

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

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

**CRI-2019-092-000507  
[2019] NZHC 1587**

**THE QUEEN**

v

**UETA VEA**

Hearing: 9 July 2019

Appearances: M K Regan and J C Toebes for the Crown  
M J Dyhrberg QC and H B Hellyer for the Defendant

Judgment: 9 July 2019

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**SENTENCING NOTES OF MOORE J**

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## **Introduction**

[1] Ueta Vea, at the age of 45, you appear before me to be sentenced for the murder of Laulimu Liyasi. You pleaded guilty on 1 June 2019.

[2] As you will know, the maximum penalty for murder is life imprisonment.<sup>1</sup>

[3] Before fixing your sentence, I shall start first with the facts. These will be well-known to you. But because sentencing is quintessentially a public function to be undertaken in open Court such as this, I need to set the facts out in some detail.

[4] After that I shall discuss how the law works and then whether life imprisonment should be imposed. If so, I shall consider whether I should also impose a minimum term of imprisonment or MPI.

## **The facts**

[5] Mr Liyasi was 62 years old when you killed him. He lived in a small house in the grounds of St John the Evangelist Church in Ōtara. Mr Liyasi was a handyman. He did odd jobs and maintenance for the church. He would also ring the bells to announce the Angelus every day.

[6] You and Mr Liyasi knew each other well. Your families attended the church together. There was also a time when you did maintenance work with him at the church.

[7] The events leading up to Mr Liyasi's death began around 4 November 2018. You discovered text messages Mr Liyasi had sent your wife. He was married too. The texts were sexually suggestive and you began to suspect Mr Liyasi and your wife were having an affair. You confronted them on a number of occasions. But they denied there was anything untoward.

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<sup>1</sup> Crimes Act 1961, s 172.

[8] In December 2018 the ongoing tensions led to an intervention between you, Mr Liuasi and your respective spouses. It was facilitated by the local priest. Despite that you continued to harbour suspicions.

[9] Mr Liuasi and your wife continued to exchange texts. Matters came to a head on 12 January 2019. You and your wife were at a church function at Maraetai. You had been drinking. You became involved in a heated exchange with her. You aired your suspicions and, it seems, became upset. Other members of the congregation intervened.

[10] You were taken back to your home in Ōtara. Your wife went to an address in Ōtahuhu.

[11] The next morning, 13 January 2019, your wife contacted you. She asked you to move out of the family home in Ōtara. This was the precursor to the end of your marriage.

[12] Early that afternoon you and your family went to your brother's house in Onehunga. People around you noticed you were withdrawn. Plainly, although no-one realised it at the time, you were thinking about what you were going to do. At around 3:00 pm you and your family, including your wife, headed back to Ōtara. On the way you asked your wife to detour via Ōtahuhu. This was under the pretext of collecting something for work. But your true purpose was to retrieve a machete. This you did. Back inside the car you wrapped the machete inside a lavalava to hide it from your wife. She then drove you back to your Ōtara home.

[13] At around 5:00 pm you left your house. You said you were going to visit a nearby worksite. Instead you walked to the church. In your hands was the machete. You entered the grounds through an adjoining reserve. And there you waited. You took off your white t-shirt and your high-visibility vest. You were clad only in shorts and shoes.

[14] At about 6:00 pm you saw Mr Liuasi leave his house to ring the bells. You walked around the side of his house and gained access through an insecure window.

Inside you waited. Mr Liyasi returned. As soon as he did, you ambushed him. Using the machete, you rained blows down upon him. These targeted the back of his neck, under his chin, his ear, left shoulder, hand and torso. As the attack unfolded, Mr Liyasi begged for mercy in Samoan, the language you both shared. You ignored his pleas.

[15] In short order Mr Liyasi lay motionless on the ground. You rolled him over. You watched him for several minutes. Blood pooled around him. You did nothing to help. Instead, satisfied that he was dead, or dying, you took his car keys and left. You threw the machete into a nearby wheelie bin.

[16] Your actions in the aftermath of murdering Mr Liyasi were measured and calm. You drove his car away and parked it down the road from your home. You walked home. You told your wife what you had done. She drove you back to the church. On the way, you pointed out where you had parked Mr Liyasi's car. Your wife got out and saw the keys were still in the ignition. She locked the car and carried on to the church with you.

[17] Once there she spoke with the priest. Then the three of you went to Mr Liyasi's house. Your wife and the priest went inside. You stayed outside. They saw Mr Liyasi lying on the floor in a pool of blood. His mouth was twitching. Your wife attempted CPR. Ambulance staff arrived shortly after. They confirmed Mr Liyasi was dead.

[18] Mr Liyasi suffered a wide range of traumatic injuries. These included the severance of his spinal cord and vertebrae at the base of his skull. He had lacerations to his neck and shoulders. Some cut right through to the bone.

[19] When spoken to by the Police, you admitted to killing Mr Liyasi. You showed them where you had left the machete. You admitted retrieving the machete and going to Mr Liyasi's house with the intention of killing him. You said you were angry at his communications with your wife.

### **Victim impact statements**

[20] Five victim impact reports have been prepared by the children of Mr Liyasi along with his widow, Alitasi. Courageously, his daughter Helen read her statement

as well as those of her siblings, Junior, Jacinta and Lei. Mr Liuasi's widow, Alitasi, also read her victim impact statement.

[21] Both women did so with great courage and dignity. Plainly, Mr Liuasi was deeply loved by his family and it is impossible not to be moved, not only by the sentiments which each victim so eloquently expressed, but also by their description of the huge hole the loss of a father and a husband has left. Each spoke of the shock they felt when they were first told that you were the man who killed their father and husband. They also spoke of the shock of learning how it was that you carried out your crime.

[22] All are struggling to come to terms with the enormity of what happened on 13 January this year when you turned their lives upside down and in doing so created the massive burden which is Mr Liuasi's loss. It is a loss each will carry for the rest of their lives.

[23] Alitasi and the children are struggling with getting on with their lives without the benign and guiding hand of a much loved husband and father. They have seen their family structure collapse. Graciously and generously they try to forgive you, but what you did was as inexcusable as it is irreversible. Through your actions you have broken this family.

### **Approach to sentence**

[24] Mr Vea, I must sentence you to life imprisonment unless I am satisfied that to do so would be manifestly unjust.<sup>2</sup> If life imprisonment is imposed the Court must also order an MPI of at least 10 years.<sup>3</sup>

[25] In certain circumstances, which I shall explain, the Court must order an MPI of at least 17 years.<sup>4</sup> That is because s 104 of the Sentencing Act 2002 ("the Act") requires the Judge to impose such an MPI of at least 17 years if one or more of a series

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<sup>2</sup> Sentencing Act 2002, s 102(1).

<sup>3</sup> Section 103(1) and (2).

<sup>4</sup> Section 104.

of aggravating factors exists unless I am satisfied that it would be manifestly unjust to do so. If s 104 is engaged then I must undertake a two-staged process:<sup>5</sup>

- (a) First, I must determine the appropriate MPI by reference to any aggravating or mitigating factors, including those listed in s 104. In doing so I must also take into account your personal circumstances, including the fact that you pleaded guilty. If I arrive at an MPI of 17 years or more then that is the MPI you will receive. If I am of the view a lesser MPI is appropriate then I shall move to the second stage.
- (b) At the second stage I must consider whether it would be manifestly unjust to impose an MPI of 17 years. If so, then I am able to impose a lesser MPI. If not, then you will receive an MPI of 17 years.

### **Should life imprisonment be imposed?**

[26] Your counsel, Ms Dyhrberg QC, responsibly accepts the inevitability of a sentence of life imprisonment. There can be no suggestion that such a sentence would be manifestly unjust.

[27] I therefore sentence you to life imprisonment. But that is not the end of the inquiry. I must then turn to consider the length of the accompanying MPI. This requires me to consider s 104 factors and whether any of the factors listed in that provision are present in your case.

### **Are any of the s 104 factors present?**

[28] The Crown says that three of the aggravating factors listed in s 104 that apply to your case. I am satisfied, for reasons which follow, that two are. I turn now to discuss each in turn.

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<sup>5</sup> *R v Williams* [2005] 2 NZLR 506 (CA).

*Calculated or lengthy planning – s 104(1)(b)*

[29] To meet the statutory threshold the planning does not have to be sophisticated or competent. What matters is the period of time or the degree of thought that has been invested in it.<sup>6</sup> The Crown says this factor is engaged to a high degree. You nursed your resentment towards Mr Liuasi for a number of months; back to early November 2018 when you first discovered him texting your wife. After that you confronted him several times.

[30] I accept this background provided the animus for what you eventually did. But I do not think it can be said that you were planning to kill Mr Liuasi at any stage throughout those fraught weeks in late 2018 and early 2019. Certainly, you were jealous. Certainly you were angry. But there is no evidence that these feelings manifested themselves into any sort of long-hatched homicidal plans until much later.

[31] Rather, as the Crown points out, your murderous intentions began to incubate on 12 and 13 January 2019. Just hours before the killing you were observed to be withdrawn. At around 3 pm you asked your wife to drive you to Ōtahuhu to retrieve the machete. From there your plan to kill Mr Liuasi unfolded. Just three hours later he was lying dead in a pool of blood on the floor of his home.

[32] Ms Dyhrberg submits that this is not a case of high level or sophisticated planning. She says what you did reveals only a moderate level of planning at best. I am inclined to agree. As Ms Dyhrberg points out, you had been drinking. And while that does not excuse, in any way, what you did, it does explain to some extent the rashness of your actions. It took some hours to carry out the plan once you had determined to kill Mr Liuasi. But the plan itself was neither well-formed nor measured. You were likely brooding earlier in the day at your brother's house and, probably, from at least the point when your wife asked you to move out. But I am reluctant to regard those matters as hard evidence of pre-planning. Any planning, such as it was, could not be said to be lengthy or particularly calculated.

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<sup>6</sup> *Kaur v R* [2017] NZCA 465 at [49].

*Unlawful entry into a dwelling place – s 104(1)(c)*

[33] I am satisfied this factor is present to a high degree. You broke into the place where Mr Liuasi was living. He was entitled to feel safe there and that was the place that you waited and ambused him.

[34] As I understood Ms Dyhrberg, she does not seriously contest the presence of this factor.

*High level of brutality, cruelty, depravity or callousness – s 104(1)(e)*

[35] It is true that almost by definition all murders are brutal, cruel, depraved or callous to some extent. But what the law requires is the presence of these factors to a high level.<sup>7</sup> Callousness does not require prolonged activity but has been described as a “hardened state of mind”.<sup>8</sup> It involves a lack of feeling and sensibility; or a numbness of the soul.<sup>9</sup>

[36] The Crown says this factor is present to a high degree. And I agree. Mr Regan describes your offending as a “frenzied attack”. That is not hyperbole. You ambushed Mr Liuasi and inflicted terrible and multiple injuries on him. You severed his spinal cord, vertebrae and major blood vessels. He begged for his life in Samoan. But you showed him no mercy. The sheer number and extent of the wounds you inflicted reveals the brutality of the attack. And when you were done you did not lift a finger to help him. Instead, you watched as his life ebbed away before you, presumably to satisfy yourself you had achieved your purpose. Ms Dyhrberg says this was because you were in shock. On the facts I do not agree. This level of callousness adds another layer of culpability.

[37] And so it follows I consider this factor is present to a significant degree. Section 104 is engaged. I now turn to consider the appropriate MPI.

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<sup>7</sup> *R v Slade* [2005] 2 NZLR 526 at [40].

<sup>8</sup> *R v Mason* [2012] NZHC 1849 at [44]; *R v Christison* [2013] NZHC 2813 at [38].

<sup>9</sup> *R v Beazley* [2019] NZHC 672 at [36].

## What is the appropriate MPI?

[38] The Crown submits that taking into account the s 104 factors, as well as acknowledging the depth of harm caused by your offending, an MPI of 18 to 19 years is called for. Mr Regan refers to similar cases where comparable MPIs were adopted.<sup>10</sup> Ms Dyhrberg disagrees. She says an MPI of 17 years is sufficient to reflect the seriousness of what you did.

[39] The Crown refers particularly to a case called *Hamidzadeh v R*.<sup>11</sup> There the defendant murdered a man whom he suspected was having an affair with his wife. Mr Hamidzadeh and his wife moved to New Zealand and befriended the victim. After some friction in the relationship, the wife said she was moving in with a female friend. In fact she moved in with Mr Hamidzadeh. Unaware of this, Mr Hamidzadeh later moved into the same apartment. Suspicious of the two, he set up a recording device which in his mind confirmed his suspicions. Within an hour, Mr Hamidzadeh stabbed the victim multiple times as he slept. He and his wife remained in the apartment for an hour before calling emergency services. The Court of Appeal signalled that an MPI of 17 years was appropriate before taking into account the defendant's guilty plea.

[40] The Crown says your case has a similar background, but submits your attack was more serious. It showed a greater degree of premeditation and involved a home invasion element. I agree with the Crown. But I do not think your offending was as serious as *Beazley*, also referred to and relied on by the Crown. While the levels of violence are similar and the attack also took place in the victim's home, the killing in *Beazley* was carried out as the victim held her baby in her arms. Another point of difference is that in *Beazley* the planning took place over months.

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<sup>10</sup> In *R v Smith* [2013] NZHC 2782, Ronald Young J indicated an MPI of 18 to 19 years would have been appropriate before taking into account mitigating factors; the offender broke into his former partner's house and hid in the ceiling cavity; he then waited for her and her children to fall asleep before descending and slitting her throat. In *Thurgood v R* [2012] NZCA 23 the Court of Appeal approved of an 18-and-a-half year MPI; the offender dropped his four children at school and drove to the address of his estranged partner; once there he attacked her viciously, inflicting 26 injuries with a knife and grubber handle and attempting to strangle her. In *R v Beazley* I indicated an MPI of 18-and-a-half years would have been appropriate before taking into account the offender's personal factors; the offender drove from Rotorua to Auckland to kill his estranged wife, stabbing her 18 times as she held their young son.

<sup>11</sup> *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369.

[41] I sentenced Mr Beazley. I adopted a starting MPI of 18-and-a-half years. Your offending is not as serious. In your case I am of the view an MPI of 17-and-a-half years is appropriate.

### **Personal factors**

[42] But that is not the end of the matter and the Crown accepts as much. I must also consider any mitigating factors personal to you.

[43] I have carefully read letters from your niece and your brothers. They are heartfelt and they speak of a man much loved by his family for his many positive qualities. They remain confounded that you did not share with them your concerns about your marriage. But they also describe how what you did has affected them and their families. And they too ask for forgiveness from Mr Liuasi's family.

[44] Ms Dyhrberg says you are genuinely remorseful. You told the pre-sentence report writer you were sorry for what you did. In addition, you admitted killing Mr Liuasi almost immediately afterwards.

[45] There is also the cultural report prepared pursuant to s 27 of the Sentencing Act 2002. It was the delay in the preparation of this report which required Ms Dyhrberg to seek a last minute adjournment of your sentencing. I am very aware of how disruptive and upsetting to Mr Liuasi's family this was. Some had travelled a long way in the expectation you would be sentenced that day. They would have been mentally and emotionally prepared for that and I now apologise to them, on behalf of the Court. That said I had no option but to grant the application because it is essential for me to know everything I should know about the man I am sentencing today, particularly given the inevitability he will receive a very long term of imprisonment.

[46] The report was well worth waiting for. It has given me a much deeper insight into your background and some of the cultural factors behind the dreadful events which unfolded on 13 January this year. As the Crown put it in their supplementary submissions filed in response to the cultural report, its utility lies in its service in providing context.

[47] You were born in a small village in Samoa; one of 11 children of which you are the eighth. You came here on a church visit in 1996 as a young man of 22 years and, with the assistance of your family, obtained permanent residence. It was here that you met your wife who is Tongan. You have been married for 16 years and have four children together.

[48] You identify as Samoan. You place much emphasis on *fa'aloalo* or respect for others. You are devoted to your Christian faith and it was through that church community that you met the man whose life you would later take.

[49] Confronted by what you believed was the infidelity of your wife and limited by the cultural taboo against men expressing their feelings to others, you bottled up your feelings. You smouldered and hatched your plan to take revenge.

[50] Of particular relevance is that you and your family have engaged in the Samoan custom known as *ifoga*. This is a ceremony where those who have harmed others seek forgiveness and offer compensation to those they have harmed. The report details what, in your case, occurred. Your younger sister and members of your family met on the roadway outside the victim's home. There they waited to be invited onto the Liyasi property. Once that happened (and I am told it does not always) your sister sat on her knees and a mat was placed over her head. The tradition is that if those who have been wronged are unwilling to forgive, the mat will not be removed. In this case your sister was required to remain on her knees with the mat over her until Mr Liyasi's family removed it. Your family then offered gifts in the form of fine mats and money and, in the end, the two families embraced. Plainly it was an intense and emotional process, but one which has permitted both families to find some form of peace out of this horror. In these circumstances I am prepared to treat participation in *ifoga* as reflecting remorse. The Crown accepts the *ifoga* is relevant as an offer by your family to make amends under s 10(c) and (d) of the Sentencing Act. I agree.

[51] The difficulty with placing your remorse much higher are the comments found in the pre-sentence report. Some of which are concerning. For example, you told the report writer that you only wanted to warn Mr Liyasi; you did not mean to kill him. But that assertion is at complete odds with the facts. If you had only meant to warn

Mr Liuasi why did you remove your t-shirt and high viz vest before you went into his house? Why did you attack him without saying a word and leave him to die in front of you? That claim is also inconsistent with what you told the Police straight after the killing. And so I regard it as a matter of concern that when you spoke to the report writer you seemed to have tried to play down what you did. This suggests you may not have accepted full responsibility for your actions.

[52] In any event, viewed in the broader context of this case, remorse can only operate to a limited extent.

[53] As for Ms Dyhrberg's description of the tumultuous nature of the relationship with your wife and your consumption of alcohol, these matters cannot carry much weight. Many relationships fail. People from all walks of life and cultures have to cope with the inevitable emotional roller coaster when intimate relationships fail. They do not resort to violence, let alone lethal violence. I accept there is an element of cultural dislocation in play here. The cultural report tells me that. But it is not at all uncommon for those affected in this way to experience feelings of betrayal, hurt and a sense of personal inadequacy.<sup>12</sup> This cannot, irrespective of cultural factors, justify what you did.

[54] However, counting in your favour is your guilty plea. You first appeared before the Court on 14 January 2019 and entered a plea of not guilty. On your third appearance, on 1 May 2019, you changed this to guilty.

[55] Life imprisonment and MPIs do not lend themselves to the conventional discounting formula when the Court is dealing with a finite sentence.<sup>13</sup> Reductions for early pleas and previous good character are generally no more than two years, depending on the timing of the plea and the strength of the prosecution case.<sup>14</sup>

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<sup>12</sup> *R V Momoisea* [2018] NZHC 1577 at [40].

<sup>13</sup> *Malik v R* [2015] NZCA 597 at [35]-[37].

<sup>14</sup> See for example *Holl v R* [2015] NZCA 67; *Cornelius v R* [2014] NZCA 123; *Akash v R* [2017] NZCA 122. See also Simon France (ed) *Adams on Criminal Law* (online looseleaf ed, Thomson Reuters) at [SA104.04].

[56] You have a number of previous convictions. These necessarily must be balanced against any discount you receive for your guilty plea. Many of your previous convictions relate to family violence. You began to accumulate them in 2005 and it seems you have not been able to disrupt that pattern of offending. Eleven of the convictions relate to offending against your wife. They include breaching a protection order, male assaults female and common assault. Despite this, you have never served a sentence of imprisonment and nothing you have done in the past comes anywhere near to the current offending in terms of scale and seriousness. But your criminal history clearly rules out any discount for previous good character. I hold it as an aggravating factor, albeit not a significant one.

[57] Taking into account all these factors, I agree with the Crown that it is proper to make a deduction of one year from the provisional MPI I have reached. Your guilty plea was not entered at the earliest opportunity and the case against you was very strong. But despite that, your plea still demonstrates some acceptance of responsibility. It is proper to recognise that.

[58] All of this means that I consider an MPI of 16-and-a-half years to be appropriate. Having set the MPI, I must move to the second stage of the enquiry: namely, is the imposition of a 17-year MPI manifestly unjust?

**Is the imposition of a 17-year MPI manifestly unjust?**

[59] Put bluntly, I do not think it is.

[60] A 17-year MPI will be manifestly unjust where the Judge decides as a matter of overall impression that the case falls outside the scope of the legislative policy that murders with specified features are sufficiently serious to justify at least that term. That conclusion can be reached only if the circumstances of the offence and the offender are such that the case does not fall within the band of culpability of a qualifying murder. A finding of manifest injustice must be made on the basis of clearly demonstrable factors which withstand objective scrutiny.<sup>15</sup>

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<sup>15</sup> *R v Williams* at [67].

[61] Ms Dyhrberg does not refer to any specific matter which could form the basis for a finding of manifest injustice. She refers to your guilty plea and your remorse. But, as discussed, the latter of these can only assume limited significance. Furthermore, your guilty plea certainly does not mark out your case from other serious murders such that it would be manifestly unjust to impose a 17-year MPI.

[62] Ms Dyhrberg also refers to various matters canvassed in the s 27 report. But as I have already mentioned, none of these is compelling. I accept that your emigration from Samoa has caused difficulties throughout your life here and that you feel isolated from your culture. Had you felt able to have a frank discussion with your wife about the deterioration about your marriage, this whole tragedy might have been averted. But you did not. Instead you chose the path of extreme violence. While your personal and cultural background provide some context for your choice of that path, it cannot and does not justify your decision to do what you did. And as I have already discussed your participation in *ifoga* does not make it manifestly unjust to impose a 17 year MPI. The cultural report has been useful. It has contextualised the offending. But it does not shift your moral culpability nor affect the assessment of your rehabilitative potential. I agree with the Crown that there is no clear causal link between your background and the offending.

[63] The imposition of a 17-year MPI is not manifestly unjust.

[64] It follows that I must adopt an MPI of 17 years.

## **Result**

[65] Mr Ve'a, please stand.

[66] I sentence you to life imprisonment. I impose a minimum period of imprisonment of 17 years. What that means is that you will not be released before you have served 17 years. It does not mean that when you have served 17 years you will be automatically released. When in fact you are released will be a matter for the Parole Board to decide.

[67] Stand down.

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**Moore J**

*Solicitors:*

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