

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

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

**CRI-2018-063-3312
[2019] NZHC 3048**

THE QUEEN

v

JASON WIREMU POIHIPI

Hearing: 22 November 2019

Appearances: D McWilliam for the Crown
R O Gowing and C A Gentleman for the Defendant

Sentencing: 22 November 2019

SENTENCE OF GAULT J

Solicitors:
Mr D McWilliam and Ms G Banuelos, Gordon Pilditch, Office of the Crown Solicitor, Rotorua
Mr R O Gowing and Ms C A Gentleman, Gowing & Co Ltd, Whakatane

Introduction

[1] Jason Poihipi appears for sentence following his conviction by jury for murder. The victim was Lynace Parakuka. She was 22. Mr Poihipi and Ms Parakuka had been in a relationship on and off for about two years. Ms Parakuka died shortly after Mr Poihipi assaulted her by hitting and kicking her in the head. She was seven weeks pregnant. As counsel said, this is a tragedy on many levels.

[2] As Mr Poihipi has been convicted of murder, he must be sentenced to life imprisonment, unless it would be manifestly unjust to do so.¹ The defence accept that it would not be manifestly unjust.

[3] The issue to be determined today, then, is what period Mr Poihipi must serve before he becomes eligible for parole: the minimum period of imprisonment. That period must be not less than 10 years.²

[4] There is broad agreement between the Crown and the defence as to the appropriate sentence. Both submit the end sentence should be not much more than the minimum period of imprisonment of 10 years.

Facts of the offending

[5] On the evening of Friday 7 September 2018, following an argument, Mr Poihipi assaulted Ms Parakuka in the grounds of St Michael's Catholic School in Rotorua. Mr Poihipi punched her in the head and face. She fell to the ground. There were 11 to 20 blows minimum to her head and face, including a kick to her face as she tried to get up – blows powerful enough to shift her brain inside her head, fracture her left eye socket, and damage blood vessels in and around her brain. She also suffered severe facial bruising. It was a sustained and frenetic attack.

[6] Mr Poihipi sat nearby for up to 20 minutes while she lay on the ground. Eventually he became concerned and went to get his cousin from a nearby house, who

¹ Sentencing Act 2002, s 102(1).

² Section 103.

called an ambulance. They tried to resuscitate Ms Parakuka while emergency services were on the way. They failed.

[7] Ms Parakuka took at least 20 minutes to die. The cause of her death was multiple brain injuries caused by blunt force trauma.

[8] Mr Poihipi waited at the scene and went with the Police afterwards. He initially claimed someone else had assaulted Ms Parakuka, but a day later admitted it was him.

Mr Poihipi

[9] Mr Poihipi is 20 years' old. He is Māori; his iwi is Te Whānau-ā-Apanui. I have received a pre-sentence report. The writer reports that Mr Poihipi was raised in a gang-entrenched whānau that was heavily involved in violent behaviours. He is one of ten siblings, one of whom is deceased. Mr Poihipi told the report writer that he was removed from his family's care after disclosing he was repeatedly assaulted by his father. He and his siblings were apparently uplifted, separated, and then returned to the family at varying intervals during his formative years.

[10] This is backed up by Oranga Tamariki, who report extensive involvement with Mr Poihipi right from the time he was born. He was removed from the care of his parents at age five and returned a year later. Mr Poihipi first came to the attention of Police when he was around six years' old. He was engaging in regular fights at school from age seven. He was in the custody of Oranga Tamariki from when he was nine.

[11] He accumulated a significant history of youth offending including domestic disputes, burglary, wilful damage and other property offences. Most seriously, he was convicted of an aggravated robbery that occurred on 26 December 2013, when he was only 14, and was sentenced to imprisonment for three years and three months.

[12] In terms of his adult criminal history, his most serious other violent offending was for common assault in December 2017, which related to a family harm episode in which he assaulted the same victim and another family member. He also has convictions for various dishonesty and property offences going back to 2017.

[13] Police noted that despite this being the first recorded family violence episode between the two, there had been unreported incidents where he assaulted the victim, and the report writer suggested that family violence was normalised. That is consistent with the evidence at trial. This was also confirmed by Mr Poihipi, who said to the report writer:

... all I have seen is violence at home, dad beating mum up. I thought that me hitting my partner would solve the problem, and then we did fight and I did hit her, we would go to bed and wake up the next morning, she would stop saying bad things and the relationship would be good again.

[14] Domestic violence should never be normalised.

[15] Mr Poihipi has an extensive history of substance abuse. He claimed he consumed a considerable quantity of alcohol prior to the present offending, as well as methamphetamine and magic mushrooms.

[16] The report writer is of the opinion Mr Poihipi is genuinely remorseful for killing the victim, Ms Parakuka. Mr Poihipi wants Ms Parakuka's whānau to know that he is so sorry and that he never meant to kill her. He is reportedly severely depressed and being kept in isolation in prison.

[17] The report writer assesses him as being at very high risk of reoffending and of posing a very high risk of harm to others.

Victim impact statements

[18] I have three victim impact statements which were read out this morning. The first is written on behalf of Ms Parakuka's whānau: her father Dione, step-mum Kelly, uncle William, and grand aunt Mahinarangi. It has been read out today by grand aunt Mahinarangi. The second is from Ms Parakuka's grandmother's sister, Ruth Pirini-Hape, and the third from Ms Parakuka's sister, Savarna Tysson.

[19] Ms Parakuka's whānau describe their despair at getting the news, and knowing she died alone, without her whānau to keep her warm and safe. They miss her cheekiness, her big cheesy smile, her loud hellos and her big hugs. She lived life to the fullest, and she left an impression on all of them. Her death has caused profound

grief to them all, which comes through clearly from their statements. Uncle William describes how both Lynace and her mother had the same soul – her mother also lost her life because of domestic violence. He says he will never forgive Mr Poihipi for taking her life, and that words cannot express his unbearable pain.

[20] Ms Tysson, Ms Parakuka's sister, describes relying on alcohol to numb the pain, and that she has trouble trusting men, now she has lost both her sister and mother to domestic violence. She says she disliked Mr Poihipi from the day she met him and she will never forgive him.

[21] Ms Pirini-Hape, Ms Parakuka's grandmother's sister, writes that the whānau will continue to cherish Lynace's name, and that Mr Poihipi will have to live with this for the rest of his life, but that she hopes he finds some peace.

[22] I thank everyone for their powerful statements, and I bear their profound grief in mind as I sentence Mr Poihipi today.

[23] Mr Poihipi also read out in Court today a personal statement to Ms Parakuka's whānau in which he said he was truly sorry for his actions.

Approach to sentencing

[24] I agree with the Crown and defence that it would not be manifestly unjust to impose a sentence of life imprisonment. As I have said, the main issue today is what minimum period of imprisonment is appropriate.

[25] It must be the minimum term that I consider is necessary to satisfy the need to hold the offender accountable for the harm done to the victim and the community, denounce his conduct, deter him and others from offending in similar ways, and to protect the community from him.³

[26] In coming to a sentence, I must consider the aggravating and mitigating features of the offending and come to a preliminary starting point. I must then consider

³ Section 103(2); and *R v Howse* [2003] 3 NZLR 767 (CA).

whether any of Mr Poihipi's personal circumstances justify an adjustment to the sentence. There is, of course, no question of any recognition for a guilty plea.

Starting point

[27] The starting point must be not less than a minimum period of imprisonment of 10 years. If section 104 of the Sentencing Act is engaged, a minimum of 17 years' imprisonment must be imposed. The Crown submits that section is not engaged. I agree. The Crown submits the starting point should be between 12 and 13 years' imprisonment. The defence say it should be 11 ½ to 12 years.

[28] The Crown and defence agree on the following aggravating features of the offending:

- (a) the level of violence and that it was directed at the head;
- (b) the vulnerability of the victim, given that she was physically smaller than Mr Poihipi; and
- (c) the effect of the offending on the victim's family.

[29] The Crown notes that Ms Parakuka was in the early stages of pregnancy, and Mr Poihipi knew that, without suggesting that adds particularly to vulnerability in the relevant sense.

[30] The defence submit that it is a mitigating feature of the offending that Mr Poihipi stayed to render assistance to the victim and tried to help resuscitate her. I accept that it is to Mr Poihipi's credit that he did not run away, but I consider this was no more than he should have done in the circumstances, so it makes his offending not as bad as it could have been rather than better. I see it as more the absence of an aggravating factor, but do acknowledge it.

[31] I have considered all these factors, and the other cases referred to me by counsel, which I will footnote for reference.⁴ I consider a starting point of 12 years as a minimum period of imprisonment is appropriate.

Personal circumstances

[32] The defence submit Mr Poihipi should receive a discount because of his youth and for remorse. The Crown accepts a discount for youth is appropriate. Mr Poihipi was 19 at the time of the offending. The Crown submits a discount of 12 to 18 months is appropriate.

[33] The Court of Appeal in *Churchward v R* gave three reasons why a youth discount is appropriate:⁵ to reflect the neurological differences between adults and young people, which make young people more susceptible to negative influences; long sentences of imprisonment may have a “crushing” effect on young people; and young people have a greater capacity for rehabilitation.

[34] These considerations are engaged here. Mr Poihipi has much maturing to do, and I hope that he makes every effort to rehabilitate himself while in prison.

[35] In addition, I consider there should be some allowance for Mr Poihipi’s upbringing, which, while not excusing or justifying his offending in any way, really set him up to fail. One need only read what he said about viewing domestic violence as the way to resolve relationship problems to realise how much his upbringing affected him. I also accept Mr Poihipi is genuinely remorseful, and I hope that this is an indication there may be some hope for his rehabilitation.

[36] I consider a global discount of 18 months is appropriate to reflect these factors.

[37] This brings me to a final minimum period of imprisonment of 10 years and six months. I consider this is the minimum period necessary to satisfy the purposes of

⁴ *R v Berry* HC Auckland CRI-2010-092-2165, 7 December 2010; *R v Callaghan* [2012] NZHC 596; *R v Pirini* HC Whangarei CRI-2010-027-448, 22 April 2010; *R v Davis* [2018] NZHC 1162; and *R v Ngeru* HC Wellington CRI-2008-085-5996, 11 December 2009.

⁵ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

sentencing I have set out above, particularly holding Mr Poihipi accountable for the grave harm he has done to the victim and her family and loved ones.

[38] I must emphasise that this is the period he will spend in prison before he is eligible for parole. That does not mean he will be released at that point. It will be for the Parole Board to assess whether he is ready to re-join society. When he eventually is released, he will still be on parole for the rest of his life, and if he commits another crime he will go back into prison to continue serving his life sentence.

Conclusion

[39] Mr Poihipi, please stand.

[40] On the charge of murder, I sentence you to life imprisonment. I impose a minimum period of imprisonment of 10 years and six months.

[41] Stand down.

Gault J