

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

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

**CRI 2016-004-11508  
[2019] NZHC 1627**

**THE QUEEN**

v

**KIRI PAUL PATIRA BRACKENRIDGE**

Hearing: 12 July 2019

Appearances: S S McMullan and H E Savage for the Crown  
M J Dyhrberg QC, N P Chisnall and H B Hellyer for Mr  
Brackenridge

Judgment: 12 July 2019

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**SENTENCING NOTES OF JAGOSE J**

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Solicitors/Counsel:  
Crown Solicitors, Meredith Connell, Auckland  
M J Dyhrberg QC, Auckland  
N P Chisnall, Barrister, Auckland  
H B Hellyer, Barrister, Auckland

[1] Mr Brackenridge, on 7 May 2019, a jury found you guilty of the murder of your mother, Linda Edwards.<sup>1</sup> You also were found guilty of arson and dishonest use of a bankcard.<sup>2</sup> I convicted you then, and gave you a first strike warning. I now sentence you on your convictions.

[2] For your murder conviction, I must sentence you to life imprisonment, unless that would be manifestly unjust.<sup>3</sup> I have considered 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 period of imprisonment (“MPI”) in the range of 11 years. Your counsel, Marie Dyhrberg QC, says life imprisonment in all the circumstances would be manifestly unjust, and recommends you be sentenced instead to a finite term of 11 years’ imprisonment. The Crown says of that, there should still be a minimum period of imprisonment. But I must decide your sentence for myself.

### **Background**

[3] At the time of your offending in November 2016, you suffered from drug-induced schizophrenia. You had stopped using methamphetamine in September 2016, but your psychotic state persisted. It altered your view of your mother and the world. In this state, you travelled from Gisborne to Auckland on 8 November 2016. You went to your mother’s address, a one-bedroom unit in Mt Roskill. That night, the two of you argued, and you became upset. At some point, you strangled your mother, killing her.

[4] You then took her car and bankcard, using the card to make two cash withdrawals – effectively clearing the account – from an ATM. You drove on to a petrol station, and bought cigarettes and a small amount of petrol. You used the petrol to set fire to a sofa inside your mother’s unit. Flames quickly engulfed the unit, rendering it uninhabitable. Ms Edwards’ body was discovered once the fire had been extinguished.

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<sup>1</sup> Crimes Act 1961, s 172. Maximum penalty is life imprisonment.

<sup>2</sup> Sections 267(1)(b) and 228(b) respectively. The maximum term of imprisonment for arson is 14 years. The maximum term of imprisonment for use of a document to pecuniary advantage is seven years.

<sup>3</sup> Sentencing Act 2002, s 102.

[5] The next day, police went to your sister's home nearby, where you were. You walked away when police arrived, but soon returned. After some discussions with police, you were arrested.

[6] There was evidence drawn from your earlier writings and later interviews, around the time of offending, you thought you the 'Sun God' told you your mother was evil, the devil, and lying about your father's identity. You said you felt you had accomplished a mission in killing her, and needed to signal that to the Sun God, which you did by setting fire to her unit.

[7] The key issue at trial was if you were legally insane at the time. The jury's rejection of that defence means I must sentence you on the basis you were capable of understanding what you were doing, and knowing it was morally wrong. I will take your mental health issues into account in sentencing you, but they do not excuse your actions.

### **Personal circumstances**

[8] I have three formal reports to assist me in your sentencing, written over the past few weeks. They are the Department of Corrections' pre-sentence report; a psychiatrist's report under s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and a cultural background report under s 27 of the Sentencing Act 2002.

[9] The reports are comprehensive, careful and consistent. Added to the evidence at trial, they give significant insight into your personal circumstances. In summary, they identify your disjointed and drug-afflicted upbringing, in which your step-father and sisters played parental roles. Your biological father was not in contact with you. You were close with your mother, but that relationship deteriorated as your drug-taking and mental trauma intensified.

[10] You have struggled to find your place in the world. You have a five-year-old daughter, but are estranged from her and her mother; you have a two-year-old son with your current partner, born while you were in custody pending trial. Your offending has put you further away from achieving the more ordinary family life for which you strived.

[11] Your family has been fractured by your offending. While you have some support from your sisters and partner, that is tempered by their loss of Ms Edwards at your hand, and their need for her to have justice. At the same time, they recognise you also have lost someone once close to you, and need to grieve. Your stepfather and brother have severed relations with you, and there is limited wider family support. We have heard the impact of your offending on Mr Edwards – your uncle, Ms Edwards’ brother – with whom you were staying in Gisborne before returning to Auckland to kill your mother. I recognise his, and all your family’s, conflicted emotions..

[12] Shortly after your offending, you were remanded to a psychiatric clinic. Your mental condition responded well to treatment, and your remand continued in prison from February 2017. Maintained by medication, you presently do not require in-patient psychiatric care. Reports of your time in custody generally are good. I have seen your steps to address your physical, intellectual, and spiritual health. I have also read your letters to me today. You appear not to have experienced difficulties while incarcerated. At your own volition, and with your mother’s encouragement and assistance, you ceased using methamphetamine two months prior to your offending. But you still have urges to use illicit drugs. Access to drugs obviously is more difficult in prison, but far from impossible.

[13] You are now 28 years old. You identify as Māori but with little understanding of your cultural identity. You have limited criminal history: a few drug and driving convictions, and three convictions for low-level aggressive behaviour. None is relevant to me now. You have outstanding fines minorly exceeding \$2,200. The psychiatrist assesses your schizophrenia currently to be in sustained remission. You are assessed as presenting low risk of harm to the public, but high risk to people close to you, if returning to drug use or your schizophrenia becomes uncontrolled. Subject to that, you present low risk of re-offending.

[14] You appear stable, and accepting of your inevitable longer-term imprisonment. You hope to engage in rehabilitative and educational programmes, for your drug addiction and mental health, as well as in exploration of tikanga and spiritual dimensions. You are said to have a positive outlook for the future, with goals to achieve. You have found faith while in prison.

## Approach to sentencing

[15] I now turn to the exercise of constructing your sentence. Your murder conviction will be the lead charge for sentencing purposes; I will treat your other convictions as aggravating your culpability, to impose concurrent sentences for them.

[16] I must have regard for the statutory purposes and principles of sentencing.<sup>4</sup> 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. The sentence is to be the “least restrictive” appropriate in the circumstances, consistent with appropriate sentencing levels.

[17] The causative effect of your mental health on your offending means deterring you or others has less prominence in your sentencing. It remains a relevant consideration, as potentially affecting your risk of re-offending.<sup>5</sup> But deterrence of others does not have “*major* impact” in decisions about life imprisonment for murder.<sup>6</sup>

[18] As I said earlier, murder attracts a sentence of life imprisonment, unless manifestly unjust.<sup>7</sup> If so sentencing, I must impose a MPI of at least ten years.<sup>8</sup> In particularly serious cases, the MPI must be at least 17 years (unless manifestly unjust).<sup>9</sup> I agree with counsel that higher threshold is not engaged here.<sup>10</sup>

[19] Where counsel disagree is if you should be sentenced to life imprisonment. Ms Dyhrberg argues such would be manifestly unjust in all the circumstances. I move to consider that question now.

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<sup>4</sup> Sentencing Act 2002, ss 7 and 8.

<sup>5</sup> *E (CA689/10) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [69].

<sup>6</sup> *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775 at [93] (original emphasis). See also *E (CA689/2010) v R*, above n 5, at [68]–[70]. The Court of Appeal held whether general or specific deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender and the effect of the condition on the mental capacity of the offender.

<sup>7</sup> Sentencing Act 2002, s 102.

<sup>8</sup> Section 103.

<sup>9</sup> Section 104.

<sup>10</sup> The murder was not committed in the course of the arson; the murder lacked the requisite “high level”.

## Life imprisonment?

[20] A departure from life imprisonment must be justified by the circumstances of your murder of your mother *and* your own circumstances.<sup>11</sup> I must make an overall assessment of that justification, in light of sentencing's purposes and principles.<sup>12</sup> The necessary injustice must be clear; life imprisonment is only to be displaced in exceptional cases.<sup>13</sup> The Court of Appeal has noted:<sup>14</sup>

There may be cases where the circumstances of a murder may not be so warranting denunciation and the mental or intellectual impairment of the offender may be so mitigating of moral culpability that, absent issues of future risk to public safety, it would be manifestly unjust to impose a sentence of life imprisonment.

Where there is risk to others, a life sentence may be necessary, even if manifestly unjust in individual circumstances.<sup>15</sup>

[21] Nothing about the circumstances of your mother's murder – your state of mind aside – warrants a departure from life imprisonment. You strangled her to death. There was some premeditation (even in your delusional state). You set fire to her home, with her body inside. There was an immediate risk to neighbours. The extent of harm, while inherent in all murders, is significant. Your offending has had a divisive effect on your family; you deprived your siblings and wider family of their mother, sister, and friend.

[22] Ms Dyhrberg relies on your then-psychotic state of mind to argue life imprisonment would be manifestly unjust. She says what occurred was highly circumstantial and connected to your acute mental illness; a compassionate response is merited. But such a merciful sentence may not be appropriate where mental illness has contributed to the offending.<sup>16</sup> And the Crown says your case is not like those envisaged by Parliament to justify departure from life imprisonment, where murder is the incidental result of exceptional influences.<sup>17</sup>

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<sup>11</sup> *R v Rapira* [2003] 3 NZLR 794 (CA) at [121]; and *R v Cunnard* [2014] NZCA 138 at [33].

<sup>12</sup> *R v Rapira*, above n 11, at [121].

<sup>13</sup> At [121].

<sup>14</sup> *R v O'Brien* (2003) 20 CRNZ 572 (CA) at 581–582.

<sup>15</sup> *R v Wihongi*, above n 6, at [90]. See also *R v Mikaele* HC Auckland TO13638, 30 August 2002; and *R v Abraham* (1993) 10 CRNZ 446 (CA) at 449.

<sup>16</sup> *R v Wright* [2001] 3 NZLR 22 (CA) at [22].

<sup>17</sup> *R v Wihongi*, above n 6, at [72], citing the Select Committee Report of the Bill which led to the provision.

[23] 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>18</sup> Still, the presumption will only be departed from in “exceptional” and “rare” cases.<sup>19</sup> Such include an elderly man’s ‘mercy’ killing of his demented wife,<sup>20</sup> or a mentally-impaired defendant killing their abuser.<sup>21</sup> Your circumstances are not of those cases.

[24] Sentencing for offending induced by mental illness is difficult.<sup>22</sup> Your mental disorder was – at least in part – causative of your offending. The psychiatrist says, but for your psychotic symptoms and associated emotional arousal, it was unlikely you would have murdered Ms Edwards. Ms Dyhrberg says it caused you “to carve out an exception to [your] understanding of moral wrongfulness”. From that perspective, she says you “essentially killed [your] mother by accident”. I cannot accept either proposition, because the jury’s verdicts mean you intended to kill her, knowing that was wrong. Your mental disorder, while falling short of exculpatory insanity, mitigates your culpability.<sup>23</sup> But it does not displace the presumption of life imprisonment.

[25] Ms Dyhrberg says your offending is virtually indistinguishable from that of the defendant in *R v Reid*.<sup>24</sup> I accept there are significant similarities. There, the defendant was in the grip of a major psychiatric illness when he “snapped” and killed his neighbour. He arranged her body to appear she died of natural causes. The offending only came to light with his later confession and attempted suicide. He did not go to his neighbour with the intention of killing her, and the attack was entirely out of character. But for his illness, he would not have killed the victim. A finite sentence of 10 years’ imprisonment was imposed. But your offending was premeditated, albeit affected by your serious delusions. And the Crown says the “predominant cause” of your mental disorder was your own chronic methamphetamine and cannabis consumption.

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<sup>18</sup> *R v Cunnard*, above n 11, at [15].

<sup>19</sup> *R v Rapira*, above n 11, at [121]; *R v Wihongi*, above n 6, at [93]; *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [55].

<sup>20</sup> *R v Law* (2002) 19 CRNZ 500 (HC).

<sup>21</sup> *R v Wihongi*, above n 6. See also *R v Rihia* [2012] NZHC 2720.

<sup>22</sup> *R v Tapueluelu* CA 172/99, 29 July 1999 at [15].

<sup>23</sup> *E (CA689/10) v R*, above n 5, at [68].

<sup>24</sup> *R v Reid* HC Auckland CRI-2008-090-2203, 4 February 2011.

[26] I am not prepared to distinguish your offending from that in *Reid* on the basis your condition was a consequence of drug use. As I explained in my reasons for ruling you had a ‘disease of the mind’:<sup>25</sup>

While scientific research into its precise and complete aetiology is incomplete and indeterminate, genetic predisposition to schizophrenia is a necessary (but insufficient) condition for its occurrence.

Significant use of high potency cannabis derivatives and/or methamphetamine can produce permanent changes in a person’s brain which lead to schizophrenia. New Zealand Ministry of Health data suggest such use probably increases the rate of schizophrenia in those genetically predisposed to its onset. The rate of schizophrenia among such users of either cannabis or methamphetamine is five or six times the rate among non-users. The rate doubles again for significant users of both drugs. As such, schizophrenia can be drug-induced in the genetically predisposed.

No methamphetamine was detected in your body around the time of your offending, and your psychotic disorder had a life of its own, regardless of its origin. Still, in *Reid*, the defendant “was no longer a risk to [himself] and others”.<sup>26</sup> While his health issues required long-term care and control, the offending was characterised as being “against [his] entire life pattern”.

[27] The same cannot be said for you. Your criminal history is minimal, but you have a long history with drug usage and its consequences. Your risk profile hinges on your drug use. The psychiatrist considers, in psychosis, you pose a high risk of violent offences of similar magnitude. I am not prepared to discount that risk, despite your willingness to address your addiction and corresponding mental health issues. Your willingness, for which I commend you, nonetheless has been within the confines and controls of prison. Your drug-use urge remains. Others suffering from schizophrenia at the time of offending have been sentenced to life imprisonment, even when their illness has improved with treatment.<sup>27</sup> There is nothing in your case making life imprisonment “disproportionately severe”.<sup>28</sup>

[28] 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

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<sup>25</sup> *R v Brackenridge* [2019] NZHC 1004 at [2].

<sup>26</sup> At [12].

<sup>27</sup> *R v Yad-Elohim* [2018] NZHC 2494; and *R v Morris* [2012] NZHC 616.

<sup>28</sup> Sentencing Act 2002, s 8(h).

recognition of the sanctity of human life and its condemnation of anybody who wrongfully takes another life”.<sup>29</sup> The circumstances of your mother’s murder and your mental disorder do not mitigate your moral culpability so far as to displace the presumption of life imprisonment on your conviction for murder.

### **Minimum period of imprisonment?**

[29] Given you are to be sentenced to life imprisonment, I must now determine the appropriate MPI. It must be for at least ten years, and then for the minimum term necessary for those same initial purposes I explained: to hold you accountable for the harm caused; denounce your conduct; and protect the community from you.<sup>30</sup>

[30] In setting the appropriate term, I must first compare your culpability with cases of murder attracting that period of imprisonment.<sup>31</sup> I must then assess if some additional period is needed to achieve the purposes just mentioned, consistently with other cases.<sup>32</sup>

[31] Your culpability is elevated beyond the ten-year murder baseline by your arson and bankcard convictions. Your conduct in that overall offending, which I already have described, was callous and of widespread impact. I discount any further increase for your premeditation by its delusional foundation. Comparable case law suggests a term of about 13 years’ imprisonment is warranted.<sup>33</sup>

[32] The aggravating features of your offending are all tempered by your then-operative state of mind. Your drug-induced schizophrenia is a mitigating factor. It moderates your culpability.<sup>34</sup> But your personal deterrence also is involved here, which may not be present where a causative illness has wholly organic origins.

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<sup>29</sup> *R v Cunnard*, above n 11, at [16].

<sup>30</sup> Sentencing Act 2002, s 103(2).

<sup>31</sup> *R v Williams* [2005] 2 NZLR 506 (CA) at [49], citing *R v Howse* [2003] 3 NZLR 767 at [63]–[64].

<sup>32</sup> *R v Williams*, above n 31, at [49]; and *Robertson v R* [2016] NZCA 99 at [80].

<sup>33</sup> *R v Bennett* HC Auckland CRI-2009-292-2198, 23 July 2010 at [23]; *R v Harmer* HC Christchurch T46/01, 25 September 2002; and *R v McKee* HC Christchurch CRI-2007-009-17060, 7 August 2008.

<sup>34</sup> Reflecting “the principle that general criminal liability is founded on conduct performed rationally by one who exercises a willed choice to offend”: *E (CA689/10) v R*, above n 5, at [68].

[33] In other cases involving mental illness of causative effect, discounts of up to 30 per cent have been given to reflect a defendant's personal circumstances.<sup>35</sup> On balance, I consider a discount of about 20 per cent is warranted here. This accounts for the strong causative link between your illness and your offending, and your present receptiveness to medication and treatment,<sup>36</sup> while recognising the self-induced aspect of your illness. Your MPI then would be for ten years and six months.

[34] A further discount is available for your remorse. The psychiatrist says you did not express any to him, but you did to the pre-sentence report writer, and – perhaps most significantly – your own comments recorded in the cultural report indicate you both understand and have genuine remorse. Your desire to reconcile with your family is accompanied by your understanding why their support presently is constrained, and you accept responsibility for that. I will apply a five per cent, or six-month, discount.

[35] That brings your MPI to ten years, which happens to be the statutory minimum. But I am satisfied, in all the circumstances, sentencing's purposes are met in your case by a minimum period of ten years' imprisonment. It will be for the Parole Board then to determine if and when you may safely be released into the community. If released, you will remain subject to your life sentence, and subject to recall.

## **Sentence**

[36] Mr Brackenridge, please stand:

- (a) on the charge of murder of Linda Edwards, I sentence you to life imprisonment, with a minimum term of 10 years' imprisonment;

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<sup>35</sup> *R v Gottmeyer* [2014] NZCA 205 (the Court applied a 20 per cent discount in light of the defendant's psychiatric problems; s 104(1)(e) was engaged); *R v Tu* [2016] NZHC 1780 (Whata J applied a discount of 30 per cent in light of the defendant's personal circumstances, largely referring to his mental illness); *R v Tait* HC Tauranga CRI 2010-070-005571, 16 September 2011 (the defendant suffered from Obsessive Compulsive Personality Disorder which was the root cause of the offending; Priestley J deducted 2 years from a starting minimum term of 12 years); and *R v Morris*, above n 27 (despite a term of 17 years being warranted, a minimum period of 10 years' imprisonment was imposed – the defendant had paranoid schizophrenia and still required in-patient psychiatric care).

<sup>36</sup> *Cf*, *R v Lucas-Edmonds* [2009] NZCA 193, [2009] 2 NZLR 493; and *Ratray v Police* [2014] NZHC 663.

- (b) on the charge of arson, I sentence you to three years and six months' imprisonment,<sup>37</sup> to be served concurrently with the previous sentence;
- (c) on the charge of dishonestly using a document, I sentence you to three months' imprisonment, also to be served concurrently; and
- (d) I remit your outstanding fines.

You may stand down.

—Jagose J

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<sup>37</sup> Applying the same discounts to the five-year starting point in *Howarth v R* [2010] NZCA 523 at [49]–[54], where the offender set fire to his ex-partner's home after dousing it with petrol.