals against the Family Court's judgments.<sup>12</sup> The judge concluded you were "dishonest in much of the evidence" you gave and, in your conduct at and after your separation from

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<sup>10</sup> *ZY v ML* [2013] NZFC 625.

<sup>11</sup> *ZY v ML* [2014] NZFC 4221.

<sup>12</sup> *Lu v Huang* [2016] NZHC 2311. The judgments were anonymised to avoid identifying Ms Yang as a vulnerable person, as subject of a protection order: Property (Relationships) Act 1976, s 35A and Family Courts Act 1980, ss 11B–11D.

Ms Yang, you were “willing to be dishonestly manipulative so as to avoid having to account to [her] for her relationship property entitlement”. He noted your apology and your observation you had then been “stupid”.<sup>13</sup> It is unclear if, in the judge saying “[you] must be careful not to make the same mistakes again”, the judge was recording your own caution, or instead was cautioning you. Either way, you have not been cautious.

[10] Instead, you continued to be dissatisfied Ms Yang had obtained her half-share of the relationship property. You became fixated with and obsessed by the wrong you perceived you had suffered at Ms Yang’s hands. Despite living in Christchurch, you continued to harass her in the vicinity of her home and work in Auckland. She obtained a second protection order, after you obtained the first’s discharge, mysteriously around the same time as you were found guilty of its breach. Despite the protection orders, Ms Yang had to change her home and work addresses, both to avoid you and to avoid you finding her again. Her work became backroom; her accommodation became secluded. You stalked her and her son, including by engaging a private investigator to find his home and work addresses, and by vandalising property and threatening tenants at his rental property she managed. With horrible foresight Ms Yang told police, if you knew where she lived, she believed you would kill her.

[11] You built up a collection of large hunting knives, a meat cleaver, and air rifles. In about 2017, you told your flatmates you could use them to attack Ms Yang, to whom you persistently referred as “that woman” or “the bitch”, and never by name. You talked about disfiguring or killing her in retribution. Your self-regard and grandiosity, particularly in relation to women, was noted by your flatmates. You developed a plan to cause Ms Yang difficulties at her work, and with immigration authorities. You put that plan into action, but your complaints against Ms Yang were dismissed.

[12] In early 2018, you told your mental health support worker, if you could not get redress in a legal way, you would chop off Ms Yang’s hands and feet “or just stab her”. She filed a report with the police, who assisted Ms Yang to restore the protection order and develop some safety plans. They warned you to stay away from Ms Yang, and

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<sup>13</sup> At [119] and n 21.

went to some lengths to improve her security at home and work as they realised the increasing seriousness of your risk to her.

[13] In the week before Ms Yang's death, you ordered large hunting knives online for later delivery to you. On Sunday, 28 July 2019, at about midday, you bought another large knife, carefully selected for its heft in your grip, from a specialist hunting equipment shop. The next morning, you drove to a street from which you could see Ms Yang's home. You took video footage of her as she prepared to leave for work. You then surreptitiously followed her in your car as she walked to her bus stop, parking briefly at a service station to ensure she stayed ahead of you.

[14] Carrying your new knife within a black plastic bag, you approached Ms Yang as she waited for the bus. She screamed. You tackled her from behind, taking her to the ground, initially on her face. You then dragged her off the footpath to adjacent grass onto her back. You stood over her as she struggled to sit up and, holding her by her hair or her collar at the back of her head, you stabbed her multiple times. Her body limp, you dropped her head to the ground, walked back to your car, and drove away, until you were pursued and stopped by a member of the public, and later arrested by the police.

[15] Your attack on Ms Yang was seen by people near the bus stop:

- (a) a worker on a nearby construction site, his and his workmates' attention drawn by Ms Yang's screams, saw you attacking her using your whole body with "a lot of power, a lot of force". He thought you hit her twelve times in under a minute as she continued to scream "stop" and "help", holding her arms out defensively in front of her. He said, once you stopped hitting her, "everything went silent, the body went limp and even the construction site [fell] silent", and you "strutted" away, giving him the impression you had "done something ... like [you were] proud of yourself";
- (b) a man driving past the bus stop on his way to work initially thought he was seeing a bullying incident between older and younger school children. Stopping to intervene and hearing Ms Yang scream "no,

don't" or "stop", he realised it was you, holding the smaller Ms Yang at the back of her head with one hand, as you hit her with the other and she was trying to scramble up and away. He described your "multiple strikes" meeting no resistance: "she had no guard up[;] she was just getting wasted". You were dismissive of his challenge to you; and

- (c) a young boy on his way to school walked past Ms Yang at the bus stop, and then past you on your way down the hill to her. Almost at the top of the hill, he heard screaming and looked back to see Ms Yang lying on the grass, and you "punching her in the stomach from the top". He said he was "so scared" he just continued to walk away.

The witnesses described Ms Yang's screams as being of "terror", "fearful, scared, shrill, loud, scary". They all thought you were punching Ms Yang, because you held the knife concealed within the black plastic bag. Its blade mostly initially penetrated her dark clothing, with the result little damage or injury immediately was apparent. The driver who stopped heard Ms Yang groan when you released your hold of her. He was an experienced lifeguard. On his initial glimpse, he thought Ms Yang only was concussed with a bloodied nose.

[16] In fact, forensic examination established over twenty cuts to the front and sleeves of Ms Yang's jacket, and blood stains indicating her injuries had been sustained while she was lying on the ground. The pathologist identified 10 stab wounds centred on the front of Ms Yang's body: directly through her neck into her spine; cutting through her ribs; crossing the body's midline; into her lungs and stomach; right through her heart; damaging important veins and arteries, intermediate tissue, and other structures; and causing very substantial blood loss and prospective serious infection from lost gastric contents. A number of the wounds were potentially lethal on their own. Another two wounds to her left hand and armpit, of less seriousness, appeared to be defensive injuries. In combination, they gave the pathologist his cause of Ms Yang's death: by stab wounds.

## **Victim impact statement**

[17] As we have heard today, Ms Yang's son, who has permanent name suppression to avoid his and his family's lives being defined by reference to their connections with you,<sup>14</sup> provided an excruciating account of the effect of your offending on Ms Yang's family, here and in China. They are traumatised by your long-term and vicious objective to kill her. Recognising the risk you posed, they did everything they could to protect her from you. As the eldest of three children and only daughter, she was the centre of her own family. Prevented from attending trial by COVID-19 border controls, they painfully have learned of your conduct from media reports and her son's nightly telephone calls. Ms Yang's mother, actively retired after a lifetime of medical practice, now suffers severe depression for which she regularly is admitted to hospital.

[18] You have robbed Ms Yang's son of the purpose of his life – to make his mother proud, as she asked of him – leaving him filled with sorrow and anger. He has pronounced survivor guilt from your involvement in his life. He understands you sought to hurt or kill him to get at Ms Yang. A university physics teacher in China, Ms Yang came to New Zealand as a skilled migrant with your son to set up a home for the family when you joined them later. Ms Yang's entire family is humiliated by your attempts to represent your relationship with Ms Yang as one only of convenience, and infuriated by your attempts to justify your actions.

[19] Ms Yang's son knows first-hand of your abuse of her and its consequences. He identifies your arrogant self-regard, as if being above the law and entitled to take it into your own hands. He gave evidence at trial, he attended throughout, hearing each witness, seeing the exhibits, listening to the interviews and calls, and watching the video footage from passing buses and security cameras of his mother's final walk from her home to the bus stop. You heard him say "it felt like watching a live TV show that ends with your mother being ruthlessly murdered".

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<sup>14</sup> *R v Li* [2020] NZHC 2844 at [16].

## **Personal circumstances**

[20] Mr Li, I turn to your personal circumstances, so far as they are discernible from the material before me.

[21] As I have said, you moved here from China, where your parents are deceased but you have two sisters. You have been a New Zealand resident since 2000. You have not integrated well here. Your English language skills are rudimentary. You spent some time employed as a bus driver and Chinese-language tour guide. You are estranged from your own son, now an adult, also living in New Zealand with his own family.

[22] You remain in denial about Ms Yang's death, saying you have no recollection of events after seeing Ms Yang at her home and to approach her at the bus stop. As was the case at trial, you denied the pre-sentence report writer access to your medical records, but claimed to be adversely affected by stopping your anxiety and depression medications and not sleeping. You talked "around" your offending, and failed to acknowledge Ms Yang's death was solely a product of your actions.

[23] The pre-sentence report assesses you as being of low risk of re-offending largely by reason of the likely lengthy term of imprisonment, but with a very high risk of harm to others, particularly in the context of intimate relationships, by reason of "the severe escalation in risk and harm" from your previous offending, and "the strategy and planning involved, the frenzied nature of the attack and the public setting".

[24] A psychiatric report instructed by your counsel concludes your narcissistic personality and chronic depressed mood left you poorly equipped to deal with Ms Yang's legal successes against you. Your response was to engage in "querulous paranoia" and "resentful stalking", the latter the psychiatrist considered on its face to be "callous and purposefully intended to cause [Ms Yang] psychological distress". But he says neither that behaviour nor your stopping taking your prescribed medications explains your killing of Ms Yang. Instead, in his opinion, your killing of her was "impulsive and the culmination of [your] frustration and [your] exhaustion of what [you] saw as legal channels of redress".

## Approach to sentencing

[25] I now explain how I will go about sentencing you. Your murder conviction obviously is the lead charge for sentencing purposes; I could treat your protection order breach conviction as aggravating your culpability, but instead only will impose a concurrent sentence for it. Ultimately, my sentence is to reflect this community's repudiation of your crimes, the punishment being "determined not on impulse or emotion but in terms of justice and deliberation".<sup>15</sup>

[26] I must have regard for the statutory purposes and principles of sentencing.<sup>16</sup> I must hold you accountable for your offending and for the harm you have caused.<sup>17</sup> Your sentence should be sufficient to denounce your conduct,<sup>18</sup> deter you and others from committing such offences,<sup>19</sup> and to protect the community.<sup>20</sup> I must consider the gravity and seriousness of your offending, and take into account its effect on the victims.<sup>21</sup> The sentence must take into account the desirability of consistency in sentencing,<sup>22</sup> and anything in your circumstances as would make an otherwise appropriate sentence "disproportionately severe"<sup>23</sup> in your case.

[27] The purposes and principles of sentencings have no ranking,<sup>24</sup> except insofar as s 103(2) endorses only four of s 7's eight sentencing purposes. That subset is to:<sup>25</sup>

... address features of an offence that aggravate its seriousness or point to a need for community protection. Mitigating factors can and do offset these features when setting a minimum period, but the fact remains that the statutory criteria for a minimum period do not include the full set of sentencing purposes and principles that apply when a determinate sentence is being fixed.

Thus "favourable personal circumstances" have limited mitigatory weight in sentencing for murder.<sup>26</sup>

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<sup>15</sup> *R v Puru* [1984] 1 NZLR 248 (CA) at 249.

<sup>16</sup> Sentencing Act 2002, ss 7 and 8.

<sup>17</sup> Sections 7(1)(a) and 103(2)(a).

<sup>18</sup> Sections 7(1)(e) and 103(2)(b).

<sup>19</sup> Sections 7(1)(f) and 103(2)(c).

<sup>20</sup> Sections 7(1)(g) and 103(2)(d).

<sup>21</sup> Section 8(a), (b) and (f).

<sup>22</sup> Section 8(e).

<sup>23</sup> Section 8(h).

<sup>24</sup> *Moses v R* [2020] NZCA 296 at [4], citing *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [37].

<sup>25</sup> *Malik v R* [2015] NZCA 597 at [28].

<sup>26</sup> *Brown v R* [2011] NZCA 95 at [18], citing *R v Walsh* (2005) 21 CRNZ 946 (CA) at [28].

[28] I said earlier, murder attracts a sentence of life imprisonment, unless manifestly unjust.<sup>27</sup> If so sentencing, I must impose a non-parole period of at least ten years.<sup>28</sup> In specific cases “especially worthy of accountability and denunciation”,<sup>29</sup> the non-parole period must be at least 17 years (unless manifestly unjust).<sup>30</sup>

[29] As you have been convicted of murder, you must be sentenced to imprisonment for life unless, given your circumstances and those of your offending, a sentence of life imprisonment would be manifestly unjust.<sup>31</sup> If not, then I must decide: (a) what notional non-parole period would apply under s 103; (b) if a s 104 category applies; and if so, (c) if a non-parole period of 17 years or more would be manifestly unjust.<sup>32</sup>

[30] Addressing the non-parole period has inherent difficulties when there is a statutory floor but no ceiling other than that offered by mortality.<sup>33</sup> Nonetheless, I am required “to benchmark the instant case against the ‘standard range of murders’, a concept elusive at best”,<sup>34</sup> and especially when “no two [murder] cases are ever identical”.<sup>35</sup>

## **Your murder sentence**

—*life imprisonment?*

[31] I start by considering if your imprisonment for life would be manifestly unjust. Neither the Crown nor your counsel suggests it might be, but I need to make that assessment myself.

[32] A departure from life imprisonment must be justified by the circumstances of your murder of Ms Yang *and* your own circumstances.<sup>36</sup> I must make an overall

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<sup>27</sup> Sentencing Act 2002, s 102.

<sup>28</sup> Section 103.

<sup>29</sup> *Malik v R* [2015] NZCA 597 at [29].

<sup>30</sup> Sentencing Act 2002, s 104.

<sup>31</sup> Sentencing Act 2002, s 102(1).

<sup>32</sup> *Davis v R* [2019] NZCA 40 at [25], restating the traditional two-stage approach to sentencing for murder in *R v Williams* [2005] 2 NZLR 506 (CA).

<sup>33</sup> *R v Bell* CA80/03, 7 August 2003, [2003] BCL 886 at [7].

<sup>34</sup> *R v Paul* CA496/05, 1 August 2006, [2006] BCL 820 at [27].

<sup>35</sup> *Preston v R* [2016] NZCA 568, [2017] 2 NZLR 358 at [158]–[160].

<sup>36</sup> *R v Rapira* [2003] 3 NZLR 794 (CA) at [121]; and *R v Cunnard* [2014] NZCA 138 at [33].

assessment of that justification, in light of sentencing’s purposes and principles.<sup>37</sup> The necessary injustice must be clear; life imprisonment only is to be displaced in exceptional cases.<sup>38</sup>

[33] There is no closed list of cases in which a sentence of life imprisonment would be manifestly unjust; power to depart from the presumption should not be “unduly proscribed”.<sup>39</sup> Still, the presumption only will be departed from in “exceptional” and “rare” cases.<sup>40</sup> Such include an elderly man’s ‘mercy’ killing of his demented wife,<sup>41</sup> or a mentally-impaired defendant killing their abuser.<sup>42</sup> Your circumstances are not of those cases. I cannot identify any factor, let alone one of the required exceptionality, as may displace your imprisonment for life as your presumptive sentence for Ms Yang’s murder.

[34] Overall, sentencing you to life imprisonment would not be manifestly unjust. Life imprisonment is the default sentence for a murder conviction; it reflects “society’s recognition of the sanctity of human life and its condemnation of anybody who wrongfully takes another life”.<sup>43</sup> The circumstances do not mitigate your moral culpability to displace the presumption of life imprisonment on your conviction for murder.

—*your culpability*

[35] I count at least ten aggravating features in your attack on Ms Yang:<sup>44</sup> They are: (1) your use of actual violence; (2) your use of a weapon; (3) your attack to Ms Yang’s vital organs; (4) in the context of family violence; (5) committed while subject to a protection order; (6) against the very person it was to protect; (7) carried out with a high level of cruelty and brutality; (8) as the product of your extensive planning; (9) on a particularly vulnerable person; and (10) with the loss of her life.

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<sup>37</sup> *R v Rapira*, above n 36, at [121].

<sup>38</sup> At [121].

<sup>39</sup> *R v Cunnard*, above n 36, at [15].

<sup>40</sup> *R v Rapira*, above n 36, at [121]; *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775, at [93]; *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [55].

<sup>41</sup> *R v Law* (2002) 19 CRNZ 500 (HC).

<sup>42</sup> *R v Wihongi*, above n 40. See also *R v Rihia* [2012] NZHC 2720.

<sup>43</sup> *R v Cunnard*, above n 36, at [16].

<sup>44</sup> Sentencing Act 2002, s 9.

[36] I cannot identify any mitigating features of your attack on Ms Yang at all. This was entirely driven by you, despite the attempts made by her, her family, and the authorities to keep her safe from you. Your attempted justifications for your actions all are unfounded. I do not believe you had an alternative reason for acquiring your cache of weapons. Other courts repeatedly have ruled against you on Ms Yang's legal entitlements. I do not believe they were wrong. In short, I do not believe you at all. I view your own evidence as a continuation of your attempts at dishonest manipulation.

[37] By reference to comparable stabbing cases involving considerable planning against vulnerable victims,<sup>45</sup> I take a starting non-parole period of 19 years' imprisonment. I particularly draw comparisons with the cases of *Singh* and *Preston* on appeal, upholding 19-year minimum non-parole periods:

- (a) although they had the added aggravated fact of unlawful entry into a dwelling place under a protection order, your similar invasions of Ms Yang's and her son's privacy in your campaign against her for over a decade, and your stalking her in and around her home, also while subject to a protection order, do not materially distinguish them;
- (b) your killing of Ms Yang was comparably brutal, and callous in your indifference to her suffering, as illustrated by your dismissive response to the man who challenged you and your self-confident departure from the scene, leaving behind the fatally-injured Ms Yang to die;
- (c) you planned this attack, designed to avoid prior detection and take Ms Yang by surprise. Your actions were not 'in the moment' or impulsive, but the product of your careful, deliberate and extended

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<sup>45</sup> *Beazley v R* [2020] NZCA 65 (Sentencing Act 2002, s 104(1)(b), (c), (e), and (g): 17 years); *Momoisea v R* [2019] NZCA 528 (s 104(1)(c) and (d): 17 years); *Singh v R* [2019] NZCA 436 (s 104(1)(b), (c) and (e): 19 years); *Kaur v R* [2017] NZCA 465 (s 104(1)(b) and (e): 17 years); *Christison v R* [2017] NZCA 168 (s 104(1)(b), (c) and (e): 17 years); *Akash v R* [2017] NZCA 122 (s 104(1)(e): 17 years); *Preston v R*, above n 35 (s 104(1)(b), (c) and (e): 19 years); *Singh v R* [2016] NZCA 582 (s 104(1)(b) and (c): 16 years); *Blake v R* [2016] NZCA 82 (s 104(1)(e): 17 years); *Dawood v R* [2013] NZCA 381 (s 104(1)(b) and (e): 17 years); *Hamidzadeh v R*, above n 40 (s 104(1)(e): 15 years and 6 months); *Thurgoood v R* [2012] NZCA 23 (s 104(1)(b), (c) and (e): 19 years); *Wallace v R* [2010] NZCA 46 (s 104(1)(d) and (e): 18 years).

planning. Those plans included your expectation of arrest, and your reliance on your mental health as exculpatory;

- (d) you took Ms Yang down from behind, tackling her to the ground. It was a “blindside attack” leaving Ms Yang no chance to protect herself,<sup>46</sup> even if her initial scream indicated she comprehended her peril. Under the protection order, she additionally was entitled to consider herself not at risk to attack from you.<sup>47</sup> Overall, in all her relevant circumstances, she was particularly vulnerable.<sup>48</sup>

The presence of those s 104(b), (e), and (g) factors means a non-parole period of at least 17 years is required to meet the statutory purposes. Appellate guidance is to the effect that extensively planned, brutal, family violence resulting in murder supports a starting point in the range of 18–20 years.<sup>49</sup>

[38] Turning to your personal circumstances, it is argued for you your age and “acute mental illness” are mitigating factors making such a long non-parole period “manifestly unjust”. I do not accept either. Certainly you would not be eligible for parole until you were in your mid-80s. But that is the consequence of your serious criminal offending at an advanced age. And you are to be sentenced to life imprisonment. Your perception of “the prospect of regaining freedom”, as your counsel would have me consider, is irrelevant. You have shown a habitual disregard for courts’ orders, with the consequence you are permanently now to be within this Court’s claim and control.

[39] Neither do I accept you are acutely mentally ill. Instead, the psychiatrist identifies, far from ‘acute’, your “severe major depressive disorder since 2004–5 ... is intermittent but recurrent and of moderate to severe intensity”. He identifies it as “chronic”: a long-term pattern of your “mood deteriorating at times of acute stress”, a disorder another psychiatrist observed was capable of being put into remission by your adherence to medication. The former psychiatrist also notes you have

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<sup>46</sup> *Vea v R* [2020] NZCA 68 at [14]–[15].

<sup>47</sup> *Singh v R*, above n 45, at [24].

<sup>48</sup> *Marong v R* [2020] NZCA 179 at [35].

<sup>49</sup> *Christison v R*, above n 45, at [34]–[35], citing cases referred to in *R v Gottermeyer* [2014] NZCA 205 at [80]–[81] and, in particular, *Dawood v R*, above n 45, and *Thurgood v R*, above n 45.

a reasonable understanding of your illness, and a history of seeking help from mental health services when acutely unwell. He doubts your erratic compliance with your medication's administration could have caused you to suffer from any psychosis or delusion. Instead he identifies that which has become obvious to those who know you: irrespective of any depressive interlude, you narcissistically manipulate people and circumstances in pursuit of your perceived entitlement. He observed you lacked any true remorse for Ms Yang's death.

[40] None of that is to render the statutory minimum non-parole period of 17 years manifestly unjust. The presence of mitigating factors under s 9(2) rarely would displace the statutory presumption under s 104.<sup>50</sup> Absent the required exceptionality, questions of manifest injustice only arise if the notional assessment is "lower than the statutory presumptive minimum".<sup>51</sup>

[41] I take your age and mental health into account, but neither offers any basis on which to discount from my starting point. I have already explained the irrelevance of your age. Neither does your mental health suggest it impinged on the rational choice you made to offend so as to diminish your moral culpability for Ms Yang's murder. As the psychologist noted, you can and do rationally choose to seek help when acutely unwell. Nor does your mental health diminish your sentence's deterrent function, or materially add to the severity of your term of imprisonment.<sup>52</sup> The availability of parole at some intermediate point between the statutory minimum of 17 years and my start point of 19 years is not a meaningful concession to either your age or mental health. I will not allow any discount.

### **Breach of protection order**

[42] I turn to your breach of protection order conviction. It is punishable by a term of up to three years' imprisonment.<sup>53</sup> Again, little assistance can be drawn from case-by-case comparisons because the offending is "so variable and ... highly

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<sup>50</sup> *Hamidzadeh v R*, above n 40, at [86], citing *R v Williams*, above n 32, and *R v Parrish* (2003) 21 CRNZ 571 (CA).

<sup>51</sup> *Davis v R*, above n 32, at [30].

<sup>52</sup> *Beazley v R*, above n 45, at [33].

<sup>53</sup> Family Violence Act 2018, s 112(3).

contextual”.<sup>54</sup> Prior convictions for such breaches are “integral to the assessment of the gravity of the index offending”.<sup>55</sup>

[43] You knew of the protection order, but rejected its application, arguing your marriage to Ms Yang was a sham. It was clear from the evidence at trial how frustrated everyone charged with ensuring Ms Yang’s safety from you was by your refusal to be bound by the protection orders. Ms Yang’s fear of you was real, informed, and plainly justified.

[44] Breaching a protection order is serious offending of itself. If it was not to double-count Ms Yang’s particular vulnerability for the purposes of s 104, I would have had little compunction about relying on Ms Yang’s murder being committed in the course of that serious offence of breaching the protection order, also for s 104 purposes.<sup>56</sup>

[T]he murder of a protected person by the person against whom a protection order has been made is particularly exacerbating. Where a defendant has deliberately and fatally flouted Court orders made specifically to protect the victim from him ..., there is a particular need for strong messages of denunciation and deterrence.

[45] You have three previous convictions for breaching a protection order, all in relation to Ms Yang, and each resulting in orders requiring you to come up for sentence if called upon.<sup>57</sup> I now am required to “impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed”.<sup>58</sup>

[46] Murdering the protected person is within the most serious kind of protection order breach, both disregarding the order for the present, and ensuring this Court cannot reassert its protection for the future. I need not to leave headroom for any individually worse case as may be contemplated.<sup>59</sup> I will impose the maximum penalty. As with your murder sentence, no discount is available on account of your age

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<sup>54</sup> *Pahulu v Police* [2020] NZHC 153 at [29], citing *Jackson v Police* [2019] NZHC 281 at [41].

<sup>55</sup> *Jackson*, above n 54, at [43], citing *Mitchell v R* [2013] NZCA 583, (2013) 29 FRNZ 498 at [12].

<sup>56</sup> *Singh v R*, above n 45, at [24].

<sup>57</sup> Sentencing Act 2002, s 110.

<sup>58</sup> Section 8(c).

<sup>59</sup> *R v Lata* [2018] NZCA 615 at [42].

or mental health. Any concerns for double-counting or totality are addressed by the sentence's necessary concurrency with your life sentence for Ms Yang's murder.<sup>60</sup>

### **Sentence**

[47] Mr Li, please stand:

- (a) on the charge of murder, I sentence you to life imprisonment, with a minimum non-parole period of 19 years;
- (b) on the charge of breaching a protection order, I sentence you to three years' imprisonment, to be served concurrently.

You may stand down.

—Jagose J

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<sup>60</sup> *Singh v R*, above n 45, upholding *R v Singh* [2014] NZHC 1246 at [20].