

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

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

**CRI-2020-090-2090
[2020] NZHC 1839**

THE QUEEN

v

YANLONG PIAO

Hearing: 28 July 2020

Appearances: D G Johnstone and J A Lee for the Crown
S L McColgan for the defendant

Date of sentence: 28 July 2020

SENTENCING NOTES OF JAGOSE J

Counsel/Solicitors:
S L McColgan Barrister, Auckland
Meredith Connell, Crown Solicitor, Auckland

[1] Mr Piao, as you know, on 10 June this year,¹ you pleaded guilty to a charge of accessory after the fact to murder of Baochang Wang.² I am now to sentence you for that conviction. In sentencing you, I must accept as proved all facts that are essential to your guilty plea.³

[2] I have listened to what the lawyers have had to say, both for you and for the Crown. They recommend starting points of between two and a half and four years' imprisonment; both accept a discount of up to 60 per cent is available to mark your assistance in bringing Mr Wang's murderers to justice.

[3] I am not bound by the lawyers' recommendations. I must satisfy myself of the appropriate sentence for the gravity – the seriousness – of your offending, including your culpability – your responsibility – for it.

Background

[4] I turn to your offending. Mr Wang is alleged to have been murdered in Auckland in August 2017 by associates of yours. You found out about Mr Wang's death soon after it occurred. You saw Mr Wang's body. Mr Wang was not reported missing, and his location remained unknown until police exhumed his body in March this year. Your liability is not for murder, but instead arises independently, occurring after the initial crime is alleged to have been committed.

[5] In the very early hours of Tuesday, 22 August 2017, you and your associates drove to an isolated road off the Desert Road in the Taupo District, to dispose of Mr Wang's body and thereby to suppress evidence of your associates' involvement in his death. You and your associates travelled there in multiple vehicles, you driving a van with Mr Wang's body in the rear. On arrival, a shallow grave was dug in waste land off the isolated road. Mr Wang's body was placed in the grave, and concrete poured over it. You and your associates then returned to Auckland.

¹ *R v Piao* CRI-2020-090-2090 (minute) 10 June 2020.

² Crimes Act 1961, s 176. The maximum term of imprisonment is 7 years.

³ Sentencing Act 2002, s 24(1)(b).

[6] Mr Wang's death only came to police attention because, in October 2019, you advised them of it and its consequences. The police are clear, without your information, Mr Wang's death "would not have been investigated, his body not recovered, and persons [not] held to account" for those matters.

Victim impact statements

[7] You told the Department of Corrections' pre-sentence report writer you were "really good friends" with Mr Wang and with his family. I have read his father's victim impact statement, and we have heard today the victim impact statement from his former wife. Mr Wang's family are victims of your offending, being disadvantaged by it.⁴

[8] Mr Wang was his parents' only child. His father has kept news of his death from his mother, for fear her frail health could not stand the shock, as he experienced, suffering a heart attack and weight loss. He says "in our Chinese culture, parents raise children when they are young so they will look after us when we grow old". On Mr Wang's death, they are to "die in loneliness and grief".

[9] As you heard, Mr Wang's former wife, and mother of their two children now eight and five years old, described him as their "guardian", whose loss has damaged her mental health and the family's financial security.

[10] Although the statements largely speak of the devastating effect Mr Wang's death has had on their lives, they are relevant to your sentencing, given you intended to help those responsible for his killing. You contributed to the family's hurt. They are victims also of your offending after the fact of Mr Wang's death.

Personal circumstances

[11] The pre-sentence report assesses you as presenting a medium risk of harm and re-offending, given your involvement with others' alleged serious activity in killing Mr Wang and your 2018 drug-related offending. You were sentenced for the latter on

⁴ Victims' Rights Act 2002, ss 4 and 17AA(1)(a)(i)(B) and 20(1).

16 August 2019 to four years' imprisonment,⁵ for which you are eligible for parole in November this year, and with a current sentence end date of 11 July 2023. The report-writer considers your risk would increase if you continued your involvement with criminals and drugs. She notes your previous lifestyle and financial circumstances precipitated that involvement.

[12] You moved from China to New Zealand in 2002, when you were twenty years old, to study. You worked in the building industry, developing houses and owning a massage parlour. You say your businesses went under after you loaned Mr Wang \$350,000, which was not repaid. You are married to your childhood girlfriend with whom you have two children aged nine and five years. They continue to live in New Zealand.

Approach to sentencing

[13] Sentencing involves a two-stage process.⁶ With reference to relevant cases, aggravating and mitigating features of the offence, I first decide the starting point your offending attracts.⁷ Then I adjust that up or down to take your personal circumstances into account, together with a discount for your guilty plea which would be reflected as a percentage of the adjusted starting point.⁸

[14] I must have regard for the statutory purposes and principles of sentencing.⁹ I must hold you accountable for your offending, and encourage you to be responsible for and acknowledge the harm you have caused. Your sentence should be sufficient to denounce your conduct and protect the community. I must consider the gravity and seriousness of your offending, and take into account its impact on victims. Especially on conviction as accessory after the fact to murder, the sentence should be sufficient to deter others from offending similarly. The sentence is to be the "least restrictive" appropriate in the circumstances, consistent with appropriate sentencing levels.

⁵ *R v Gu* [2019] NZDC 16307.

⁶ *Moses v R* [2020] NZCA 296 at [46].

⁷ *R v Taueki* [2005] 3 NZLR 372 (CA) at [8].

⁸ *Moses v R*, above n 6, at [46].

⁹ Sentencing Act 2002, ss 7 and 8.

Starting point

[15] Mr Piao, you played an active role in the callous disposal of Mr Wang’s body. “Destroying evidence after someone’s life has been criminally taken is itself a serious offence. It requires denunciation and deterrence ...”.¹⁰ There is no appellate tariff decision governing accessory after the fact to murder sentencing. But the Court of Appeal, by which I am bound, acknowledged two and a half years’ imprisonment starting points where the body suffered indignities or was treated callously,¹¹ and three years where arrangements were made to dispose of the body at sea.¹² The disposal of a body to assist murderers to avoid arrest is an attempt to defeat the ends of justice.¹³

[16] There are no mitigating factors. Your offending is aggravated by its inherent callousness in disposing and concealing Mr Wang’s body, and in a way that amounted to its cruel desecration, by entombing it in concrete at an isolated location.¹⁴ It also is aggravated by the premeditated nature of your involvement, involving at least the arrangements to transport Mr Wang’s body to the site of its burial. It was not a “spontaneous exploit”, or done “out of stupidity or loyalty”.¹⁵

[17] I am not prepared to hold your drug-related convictions as aggravating your present offending. They arose after the present offending, but you say as a consequence of your involvement with it and your associates. Although it is a close-run thing, for the same reason, neither am I prepared to hold your association with them as aggravating. But I am suspicious about the circumstances by which a man with at least family connections in an identifiable cultural community can just disappear without comment for a period of years. I recognise you say you were forced, at risk to you and to your family, to cover up Mr Wang’s disappearance by deceiving his family as to his whereabouts.

¹⁰ *R v Te Moana* [2018] NZHC 1480 at [13].

¹¹ *Te Kani v R* [2020] NZCA 69 at [35], citing *R v Leach* HC Wellington CRI-2006-085-4461, 27 October 2006 and *R v Wilkie-Morris* [2016] NZHC 259. See analogously *R v Betteridge* [2019] NZCA 513 at [14]–[15] and n 17. Mr Piao’s counsel, Scott McColgan, points me also to *R v Boskell* [2015] NZHC 286, which includes at its Annexure B a schedule of “examples of accessory after the fact to murder sentencing”.

¹² At [35], citing *R v Raroa* [1987] 2 NZLR 486 (CA) at 495.

¹³ *R v Raroa*, above n 12, at 495.

¹⁴ *R v Roigard* [2016] NZHC 166 at [53]–[54].

¹⁵ *R v Mako* [2000] 2 NZLR 170, (2000) 17 CRNZ 272 (CA) at [36]; *R v Leach*, above n 11, at [15].

[18] Viewed in the round, uplifting other two and a half year starting points to reflect your offending's aggravating premeditation, I take a starting point for your sentencing of three years' imprisonment.

Aggravating and mitigating features personal to the Defendant

[19] I now move to the second step of sentencing, to adjust the starting point by reference to factors personal to you. I can identify no personal aggravating factors.

[20] You pleaded guilty at the first possible opportunity, within three weeks of being charged, which would entitle you to the maximum discount available under that head. While I acknowledge your expressions of remorse to the report-writer, and in your letter to me, you had plenty of time, in the nearly three years between your offending and being charged with it, to address it. I do not think that late expression itself constitutes true remorse for your offending.

[21] I recognise, at some risk to yourself and your family, you provided extensive assistance to the police in relation to Mr Wang's murder. Were it not for your co-operation, Mr Wang's fate would likely have remained unknown. I take that to be a more tangible illustration of your expressions of remorse to the report-writer, to in your words "take 100 percent responsibility" and "help [Mr Wang's] family by speaking the truth of what occurred". Up to a 60 percent discount is available to reflect the totality of mitigating factors in such circumstances, specifically including early guilty pleas and provision of assistance.¹⁶

[22] I therefore would reduce your end sentence to fourteen months' imprisonment, rounded down.

Totality

[23] Your current offending is different in kind, and insufficiently connected, to that for which you presently are imprisoned, making a cumulative sentence appropriate. As I only am considering imposing a sentence of imprisonment for one offence, the

¹⁶ *R v Hadfield* CA337/06, 14 December 2006 at [22].

totality of your offending is not a requisite consideration.¹⁷ But I nonetheless should have regard for it, still to ensure your total period of imprisonment is not disproportionate to the gravity of your overall offending.¹⁸

[24] I do not consider what would effectively have been a fourteen-month uplift on your drug offending sentence of four years' imprisonment to have rendered the resulting sentence manifestly excessive, that being the threshold for appellate review.¹⁹ Its principal impact is to extend your non-parole period beyond November this year, which reflects the seriousness of your additional conviction now.

Result

[25] Mr Piao, please stand.

[26] On your conviction for accessory after the fact to murder, I sentence you to fourteen months' imprisonment, to be served cumulatively on your current term of imprisonment.

[27] You may stand down.

—Jagose J

¹⁷ Sentencing Act 2002, s 85.

¹⁸ *Taylor v R* [2018] NZCA 444 at [15].

¹⁹ *Tutakangahau v R* [2014] NZCA 279 at [33]–[35].