IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

CRI 2014-043-1801
[2016] NZHC 166

THE QUEEN

v

DAVID NOEL ROIGARD

Hearing:	15 February 2016
Counsel:	C E Clarke and J M Marinovich for Crown P M Keegan and J Woodcock for Defendant
Judgment:	15 February 2016

SENTENCING NOTES OF HEATH J

Solicitors:
Crown Solicitor, New Plymouth
Counsel:
P M Keegan, New Plymouth
J Woodcock, New Plymouth

Introduction

[1] David Noel Roigard, you appear for sentence today on one charge of murder and eight charges of theft in a special relationship. You were found guilty by a jury on each of those charges and convictions have been entered. You have also been given a three strikes warning, as required by law. The maximum penalty for murder is life imprisonment. The maximum for theft in a special relationship is seven years imprisonment.

[2] As a result of your conviction on the murder charge you will be sentenced to life imprisonment. The only issue for my consideration today is the length of the period to be fixed before you may apply for parole.

[3] There is sometimes misunderstanding in the community about the effect of the minimum period of imprisonment that is imposed in conjunction with a life sentence. The period I will fix simply determines the first occasion on which you are eligible to apply for parole. There is no guarantee that you will be granted parole, either on the first application you make or at any later time. The Parole Board must consider at the relevant time whether you remain a risk to the community.

[4] Even if you were to be granted parole, you would be subject to conditions for the rest of your life and amenable to arrest in the event that the conditions were breached. If you were returned to prison in those circumstances, you would continue to serve a sentence of life imprisonment. So, the sentence I impose today really is life imprisonment.

[5] The lead charge for sentencing is murder. I propose to treat the circumstances in which you committed the eight offences of theft in a special relationship as aggravating factors relating to that offence.

[6] While I will impose a concurrent term of imprisonment on the theft charges, I have ensured no double counting occurs in the fixing of those terms. The circumstances in which the thefts occurred provided the motive for you to kill your son, Aaron.

Context

[7] I will now explain the background to the offending. Necessarily, in light of the nature of the Crown's circumstantial case, my summary will be incomplete and selective.

[8] Aaron was killed at your property in Waiteika Road near Opunake on 2 June 2014. Although Aaron's body has never been found and nobody witnessed what took place between the two of you around midday on 2 June 2014, the jury were satisfied beyond reasonable doubt that you killed your son with murderous intent. That finding provides the cornerstone for sentencing.

[9] For the purpose of sentencing, I am required to make findings of fact that are consistent with the jury's verdict. In doing so, I am conscious of the need not to speculate and to ensure my findings are grounded firmly on the evidence adduced at trial. Where I consider there is room for doubt as to the basis on which the jury reached its verdict, I make findings more favourable to you than to the Crown.

[10] The evidence satisfied the jury that between 1 January 2007 and 30 April 2014 Aaron made regular payments into an account at TSB at Opunake. That was for the purpose of the "Sovereign" investment. Earlier deposits had also been made, but evidence of what occurred during that period was not available to establish charges earlier than 1 January 2007. The "investment" was supposed to mature in May 2014.

[11] From the outset, you planned to use the money your son was depositing into that account for your own purposes. You did not tell Aaron that you proposed to use the money in that way. He did not consent to that being done. Although the crime of theft in a special relationship[1] is not one that requires proof of dishonesty, there is no doubt that you defrauded your son out of his hard earned money.

[12] I am satisfied that Aaron believed that by paying about 50 percent of his earnings into that account over that time he would be able, by the time the

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1 Crimes Act 1961, s 220.

investment matured, to purchase a farm. That is consistent with a text that he sent not long before his death in which he told his friend, Mr Bevans, that he had obtained the funds to buy the farm from a high interest investment.

[13] As the time came for the "investment" to "mature", Aaron began to ask questions about the money and the farms he may be able to buy. By this stage, it was becoming clear to you that you would need to find a solution to the obvious problem that would emerge once Aaron realised you had defrauded him.

[14] Discussions about farms that Aaron might purchase must have taken place in or about November 2013. It was during that month that Aaron and his partner, Ms Thoms, gave notice to their employer. They did so because they believed they would be going to work on their own farm during the 2014/2015 dairy season. That they had that belief is apparent from the fact that they made that momentous decision at a time when Ms Thoms was pregnant. It is also demonstrated by the steps they were taking in late May 2014 to pack up their house to move.

[15] Your actions around November and December 2013 demonstrate that you were discussing the purchase of a farm with Aaron. For example, you were seen driving along Palmer Road in December 2013 with Aaron. You were also engaged in telephone discussions with a real estate agent about a property in Palmer Road about the same time. When you discovered that the property in Palmer Road that you had told Aaron would be purchased had, in fact, been sold, you took steps to identify an alternative property.

[16] On the face of it, the absence of any inquiry by Aaron into the nature of the farm and the availability of the funds would tend to suggest that he might not have really believed the farm was to be purchased. But, it is clear that Aaron was (in the best sense of the term) a simple soul who was prepared to rely on you (as his father) to safeguard his interests, by looking after his money and ensuring he had sufficient to buy a property when the investment matured. No steps were taken to visit either of the farms you identified to determine whether they were fit for purpose. That was because Aaron trusted you. You betrayed that trust.

[17] It seems clear that Aaron believed that about $2 million or so would be available from the investment. Given the amount of money that was being paid into the "Sovereign" account that was never a realistic possibility. Nevertheless, it was a belief that Aaron and Ms Thoms honestly held.

[18] At trial, the Crown suggested to the jury that you had planned to kill Aaron when he came to your property on 2 June 2014. For reasons that follow, I do not accept that was your primary intention on that day. Rather, I consider that the possibility of killing Aaron was something to which you had given thought, a "Plan B", so to speak. Your primary intention was to try to talk your way out of the problem you faced. The likelihood that that is so is informed by the nature of your relationship with Aaron beforehand. I am satisfied that you were a dominating influence. You tried to control Aaron, as well as your wife and daughter. You believed Aaron would do what you told him to do.

[19] Ms Clarke put the Crown's case firmly on the proposition that you killed your son between 12.06pm and 12.12pm on 2 June 2014 by hitting him over the head with a wood splitter. She submitted that Aaron was killed in the area between the two woodsheds, at the rear of the house. She submitted that the killing was premeditated and carried out to cover up the fact that you had stolen over $66,000 from Aaron over the previous 10 years.

[20] The Crown fixed the time of death by reference to these factors:

(a) Aaron was alive when the siren went off in Opunake at midday on 2 June 2014. The siren sounds in Opunake at that time each day.

(b) Aaron was alive at 12.02pm when he telephoned Ms Thoms and spoke both to her and to Mr Bevans. On Ms Thoms' evidence, Aaron ended that conversation by making it clear he expected to see her soon.

(c) The call lasted three minutes and 50 seconds, meaning that it ended at 12.06pm.

(d) A text was sent from Aaron's cell phone, at 12.12pm, saying "They on there way". This text referred to Mr and Mrs Armstrong, who were not in fact coming to the property. You used Aaron's cell phone to send the text message after Aaron had been killed.

[21] Your version of events necessarily involved Aaron driving away from your house in his car, but ultimately leaving it parked at the end of the tanker driveway while he was driven off by someone in another car, described as a "Commodore". On your account to the Police, the keys to his car and Aaron's wallet were inside the vehicle but his mobile telephone and his "smokes" had been taken away. On your version, you did not leave your property until you drove the vehicle back to Ms Thoms' home later that afternoon.

[22] The jury must have rejected your account of what occurred. The "Commodore" story was pure fiction. On the evidence that the jury and I heard, I am satisfied there was no reasonable possibility that Aaron is still alive. I am satisfied that his body would likely have been located had he committed suicide out of despondency. Once the fact that Aaron was dead was established there was no other candidate as his killer. It is implausible that Aaron might have been killed by someone else. The same comment applies to the possibility of accidental death. In either of those situations, the chances of the body being located were very high.

[23] I find that between 12.12pm and 1.41pm, you moved and disposed of Aaron's body. The total available time to do so was one hour and 34 minutes. The end time of 1.41pm is fixed by reference to a telephone call made by you to Ms Thoms.

[24] Your version of events was discredited by evidence about cell phone calls made by you away from the farm at a time when you contended you remained there and Aaron's phone had gone. That evidence, in the form of data extracted from Aaron's cell phone and the cell phone polling evidence, supported the Crown's contention that Aaron was killed at Waiteika Road, between 12.06pm and 12.12pm on 2 June 2014.

[25] The fact that you had access to Aaron's phone at that time is demonstrated by a text message that you sent and the voice mail messages left for Aaron. Evidence was given about the background noise and the possibilities from where that may have emanated. One of the calls was polled through the Jackson's Lookout cell phone tower at 1.14pm, demonstrating that you were at that stage well away from the Waiteika Road property.

[26] Another telling piece of evidence was what you told Ms Thoms about David Wright telephoning Aaron. David Wright did telephone Aaron at 1.02pm that day. To know that you had to be in possession of Aaron's cell phone. The cell phone was turned off shortly after and has not been activated since. You could only have had Aaron's cell phone in your possession if you had removed it from the vehicle at the end of the driveway.

[27] However, contrary to the Crown case, I consider it is speculative to say that you had a primary intention to kill your son on 2 June 2014. I will explain shortly some aspects of your character which seem to support that view. I find that you believed you could convince your son to leave his partner and children out of shame for not buying the farm. This was, in my view, the first time that Aaron had stood up to you. Your normally placid son reached his breaking point when you told him that you had stolen his money and there was no farm to buy. When it became clear to you that you could not persuade him to go away voluntarily, or to separate from his family, I find that you embarked upon a backup plan to kill him and dispose of his body. I find Witness 77's evidence that you told him that Aaron had threatened to report you to the authorities convincing in that regard.

[28] Given the implausibility of Aaron being alive, Mr Keegan was right, having put the possibilities of disappearance or suicide to the jury, to put forward on your behalf, the possibility that you might have committed the offence of manslaughter.

[29] Indeed, during the trial, I wondered whether an altercation may have occurred in the course of which you hit Aaron, as an act of spontaneous anger, with some form of object, without intent to seriously harm or kill and he fell, hit his head and died. On reflection, I consider the jury was right to conclude that you killed your son with

murderous intent. Had death been accidental, it is inconceivable that you would have chosen to dispose of the body rather than telephone emergency services to see if Aaron's life could be saved. The fact that you went to such lengths to dispose of the body and to cover your tracks immediately afterwards, tells in favour of an intentional killing, as opposed to one that was accidental.

[30] You and Aaron had been splitting wood at the farm on 1 June 2014. Witness 77 recounted conversations with you in which you disclosed that you had told him that a splitter was used to kill Aaron. A stain of blood was found on a splitter. The blood was matched to Aaron, as a result of DNA analysis. Witness 77 could not have known that a wood splitter was involved unless you had disclosed that to him.

[31] Even though that splitter was ruled out as the murder weapon, evidence given by an ESR scientist, Ms Knight, demonstrated that Aaron's blood could only have been found on the splitter if it had been transported through the air as a result of the application of significant force to Aaron's body, most likely through another object; I would say probably another wood splitter as Witness 77 recounted. The size of the droplet found on the wood splitter was, in Ms Knight's opinion, likely to have resulted from "really hard force". After application of that force, the blood particles flew through the air and landed on the splitter.

[32] The fact that Witness 77 knew about the existence of a wood splitter gives credence to other evidence given from him. In particular, I accept you told him that Aaron was buried somewhere along the lengthy Eltham Road where nobody would find him. Most likely he has been buried there together with the murder weapon and his mobile telephone.

Personal factors

[33] I turn now to personal factors relevant to sentencing.

[34] Mr Roigard, you are a compulsive liar. You believe that you can talk your way out of anything. You are prepared to give the most outrageous explanations for not doing something; an example that springs to mind is an inability to pay a debt on

time because your daughter had committed suicide – something that had plainly not occurred.

[35] You were prepared to tell delusionary stories to people about the amount of money you had and your ability to buy a farm, whether together with Aaron or not. You were prepared to use the respected names of your employers, Mr and Mrs Armstrong, to add credence to the idea that Aaron's investment would yield him a farm. They had nothing to do with what you did.

[36] You are not unintelligent. Certainly, you are cunning. Unless you believed that you were capable of talking your way out of any situation, you could not possibly have thought that you could persuade others that some of the more extravagant claims you made were true. Nor could you have expected the Police to believe your version of what happened on 2 June 2014.

[37] I have the advantage of a pre-sentence report and a psychiatric assessment undertaken by Dr Street following your convictions. I focus on the psychiatric report. Much of what is said in that report has served to confirm views that I formed about you during the course of the trial.

[38] You have a history of dishonesty, though your last conviction was as long ago as 1990. The ease with which you lie, something associated with a predilection for dishonest behaviour generally, is consistent with Dr Street's assessment that you suffer from an anti-social personality disorder. I cannot do much better than to paraphrase his explanation. You have demonstrated a failure to conform to social norms. You have demonstrated deceitfulness as evidenced by your "conning" of others for personal gain; particularly when challenged with overwhelming evidence to the contrary of a statement.

[39] Dr Street also points to irresponsibility on your part, as evidenced by multiple loss of employment and inability to honour financial commitments. Most importantly for sentencing purposes, he adds:

> … [Mr Roigard] demonstrated a lack of remorse as most evidenced during my interview with him, when he did not demonstrate any emotional response

> in issues regarding his son, but could become quite emotional when discussing his own mistreatment or misfortunes. Mr Roigard also demonstrates traits consistent with a narcissistic personality disorder.

[40] In other words, while you feel sorry for the position in which you find yourself, you have no remorse for killing your son. Dr Street informs me that you display anti-social and narcissistic personality disorders and those who do so "have a tendency to be tough minded, glib, superficial, exploitive and un-empathetic". He states that people dealing with you should be cautious as individuals with such disorders "often display a superficial charm" and are "capable of using technical terms or jargon to impress others" who do not necessarily understand them. Dr Street opines that this lack "of empathy, inflated self appraisal and superficial charm are more predictive of recidivism".

[41] I also observed your wife and daughter give evidence. They continue to support you and to believe that Aaron is not dead. They declined to provide victim impact statements. Their belief cannot be justified on any rational basis. In my view, your wife, when giving evidence, exhibited signs of what psychologists call "learned helplessness". She displayed an inability to remember events that occurred on 2 June that a mother would be most unlikely to forget. This was the day on which her son went missing after being alone with his father. I also consider that your daughter has been affected by controlling behaviour over many years. That contributed to the way in which she gave her evidence.

[42] There are no mitigating circumstances. You do not accept responsibility for what you did. You show no remorse. You show no understanding of the enormity of your deceit and the evil act of killing your own son. You were not prepared to tell the Police, when they asked, where the body could be found.

Victim impact statement

[43] Aaron's partner, Julie Thoms, read out a moving victim impact statement earlier. Ms Thoms I acknowledge what you did. Her description of the crushing circumstances of her partner's disappearance, the Police investigation that followed and the traumatic nature of your trial, stands in sharp contrast to the vitriolic way in which you described her in your interview with Detective White.

[44] I extend to Ms Thoms the sympathy of the Court for the distress she has suffered. Hopefully, the outcome of the trial will prove some consolation, though I accept that nothing will provide closure until she is able to lay Aaron to rest with dignity.

[45] The victim impact statement has two important components. Not only have your actions caused immense emotional harm to your son's life partner, but they have also affected significantly the lives of your grandchildren, one of whom had been born only five weeks before Aaron died.

[46] It is obvious from what you said to Detective White that you hold Ms Thoms in disdain. But, something I have found extraordinary is that I have never heard a word from you about the impact of your offending, or even Aaron's disappearance, on your grandchildren. Perhaps that is because you initially seemed to think, misguidedly, that Aaron was not their father; though you and your wife did visit occasionally, which suggests that you did. You need to realise that the lives of Ms Thoms and the children will never be the same. She has lost a partner and a soul-mate; the children have lost their father. What they will make of what happened when they are old enough to be told is impossible to predict. I suspect they too will need significant professional help to recover from what they are told.

[47] I also heard read out a victim impact statement prepared by Mr Andrew Wright, on behalf of the Wright family. Andy Wright was a friend of your son. On the evidence I heard the Wrights were more of a family to Aaron than you ever were. I acknowledge their presence in Court today and the loss they too have suffered.

[48] I want to add one further comment about the significance of the Police investigation. Initially, the Police embarked upon a missing person inquiry. That was why it was not possible to undertake a detailed forensic analysis of the scene on or about 2 June 2014. One comfort to Ms Thoms and to Aaron's friends will have been the rigour with which the Police inquiry was undertaken once it became clear they were dealing with a suspicious death.

[49] This was an investigation that it would have been easy to abandon when Aaron was not found. Instead, a full investigation was undertaken that led to your arrest on the charge of murder. The community in Taranaki should be grateful to have police officers who are prepared to go to the lengths they did to reach a conclusion to the investigation. On behalf of the community, I acknowledge the work that they have done and, in particular, wish to praise the work undertaken by Detective Allemann.

Analysis

[50] My task is to determine the minimum period of imprisonment that you must serve before being eligible to apply for parole. I start by considering whether this is a case to which s 104 of the Sentencing Act applies, which, unless it would be manifestly unjust to do so, requires a minimum non-parole period of at least 17 years to be imposed.

[51] All murders are serious. But those to which s 104 applies involve aggravating factors that heighten the level of a killer's culpability and cause members of the public to view what has occurred with greater opprobrium.

[52] In this case I am satisfied that two relevant factors exist. They are:

(a) The murder was committed in an attempt to avoid detection and prosecution for other offences that you committed, namely the theft of Aaron's money.[2]

(b) The murder was committed with a high level of callousness.[3]

[53] I include within the scope of the "callous" behaviour, the disposal of Aaron's body, your refusal to tell anyone where it might be found, and your continued attempts to paint what happened as no more than a deliberate decision on the part of Aaron "to disappear". The precise characterisation of those factors is not important.

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2 Sentencing Act 2002, s 104(1)(a).
3 Ibid, s 104(1)(e).

The question is whether they represent aggravating factors of a type that brings your crime within the scope of s 104.

[54] Whether those factors are viewed as part of the "callous" nature of the offending or independently as other "exception circumstances",[4] they come within the section. Disposal and concealment of a body causes great pain and distress to those close to the victim; in that regard I refer in particular to Ms Thoms and the children. The effect that can have becomes more acute when the body is not located subsequently.[5]

[55] Ms Clarke submits that those factors, taken together with other aggravating factors, justifies a minimum non-parole period of between 20 and 22 years. On the other hand, Mr Keegan has contended on your behalf that a minimum period of 17 years is sufficient to mark the offending.

[56] In my view, the fact that you killed your son in an attempt to cover up other criminal activity and did so in the manner I have described justifies an uplift on the period of 17 years mandated by s 104. While the murder was not "calculated" or involving "lengthy planning" (of the type to which s 104 refers)[6] it did involve thought being given to how the body could be disposed of in the event that you had to kill your son.

[57] A further aggravating factor is your breach of the inherent trust that must exist between father and son. Parents are there to protect and support their children. No father should steal from his son. Certainly, no father should deliberately kill his son. Aaron was entitled to trust you with his money and his life, and to expect support from you. His trust was tragically misplaced.

[58] Your lack of concern for your son, his partner, your grandchildren, and his fate was vividly demonstrated by what you said to Detective White when interviewed about what had happened on 12 June 2014. I found your demeanour on that occasion chilling.

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4 Ibid, s 104(1)(i).
5 Generally, see *R v Kafil Ahmed* [2012] EWCA Crim 251 at para 15.
6 Sentencing Act 2002, s 104(1)(b).

[59] When comparator cases are taken into account I consider that the appropriate minimum non parole period is one of 19 years imprisonment. I reiterate that means that you will not be able to apply for parole until after 19 years of your life sentence has been served. Whether parole will ever be granted is for the Parole Board to determine at the appropriate time.

Result

[60] Mr Roigard, on the charge of murder you are sentenced to life imprisonment. You will serve a minimum of 19 years imprisonment before you may apply for parole. On each of the theft in a special relationship charges you are sentenced to three years and six months years' imprisonment. All sentences are to be served concurrently.

[61] Stand down.

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P R Heath J