

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

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

**CRI-2018-043-189
[2019] NZHC 72**

THE QUEEN

v

COLIN JAMES THOMPSON

Hearing: 5 February 2019
Counsel: C E Clarke for Crown
P M Keegan and J M Woodcock for defendant
Sentence: 5 February 2019

SENTENCING NOTES OF DOBSON J

[1] Mr Thompson, you have pleaded guilty to the murder of Maurice Riddle on his farm at Normanby one year ago tomorrow. For approximately 20 years, you rented a cottage on Mr Riddle's farm and occupied it, together with an area of land adjoining the cottage. You were extremely bitter towards Mr Riddle as your landlord and you resented his pressure to have you pay the rent on the cottage. You also did not comply with requests to keep your part of his property in the tidy state Mr Riddle expected.

[2] It seems that the exchanges between you on the day Mr Riddle died started with a telephone call from him to you at about 5.45 pm in the evening, when he raised with you the matter of unpaid rent. Banking records show that about half an hour later you withdrew \$80 from your bank at Hawera, and a further half hour later, sometime before 7.00 pm, you called Mr Riddle and invited him to come over to the house to

collect his rent. A short time later, Mr Riddle came to the house and you handed over an amount of money. As he began walking away from the house, you went inside, retrieved a loaded 12-gauge shotgun and challenged Mr Riddle whilst armed with it. It appears there was a further exchange and with the two of you standing only metres apart, with Mr Riddle facing you, you fired a single cartridge from the shotgun which caused wounds to Mr Riddle's lower abdomen and to his hands. He immediately fell to the ground, critically injured.

[3] You retreated back into the house but associates with whom you had been in contact about the prospect of a confrontation with Mr Riddle arrived shortly after that and made attempts to help him. You called out to them that Mr Riddle had got what he deserved and that they should let him die. You then walked up to where Mr Riddle was lying, kicked him hard in the hip area, and swore at him, saying that he had got what he deserved. You then made further comments to those at the scene to discourage them from offering him any assistance.

[4] Mr Riddle died at the scene. He was 78 years old, would be unlikely to have effectively defended himself from any form of attack and was certainly completely helpless when confronted by you with a loaded shotgun.

[5] You do not contest the summary of facts as prepared by the Police from which I have drawn this outline. It does record quite a history of your animosity towards Mr Riddle, with specific examples dating from June or July 2017 in which you told others that you should or were going to shoot him. There was a pattern of complaints by you about Mr Riddle's demands for the rent to be brought up to date and for the property to be tidied up by your getting rid of the broken down tractors parked there.

[6] In particular, in the week preceding the murder, you told one associate with whom you discussed your tenancy dispute on 3 February 2018, that you were going "to shoot the mongrel" and repeated such threats to another associate on 5 February 2018. The relationship was so toxic that you and Mr Riddle had used an intermediary to act as a go-between in the dealings between the two of you. After your call inviting Mr Riddle to come and get the rent on the night you killed him, you then called that associate, told him that you had been to the bank to add money to the rent you had set

aside, but that the gun was loaded and that you had had enough so that the intermediary should get up to your place “now”.

[7] Making every allowance for the difference between matters of bravado and threats that should be taken literally, the shooting has to be seen as the tragic culmination of a long-expressed intention to kill Mr Riddle. It was certainly not on the spur of the moment, it was completely unprovoked, and I accept that the Crown is entitled to describe it as a cold-blooded execution for which you showed no remorse by your comments and conduct immediately after the shooting. The expression of sorrow conveyed to the Court this morning through your counsel is, to my knowledge, the first acknowledgement of sorrow for the harm and the hurt and the tragic loss that you have caused. I do not discount the genuineness of it, but its timing means that I cannot give material weight to it when I am analysing the nature of the murder.

[8] All murders cause more victims than the person killed. A violent killing scars family and friends indefinitely and often produces a loss that they struggle with for a long time. That appears, from the victim impact statements we have all heard this morning, to be the case here, and I acknowledge that it is not all one-sided. For members of your family who are here, Mr Thompson, I acknowledge that the hurt and the suffering extends on both sides.

[9] Mr Thompson, the sentence for murder has to be one of life imprisonment, unless in all the circumstances of a particular case it would be manifestly unjust to impose that sentence. Having regard to the circumstances of the offending and you as the offender, there is no way in which you can avoid a sentence of life imprisonment because there are no credible grounds for contending it would be manifestly unjust.

[10] The next aspect of my sentencing analysis is whether there are sufficiently serious features about the offending to put it in the most serious category of murders where the Sentencing Act 2002 requires the imposition of a minimum period of imprisonment (MPI) of 17 or more years. Section 104 lists nine specific characteristics of murders that can bring offending within it, as well as a more general circumstance of “any other exceptional circumstances”. If the Court finds one of those characteristics to be present, then the MPI has to be 17 years or more, unless that

sentence would be manifestly unjust. You have heard counsel address me about those characteristics and I have had more detail from them in their written submissions that I have considered. Two of the s 104 characteristics that are potentially relevant to this murder are if the murder involved calculated or lengthy planning, or if the murder was committed with a high level of brutality, cruelty, depravity or callousness. The Crown invites me to consider that either or both of these characteristics are present here, whereas Mr Keegan argues that neither of them is present.

[11] As to the extent of planning, although the history of your animosity towards Mr Riddle suggests a relatively long-standing intention to shoot him, or at least harm him seriously, I do not see that as constituting a calculated or lengthy form of planning as is contemplated by s 104(1)(b). The circumstances of the killing were relatively straightforward. It appears you had had the means to shoot Mr Riddle for some time and it was a matter of when the opportunity would arise whilst you were in a mood to be taken beyond the tipping point of animosity towards him which you could control.

[12] As to the characteristics of a murder committed with a high level of brutality, cruelty, depravity or callousness that is provided for in s 104(1)(e), the Court of Appeal has described these four elements as overlapping to an extent and focusing on the manner in which a murder has been committed in an objective way.¹ It has also acknowledged that the extent of planning and the extent of vulnerability of the victim are covered in separate s 104 characteristics, so they should not be at the forefront when measuring the extent of brutality, cruelty, depravity or callousness. The focus is on the manner in which the murder was actually committed.² The cruelty or callousness must be at a high level so that a distinction can be drawn between murders in which callousness or cruelty are present to an extent that would generally arise as an incident of the circumstances in which the killing occurs.

[13] Both counsel in their written submissions have referred me to the sentencing in *R v Winders*.³ That is the case in which the defendant had an irrational grudge against a roadworker who he thought was responsible for causing a road accident.

¹ *R v Gottermeyer* [2014] NZCA 205.

² At [79].

³ *R v Winders* [2016] NZHC 2964.

Some days after the road accident, Mr Winders drove a substantial distance to where the victim was working on the road and shot him at very close quarters in an entirely unprovoked killing. Mr Keegan makes the point that the Judge there did not see sufficient callousness or cruelty to bring it within s 104(1)(e). Ms Clarke points out that the circumstances of that killing nonetheless came within s 104(1) because of the extent of planning and that inclusion on that ground might have enabled the Judge to rank the callousness and cruelty somewhat differently.

[14] I treat the callousness of the present killing as greater than that in *Winders* because your antagonistic relationship with Mr Riddle could be managed by the intermediary you had deployed, Mr Riddle was doing no more than attempting to enforce his contractual rights, at 78 and being on part of his own property he was entitled to expect that he would be safe, he was retreating from your presence at the time you confronted and shot him and then you inflicted further hurt and indignity on his dying body by kicking him and attempting to obstruct those who had arrived at the scene in attempts to help him. That conduct is callous to a high level.

[15] This murder therefore qualifies under s 104 for the imposition of an MPI of 17 years or more, unless in all the circumstances of the offending, and of you, Mr Thompson, as the offender, I can be satisfied that it would be manifestly unjust to impose that length of MPI.

[16] I therefore turn to the circumstances of you as the offender, initially to assess what an appropriate MPI is and, in light of that, whether an MPI of 17 years or more would be manifestly unjust.⁴

Personal circumstances

[17] Mr Thompson, you have been, to put it mildly, out of sorts since the death of your wife after a lengthy illness in October 2017. Mr Keegan has put it this morning that your life fell apart, and I can accept from all that I know that that is an accurate description. Over a substantial period of time in your dealings with Mr Riddle, you have harboured a serious grudge against him, based on apparently delusional concerns

⁴ Following the sequence described in *R v Gottermeyer*, above n 1, at [93].

about Mr Riddle's conduct. One of the psychiatrists who has assessed your mental state treats this grudge as based on delusional beliefs that may have been genuinely held.

[18] In addition, one of the psychiatrists who has assessed you treats you as having a major depressive disorder. The latest report from the other psychiatrist did not assess you as presently suffering from a depressive disorder, but did recognise the on-going risk and previous presence of such a condition. There are no specific grounds for believing that your mental condition will improve. At the age of 69, you appear to have adjusted to being in prison but are pessimistic about what life holds for you.

[19] You have no previous convictions. Mr Keegan submits that you have entered your guilty plea at the earliest reasonable opportunity, whereas the Crown suggests that there were delays in reaching that point. Mr Keegan's position is that it was not reasonable to expect a guilty plea until all issues affecting your fitness to stand trial were resolved, and the time between being charged and indicating your preparedness to plead guilty was reasonably taken up with obtaining the requisite mental health reports.

[20] I am prepared to accept that you have acted in reliance on legal advice, and reasonably sought to clarify the issues of fitness to plead before committing to a guilty plea.

[21] There are then three mitigating circumstances. First, I accept the most recent analysis of Dr Lehany that you have a mild to moderate depressive illness. Second, your relatively advanced age at 69, and third, the entry of your guilty plea at a reasonably early opportunity. From a starting point of 17 years MPI, which I consider would be appropriate to mark the seriousness of the offending, I need to assess the appropriate extent of discounts for these three mitigating factors.

[22] The Court of Appeal has noted that discounts of between 12 and 30 per cent have been allowed for mental illness that contributed to the offending. In a case the Crown invited me to compare yours with, a discount of 15 per cent was allowed, even although the defendant's mental condition was not directly causative of the offending

but had made it more likely that the defendant would offend in the way that she did.⁵ From the analysis of your mental condition reported on by the psychiatrists, I recognise a somewhat similar tangential connection between the pressure on you caused by your mental disorder, and your deliberate progression from threatening to shoot Mr Riddle, to carrying that threat out.

[23] Given the circumstances of your case, I also take into account your age in reflecting on the relevance of your mental condition to the appropriate sentence. In particular, I reflect on the perception of your prospects of regaining your freedom when you are to start an inevitably long sentence at the age of 69. I am satisfied by the psychiatrists' reports that you will receive appropriate mental health support whilst serving your sentence, but any sentence longer than about 12 years means that, looking forward, you will have no chance of release until, at the earliest, your early 80s.

[24] Making balanced allowance for the difference in the mental health assessors' opinions on the nature and extent of mental disorder, and the impact of your age in ranking relatively how difficult it will be for you to serve a long sentence, I consider that a combined discount of 15 per cent for these factors is appropriate.

[25] The second discount is the extent to be allowed for your guilty plea. In sentencings for less serious crimes, the usual approach following Supreme Court guidance is to allow a percentage discount for the guilty plea that is calculated last in the sentencing analysis. Depending mostly on how early the guilty plea is offered, discounts of up to 25 per cent of what would otherwise be the sentence are allowed. However, the more usual approach in murder sentencings where there is a guilty plea is to specify a specific length of time as the discount that should apply to recognise the advantages for all involved in avoiding a trial. In my exchanges with counsel this morning, they agree that that is the appropriate approach.

[26] In this case, the Crown suggests that your guilty plea should result in a discount of between one and two years' imprisonment, on the basis that there be no further discount for other mitigating circumstances. The Crown has submitted that the extent of discount should be reduced because of malingering in the process of your taking

⁵ *DD (CA595/2014) v R* [2015] NZCA 304 at [20], [21].

instructions, being assessed and coming to the point of being prepared to plead guilty. I do not agree with the Crown on that point and I consider that, particularly in light of the initial indications raising questions about fitness to stand trial, however traumatic it has been for those interested in the matter proceeding to trial, the time taken is reasonable.

[27] Once your fitness to stand trial was clarified, however, you were facing an exceptionally strong Crown case and, with respect, a conviction would have been extremely likely, if not inevitable, had the matter gone to trial. On the positive side, your plea has avoided the further delay and stress of a trial, which would obviously have been highly traumatic for all involved. I consider that a discount of 15 months to recognise your guilty plea is appropriate.

[28] Mr Keegan has submitted that I should give you a further discount on account of the lack of previous convictions. Varying degrees of leniency can be granted to first offenders when their crimes are appropriately seen as a lapse from a life otherwise led as a good citizen. Given the other components of my sentencing analysis, I am not persuaded it would be appropriate to grant any additional discount to you because this is your first conviction.

[29] Mr Thompson, you have hopefully followed the different arguments presented by Mr Keegan on your behalf and Ms Clarke for the Crown. Mr Keegan has urged that I get to an end point requiring no longer than a 10 year MPI, whereas the Crown suggests that the MPI should be somewhere between 11 years and nine months and 14 years and 10 months. My own evaluation results in a minimum period somewhere in the middle of those contrasting submissions.

[30] Accordingly, from a starting point of 17 years, the first deduction of 15 per cent would reduce that from 204 to 173 months, which would be 14 years and five months, and a further reduction of 15 months would reduce it to 158 months, which would amount to an MPI of 13 years and two months' imprisonment.

[31] The extent of the difference between an MPI of 17 years if s 104 dictated the outcome, and the appropriate end point I have arrived at by taking into account

relevant mitigating circumstances relating to you, make it clear to me that it would be manifestly unjust to impose the s 104 MPI of 17 years and I will accordingly not be doing that.

[32] Mr Thompson, would you please stand. I now sentence you on your conviction for murder to life imprisonment. I direct that you are to serve a minimum period of imprisonment of 13 years and two months.

[33] You have already been served a first strike warning and I need do no more than remind you of the effect of this conviction on any future offending.

Dobson J

Solicitors/Counsel:
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