

**NOTE: PUBLICATION OF REFERENCES IN THESE SENTENCING NOTES
TO THE NAMES OF THE DEFENDANTS IN THE MURDER TRIAL ARE
PROHIBITED UNTIL FURTHER ORDER OF THE COURT**

**NOTE: PUBLICATION OF REFERENCE TO ACTIONS OF A DEFENDANT
IN A STATEMENT MADE BY MR ZHANG PROHIBITED UNTIL FURTHER
ORDER OF THE COURT**

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

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

**CRI-2020-090-1976
[2020] NZHC 3350**

THE QUEEN

v

YUZHEN ZHANG

Hearing: 16 December 2020
Counsel: D Johnstone for Crown
D P H Jones QC for Defendant
Judgment: 16 December 2020

[REDACTED] SENTENCING NOTES OF WHATAJ

Solicitors: Meredith Connell, Auckland

Suppression

[1] For clarity, I commence with the following suppression orders. First, all references by name to the defendants in the upcoming murder trial are suppressed. Second, reference to the actions of a defendant in a statement made by Mr Zhang, that I will refer to in my sentencing, are also suppressed.

[2] Before I go further, I want to acknowledge the victim and his family for the hurt and suffering caused by his death and the circumstances of it. It must be very difficult to bear. I will say something more about that later. I simply wish to observe that while you, Mr Zhang, were not involved in his murder, it is important to acknowledge that harm today at the outset.

Introduction

[3] Mr Zhang, you face sentence on one charge of accessory after the fact to the murder of Mr Baochang Wang. You have accepted a sentencing indication of 15 months' imprisonment, with the issue of home detention left to be determined by me. I indicated that I would be assisted by background information about you, including any cultural matters that may have influenced your offending. In response, you have provided me with a statement and a number of supporting references.

[4] Two things are very clear from that material. First, this offending is out of character. You are a family man, hard-working and trusting, but also naive. Secondly, there is a cultural dimension to your offending – born in China under the “One-Child” policy, close friendships have assumed great importance to you. This is important because it was your misguided feelings of familial-like obligation to your closest friend in New Zealand that led to your offending.

[5] I will expand on these factors later and their significance, but I simply note that, in conjunction with other factors I will mention, I have come to the view that home detention is appropriate.

[6] My sentencing will be in four parts. Firstly, I will explain the facts of the offending. Secondly, I will refer to the victim impacts statements. Thirdly, I will refer to your personal circumstances and, finally, I will fix my sentence.

[7] Much of this, you will know, Mr Zhang, because I have addressed it in a sentencing indication. But it is important that the public hear it.

Summary of facts

[8] Turning then to the facts of your offending, in August 2017, Mr Zhang, you were made aware of the murder by associates. You also saw Mr Wang's body. Late on 21 August 2017, you travelled with four associates to Rangipo Intake Road in the Taupo District. You all used three vehicles to travel to the burial site in the middle of the night. You took turns driving the vehicle that you travelled in. Mr Wang's body was transported to the burial site inside a freezer in the back of the van driven by one of your associates. A shallow grave was dug in wasteland directly beside Rangipo Intake Road, 450 metres from Desert Road. The body was placed in the grave and concrete was poured over the body. You and your four associates then returned to Auckland.

[9] You then returned the following day to the burial site at Rangipo Intake Road with your three associates. Again, you shared the driving on the trip. Your group then dug a second, deeper grave directly beside the first grave. Mr Wang's body was then dug up and dragged into the deeper hole and reburied. Mr Zhang, you then returned to Auckland with your associates.

Mr Zhang's statement

[10] You also have given a statement to the police. The following is based on that statement. In that statement you say you were approached by [redacted], who informed you of the murder. You then met [redacted] and others who would assist with the disposal of Mr Wang's body. You were present while [redacted] had initial conversations with others about how to dispose of Mr Wang's body, including discussion on how to dispose of his teeth. You also became aware that Mr Wang was killed because he had owed money to [redacted].

[11] Mr Wang's body was loaded into a chest freezer and placed into a van. You accompanied the van in a separate vehicle while your other associates drove to Rangipo Intake Road, off Desert Road, where the body was buried. It is said that approximately two weeks later, you drove another associate to a rubbish skip in Hobsonville to dispose of some floorboards. You were also asked to inspect the quality of the re-painting of the house in which Mr Wang was killed.

[12] I also have your statement that you prepared for the sentencing. I will come back to the statement when I deal with your personal circumstances.

Victim impact statements

[13] I turn now to the victim impact statements. Mr Wang leaves behind his whānau, including two children, his father and mother. Understandably, the offending has had a traumatic effect on them, emotionally and financially.

[14] Mr Wang Zhimin, Baochang's father, describes Baochang (his only child) as honest, friendly, gentle and polite. He also describes how he and his wife sold their only property in order to support their son's studies in New Zealand, and that his son built a life and family for himself in New Zealand. He also describes the happy memories of his visit to New Zealand with his wife in 2012 to see their son. Mr Zhimin describes suffering immediate emotional and physical harm upon learning of his son's death, including a heart attack, and that these harms are ongoing. He also explains that he has not told his wife about their son's death because her health is very poor. Mr Zhimin further explains how, in Chinese culture, parents raise their children so that their children can look after their parents in old age, but that the death of their only son means this will not happen, nor will their son be able to raise his own children. Mr Zhimin urges that "suspects should be severely sentenced based on guilt."

[15] Guangxiu Zhu is Baochang's widow and the mother of his two children. Zhu describes "Ricky" as a loving, dedicated and proud father. She describes the "immense pain" the family are suffering from losing their "guardian", and how she finds it hard to explain to the children what has happened to their father. She also expresses sadness that Ricky will not be able to experience the milestones of their children's lives. She

also describes the financial struggles she is experiencing as a result of being a solo mother.

Personal circumstances

[16] I now refer to your personal circumstances, Mr Zhang.

[17] You are 30 years old. You were born in China and you are an only child. You studied civil engineering and later qualified as a civil engineer. You are married and until your arrest you had a company importing and selling towels. You have a supportive family. You have no prior convictions. I have also read the many supporting references. As I have noted, the uniform message is that you are a good person, hard-working and trustworthy but that are also, or you were also naïve.

[18] You have provided an explanation of your background and your offending, which is not challenged. You grew up in a culture and community in which you treat friends, neighbours and members of the community as an extension of the family. You say that, under the government's long-term "One-Child" policy, almost all families in your generation have only one child. Since you do not have any brothers and sisters, you say that you treat your good friends as family. You note, for example, that according to traditional values, the community is a big family and that these values have a strong influence still in Chinese society.

[19] I am now going to turn to what you say about the circumstances of the offending. I wish to repeat that the references to the actions of the defendants in the upcoming murder trial are suppressed.

[20] You explain that your closest friend in New Zealand, [redacted], sought your help. He asked you to drive to help bury the body because he said he had been ordered by his boss to find a secret place. He said he was scared and he asked you to go with him. You initially refused but felt obliged to help him. So, you went with him to see his boss that night in a hotel in the city. [redacted] You then chose to go with [redacted] because you thought that if you went with him, you would be able to protect him or, at least, might be able to help him to escape or contact his family. During the whole time, you say you were concerned about [redacted].

Sentence

[21] With that background in mind, I turn to fixing your sentence.

[22] Firstly, I must identify a starting point of imprisonment for your offending. As I noted in your sentencing indication, your co-offender, Mr Piao, played an active role in the disposal. A three-year starting point was adopted for him. A discount of 35 per cent was afforded to him because of his extensive assistance to the police.¹ His offending was, however, materially worse than your offending in terms of his involvement in the planning and the disposal of the body. Given this, a starting point of two years, nine months is appropriate, noting while you were not as involved in the planning, you had an active role in the execution of what was a well-thought-out plan to conceal the murder.

[23] In terms of mitigating factors, I initially placed limited significance on the fact that you felt obliged, as a friend, to help dispose of Baochang's body. But with the benefit of your full explanation, and the cultural dimension to it, I accept that it played a genuine part in your decision to become involved. It seems that your feelings of obligation were akin to the obligations of whanaungatanga. While not expressed in terms of whanaungatanga, obligations of this kind have been recognised as a mitigating factor for some time. In the case of *R v Watson*, two sons were facing charges in terms of their father's cannabis enterprise. The Court of Appeal had little trouble in endorsing an approach that took into account cultural imperatives that contributed to the offending. The Court in that case said:²

The Judge was invited to recognise that their situation was governed to a degree by the whanau aroha (or family loyalty and affection) of the strong characteristic of Māori communities. In his sentencing remarks the Judge expressly noted that he accepted this was a proper factor to be brought into account, as we do. It was, as he said, a matter making it harder for the two "to say no" to their father's request for help. ...

[24] This is important because it bears on your relative culpability – you were not motivated by ill-will or personal gain, and also the risk presented to you by the

¹ *R v Piao* [2020] NZHC 1839 at [21].

² *R v Watson* CA360/90, 19 April 1991 at 5.

community is low – I believe that you have learnt a harsh lesson, that your sense of familial obligation to a friend was plainly misguided.

[25] However, care needs to be taken in terms of applying a discount for this factor. It is not a justification for what you have done. Deterrence of offending of the present kind remains a major consideration. For that reason, I do not propose to apply a further discount to the starting point. Rather, I take this factor into account when settling on the type of sentence.

[26] As noted in the indication, I accept, however, that your previous good character could attract a discount of, say, up to 10 per cent. The references on your behalf confirm that you have that good character. I acknowledge that you have spent a short period in custody and that you have been on electronic monitoring for several months. But I am satisfied that a 10 per cent discount already afforded to you is sufficient. You are also entitled to a discount for assisting the police with your statement and for your offer to give evidence. I cap that discount at 20 per cent in the sentencing indication. But the Crown has indicated that your offer of assistance is genuine and likely to be material. I am therefore satisfied that this should be increased to 25 per cent. When combined with a discount for early guilty plea of 25 per cent, this brings the discount to a total of 60 per cent.

[27] In the result, if I were to sentence you to a sentence of imprisonment, I would sentence you to 13 months' imprisonment. This would comprise a starting point of two years, nine months or 33 months, less a discount of 20 months for personal circumstances, including good character and assistance to the police, and an early guilty plea.

[28] I now provide my reasons for imposing a sentence of home detention.

[29] Firstly, there is no presumption for or against a sentence of home detention. Furthermore, as submitted by Mr Jones, home detention is “a signal of deterrence,”³ is “a significant sentence in its own right”.⁴ It is also recognised as a real alternative

³ *R v Osman* [2010] NZCA 199 at [25].

⁴ *R v Iosefa* [2008] NZCA 453 at [41].

to imprisonment.⁵ Ultimately, the central issue to be resolved is whether home detention will better serve the purposes and principles of sentencing. There is a strong case for imprisonment, given the need to deter and denounce offending of the present kind. That was certainly my starting point when I gave my sentencing indication. However, I am satisfied that this was a single incident of misjudgment based on a misguided sense of familial-type obligation by a person of otherwise good character. The prospects of your rehabilitation are very high and the risk of you re-offending, certainly in terms of this type of offending or at all, is very low. Personal deterrence and risks to the public are therefore not strong factors in this case. I note, for completeness, that the Crown submits that a sentence of home detention is available to me.

[30] Overall, therefore, I am satisfied that a sentence of home detention is appropriate.

[31] Accordingly, Mr Zhang please stand. On the charge of accessory to murder, I sentence you to a sentence of home detention for six months.

Addendum

[32] After the sentencing, I have resolved that the references to the friend who Mr Zhang assisted should be suppressed on the basis that he has had no opportunity to be heard in relation to those matters.

[33] If there are any concerns about this, I grant leave to the parties and/or the media to file submissions.

⁵ *R v D* (CA253/2008) [2008] NZCA 267 at [60].