

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

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

**CRI-2019-009-012005  
[2021] NZHC 2877**

**THE QUEEN**

v

**KAINE VAN HEMERT**

Hearing: 28 October 2021

Appearances: D L Elsmore for the Crown  
J R Rapley QC for the Defendant

Judgment: 28 October 2021

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**SENTENCING REMARKS OF NATION J**

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[1] Mr Van Hemert, you pleaded guilty today. Following the case going to the Court of Appeal, it was necessary for you to go through that procedure again. You had indicated previously through your counsel that you were accepting the sentence indication I gave earlier and would be pleading guilty, so your plea of guilty today was simply, in one sense, a formality, recognising what had happened previously. So, it is now necessary that I sentence you.

[2] On 11 August 2021, I provided you with a sentencing indication on the charge of murder.<sup>1</sup> The context of this sentence indication and the decisions leading up to it have previously been explained.<sup>2</sup> You accepted the indicated sentence of life

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<sup>1</sup> *R v Van Hemert* [2021] NZHC 2076.

<sup>2</sup> At [1]; and *R v Van Hemert* [2021] NZCA 261.

imprisonment with a minimum period of imprisonment of 11 and a half years. So, you are now, as a result, before the Court for sentence on one charge of murder.<sup>3</sup>

[3] I again acknowledge the family and friends of the victim, Ms Te Pania, who are at the back of the Court today. And, I also acknowledge the arduous process that everyone has had to go through with these Court proceedings and recognise that there have been many occasions on which you have had to come to Court to follow all that has happened.

[4] I have again read the victim impact statements. I want to acknowledge the care, thoughtfulness, insights and understanding of other people's difficulties that is apparent in those statements but also the anguish that has been caused by Ms Te Pania's murder. I appreciate that no sentence I pass will ever address the loss of Ms Te Pania or the pain you suffer because of it. For Ms Te Pania's daughter, who cannot understand where her mum has gone, nothing can take the place of the loyal and loving person who cared for her. Those who worked alongside Ms Te Pania on a project to end violence against sex workers, for which Ms Te Pania won a Volunteering Canterbury Award, emphasise that Ms Te Pania's daughter must grow up in a safe community that values her mother's life and place in the world.

[5] Mr Van Hemert, the facts of your offending have been presented before but I need to outline them briefly again now.<sup>4</sup>

[6] Over the Christmas period of 2019, you found out that your former partner, and the mother of your child, had entered a new relationship. After finding this out, you consumed very significant quantities of alcohol and cannabis, and your mental health deteriorated rapidly.

[7] On 29 December 2019, your former partner contacted the Canterbury District Health Board Mental Health Services and reported her concerns about your paranoid behaviour.

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<sup>3</sup> Crimes Act 1961, ss 167 and 172. Maximum penalty of life imprisonment.

<sup>4</sup> This summary of facts is largely adopted from the Court of Appeal judgment in *R v Van Hemert*, above n 2.

[8] The next day your brother contacted the same service and reported that you had been talking nonsensically, spent a long period of time in the shower and were acting in a very agitated manner.

[9] You were attended by a mental health nurse and doctor, who reported that you were seemingly presenting with acute psychotic symptoms. A certificate under s 8A of the Mental Health (Compulsory Assessment and Treatment) Act 1992 was issued by the nurse. The doctor issued a certificate to support this application to have you assessed at Hillmorton Hospital. Police assistance was sought to transfer you to Hillmorton Hospital. After learning that the Police were unable to assist in a timely manner, health authorities, in consultation with family, issued prescriptions for anti-psychotic and anxiolytic medication, and an arrangement was made that you would present voluntarily to Hillmorton Hospital the following day.

[10] You fell asleep soon after taking the medication and your brother stayed with you until the evening, when he left you asleep in bed.

[11] Later that night, you woke up and decided to engage in “revenge sex” to “level the playing field” with your former partner. At some point during the night you consumed the rest of the prescribed medication and drove your vehicle to the red-light district in Christchurch. You appear to have made this journey on two occasions, returning home each time to consume cannabis. At roughly 4 am you made a third trip, removing the number plates from two vehicles and affixing them to your own vehicle on the way. You encountered Ms Te Pania, who was working as a sex worker on Manchester Street. Ms Te Pania got into the front passenger seat of your vehicle and you drove to the Burnside area, where you said you discussed potential services and payment.

[12] According to you Mr Van Hemert, Ms Te Pania then presented a weapon, which was likely an awl later found under the front passenger seat. Whatever the circumstances, it is clear that you then attacked Ms Te Pania with a large knife and other items. It is not suggested for you that the attack was in self-defence. This attack was brutal and Ms Te Pania suffered extensive injuries. Those injuries were set out in

the summary of facts. They included slash or stab wounds to one thigh, the right side and front of her face, abdomen, throat, left and right hands, and chest.

[13] You then drove out of Christchurch on State Highway 1 with Ms Te Pania's body still in the front passenger seat. At 6.45 am you returned to Christchurch and drove to Christchurch airport, where concerned staff called the Police.

[14] You were interviewed by the Police on 31 December 2019 and alleged that an altercation had occurred between you and Ms Te Pania over the details of the transaction for the sexual service Ms Te Pania was to provide. You claimed that Ms Te Pania attacked you and you acted in self-defence. You said you had "sliced and diced" her and "murdered her" after you had both seen "red". You said that you had been freaked out and drove all over Christchurch disposing of Ms Te Pania's purse and cell phones.

[15] You suffered a V-shaped laceration to your left hand, which required surgery.

[16] In relation to these facts, the sentence indication given to you on 11 August 2021 set out my analysis of the appropriate sentence in full and should be considered along with these remarks. However, it is appropriate that I repeat some of that detail in Court today.

[17] Firstly, in line with the Court of Appeal's judgment, a sentence of life imprisonment will be imposed here.<sup>5</sup> There is a statutory presumption in favour of life imprisonment for murder unless, given the circumstances of the offence and the offender, a sentence of life imprisonment would be manifestly unjust.<sup>6</sup> Having regard to all the circumstances of the offending and with due regard to the way your mental health illness was a significant factor in your offending, this is not a case where it would be manifestly unjust to impose life imprisonment. And as Mr Rapley acknowledged today, this means you are subject to a sentence for life. You will be released only if the Parole Board considers the community will be safe with you on parole and, if you are released on parole, you will be subject to potential recall to

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<sup>5</sup> *R v Van Hemert*, above n 2, at [54].

<sup>6</sup> Sentencing Act, s 102.

prison if at any time anything happens which causes the Parole Board to think that you could again be a danger to the community.

[18] The central issue here is what the minimum term of imprisonment should be before you can be considered for parole. When a life sentence is imposed, the Court must order the offender to serve a minimum period of imprisonment *of no less than*<sup>7</sup> 10 years.<sup>8</sup> If one of the factors in s 104 of the Sentencing Act is engaged, a minimum period of at least 17 years must be imposed, unless the Court is satisfied that it would be manifestly unjust to do so. In these circumstances, as I discussed in more detail in my sentence indication, the murder of Ms Te Pania was committed with a high level of brutality,<sup>9</sup> Ms Te Pania was particularly vulnerable,<sup>10</sup> and there was an element of premeditation in what happened.<sup>11</sup>

[19] The presence of these factors means the effective starting point for the minimum period of imprisonment is 17 years.

[20] As noted in my sentence indication, taking into account your guilty plea and mental illness, I consider it would be manifestly unjust for the minimum term of imprisonment to be 17 years.

[21] For your guilty plea Mr Van Hemert, I consider a credit of two years is appropriate. And, this reflects your acknowledgement that you killed Ms Te Pania and were intending to do so or, knowing that she could die from what you were doing, you did not care if you did kill her.

[22] I do not consider you have demonstrated genuine remorse Mr Van Hemert although I note the expression of apology and condolences which your counsel gave to Court today. But I do have in mind what was said in the pre-sentence report. Nevertheless, the absence of remorse is apparent from that pre-sentence report, it is not to be treated as an aggravated feature but obviously, with that absence of remorse, you are not entitled to a further discount on that basis.

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<sup>7</sup> In the sentencing in Court, the words read were “greater than”. This was a slip and obviously incorrect. The words used were not material to the sentence arrived at in either the indication or this sentencing. The slip has now been corrected.

<sup>8</sup> Section 103.

<sup>9</sup> Section 104(1)(e).

<sup>10</sup> Section 104(1)(g).

<sup>11</sup> Section 104(1)(b).

[23] As to your mental health issues, I accept these contributed towards the offending. It was agreed by the psychiatrists who assessed you that, at the time you killed Ms Te Pania, you were suffering from mania, consistent with your past diagnosis of bipolar 1 disorder.

[24] You have no previous convictions for violence. You do have a tendency towards violence and serious aggression when you become manic through your bipolar illness. Those episodes have been aggravated and have become more intense through your tendency to indulge heavily in alcohol and illicit drug use at such times.

[25] As indicated in my sentence indication, I take into account your lack of previous violent offending when deciding what adjustment there should be for your mental illness. Your lack of previous violent offending prior to the murder of Ms Te Pania does suggest that your mental illness was a significant factor in your offending. However, although I accept that your judgement was significantly impaired at the time of the offending, you still set out that night knowing what you were doing. You armed yourself with a weapon, took Ms Te Pania to an undisclosed place where no one could come to her aid and attacked her in a rage.

[26] In taking into account your lack of any previous convictions for offences of violence and the way your mental illness contributed to what you did, I will reduce the starting point sentence by 20 per cent on account of such matters. This is consistent with the Court of Appeal's judgment and the recognition by the Crown that a significant allowance is appropriate for the way your mental illness contributed to the murder.

[27] Against a starting point minimum period of 17 years, and taking into account the credit for your guilty plea, that would result in a credit of around five and a half years, commensurate with a minimum period of imprisonment of 11 and a half years. That minimum period of imprisonment is, I consider, the minimum required to recognise the principles of accountability and deterrence, and the importance of protection for others.

[28] Mr Van Hemert, please stand.

[29] On the charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 11 and a half years.

[30] With your plea of guilty, it is appropriate I again enter a conviction on the charge of murder and I am required to give you a first strike warning which is this.

*First strike warning given*

[31] That is the sentence of the Court.

Solicitors:  
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J R Rapley QC, Barrister, Christchurch.