

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

**I TE KŌTI MATUA O AOTEAROA
WHANGANUI ROHE**

**CRI-2019-083-00492
[2020] NZHC 1573**

THE QUEEN

v

ERIC ARA METE

Hearing: 3 July 2020

Appearances: M M Wilkinson-Smith for the Crown
D Goodlet for the Defendant

Judgment: 3 July 2020

SENTENCING OF COOKE J

[1] Mr Mete you have pleaded guilty to one charge of murder. The victim was your partner, Ms Lorna-Anne Thompson. The two of you had been in a on and off again relationship for six to eight months. At the time of the offending you were living together.

[2] In the afternoon of Saturday 6 April 2019 you and Ms Thompson were at your flat in Ratana, Whanganui. An argument commenced in the living room. You became enraged and struck Ms Thompson numerous times in the face, aiming at her nose and eyes. The sheer force and number of blows caused multiple fractures to her skull. After an unknown period of time you stopped the assault. Upon seeing that she was non-responsive you realised that she was dead.

[3] You then went to the bathroom and attempted to clean the blood off yourself. You then sat down and consumed methamphetamine and cannabis, eventually falling asleep.

[4] Later in the afternoon you left the flat and returned later that night. On your return you used an extension cord to tie Ms Thompson's hands together in front of her and around her neck. You then dragged her body to another room and attempted to wipe up the blood on the floor.

[5] Four days later you travelled to Turangi and told a family member you had killed Ms Thompson. The family member advised police of your admission.

[6] After speaking with the family member you travelled back to Whanganui. You located a marked patrol car and advised the officer you were the person police were looking for.

[7] Subsequent post-mortem confirmed that Ms Thompson received severe trauma to her face causing her death.

Impact of the offending

[8] The Court has received victim impact statements from Ms Thompson's mother, her eldest son, her 13 year old daughter and her brother.

[9] All have spoken of the impact of her death on the whānau. She will be remembered as a kind and loving person. Ms Thompson's daughter describes her as a person with a big heart who was a healer. They all have feelings of deep distress, and there are also feelings of anger towards you. It is important that you understand that Ms Thompson is not the only victim of your actions, and that the harm you have caused will be long lasting. They say, and you must know this, the time you will serve in prison will never be enough for what you have done.

Approach to sentencing for murder

[10] Under s 102 of the Sentencing Act your conviction for murder means you must be sentenced for life imprisonment unless a sentence of life imprisonment would be manifestly unjust. That exception only applies in very rare circumstances.¹ There is no suggestion the exception applies in your case, and you will accordingly be receiving that sentence. The only issue for consideration, therefore, is the appropriate minimum period of imprisonment you must serve.

[11] A minimum term of imprisonment is something that affects your ability to be released on parole. Such a term prevents you from being so considered for parole for the period of the minimum term. Such a minimum term of imprisonment is imposed if the Court thinks it necessary to:

- (a) hold you accountable for the harm you have done to the victim and the community;
- (b) denounce your conduct and deter you and others from committing similar offences; and
- (c) to protect the community.

[12] The minimum term does not mean that you will be released at the end of that term. It simply means that you cannot be released by the Parole Board during that period. Whether you will be released after that time will depend on the Parole Board's assessment of you at that time. Because you have been convicted murder the Sentencing Act says that there must be a minimum period of imprisonment of at least 10 years.² In certain circumstances, a minimum term of at least 17 years must be imposed where the case fulfils one or more of the criteria under s 104, unless such a minimum term would be manifestly unjust.

¹ *R v Mayes* [2003] 1 NZLR 71 (CA); *R v Rapira* [2002] 3 NZLR 794 (CA); *R v Smail* [2007] 1 NZLR 411 (CA); and *R v Smith* [2019] NZHC 1910.

² Section 103.

[13] In terms of the s 104 factors, the Crown submits that s 104(e) is engaged. This applies when the murder is committed with a high degree of brutality, cruelty, depravity, or callousness. Your counsel submits that multiple strikes to the head, while brutal, were not of a high level of brutality contemplated under s 104. I do not agree — the summary of facts records the blows were of such a degree to leave Ms Thompson’s face unrecognisable. It was plainly an attack with a high level of brutality.

[14] The main issue in your case is whether a 17 year minimum period of imprisonment is manifestly unjust. The Court of Appeal in *R v Williams* explained the proper approach to such questions.³ First, I must assess the degree of culpability by taking into account the aggravating factors set out in s 104 and any other applicable aggravating factors and all those in mitigation. I must then decide what the appropriate minimum period of imprisonment in all the circumstances of the case, including your personal circumstances should be. If I conclude that a minimum period of imprisonment of less than 17 years is appropriate despite that, then I must go on to consider whether it would be manifestly unjust to impose the 17 year period.

Culpability assessment/aggravating factors

[15] I first consider what the appropriate minimum period of imprisonment should be. I consider the following aggravating factors are relevant to the assessment of your culpability:

- (a) The high degree of violence involved in the offending.
- (b) Whilst you eventually came forward and turned yourself in to police, your actions in making some attempt to tie up Ms Thompson’s body and leave it in the house for four days after her death are reprehensible and can also be said to show a degree of callousness.
- (c) The offending took place in the home you and Ms Thompson shared together, and she was entitled to feel safe there. While she was not a

³ *R v Williams* [2005] 2 NZLR 506 (CA) at [52]–[54].

protected person within the meaning of s 9(1)(ca) of the Sentencing Act, I consider this context made the victim particularly vulnerable. The Court of Appeal in *Graham v R* observed that many victims will be vulnerable to some extent, but whether a particular factor truly aggravates the offending will be a question of fact and degree.⁴ The Crown accepts the current offending does not involve a high degree of victim vulnerability, but I nevertheless consider there was a degree of vulnerability in the circumstances.

- (d) Finally, you have an extensive criminal history. The majority of your earlier New Zealand convictions are for dishonesty and drug related offences, but your more recent Australian convictions between 2008–2016 concern driving, drug and violent offences, including contravention of family violence protection orders. So your offending has been escalating, although the present offending involves a marked increase in the severity and seriousness of the use of violence.

[16] In terms of an appropriate starting point given the aggravating factors referred to previously, a series of cases have been offered by counsel as comparable.⁵ They include two contrasting cases:

- (a) *R v Te Hiko*:⁶ Mr Te Hiko was convicted after a trial. The victim was Mr Te Hiko's long term partner. There was a history of violence in the relationship. Before the offending Mr Te Hiko had recognised he needed help and had taken constructive steps to address his addiction and anger issues and was receiving counselling but was on the waitlist for a residential programme at the time of the murder. On the night of the murder the victim had brought two friends over and Mr Te Hiko was frustrated they had brought alcohol in light of his addiction but drank with them. An argument broke out between Mr Te Hiko and the victim about whether she had been unfaithful and Mr Te Hiko flew into

⁴ *Graham v R* [2011] NZCA 131 at [13].

⁵ *R v Williams*, above n 3.

⁶ *R v Te Hiko* [2017] NZHC 1260; *Te Hiko v R* [2019] NZCA 41; *Beazley v R* [2020] NZCA 65; and *Vea v R* [2020] NZCA 68.

a rage. He maintained a prolonged and brutal attack against her, striking her repeatedly with his closed fist and striking her head and body with a heavy metal pole. Many blows were inflicted while she was lying on the floor and her entire body was covered in injuries. The attack did not end until it was obvious she was deeply unconscious. He changed her clothes, put her to bed and left her to die before going to bed himself. The next morning he contacted authorities, turning himself in and confessing. Section 104 was engaged. At the High Court considered would not be manifestly unjust to impose 17 years but equally not such a case as to warrant a period greater than that. The decision was upheld on appeal with the Court noting that there was no remorse and that the case fell well short of the manifest injustice threshold.⁷

- (b) *R v Momoisea*:⁸ Ms Momoisea pleaded guilty to murder. The victim was Ms Momoisea's former partner who had married another woman. She pre-planned his murder. She waited at his home stabbing him and his wife, killing him and seriously injuring her. He was stabbed seven times. The High Court noted that there was pre-planning, and that there were two victims. It concluded that a 15 year minimum term of imprisonment would be appropriate but for s 104, which was held to apply given that the murder was brutal. In light of mitigating factors, including a guilty plea, prior good character and cultural factors arising from the Samoan culture the Court concluded that a 17 year minimum period would be manifestly unjust and it substituted a minimum period of imprisonment of 14 and a half years. This decision was also upheld on appeal.

Personal mitigating factors

[17] Here there are a number of mitigating factors relevant to the assessment of an appropriate minimum term and I intend to address those at some length.

⁷ At [24].

⁸ *R v Momoisea* [2018] NZHC 1577, *Momoisea v R* [2019] NZCA 528.

[18] I have been provided with a series of reports that are relevant. Two psychiatrists, Dr Leahy and Dr Barry-Walsh have assessed that you do not suffer from a mental illness, but I particularly note the view that your unusual behaviour after Ms Thompson's death was likely the product of long methamphetamine use. You have been assessed by a clinical psychologist Mr Paul Carlyon and he has provided a detailed report. The Court has also received a cultural report under s 27 of the Sentencing Act from Te Hurahi Rereke Services.

[19] It is important to obtain some understanding of what has led you to be where you are today. You are now 51 years old. You were born in Whanganui but raised in nearby Ratana by your mother with your three siblings. At age 10 your parents separated and in early adolescence you remember being subjected to considerable violence by a teacher and extended family. Behavioural difficulties emerged and by the time you reached middle adolescence, the stability of your early childhood had been ended and you associated with peer groups who readily and proactively exerted anti-social influence. As Mr Carlyon describes it, this influence and exposure to violence resulted in reliance on interpersonal aggressiveness as a means of self-expression, by exerting dominance and resolving conflict.

[20] You first began what would become a long history of substance abuse at an early age. By age 10 you were using inhalants and by age 13, cannabis. Your drug use unsurprisingly exacerbated your violent behaviour, often getting into fights at school. At age 12 you were expelled from secondary school due to violent behaviour and you were sent to live with your father in Auckland. In Auckland you were exposed to further drug use, recalling observing your father's associates using intravenous drugs. Your drug use escalated to a period of intravenous drug use in your later teen years and your substance use progressed to include the use of hallucinogenics, heroin and methamphetamine. At 14 you were again expelled due to drug use and did not return to complete any further education.

[21] You have a lengthy criminal history, coinciding with periods of drug abuse. You received your first conviction aged 14 for dishonesty offending. You moved to Australia in your 30s and upon your arrival managed to maintain employment and a stable relationship. But you drifted back to drug use, with intravenous heroin and

methamphetamine use and received over 20 convictions for a range of violence and drug related offences, serving several sentences of imprisonment in Australia. Upon release you recalled a period being abstinent from drug use to the positive influence of your sister, who was living in Australia at that time. But soon after returned to drugs. You moved back to New Zealand in late 2018 and soon after began a relationship with Ms Thompson. In the period before the offending your drug use had escalated and self-reported as the highest it had ever been, with you consuming one to three grams of methamphetamine a day and continuous episodes of “bingeing”.

[22] Mr Carlyon observes that drug-dependence is a prominent feature of your functioning, and a coping mechanism for intense negative emotions. You focused on immediate gratification inherent in a drug-oriented lifestyle and prioritised substance abuse over relationships and your own welfare. The few relationships you had with peers were transactional in nature and loyalty was uncommon. You had little to no relationship with your six children.

[23] Your extensive drug use is no doubt a key driver of your offending history. And at the time of the offending you were coming off a five day extensive period of extreme drug use. The Sentencing Act provides that voluntary consumption of alcohol or drugs cannot be taken into account by way of mitigation.⁹ The Court of Appeal in *Zhang v R* recently held that addiction warrants a rehabilitative approach to sentencing and may warrant a discount, depending on the extent to which it mitigates moral culpability for the offending.¹⁰ But any discount for addiction should be based on persuasive evidence, as opposed to mere self-reporting, and the onus of proof lies on the offender to establish the extent and effect of addiction or mental health issues.¹¹ The reports in my view do not demonstrate such a link. So there cannot be a self-standing mitigation for that. On the other hand, substance abuse is an offending related factor that indicates risk of re-offending and the risk of re-offending will be significantly reduced if you successfully undertake rehabilitation programmes in prison. And deep seated substance abuse can be indicative of other circumstances that warrant consideration.

⁹ Sentencing Act 2002, s 9(3).

¹⁰ *Zhang v R* [2019] NZCA 507 at [149]-[150].

¹¹ At [148].

[24] The cultural report provides important cultural context for your offending. You grew up in a culture of violence, experiencing instability and chaotic living. You have little understanding of your Māori identity — you do not know your whakapapa or your iwi and you do not speak te reo Māori. This separation from cultural identity was exacerbated during the time you spent in Australia where you say, you were “totally disconnected” from your taha Māori.

[25] Your aspirations are to learn te reo and tikanga Māori and reconnect, rekindle and restore a relationship with your whānau. The report writer explains this will enhance your sense of identity and facilitate your ongoing mental and emotional growth. Your brother says your drug use has estranged you from your whānau but since entering prison and away from drugs, the family has been able to reconnect. Your brother affirmed that your wider whānau are there to stand with you and support you through prison and help you reintegrate into the community at Ratana when you are released. Your brother speaks of kaumatua at Ratana who can educate you in te reo Māori and tikanga Māori.

[26] I consider the s 27 report demonstrates a causal link between your cultural background and the offending.¹² You have a limited knowledge of your whakapapa and cultural identity due to intergenerational social and cultural dislocation. The fact that you have a history of reverting to heavy drug use seems to me to further illustrate that you have been living a life without any true sense of your place in the world.

[27] The pre-sentence reports indicate you have good prospects of rehabilitation. You have demonstrated insight into links between your pattern of substance abuse and offending behaviours and you are motivated to address those issues. You have taken personal responsibility for the offending rather than attributing your actions to your methamphetamine use and since being in prison have already begun to actively build your literacy and numeracy ability. You are very fortunate that your whānau are willing to support your rehabilitation both while in custody and upon your release. Not only do they offer spiritual and emotional support, but are willing to assist you in

¹² Section 8(i). See *Zhang v R* [2019] NZCA 507 at [159]. See also *Solicitor-General v Heta* [2018] NZHC, [2019] 2 NZLR 241 at [49].

forming a sense of cultural identity through education in te reo Māori and tikanga Māori.¹³

[28] You say you are enjoying his ability to think clearly again, drug free but the problem now is that your early life memories are returning, and you no longer can rely on substances as a coping mechanism. It is critical that you undertake appropriate programmes in order to process your trauma without reliance on substances. You need to find your place in the world other than in a drug induced stupor. The pre-sentence report records you pose a significant risk of reoffending and harm to the community if you are released without effectively addressing these issues. The s 38 reports and pre-sentence reports recommend intervention in polysubstance dependence, anger and violence, literacy and relationship development to improve personality function and reduce the risk of further offending.

[29] All the report writers observed your expression of deep and genuine regret, remorse and distress at your actions. A restorative justice hui was held on 23 June 2020 at Whanganui Prison with yourself, your whānau support and Ms Thompson's mother, and her sister. At the conference you expressed your distress at your actions and apologised for the hurt and damage caused.

[30] Section 10(1) of the Sentencing Act provides that in sentencing the Court must take into account any measures taken to the offender or the whānau in apologising to the family group of the victim. This section reflects the significance of the cultural apology process and group accountability rather than individualised retribution.

[31] I consider your display of genuine remorse and recognition of the restorative justice process warrant recognition.

[32] It is accepted that you ultimately repented your offending, and entered a guilty plea at the earliest possible opportunity. But any discount or mitigation for early guilty pleas carry limited weight in the s 104 context as departures from the 17 year minimum period are only to occur in cases of clear injustice.

¹³ See *Carroll v R* [2019] NZCA 172.

What would the minimum period have been but for s 104?

[33] The Crown submits that an appropriate starting point for a minimum term of imprisonment is 17 to 18 years. With discounts for mitigating factors, it suggests an end minimum period of between 15 years, six months and 16 years, six months without the effect of s 104. Your counsel submits the appropriate starting point is 16 years, with discounts for mitigating factors bringing the end point to 13 years, six months.

[34] This was not a premeditated murder of the kind arising in *Momoisea*. It has greater similarities to *Te Hiko* although in that case there was no guilty plea, and no remorse. Were it not for s 104 I would have concluded that the starting point for the minimum period of imprisonment would have been 16 years. The mitigating factors I have identified, particularly your guilty plea, remorse, cultural deprivation and the prospects of rehabilitation would have then warranted a discount of two years, resulting in a minimum period of imprisonment of 14 years.

Is a 17 year period manifestly unjust?

[35] The question whether a minimum period of imprisonment of 17 years would be manifestly unjust requires an overall assessment, taking into account your personal circumstances, the circumstances and nature of the offending and the purposes and principles of the Sentencing Act. The Court of Appeal in *Williams* explained the purpose of s 104 is to require a very substantial minimum period of imprisonment for the most serious murders.¹⁴ A minimum term of 17 years will be manifestly unjust where overall, the case falls outside the scope of that legislative policy.¹⁵ Such cases will be exceptional but need not be rare.

[36] The manifest unjust exception is often applied where the offender was particularly young, or where the offender is suffering from serious mental disorders.¹⁶ It has also been applied where a range of more limited mitigating factors together were sufficient to displace the presumption, such as in *Momoisea*.¹⁷

¹⁴ *R v Williams*, above n 3, at [47].

¹⁵ At [67].

¹⁶ See for example, *R v Lewis* [2018] NZHC 1877 and *Te Wini v R* [2013] NZCA 201 where the offenders were 17 and 15 years old respectively at the time of the offending, or *R v Turner* [2015] NZHC 189 where the offender was diagnosed with severe personality disorder.

¹⁷ See *R v Momoisea* and *Momoisea v R*, above n 8.

[37] The present case, your case, is a difficult one, perhaps reflected in the fact that the Crown are neutral on whether the exception to the 17 year minimum period of imprisonment arises. I have addressed your personal circumstances at some length in order to understand you, and so I can apply the legislative provision in light of wider sentencing principles.

[38] Your attack was particularly brutal, and took place in a place where Ms Thompson was entitled to feel safe. The attempt to hide your offending involved callousness, but also evidences that you have lost a connection with society and cultural norms. An ingrained tendency for extreme violence is also part of that. But it is also apparent that this state, and the extreme violence is triggered by your use of drugs. You are now sober, and when you are sober you are genuinely remorseful. The severity of the violence on this occasion has not been previously displayed. In addition given your age, a minimum period of imprisonment of 17 years would mean that you would be 68 years old before you could even be considered for release.

[39] It is obvious that you will spend a very long time in prison. But the aims of the Sentencing Act also include rehabilitation. There seems to me to be significant rehabilitation potential here aided by your whānau. Provided that you can build on that expressions of remorse, and build on the rehabilitation potential with the assistance of your whānau, you may find your place in the world without drugs. It seems to me it would be pointless to keep you in prison for a number of additional years beyond that needed to protect the community if you can. It is important that the Court does not remove all hope for a person such as you.

[40] For those reasons I see your case as different from the other cases identified by counsel where the 17 year minimum period of imprisonment has been confirmed.¹⁸ Because of the particular features I have addressed I have concluded it would be manifestly unjust to insist on a 17 year minimum period of imprisonment. In my view a minimum term of imprisonment of 14 years is appropriate.

[41] I have already given you, but remind you of your first strike warning under the three strikes law.

¹⁸ See footnote 6 above.

Result

[42] Mr Mete you committed a callous and brutal murder of Lorna-Anne Thompson. You have admitted your guilt but now need to take responsibility for who you are, and what you have done. You are sentenced to imprisonment for life with a minimum period of imprisonment of 14 years. Please stand down.

Cooke J

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