

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

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

**CRI-2018-092-013613
[2019] NZHC 672**

THE QUEEN

v

EPHRAIM JOSEPH BEAZLEY

Hearing: 2 April 2019

Appearances: C Robertson and J Toebes for the Crown
D Wallwork and D Wang for the Defendant

Judgment: 2 April 2019

SENTENCING NOTES OF MOORE J

Introduction

[1] Ephraim Beazley, at the age of 33, having never been in trouble with the Police before, you appear before me to be sentenced for murder. You pleaded guilty on 6 March 2019.

[2] As you will know, the maximum penalty for murder is life imprisonment.

[3] In these sentencing remarks I shall start first with the facts. Then I shall discuss how the law works and then whether life imprisonment should be imposed. If so, I will consider whether I should also impose a minimum term of imprisonment or MPI.

The facts

[4] What you did, and what led up to what you did, is obviously well-known to you. But because sentencing is a quintessentially public function and because it must be undertaken in public and in an open Courtroom such as this, I must set out those facts.

[5] The young woman you killed was Xi Wang. She was your estranged wife and the mother of your child.

[6] You met in November 2014 and a relationship quickly developed. You married six months later in May 2015. You and Ms Wang moved to Rotorua where you had a job as a farm hand.

[7] Your relationship with Ms Wang lasted only until September of that year. It was acrimonious. Shortly after it finished Ms Wang discovered she was pregnant with your child. She gave birth to your son on 8 May 2016.

[8] Your contact with Ms Wang and your new son was limited. You saw Ms Wang a couple of times before the baby was born. You were in Auckland for the birth but two days after the baby was born Ms Wang asked you to leave following an unpleasant confrontation at the hospital.

[9] From that time on you had no contact with your son. You had some limited contact with Ms Wang through Facebook or via text messages. This was because Ms Wang had left her iPad at your home.

[10] Within a relatively short time of your estrangement you began to harbour an increasing resentment towards Ms Wang, partly because you were required to pay child support.

[11] From that point you began to feel that everything in your life was spiralling downwards. You contemplated suicide but decided against it. You also began to contemplate killing Ms Wang.

[12] It was through Ms Wang's iPad that you learned that she was living at an address in Flatbush.

[13] On Monday, 10 December 2018 you decided that you had "had enough". You decided you would kill Ms Wang. You got up early that morning, as you usually did. You headed off to work on the farm. You finished at about 5:30 pm. You went home and showered. You thought about what clothes you would wear. You also sharpened your Norwegian hunting knife.

[14] A little after 6:00 pm you got into your car to drive to Auckland. You had Ms Wang's iPad with you to find out where she lived if you discovered she had moved from the address you believed she was living at.

[15] As you drove north you thought about what you were going to do. You thought about how you would achieve it. You thought about stabbing her in the head and neck.

[16] You arrived at her address at about 10:00 pm. You saw two cars parked outside. You contemplated abandoning your plan and even started to drive away. But then you thought about it some more. You decided you had come this far you should carry out your plan.

[17] So you parked and approached the house. You were wearing a jacket and a hat; the latter apparently to conceal your identity. The hunting knife was hidden in its sheath.

[18] You knocked on the door several times. It took Ms Wang about 10 minutes to answer door. Even then, as you waited, you thought about what you would do; would you kill her at the front door or would you go inside and then kill her? You also wondered whether someone other than Ms Wang might answer the door.

[19] Eventually the door was opened. Ms Wang was standing there. She was holding your son who was then just over two-and-a-half years old. Because of the way you were dressed it seems that she may not have recognised you immediately. You stepped forward and thrust the knife at her throat. She put her arm up to protect herself and your son. She managed to avoid the first strike. A short struggle then followed but came to an end when you stabbed her just above her genitalia, conscious that this would cause her to slump over and thus expose the back of her neck. You also stabbed her in the legs. Throughout she and your son were screaming.

[20] Once she had slumped you grabbed her head and, apparently to use your words “took the advantage” by stabbing her multiple times in the head and back, conscious of the damage it would inflict. As you did, Ms Wang fell silent and eventually fell to the ground. Despite this you continued to rain blows onto her lifeless form. Eventually you decided there was no need to continue the attack. You knew you had done enough to kill her.

[21] Throughout this attack Ms Wang was holding your son. It was simply a stroke of good luck he was not injured. The attack was not long in duration; you told the probation officer between 30 seconds and a minute.

[22] You then left. You drove down the road and parked your car. You called a friend and told them what you had done. You walked to the Botany Town Centre and called the Police. You told them you had murdered your wife. You told them that you went to her home with the intention of killing her. Police and emergency staff raced to the scene and took Ms Wang to hospital where she underwent emergency surgery.

Despite this, she died just before midnight as a result of the injuries which you had inflicted.

[23] The post mortem examination confirmed she was stabbed 18 times to various parts of her body. Wounds were inflicted to her limbs, abdomen, face, shoulders and back. However, it would seem that the primary target of your attack was her neck and the back of her head. Ten of the 18 stab wounds were inflicted to those parts of her anatomy.

[24] After the Police arrested you, you told them what you had done and the events leading up to it. You said that once you got your “rhythm” any hesitation you might have felt, passed. You said you intentionally targeted her vital areas, particularly the back of her neck adding that you did not consider your attack to be particularly savage; rather it was very efficient and quick.

Victim impact statements

[25] I have received two victim impact statements; one which has been read from a friend of Ms Wang who is your son’s caregiver and the other from your mother-in-law.

[26] Plainly, not only was Ms Wang a highly intelligent young woman, but she was a committed and very competent mother to your son.

[27] The theme which emerges from both statements is the heart wrenching reality which your son will face for the rest of his life. And that is he has been robbed of the care, protection and love of his mother and secondly the incomprehensibility that the person responsible for that vast hole in his life, is his own father.

[28] Ms Wang was the only daughter of your parents-in-law. They cherished her. They loved her deeply. They spoke with her every day. They are inconsolable with grief. Without their daughter they describe their hearts as empty. Their only wish is to see their grandson grow up safe and happy. The harm you have wrecked on others, especially your son, is incalculable.

Approach to sentence

[29] As I am sure has been explained to you by Ms Wallwork, I must sentence you to life imprisonment unless I am satisfied that to do so would be manifestly unjust.¹ If life imprisonment is imposed the Court must also order an MPI of at least 10 years.²

[30] In certain circumstances, which I shall explain, the Court must order an MPI of at least 17 years.³ That is because s 104 of the Sentencing Act 2002 (“the Act”) requires the Judge to impose an MPI of at least 17 years if one or more of a series of aggravating factors exists unless I am satisfied it would be manifestly unjust to do so. If s 104 is engaged then I must undertake a two-stage process:⁴

- (a) First, I must determine the appropriate MPI by reference to any aggravating or mitigating factors, including those listed in s 104. In doing so I must also take into account your personal circumstances, including the fact that you pleaded guilty. If I arrive at an MPI of 17 years or more then that is the MPI you will receive. If I am of the view a lesser MPI is appropriate then I shall move to the second stage.
- (b) At the second stage I must consider whether it would be manifestly unjust to impose an MPI of 17 years. If so, then I am able to impose a lesser MPI. If not, then you will receive an MPI of 17 years.

Should life imprisonment be imposed?

[31] The first question I must ask is whether life imprisonment should be imposed. Ms Wallwork accepts, as is inevitable, that a sentence of life imprisonment must be imposed. Furthermore, there can be no suggestion at all that such a sentence would be manifestly unjust in your case.

[32] And so I sentence you to life imprisonment. But that is not the end of the exercise. I must then turn to consider the length of any accompanying MPI. This

¹ Sentencing Act 2002, s 102(1).

² Section 103(1) and (2).

³ Section 104.

⁴ *R v Williams* [2005] 2 NZLR 506 (CA).

requires me to consider s 104 of the Act and whether any of the factors listed in that provision are present in your case.

Are any of the s 104 factors present?

[33] I am satisfied, for reasons which follow, that four of the aggravating factors listed in s 104 are present to a greater or lesser extent. I turn now to discuss each in turn.

Calculated or lengthy planning – s 104(1)(b)

[34] Unsurprisingly, a calculated or planned killing is a relevant aggravating factor. The planning does not need to be sophisticated; neither need it be competent.⁵ The Crown says this factor is present to a moderate to high extent. I agree. You ruminated over Ms Wang's death for what appears to have been a couple of years. Certainly it was a long time. On the day of the killing you chose your clothing, including a jacket within which to conceal the knife and a hat to hide your face. You sharpened the knife and took it with you to Auckland. And during the three hour drive north you thought about where and how you would stab your victim. You even took into account the possibility she might not be at the address. That is why you took her iPad with you.

Unlawful entry into a dwelling house – s 104(1)(c)

[35] This is the second factor I regard is engaged in your case. The summary of facts does not make it clear whether the attack took place at the front door or just inside Ms Wang's home. I do not think it matters. This factor is not to be interpreted in an artificial or technical way.⁶ You knocked on the door as a visitor. Ms Wang opened the door of the home she lived in with her child expecting a visitor. This was an environment in which she was entitled to feel safe. What you did represented a gross intrusion of her personal security. Everyone should feel safe in their own home. I am satisfied this aggravating factor is made out.

⁵ *Kaur v R* [2017] NZCA 465 at [49].

⁶ *Pahau v R* [2011] NZCA 147 at [74]; in that case, s 104(1)(c) was engaged where the victim was half-way through a window when he was stabbed by the offender.

High level of brutality, cruelty, depravity or callousness – s 104(1)(e)

[36] It is implicit that the crime of murder must necessarily involve elements of brutality, cruelty and callousness. What this factor requires is the presence of these characteristics to a “high level”. It is well settled that the number and severity of stab wounds, the target of the attack and the presence of a child satisfies this element.⁷ Callousness does not require prolonged activity but has been described as a “hardened state of mind”.⁸ It involves a lack of feeling and sensibility; a numbness of the soul is one descriptor. All these labels apply in your case and I am satisfied this factor is met to a high level.

[37] You inflicted 18 separate wounds. The blows were deliberately targeted towards Ms Wang’s vital parts. You continued your attack until you were satisfied you had done enough to achieve your purpose. Yet, despite this, Ms Wang did not die immediately. It took her a further 90 minutes to die. And throughout this ordeal she was holding your young son. I accept that you did not intend your son any harm. But you put him at serious risk of injury or worse. He was in his mother’s arms when she was killed at the hands of his father. That you continued your attack undeterred by this spectacle takes this killing well within the definition of high levels of brutality, depravity and callousness.

Particular vulnerability – s 104(1)(g)

[38] A victim will be particularly vulnerable if they are prone to being attacked physically rather than being in a place where they might be attacked unexpectedly.⁹ The Crown properly acknowledges that there is some overlap between this factor and the depravity factor I have just finished discussing. Ms Wang was caught unawares by your unannounced and unexpected intrusion. Holding your son made her particularly vulnerable and unable to defend herself.

⁷ *R v Gottermeyer* [2014] NZCA 205.

⁸ *R v Mason* [2012] NZHC 1849 at [44]; *R v Christison* [2013] NZHC 2813 at [38].

⁹ *R v Nelson* [2012] NZHC 3570 at [28](a).

[39] But I have discussed this already and I am satisfied that this factor is properly included under other headings. For reasons of duplication it does not add to the overall assessment of your culpability.

[40] In summary and on your behalf, Ms Wallwork is, again, realistic. She accepts, as she must, that s 104 is engaged through the combination of these factors. She does not dispute that every one of them is present to a significant degree.

[41] That being the case what then is the appropriate MPI?

What is the appropriate MPI?

[42] The Crown submits that taking into account the s 104 factors, as well as acknowledging the depth of harm caused by your offending, justifies an MPI of 18 to 19 years. I have already discussed those aggravating factors and the Crown justifies its position by reference to a number of cases which I have taken into account in this assessment.¹⁰

[43] But that is not the end of the matter and the Crown accepts as much. You have no previous convictions and that must operate as a mitigating factor. Furthermore, you pleaded guilty at what I accept was the earliest practical opportunity on 6 March 2019. And so, while it might be said you did not plead at the earliest possible opportunity I am satisfied that fact should not be held against you. Ms Wallwork had a professional duty to satisfy herself and the Court of your mental health. Enquiries were undertaken. And they came back to confirm you were fit to stand trial and an insanity defence was not open to you. You pleaded on your third appearance; your second in this Court.

¹⁰ In *R v Singh* [2019] NZHC 148 Powell J imposed an MPI of 19 years; the offender stabbed his former partner at least 20 times in her home, having resolved to kill her the day prior; he then left her body for her parents to find and took steps to cover his offending. In *R v Smith* [2013] NZHC 2782, Ronald Young J indicated an MPI of 18 to 19 years would have been appropriate before taking into account mitigating factors; the offender broke into his former partner's house and hid in the ceiling cavity; he then waited for her and her children to fall asleep before descending and slitting her throat. In *Thurgood v R* [2012] NZCA 23 the Court of Appeal approved of an 18-and-a-half year MPI; the offender dropped his four children at school and drove to the address of his estranged partner; once there he attacked her viciously, inflicting 26 injuries with a knife and grubber handle and attempting to strangle her.

[44] Life imprisonment and MPIs do not lend themselves to the conventional discounting formula applicable when the Court is dealing with a finite sentence.¹¹ The case law reveals that reductions for early pleas and previous good character are generally no more than two years, depending on the timing of the plea and the strength of the prosecution case.¹² On this basis the Crown says I should reduce the MPI by about two years and impose an overall MPI of 17 to 18 years.

[45] Ms Wallwork effectively accepts as much. She suggests that the starting point for your MPI should be 17 to 18 years reduced to reflect your guilty plea and what she describes as provocation by Ms Wang. I shall return to that topic shortly. But responsibly, Ms Wallwork acknowledges that even in combination, these factors are insufficient to make the imposition of a 17 year MPI manifestly unjust. She thus says I do not need to turn my mind to the second part of the s 104 inquiry. In the end, she says an MPI of 17 years would be appropriate.

[46] In my view Ms Wallwork is correct. It cannot be manifestly unjust to impose an MPI of 17 years or greater in your case. Despite pleading guilty at an early stage you have shown little or no remorse for what you did. Perhaps the closest you have got to expressing any regret for what you did was when you told the author of the presentence report that you were not “... dealing with it at the moment, I don’t feel good that I hurt her.” You have no previous convictions. You are not a young man and your offending does not appear to have been driven by any entrenched mental health problems. Dr Duff has provided a psychiatric report in which she concluded that at the time of the killing you were suffering from depression of moderate severity with some psychotic features but not sufficient to support a defence of insanity. This is supported by your own self-report that you have struggled with depression for a number of years and woke up on the morning of the killing depressed because you had spent all your wages on gambling and you thought about killing yourself.

[47] Apart from your early plea, the only other ground of mitigation Ms Wallwork relies on is what she describes as provocation arising from the stressed relationship

¹¹ *Malik v R* [2015] NZCA 597 at [35]-[37].

¹² See for example *Holl v R* [2015] NZCA 67; *Cornelius v R* [2014] NZCA 123; *Akash v R* [2017] NZCA 122. See also Simon France (ed) *Adams on Criminal Law* (online looseleaf ed, Thomson Reuters) at [SA104.04].

you had with Ms Wang. I fully accept your relationship with Ms Wang was stressed. It may well be that you felt you were exploited by Ms Wang in order for her to secure residency. You also described being required to pay child support on the one hand and being denied access to your son on the other. Ms Wallwork referred to taunting photographs Ms Wang sent you. In combination, Ms Wallwork says these factors of provocation while not in themselves aggravating provide an explanation and context to what you did.

[48] The problem with that submission is that none of these specific claims appears to be founded in evidence. In her oral submissions to me your counsel made the observation that rather than adopting this as a true mitigating factor it was put before the Court to provide an explanation for what happened. Plainly on the law the circumstances surrounding the end of your relationship with Ms Wang provide no basis that you were somehow provoked into killing her.

[49] The end of a relationship is not an uncommon event. It simply cannot justify an extreme reaction leading to murder.¹³

[50] In any event, the whole issue is somewhat academic. That is because I am satisfied the appropriate starting point for your MPI should be 18 years and six months. I then reduce that figure by 18 months to arrive at a final MPI of 17 years. I have done so primarily on the basis of your early guilty plea. I note that the same discount has been given in similar circumstances in other cases despite there being an overwhelming case against the offender.¹⁴

Result

[51] Please stand.

[52] I sentence you to life imprisonment. I impose a minimum period of imprisonment of 17 years.

¹³ At [81].

¹⁴ *R v Maheno* [2013] NZHC 2430 at [31]-[32].

[53] Stand down.

Moore J

Solicitors:

Crown Solicitor, Auckland

Ms Wallwork, Auckland