

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CRI-2017-009-8217
[2019] NZHC 1366**

THE QUEEN

v

**KASHA WILLIAM GOSSET
CODY DEREK MARTIN**

Hearing: 17 June 2019

Appearances: P Currie and S Mallett for Crown
J Rapley QC and K Cook for Defendant Gosset
K Beaton and J Lucas for Defendant Martin

Judgment: 17 June 2019

SENTENCING REMARKS OF MANDER J

[1] Mr Martin and Mr Gosset, you are for sentence this morning having each been found guilty by a jury of the murder of Bradley Lomax. You are also for sentence on various firearms and drugs charges.

Facts

[2] On the evening of 4 September 2017, both of you met Mr Lomax at a local cemetery on the pretext of some common endeavour relating to drugs – and, indeed, it was a pretext. In fact, you were armed with firearms and intended him harm. It appears both of you bore him some grudge as a result of your perceived treatment by him of his partner, although, both of you and Mr Lomax were involved in dealing in

methamphetamine. It cannot be discounted that the subsequent killing of Mr Lomax was also drug-related.

[3] You drove Mr Lomax to an isolated location adjacent to the Waimakariri River. You, Mr Martin, told the police that the purpose of this trip was to give Mr Lomax a “rark up”. However, you specifically armed yourself with a loaded shotgun prior to this trip, which you hid from Mr Lomax in the vehicle, but was immediately accessible to you. By your own admission, you were the first to shoot him with that weapon after Mr Lomax exited the vehicle. Your claim that the shotgun went off accidentally was established at trial to be demonstrably false.

[4] You, Mr Gosset, admitted to the police that you knew it would be a “one-way trip” for Mr Lomax, and that it was you who identified the secluded place where he would be killed. Mr Martin, you told police that immediately prior to embarking on this mission Mr Gosset said in your presence that he was going to kill Mr Lomax. You knew Mr Gosset was unpredictable and erratic and I reject your claim that you did not know what was going to happen to Mr Lomax that night or that you thought Mr [Gosset] was joking.

[5] Apart from the first shot to Mr Lomax’s knee, it is not clear on the available evidence who fired the other shots, or in what order. You, Mr Martin, were armed with the loaded sawn-off double-barrelled shotgun and knew Mr Gosset was carrying a cutdown semi-automatic .22 rifle. Mr Lomax, of course, was unarmed. A second shotgun blast was inflicted to Mr Lomax’s chest. At some stage the shotgun must have been reloaded because Mr Lomax was shot with that weapon from close range while he was lying on the ground. Each of those shots struck him in his eyes and caused his death. There was also evidence that Mr Lomax suffered wounds to his head from a .22 firearm and that such a weapon was repeatedly fired at him.

[6] The Crown did not set out to prove, nor was it able to prove, who the principal offender was in terms of who administered the final and immediately fatal shots to Mr Lomax’s face. Each of you blame the other for causing those wounds, but that aspect of the murder is not critical in determining your culpability for this killing which you both share.

[7] I am satisfied that Mr Lomax was effectively executed that night, and I am also satisfied that this was the result of your shared plan to transport him to an isolated location for the purpose of killing him. Both of you admit to being under the influence of methamphetamine at the time, and your lethal intentions are consistent with being so affected. That, of course, provides no mitigation for your actions.¹ You will be sentenced on the basis of your equal participation in and responsibility for Mr Lomax's murder, to which both of you were a party.

[8] After killing Mr Lomax, you left his body at the riverbed. You attempted to retrieve the shell casings from the immediate area and took Mr Lomax's cell phone which you later discarded. Mr Martin, you retained the shotgun used to kill Mr Lomax, which was later found in your possession by the police at the time of your arrest.

Victim impact statements

[9] I have received five victim impact statements, three of which were read aloud in Court this morning. Mr Lomax was a much loved father, son, grandson and brother. His family must live with the loss of their loved one forever. The nature and circumstances of his death have understandably been a particularly difficult burden for them to bear.

[10] There is nothing I can add to their words of grief and anger for the loss that they must endure to emphasise the incalculable hurt you have caused, other than to acknowledge the deep impact your offending has had upon them and to recognise their personal loss and anguish. You need to reflect deeply on the truthful words that have been spoken directly to you by Mr Lomax's family this morning.

Personal circumstances

[11] Mr Martin, you are aged 32 years. You were engaged for some years in an underworld lifestyle marked by dealing in drugs and the possession of firearms. At the time of this offending you were a heavy methamphetamine user. You have

¹ Sentencing Act 2002, s 9(3).

previous convictions that include possession of offensive weapons and firearms, dealing in drugs, violence, and threatening behaviour. From that criminal background, as with Mr Gosset, there is almost a certain inevitability about you having now committed murder.

[12] You are the father of two children, however, your domestic situation has been turbulent, and has been marked by a number of violent incidents. No doubt that has been aggravated by your long-term involvement with methamphetamine. You left school at an early age and had a variety of jobs, although any long-term employment prospects have been interrupted by periods of incarceration or electronically monitored sentences.

[13] Mr Gosset, you are aged 37 years. You, too, have led a lifestyle dominated by the use of methamphetamine. You have a significant list of previous convictions. The most notable and disturbing is for attempted murder using a firearm that was entered in November 2009 for which you were sentenced to six and a half years' imprisonment. You have the support of your partner with whom you have two children. Despite this and the prosocial support of your parents, you have preferred a lifestyle of dealing and abusing methamphetamine. Your likelihood of reoffending is assessed as high.

[14] You advised the pre-sentence report writer that prior to the current offending you had lapsed into daily methamphetamine use and were dealing in the drug to fund your habit. You claimed that this drug use exacted a heavy toll on your mental health. You have previously given evidence of having, as a 17-year-old, been admitted to Hillmorton Hospital and being diagnosed with a bipolar disorder and suffering drug-induced psychosis. Your mother has confirmed that you have a mental health condition that is aggravated by drug abuse.

[15] I do not dispute the information you have provided regarding your mental health history, and in particular your bipolar condition, but I have been provided with no medical evidence or reports as to how your mental health affected your functioning on the night of the murder. While mental health can be a relevant factor reducing culpability, in the absence of you being prepared to take responsibility for your

involvement in Mr Lomax's murder, for which you solely blame Mr Martin, it can be of negligible relevance. Nor, have I been provided with any information which would indicate that a sentence of imprisonment would be disproportionately severe for you and which might otherwise justify some reduction.

Life imprisonment and minimum period

[16] There is no dispute that I must impose on each of you a sentence of life imprisonment. The only question that arises is the length of the minimum period of imprisonment (MPI) that should accompany that sentence. The minimum period is the term you must serve before you can be eligible for consideration for parole. It does not fix the term of your sentence which, as I have said, will be one of life imprisonment.

[17] In undertaking the task of determining how long the minimum term should be, I am required to compare your culpability with cases of murder that attract a normal statutory minimum term of 10 years, and which serves as a benchmark for the sentencing exercise. Taking into account aggravating and mitigating factors, I am required to decide whether and what additional minimum period of imprisonment is required to satisfy the sentencing purposes of accountability, denunciation, deterrence and community protection.²

[18] In following that process, I must give effect to the legislative policy of the Sentencing Act. This includes consideration of whether a minimum term of at least 17 years should be imposed.³ A minimum term of at least that length is required where the murder is especially bad. That will be the case where one or more of the factors set out in the Sentencing Act is present. The Crown submits that your offending should attract a starting minimum term of 17 years because the murder was committed with a high level of brutality, cruelty, depravity, or callousness, and because it involved calculated or lengthy planning.⁴

² Sentencing Act 2002, s 103(2); *R v Williams* [2005] 2 NZLR 506 (CA) at [49].

³ Sentencing Act 2002, s 104; *R v Robertson* [2016] NZCA 99.

⁴ Sentencing Act 2002, s 104(1)(b) and (e).

[19] I accept the Crown's description in its written submissions that the killing involved an element of planning and premeditation. This was an execution-style killing. That feature constitutes a significant aggravating factor. Both of you participated in a joint enterprise to achieve that objective. That was the reason Mr Lomax was taken at night to the secluded riverbed location where he was ultimately despatched. However, I am unsure as to whether those circumstances are sufficient to fall into the category of case contemplated by the legislation as involving calculated and lengthy planning as opposed to amounting to a premeditated murder.

[20] The Crown also emphasises the nature of the killing, which I accept must have been carried out in cold blood. It was undoubtedly a cruel and callous murder. Mr Lomax was shot once in the knee, which caused him to be incapacitated, before likely being shot in the chest. Neither wound would have killed him instantly. Yet, while lying on the ground incapacitated and unable to defend himself, it appears the shotgun was reloaded (as it must have been at some stage), and he was shot in the face twice from close range. During this time, he was also wounded in the head as a result of a succession of shots fired from the .22 firearm.

[21] The Court is placed in the invidious situation of having to attempt to make comparisons with the circumstances of murders in other cases which, like the present, are clearly and intrinsically brutal and cruel, in an endeavour to determine whether the circumstances of the killing are sufficiently so to trigger the statutory presumption. I accept that the leaving of Mr Lomax's body at the riverbed, his face effectively obliterated and unrecognisable, the taking of his phone to avoid or delay detection and, in respect of you Mr Gosset, your making of derogatory remarks, after his death, of the man you were responsible for killing, are factors that can be taken into account when assessing the callousness of your conduct.⁵

[22] The circumstances of each individual case will invariably differ but having reviewed a number of sentencing decisions with some similarities to the present, by a fine margin, I have concluded that the circumstances of this murder fall outside the legislative policy designed to trigger the presumptive imposition of a MPI of at least

⁵ See *Akash v R* [2017] NZCA 122; *R v Davies* [2017] NZHC 729; *R v Marong* [2018] NZHC 748.

17 years.⁶ In reaching that position, I have had regard to the observations of the Court of Appeal that many murders will involve elements of brutality, cruelty and callousness but that sentencing courts are required to distinguish between different murders depending upon the level of those elements involved in their commission.⁷ The nature of the Crown's case, based as it was on each of you being a party to the killing and of it not being able to identify the particular role each of you played at the scene has also influenced my approach.

[23] Having come to that conclusion, however, I consider the identified aggravating features of your murder of Mr Lomax require the imposition of a very significant minimum term to meet the purposes of sentencing.⁸ You must be adequately held accountable for the harm you have caused, your conduct denounced, and the community protected from persons capable of committing such premeditated and callous crimes. As the Crown has emphasised, this was not reactive or spur of the moment offending, it involved the carrying out of a plan in the knowledge that a man would be killed as a result. I take a 16 year minimum term as the starting point for each of you.

[24] As I have previously noted, each of you have significant criminal histories with convictions that are directly relevant to the circumstances of the present offending. In your case, Mr Martin, these include multiple previous convictions for possessing firearms and supplying methamphetamine. I am aware from the knowledge of your prior offending, gleaned by the attempt to have propensity evidence admitted by your co-offender, that you have engaged in dangerous and threatening conduct in the past. I consider your criminal history, relevant as it is to the risk you present to the community, is required to be marked by a six month uplift to the minimum term.

[25] In your case, Mr Gosset, there is your previous conviction for attempted murder. That offending involved the successive firing of a pistol at a person who was in close proximity to you. The pistol was reloaded twice and your victim hit three

⁶ *Blake v R* [2016] NZCA 82; *R v Yates* [2018] NZCA 260; *R v Moala* HC Auckland CRI-2006-092-461, 12 December 2007; *R v Weatherston* HC Christchurch CRI-2008-012-137, 15 September 2009; *Winders v R* [2018] NZCA 277; *R v Thompson* [2019] NZHC 72; *R v Warren* [2018] NZHC 1370 at [24]; *R v Whiting-Roff* [2018] NZHC 3239.

⁷ *R v Gottermeyer* [2014] NZCA 205 at [79].

⁸ Sentencing Act 2002, s 103(2).

times in the chest. He was described as being very fortunate to be alive. There are clear parallels with the present offending, which demonstrates that you are a highly dangerous person prone to use firearms with an intention to kill people. The present offending occurred only a little more than a year after your parole expired for the attempted murder offence. Because of this proven propensity, I consider the minimum term must be increased by 18 months to mark the need to protect the community.

[26] Each of you are also for sentence for other charges which arise out of your arrest for the murder of Mr Lomax. In your case, Mr Martin, these include charges of possessing another shotgun and ammunition, and possessing methamphetamine for your own use. After your arrest in November 2017, you were sentenced to 18 months' imprisonment on Arms Act charges which included your possession of the murder weapon. That was imposed cumulatively on a two year sentence of imprisonment for unrelated methamphetamine and firearms charges. Because you have been subject to that sentence since September 2017, and because your involvement with firearms and methamphetamine at the time of Mr Lomax's murder was part of the background to your present offending, I do not consider an uplift in the MPI is required to mark those charges to which you pleaded guilty at the commencement of the trial.

[27] Mr Gosset, you also pleaded guilty at the beginning of the trial to the possession of firearms. These included a pistol and two shotguns, and possession of ammunition in the form of shotgun cartridges and .22 ammunition. You also pleaded guilty to a charge of possessing six grams of methamphetamine for supply. Those charges reflect separate offending from the murder and would ordinarily attract not insubstantial terms of imprisonment. As your counsel has acknowledged, they would justify an increase in the MPI. However, I accept Mr Rapley's submission that your involvement with methamphetamine and your possession of firearms and ammunition was part of the underworld in which you were operating at the time of Mr Lomax's murder. Like Mr Martin, your possession and carriage of firearms and your use and dealing in methamphetamine cannot realistically be isolated from the lifestyle you were leading which bears on how you came to commit this callous crime.

[28] Mr Gosset, I have previously referenced your earlier mental health difficulties and how your drug taking may have affected your functioning at the time. Insofar as

that may be of any relevance, which, as I have noted, I have considerable reservations, that is a further reason not to further uplift the MPI for these other offences. Furthermore, I consider the uplift that I have imposed for your previous offending, and in particular your previous conviction for attempted murder, essentially reflects the aggravating feature personal to you which is your dangerous and unpredictable nature while under the influence of methamphetamine, particularly when combined with your possession of firearms and your dealing in that drug. Any discrete sentence imposed in respect of the charges of possession of methamphetamine for supply and of firearms and ammunition would arise from the need to reflect that concern. I consider that has been adequately taken into account in the uplift I have already imposed.

[29] These considerations result in an MPI of 16 and a half years' imprisonment for you, Mr Martin, and a minimum term of imprisonment of 17 and a half years' imprisonment for you, Mr Gosset. Each of your counsel have sought to highlight your potential to live constructive lives, to obtain employment and to live in positive relationships with your families. However, all that pales in comparison to the nature of the crime you have committed and the fact that neither of you can call on evidence of prior good character. The evidence is to the contrary.

[30] The presentence reports disclose that each of you continues to entirely blame the other for the murder. Mr Martin, you purport to be genuinely remorseful and to have some insight into the wider impact of Mr Lomax's death, but neither you nor Mr Gosset are willing to take any responsibility. Each of you purport to express sympathy for the victim's families, but I consider that is a means by which you seek to distance yourself from Mr Lomax's murder. In my view, what is striking about both of your responses is the self-centred attitude which each of you display to the position you find yourselves and the priority you both give to your respective refusals to accept responsibility. In light of your continued denials in the face of the evidence of your direct involvement in the killing of Mr Lomax, no discount can be extended for any form of genuine remorse.

Sentence

[31] Will you please now stand.

Mr Gosset

[32] Mr Gosset, you are sentenced on the charge of murdering Bradley Lomax to life imprisonment with a minimum term of imprisonment of 17 and a half years (charge 1).

[33] On the charge of possessing a firearm, namely a pistol (charge 6) and the charge of possessing two shotguns (charge 8), you are sentenced on each to concurrent terms of imprisonment of two years.

[34] On each of the two charges of possession of ammunition (charges 9 and 10), you are sentenced to concurrent terms of 18 months' imprisonment.

[35] On the charge of possessing methamphetamine for supply (charge 7), you are sentenced to a concurrent term of imprisonment of two and a half years.

Mr Martin

[36] Mr Martin, you are sentenced on the charge of murdering Bradley Lomax to life imprisonment with a minimum term of imprisonment of 16 and a half years (charge 2).

[37] On the charges of possession of a firearm (charge 4) and possession of ammunition (charge 5), you are sentenced to respective concurrent terms of imprisonment of two years and 18 months.

[38] On the charge of possessing methamphetamine simpliciter (charge 3) you are convicted and discharged.

Strike warning

[39] Finally, the three strikes legislation applies to each of you. This is your first strike. I am required to give both of you a formal warning, and it is this. If you are released and ever commit a further serious violent offence, you will serve the resulting sentence without parole. If ever convicted of murder again, you will be sentenced to

life imprisonment without parole. The full terms of this warning will be supplied to you in writing.

[40] You may stand down.

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