

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2018-063-004251
[2019] NZHC 2214**

THE QUEEN

v

MICHAEL EDWARD DOUTHETT

Hearing: 29 August 2019

Appearances: A Gordon and G Banuelos for the Crown
M Simpkins for the Defendant

Sentence: 29 August 2019

SENTENCING NOTES OF HINTON J

Solicitors:
Gordon Pilditch, Rotorua
Lance Lawson, Rotorua

[1] Mr Douthett, you have pleaded guilty to one charge of murder¹ and one charge of dangerous driving.²

[2] The events are tragic – you murdered your wife, Patricia Wallis, on 26 November 2018 and then set out, but failed, to kill yourself. As well as wiping out your wife’s life, you have inflicted immeasurable pain on your family and wider community. Your close friends and your family, including your four children, are all still very supportive of you. Trish’s sisters and close friends, quite understandably, are not.

[3] I wish to acknowledge, as counsel have, the presence in Court today of so many family members and friends, and to extend the Court’s greatest sympathy to you all. This is a very, very difficult time. It is a horrible thing that has happened.

Facts

[4] You and Trish were married for 20 years. In early 2018, you separated, and Trish moved out of the family farmhouse in Ngakuru. She was a passionate farmer and horse-rider, and returned to the farm three to four times a week to work with Jenny Edwards, running the farm. Before her death, you were in the process of dividing the relationship property. There was a tension around what was to happen to the farm.

[5] At 6.00 am on 26 November 2018, you were sitting at the dining-room table at home with a cup of coffee. Trish arrived at the house, put her gumboots on, and headed down to the milking shed to work.

[6] At around 6.30 am, your then-17-year-old son, Mark, left the house. After he left, you had a shower, got dressed, and took out a .22 bolt action rifle from the wardrobe. You loaded it with ammunition from a tin on the dresser and hid the rifle beneath the blankets on the bed.

¹ Crimes Act 1961, s 167(a).

² Land Transport Act 1998, s 35(1)(b).

[7] You returned to the kitchen and made another cup of coffee. Trish returned from the milking shed and went into the office. You then got up from the table, retrieved the gun from the bedroom, and walked down the hallway to the office.

[8] Trish was sitting in the office. You aimed and fired two shots from the rifle at her head.

[9] You then dropped the gun in the hallway and immediately called the Police, telling them: "I have murdered my wife, I shot her". You then abandoned the call, left the house, got into your car and drove towards Rotorua.

[10] On this drive, you attempted suicide twice. On State Highway 30, you drove your vehicle into the path of a 17-tonne logging truck. The truck driver managed to stop without losing control of the vehicle, blowing three tyres and incurring further damage to the vehicle in the process. No one was hurt, thanks to his quick actions. You abandoned your car on the side of the road and proceeded to walk to Rotorua. When you saw another truck approaching, you lay on the road in front of it, but again, the truck braked heavily and avoided you. A short while later, you were picked up on the road by someone you knew, and you asked to be dropped at the Rotorua Police Station.

[11] When you arrived at the Station, you advised the Police that you had killed your wife. When asked why, you told the Police you were struggling with the sale of the farm and your wife "kept throwing a spanner in the works". You said that it got too much and that is why you shot her.

Victim Impact Statements

[12] I have received six victim impact statements from Trish's two sisters, a close friend/farm employee, and three other close friends. Your lawyer, Mr Simpkins, has filed a further 22 letters from your friends and family, including your four children, which I will address further on.

[13] I have read all of the statements very carefully. Barbara and Rosie Wallis have read out their victim impact statements in Court this morning and I thank them for that.

[14] They both write about how concerned they were about your relationship with Trish. Barbara writes that you were controlling and says that she was concerned that you would kill her sister. Rosie says that Trish wanted to leave you for several years and became a much happier, lighter person after the separation.

[15] The four further victim impact statements are from close friends of Ms Wallis: Jenny Edwards, Nikki Steens, Linda McBride and Judy Clifton. They write about how dedicated Trish was to her children, her horses and her farm; what a great person she was and how much they miss her. They all mention, to varying degrees, how Trish changed and became a new person after her separation. Ms Steens said she had conversations with Trish about her safety after the separation, but she was nonetheless shocked by what happened.

[16] The victim impact statements show that, although Trish was the primary victim of your actions, your offending had much wider effects, as it always does – but particularly so in a case such as this. They write about Trish and your two sons and grandchild, and the devastating effect that Trish's death has on them. Jenny Edwards and Barbara Wallis have had to step up and run the farm on their own. Barbara is now having panic attacks. Rosie's 11-year-old son is suffering from extreme anxiety, which has manifested itself in violent outbursts and huge dents in his confidence. Trish's friends all say they are devastated and are struggling to move on.

[17] Both sisters also write about the impact of Trish's death on their father. He is recovering from a heart attack and Trish was a big support for him. He has been hospitalised for health issues relating to stress and anxiety and has become increasingly frail. He is scared that another of his daughters might die.

[18] I should add that Trish and you purchased the farm from her parents. It was their family farm before it was yours, which of course adds materially to the impact

on the Wallis family. You have killed your wife in the home she and her sisters grew up in.

Personal circumstances

[19] You are 57 years old. You have been self-employed for your whole adult life. For the past 18 years, Trish and you have been running the dairy farm on Waikite Valley Road.

[20] You have four adult children (two from a previous marriage), and three grandchildren. Those supporting you have described you as a “family man”. They say your family is a close, tight-knit unit and family means everything to you.

[21] Mr Simpkins, as I said before, has presented 22 letters to the Court written by your close friends and your family. This includes letters in support of you from your four children. I have also read all of these letters carefully. They refer to the grief of Trish dying. They also present an account of you as a much loved and respected member of your family and community, and they say your conduct was wholly out of character. They all, including your children and your own family, describe you as a supportive and loving man. Trish’s murder has come as a complete shock to them. They are devastated, but supportive of you. Many of them say they believe you are mentally unwell and they hope for your recovery.

[22] There is strong evidence before the Court that you have struggled with mental illness. Most relevantly, four psychiatrists’ reports have been filed, to which I return. Three of these were obtained by the Court and one by your lawyer.

[23] You were first diagnosed with depression 25 years ago. You have had treatment for it in the past. An appointment had been scheduled for the day after the murder. You have said that you were feeling “suicidal and depressed” that week in particular, saying that the pressures of the separation, the farm and its preparation for sale were all triggers. This is corroborated by evidence from your family, who say that over the months prior to Trish’s death, you lost weight, became increasingly anxious and agitated, and were hardly sleeping. They say your depression escalated until it was out of control.

[24] Your younger son, Mark, writes:

I will never understand what happened to my father the morning he took my mother's life. I just know my Dad and know he is not capable of doing this. Obviously his mental health had got to a stage where he was no longer in control of his own actions. ... These last nine months have been unbelievably hard. First, the death of my mother, along with my father going to prison and being witness to the seriousness of this mental state. Dad will never get over what he has done. He is horrified and hates himself. He can't believe we all still love him and support him. We do this because we know if he hadn't been mentally ill, this would have never happened. I love my Mum and am devastated she is no longer here. I also love my Dad, I have lost both of them.

[25] Your sister, Fiona, and her husband, have written about the night of 22 November, where you stayed at their house after celebrating your birthday. The next morning, you told them that you needed help as you were in a bad headspace and were hearing voices in your head. You also say that at the time of the offending you heard voices telling you to "hurry up and get it done". Prior to the murder, you were suicidal. After the murder, you were clearly suicidal.

[26] Your daughter, Nicole, says:

... Michael is my father and Trish has been my step-mum since I was a baby. I lived with Dad and Trish in our family home in Ngakuru from the age of 12 until about 20 years old and I had a very close relationship with both of them.

We had a happy home life for the most part. Trish and Dad got on well and spent their downtime enjoying their hobbies – horses for Trish and fishing for Dad. However, as a teenager, I became concerned about the mental health of both of my parents. ... [I thought] they were struggling to cope with the stress of the farm and the uncertainty of what their future looked like.

... For the past six years I have lived in Melbourne and regularly spoke to Dad and Trish on the phone and we would see each other two or three times a year. In the year leading up to the 26th of November, I would be in tears after talking to my Dad on the phone as I could tell his mental health was deteriorating. He would never want to worry anyone with his burdens, but I could hear the anxiety and sadness in his voice. Depression is a debilitating disease and I knew my Dad was losing the battle he had fought for so long.

... My Dad is a loving and caring man, who could do anything for anyone. I know without a shred of a doubt that if he was of sound mind, this could not and would not have happened. It was only after I found out what had happened that I became aware he had asked for professional help because he couldn't stop the voices in his head. Unfortunately his appointment was a day too late. I regret I didn't get him the help he needed.

...

[27] After the offending, you were taken to the Intervention Support Unit at Waikeria Prison and later moved to Waikato Hospital's unit for people with acute mental illnesses, the Henry Rongomai Bennett Centre. You have since been on medication, but you were not on any at the time of the offending. Your family continue to visit you regularly.

[28] You have no history of physical violence.

[29] There is no question but that Trish "did nothing" to make this happen. Your behaviour was unprovoked.

[30] You only have one minor conviction relating to a commercial vehicle infringement in 1986. As such, I will treat you as a first offender.

Sentencing – purposes and principles

[31] In sentencing you today, I have to consider the purposes and principles set out in the Sentencing Act 2002.

[32] The purposes of sentencing which are particularly relevant here are the need to hold you accountable for your offending, to promote a sense of responsibility for, and acknowledgment of, the harm you have done, to denounce your conduct, and to assist in your rehabilitation.³ The pre-sentencing report notes that you are at a very low risk of reoffending.

[33] In respect of the principles of sentencing, I consider it is of particular importance to take into account the gravity of your offending, including your level of culpability. I have also taken into account the general desirability of consistency of sentencing levels with similar offenders, and I must also consider the effect on Trish's immediate family and close friends, who are also victims in this matter.

[34] You are aware already, Mr Douthett, that I must sentence you to life imprisonment, unless it would be manifestly unjust to do so.⁴ In this case, both

³ Sentencing Act 2002, ss 7(1)(a), (c), (e) and (i).

⁴ Section 102(1).

counsel accept that a sentence of life imprisonment is appropriate. I agree – you should be sentenced to life imprisonment. That is the important part of this case. There are not circumstances that would make it manifestly unjust for you not to serve life imprisonment.

[35] The further question is whether the statutory minimum period of imprisonment of 10 years should apply, or whether I should impose something higher.⁵ Counsel agree that s 104 of the Sentencing Act, which applies to particularly brutal murders, is not engaged.

[36] A “minimum period of imprisonment” (MPI) refers to the minimum period for which you *must* remain in prison before you can apply for parole. Whether you are then released is a decision for the Parole Board, who will determine at the relevant time whether you still remain a risk to the community. There is no guarantee, even after the MPI, that you will be granted parole. If and when you are, you will be subject to parole conditions for the rest of your life. If you were to breach them or reoffend, you would return to prison and continue to serve a sentence of life imprisonment.

[37] Counsel have referred to a number of cases involving murder, where offenders have killed their partners at the end of their relationship. These cases are set out in the written submissions that I have received. In these cases, minimum periods of imprisonment have tended to range between 10 and 13 years.⁶

[38] A material feature in this case is the impact of your mental illness. Both counsel have acknowledged this. However, they disagree on how your mental illness should be taken into account. Mr Simpkins submits that your mental illness should justify a reduction in the starting point of the MPI. He submits that your moral culpability is significantly reduced because your actions were a direct result of your mental illness, relying on the Court of Appeal decision in *Shailer v R* and the decision of the Victorian Court of Appeal in *Verdins*.⁷ He contends that a final MPI of 10 years

⁵ Section 103(1) and (2).

⁶ *R v Schofield* [2015] NZHC 2109; *R v Wallace* [2018] NZHC 3289; *R v Fennell* HC Wellington CRI-2007-085-238, 13 June 2008; *R v Meads* HC Hamilton CRI-2009-019-8828, 31 March 2011; and *R v Johnston* [2012] NZHC 387.

⁷ *Shailer v R* [2017] NZCA 38 at [44]-[45]; and *Verdins v R* (2009) 16 VR 269 (VCA) at [32].

is appropriate. Ms Gordon, for the Crown, submits that your acute depression should not reduce your moral culpability for the murder, but should be taken into account as a mitigating factor that reduces the MPI. Her suggested final MPI is around 11 to 13 years.

[39] I consider that in this case your mental illness was causative of your offending. I realise the situation is more complex than that, noting particularly Trish's sisters' statements. But I consider, as Mark and others have said, that without your mental illness, you would not have killed Trish. Your mental illness in no way excuses your offending, but it should be taken into account in assessing the MPI, rather than be taken into account in mitigation.

[40] I agree with Ms Gordon that, in this particular context, there may not be a great deal of difference. I note that in *R v Johnston*, a case to which I refer shortly, Clifford J took an approach in the round.⁸

[41] Mr Simpkins relies heavily on the psychiatrist Dr Chaplow's suggestion that you were in what he called "a dissociated state" immediately prior to the shooting. "Dissociation" explains a state where a person's actions are detached from their emotions, or detached from reality. Dr Chaplow says this would account for any gaps in your memory of that morning and reduce your moral culpability. The Crown is sceptical about Dr Chaplow's suggestion that you had periods of dissociation during your offending, and so am I. Your offending was premeditated and you immediately called the Police to tell them what you had done. The fact you gave an interview the day of the shooting outlining what happened in clear detail, also undermines the credibility of Dr Chaplow's finding that you dissociated sometime before killing your wife.

[42] However, there remains as I have already said, strong evidence from a number of medical experts that your mental illness affected your offending, even if you were not in a state of dissociation. All medical experts considered that you suffered from what they refer to as a Major Depressive Disorder, with Dr Dean and one other also suggesting you exhibited features of psychosis. Dr Kumar concludes that there were

⁸ *R v Johnston* [2012] NZHC 387.

many active signs and symptoms that were consistent with a diagnosis of Major Depressive Disorder. He says that you also posed a serious risk to your own health and safety. Dr Zeist-Jongman, in his report dated 9 April 2019, considers that you were “clearly influenced by [your] mental state at the time”.

[43] You say, as I have already referred to, that you heard voices inside your head. Mr and Mrs Palmer also recall that you told them about the voices in your head on the morning of 23 November 2018.

[44] Your mental illness did more than form the backdrop for your offending; it was a root cause of your conduct.⁹

[45] A very similar case to this case, in my view, is *R v Johnston*.¹⁰ Mr Johnston shot his wife after she told him she planned to divorce him. Mr Johnston was suicidal and depressed, though not to the extent to which you have been assessed by the psychiatrists here. Like you, he also attempted suicide following the murder of his wife. The central discussion of mental illness in that case concerned whether it rendered a sentence of life imprisonment manifestly unjust. Clifford J did not think Mr Johnston’s mental health was significant enough to actually rebut the presumption of life imprisonment, and I obviously have not either. But he imposed an MPI of 10 years in that case.

[46] In my view, your mental illness and its causative effect were greater than in *Johnston*.

[47] I note a tension that often arises in these cases – that mental health may reduce an offender’s moral culpability, but also increase the danger they pose to the community – is not a significant issue in this case. The evidence before the Court suggests there is little risk of reoffending.

[48] I have considered the relevant aggravating and mitigating factors to which counsel have referred. Your offending was violent and somewhat premeditated. You

⁹ *DPP v Moore* (2009) VSCA 264 at [51].

¹⁰ *R v Johnston* [2012] NZHC 387.

used a lethal weapon against a vulnerable victim who was unable to defend herself. But there are also relevant mitigating factors. This is your first serious conviction and your actions appear to be out of character. You have taken full responsibility for your actions, entered a guilty plea, and show remorse. The dangerous driving charges must also be taken into account in the overall sentence.

[49] To conclude, I consider that the starting point is a 10-year minimum period of imprisonment.

[50] The impact of your dangerous driving charges, mitigating and aggravating factors cancel each other out. That also appears to have been the approach of Clifford J in *Johnston*.

[51] I therefore reach a final minimum period of imprisonment of 10 years.

Sentence

[52] Mr Douthett, please stand, while I formally sentence you.

[53] Mr Douthett, for the murder of Patricia Wallis, I sentence you to life imprisonment with a 10-year minimum period of imprisonment.

[54] Although it is academic, I must also disqualify you from driving on the dangerous driving charge for six months.

[55] I must also order you to pay reparation for damage to the logging truck of \$22,258.83.

[56] Stand down please.

Hinton J