IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHAKATŪ ROHE

CRI-2016-042-1644
[2018] NZHC 811

THE QUEEN

v

MARTIN GRANT PRICE

Hearing:	26 April 2018
Counsel:	J M Webber and S J Revell for Crown R M Mansfield and S R Lack for defendant
Sentence:	26 April 2018

SENTENCING NOTES OF DOBSON J

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[1] Mr Price, I now have to sentence you for the murder of Mr Morton and I am also required by law to give you a first strike warning, which I will do at the end of explaining my sentence.

[2] It is mandatory that I sentence you to life imprisonment unless it would be manifestly unjust to do so. There is no suggestion that your circumstances and those of the killing would make a life sentence manifestly unjust. So the sentence will be life imprisonment, and the issue is the length of the minimum period of imprisonment (MPI). The Crown has submitted that the appropriate term is 17 years on grounds that I will shortly review. Mr Mansfield has submitted that the 17 year threshold is not made out and that the MPI ought to be no more than in a range between 11.5 and 13 years.

[3] The Sentencing Act 2002 (the Act) contains a range of circumstances the Court has to consider in setting the MPI for a murder conviction. First, it provides the MPI may not be less than 10 years except in circumstances that could not apply here, and that the Court has to impose a term that holds you accountable, denounces the conduct involved, deters you and others and protects the community.[1]

[4] Secondly, s 104 of the Act recognises that there will be some murders that are more serious than others, and directs that an MPI of at least 17 years will be required if one or more of defined features of the offending or the offender are made out. Two potentially relevant features in s 104 are, first, where a murder involved unlawful entry into, or unlawful presence in, a dwelling place and, secondly, where a murder was committed with a high level of brutality, cruelty, depravity or callousness. Now you have heard Mr Webber this morning highlighting the features of the killing here that the Crown argues bring both those considerations into play.

[5] On your behalf, Mr Mansfield has urged that I should adopt the explanation for the killing that you provided in evidence, except to the smallest extent of variation from your version that would be needed to fit with the jury's finding of murder. So, Mr Mansfield asks me to assess your culpability on the basis that you acted in self-defence, but that the jury must have found you used a greater level of violence than was reasonable to meet the threat from Mr Morton as you perceived it.

[6] Having presided at your trial, I have my own view of the circumstances of the killing. I am mindful that any view of the circumstances I adopt must be consistent with the jury's verdict. The jury's verdict is not necessarily, as Mr Mansfield suggests, that the jury believed your evidence that you acted in self-defence, but found you guilty of a reckless form of murder because you used a greater level of violence in self-defence than was reasonable.

[7] As you should recall from the sequence of questions posed for the jury at the end of the trial, there were a number of issues they had to decide. The jury may well have rejected your claim that you acted in self-defence at an earlier point in the reasoning than that contended by Mr Mansfield.

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1 Sentencing Act 2002, s 103.

[8] For my part, I cannot accept your reconstruction of how the attack occurred. Your explanation of using the knife when Mr Morton was sitting astride you and was using both hands to choke you is inconsistent with the nature and location of the stab wounds you inflicted. His knuckles did not show any signs of having been used to hit you hard with a closed fist. Your trousers, as shown in the CCTV footage when you were back in the Nelson CBD after the attack, were entirely too clean to have suffered any sort of rolling around on the low tide zone of the foreshore, even if, as Mr Mansfield urges, the fight occurred where the surface was sandier, rather than muddy, and dry. You did not appear to have any injury to your neck when, on your version, Mr Morton had been choking you to the point that you were concerned about blacking out.

[9] I appreciate that rejecting your explanation leaves the detail of the attack unclear. One material aspect is whether you took the knife used in the attack with you when you went to see Mr Morton. I accept the prospect that you did have it in your backpack throughout the evening. I am influenced in that prospect by your history of offending, which has involved threats to use, or violence with, a knife and the evidence of Mr O'Carroll that suggested you are a person with a propensity to use knives.

[10] However, I am not able to be sufficiently satisfied to assess your culpability on the basis that you did take the knife with you. The Crown did not contend that, and a filleting knife such as the pathologist reconstructs was of the type used was quite likely to be readily to hand on Mr Morton's boat. I therefore disregard the prospect of your taking the knife as what would have been an important indication of pre-meditation.

[11] I am, however, satisfied on all the evidence at the trial that you took the knife away with you after the confrontation and disposed of it.

[12] I have carefully reviewed the pathologist's evidence. You should recall that he identified seven stab wounds and that he reconstructed the knife used as having a relatively long but narrow blade, such as a filleting knife. You inflicted two stab wounds to the back of Mr Morton's neck. They would not have been fatal but that is an area where Mr Morton would have been vulnerable to serious harm such as paralysis if spinal nerves were severed.

[13] You also stabbed Mr Morton in the chest, thrusting downwards from near the bottom of his ribs into his abdomen. That stab wound nicked a lung, passed through the spleen, pancreas and kidney, and nearly breached the skin on Mr Morton's lower back, and that wound track was some 15 centimetres long.

[14] You also stabbed Mr Morton in the thigh. The pathologist assessed that as going some 12 centimetres up the thigh. It appears that these two most serious stab wounds were not immediately fatal, possibly by good luck rather than good management by you in confining the impact of the injuries you were causing.

[15] There were three other stab wounds to the left side of his face, right ear, and quite a large slash on the back of his right wrist.

[16] The pathologist also identified seven separate areas of deep bruising to Mr Morton's head, in addition to blunt force injuries to both eye sockets and his lips. Although the pathologist could not be certain, I accept as reasonable his opinion that these were inflicted by a mixture of kicking, stomping and blunt force trauma by hitting Mr Morton about the head and his body with some form of weapon such as a piece of wood.

[17] The lack of blunt force injuries to the front of Mr Morton's torso and the nature and location of the grazes on his hands and arms suggested that the injuries may have been inflicted when Mr Morton was attempting to protect himself from attack and most likely in a foetal position. There were no grazes on his knuckles, such as might be expected if he had punched you hard.

[18] I reject your suggestion that some of these injuries were inflicted by someone else after you left the scene. I also reject your evidence that you did not appreciate how seriously he was hurt when you left the scene. Instead, I find that you left him with what you must have know were life-threatening injuries and made no attempt to get help for him. In effect, Mr Price, you left him to die.

[19] Now in contrast to his condition, we have the CCTV footage of you walking back through Nelson after the attack. Apart from the limp which is explained by a pre-

existing ankle injury, you appear unscathed. You were observed by others to have a cut lip that night. When interviewed by the Police relatively shortly after the killing, there was no suggestion of you having sustained injuries, such as bruising to the neck by choking as you claim Mr Morton inflicted on you.

[20] The attack on Mr Morton started on the small boat on which he lived. It occurred at around 3.00 am in the morning when it is safe to assume that Mr Morton would have been sleeping, or at least not expecting an uninvited visitor. Accordingly, he would have been taken by surprise. Mr Mansfield argues that you went aboard the boat in accordance with an implied licence to do so. Your version is that you went there to buy cannabis, in the belief that the long-standing animosity between you had been resolved.

[21] I cannot accept that. When giving evidence, you had no credible response to the Crown questions that you would not have had sufficient cash to buy cannabis if getting cannabis was your intention. If at all, it is to be inferred that you were intending to demand it, either on tick or by using threats. Further, I did not find credible your evidence that you believed the animosity had been resolved so that you might well be welcomed by Mr Morton. The on-going arguments between you might have been petty and childish, but they were bitterly maintained to an extent that would not credibly be resolved by a cheery wave when you saw him in a passing car. In summary, I find that you were unexpected and uninvited.

[22] I am satisfied that the injuries inflicted on Mr Morton started on his boat. In the circumstances of this case, I treat the whole of that boat as a dwelling place so, although this may not be a classic "home invasion" of the type contemplated in s 104, I agree with the Crown that the criterion in s 104(1)(c) of the Act is made out.[2]

[23] As to whether this was a murder involving a high level of brutality, counsel have invited me to compare the circumstances here with those summarised in a range of other cases. I have reflected on each of the cases suggested as comparators, and applied the approach they suggest to an assessment of what occurred here.

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[2] Applying the approach in *Pahau v R* [2011] NZCA 147 and *R v Christison* [2013] NZHC 2813.

[24] Mr Mansfield makes the point that because the whole Crown case was that this amounted to a reckless killing, that description makes it inconsistent with, or takes it outside, the scope of a killing that could be seen as committed with a high level of brutality. I do not accept that the two concepts are necessarily mutually exclusive, but clearly these indications of a higher level of seriousness are more easily made out when the killing was intentional and possibly pre-meditated, which is not the case here.

[25] Again, Mr Mansfield relies on your explanation of events to describe this as a reckless killing that occurred after an unanticipated fight escalated into your use of the knife to inflict the serious injuries, which, on your version, unknowingly went further than the jury would accept as a reasonable level of response. Mr Mansfield also pointed to acknowledgements by the pathologist in cross-examination that his reconstruction of many of the injuries to the back and legs of Mr Morton being inflicted when he was curled up in a foetal position was not established conclusively. Mr Mansfield urges me to reject that part of the Crown's reconstruction as something about which I could not be sure. In particular, that the Crown cannot make out that the blood observed on the bottom of your trousers was splatter blood consistent with it being sprayed on them in the course of a kicking. I accept that caution.

[26] The overall impression from the reconstruction of the attack as it moved from Mr Morton's boat to other locations in the area, assessed in light of the pathologist's reconstruction of the nature and extent of the injuries, does satisfy me that this murder, although not at the highest level of brutality or callousness, was indeed committed with a high level of brutality. On any view Mr Price, this was a savage and prolonged beating. The huge difference in the level of wounds inflicted on Mr Morton, compared with you being relatively unscathed except for a cut lip and the suggestion of a sore shoulder, shows who was the dominant aggressor. I therefore find that the second feature from s 104, that it was committed with a high level of brutality, is made out.

[27] Now, if I reached that finding, Mr Mansfield suggests that I am lowering the test for a high level of brutality. I do not agree. The difference between us is in the reconstruction we take of the events on the boat and the attack that continued thereafter.

[28] Before turning to your circumstances as the offender, I observe that, on one view, both you and Mr Morton were men alone, in the sense that you were without partners or dependants. However, I hope you have read the victim impact statement from Mr Morton's brother. He states that his loss has destroyed their family. Mr Morton had helped care for their elderly mother who died three months after Mr Morton, and the impact on Mr Morton's brother was such that he had to leave Nelson. I acknowledge that he and other members of Mr Morton's whanau are present in Court. The hurt for the family was prolonged by your not guilty plea.

[29] The pre-sentence report and Mr Mansfield's submissions provide insight into your background. Your family moved to Western Australia when you were young and that is where all your immediate family still live. You have no familial support in New Zealand. After leaving school, you worked in Australia as a labourer, truck driver and shearer, and in other labour-intensive jobs. Mr Mansfield describes a hard lifestyle involving heavy drinking and drug-taking. In 2004, the Australian Immigration Department moved to deport you, and after three months in a detention centre you were deported to New Zealand. Since that time, you have had employment around New Zealand as a shearer, and then here in Nelson working in odd jobs.

[30] The pre-sentence report writer records an explanation that you were affected by alcohol and cannabis at the time of the attack, that you are now sorry Mr Morton died and that it was not your intention to harm him. You stated to the report writer that someone else must have come to the site and stomped on Mr Morton's head.

[31] You were tearful when cross-examined during your evidence, claiming that Mr Morton's death had saddened you. I took there to be a measure of concern, but consider that a significant contributor to it is your regret at the predicament it has created for you, rather than the death Mr Morton and the loss that creates for his family. There was certainly no remorse at the time of the killing, given you did nothing to get help for Mr Morton and that you sought to blame Mr O'Carroll for the murder in the days after it occurred.

[32] Relevant to your level of culpability is the extent of your previous convictions for violence. Mostly they are relatively low level, but you have convictions in

Australia between 1986 and your deportation in 2004 ranging from common assault in 1986, assault causing bodily harm in 1989, then assault occasioning bodily harm, unlawful wounding and threats in 1998, and causing grievous bodily harm in 2004.

[33] Since your return to New Zealand, you have been convicted of assaulting Police in 2005, injuring with intent and a threatening act in 2009, assault with a weapon in 2010 and common assault in 2013. That record is, in conventional terms Mr Price, an aggravating feature in terms of the level of your culpability for this crime. I am not persuaded it is offset by any mitigating circumstances for which I can give you material credit.

[34] In the end, I am satisfied that the Crown has made out the threshold under s 104, which would mean an MPI of 17 years. Having reached that benchmark, I conclude that it would not be manifestly unjust to impose that MPI. I am not persuaded that you would are entitled to a reduction on account of the limited sense in which I acknowledge remorse on your part, nor is any uplift warranted when your previous convictions might otherwise justify that. Alternatively, these pluses and minuses cancel each other out.

[35] Having reached that benchmark distinguishes your case from that in *R v Churchis*,[3] which Mr Mansfield submitted in his written submissions was comparable. In that case, the Crown did not argue that s 104 features were present, and the youth and genuine remorse of the offender were relevant in settling a lower MPI.

[36] Contrary to the youth in *Churchis*, here your age means that you will be 72 before you are eligible for parole. That is a sad feature but it cannot alter the application of the considerations I am required to take into account.

[37] Before imposing sentence Mr Price, I am obliged to give you a first strike warning. You will be given a form of the warning in writing and sadly you have a lengthy period in prison to reflect on its impact, but I deliver it now orally in the following terms. Would you please stand.

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3 *R v Churchis* [2014] NZHC 2257.

[38] Mr Price, given your conviction for murder, you are now subject to the three strikes law. I warn you about the consequences of another serious violence conviction. If you are convicted of any serious violent offences other than murder committed after this warning, and if a judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release.

[39] If you are convicted of murder that was committed after this warning, then you must be sentenced to life imprisonment. That would be served without parole unless it would be manifestly unjust. In that event, the judge would have to sentence you to a minimum term of imprisonment. The written notice you will receive will confirm the list of what are treated as serious violent offences.

[40] Mr Price, I now sentence you on your murder conviction to life imprisonment and impose a minimum period of imprisonment of 17 years.

Dobson J

Solicitors:
Crown Solicitor, Nelson