IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

I TE KŌTI MATUA O AOTEAROA
AHURIRI ROHE

CRI-2019-092-8912
[2023] NZHC 2099

THE KING

v

RANAPERA TAUMATA

Hearing:	7 August 2023
Appearances:	S B Manning and M J R Blaschke for the Crown A M M Schulze for the Defendant
Judgment:	7 August 2023

NOTES ON SENTENCING OF GRICE J

Introduction

[1] Mr Taumata, you appear for sentencing today having been found guilty of one charge of murder[1] and one charge of assault with intent to injure following a jury trial in Napier on 14 June 2023.[2]

The offending

[2] The facts of the offending are not in dispute. Given the extent of the evidence we heard at trial, including the CCTV footage, I only give a brief summary here.

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1 Crimes Act 1961, ss 167(b) and 172 — maximum penalty life imprisonment.
2 Section 193 — maximum penalty three years' imprisonment. The victim in both charges is Ms Taylor-Jade Hira.

[3] The offending took place in the evening and early hours of 14 and 15 August 2019. You and Ms Taylor-Jade Hira had been in a relationship for about 18 months by that stage. You were effectively living together in the sleepout at your family's home.

[4] The CCTV footage recorded that in the early hours of the morning you and Ms Hira went to get McDonald's at about 12.30 am. When you returned a short time later and both got out of the car you kicked her. Then you kicked her again shortly afterwards as you were walking towards the sleepout and that caused her to fall to the ground and spill the food she was carrying. You kicked her several more times and threw her to the ground. She then followed you to the sleepout.

[5] At about 12.55 am you pulled Ms Hira out of the sleepout by her hair, threw her to the ground and returned to the sleepout. You would not allow her back in for several minutes.

[6] Over the next 17 minutes or so, inside the sleepout you inflicted a prolonged and violent assault on Ms Hira, rendering her unconscious and injured. At about 1.15 am you dragged her outside; she appeared to be unconscious. You tossed her to the ground. You then proceeded to throw items of clothing and bedding outside around where her body lay. A few minutes later you again grabbed her and dragged her by the hair back into the sleepout.

[7] About 10 minutes later you came out and went into the main house where your family were sleeping. You alerted them that something was wrong with Ms Hira. Another 20 minutes or so elapsed and you while your family were seen to be going in and out of the sleepout carrying out various tasks. Then you carried Ms Hira's body to the car. With your mother and sister, you drove her to the hospital. She was unresponsive at the hospital. Ms Hira was flown to Wellington, but nothing could be done and her life support system was disconnected two days later. She died in Wellington surrounded by whānau.

[8] A post-mortem examination the next day determined the cause of her death was head injuries. They were described as a subdural haematoma from blunt force trauma. She also had rib fractures, a number of bruises, and abrasions to her body.

Impact of your offending

[9] I have had the advantage of victim impact statements given on behalf of Taylor-Jade's whānau and her friends. We have heard today from Taylor-Jade's mother, Maria Rukupo, on behalf of the whānau and she was supported by Taylor-Jade's father. Nichola Tuakanangaro on behalf of Eden, Taylor Jade's best friend, and her other friends and cousins and wider group of friends, also spoke about the loss of Taylor-Jade.

[10] No sentence can reflect the loss of the person that Taylor-Jade was and the fact that she died as she was poised to embark on her adult life.

[11] It is clear from the victim impact statements and what I heard from her mother and Nichola that she was much loved. That love was well-expressed in the sentiments that we heard today.

[12] Taylor-Jade will be much missed, but her life will be celebrated and remembered by her whānau and friends.

Submissions of the parties

[13] I have heard from both the Crown, Mr Blaschke, and Mr Schulze on your behalf. There is no dispute about the fact that the appropriate sentence is life imprisonment.

[14] Where a sentence of life imprisonment is imposed, I must also consider a minimum period of imprisonment called an MPI. The key issue today will be what that minimum period of imprisonment should be.

Crown submissions

[15] The Crown, Mr Blaschke, submits that the appropriate starting point should be be somewhere between 10 and 13 years. The Crown submits an uplift of six to twelve months is appropriate to reflect your previous offending and it accepts, rightly, that some allowance should be made for your combined personal circumstances and mental health difficulties but says that should be constrained. The Crown submits the appropriate end minimum period of imprisonment should be 12 years.

Defence submissions

[16] Mr Schulze for the defence on your behalf submits that a starting point for the MPI is in the vicinity of 12 years but an uplift of no more than six months should be imposed for the previous convictions and that, with discounts for personal circumstances including your background and intellectual disabilities, the MPI should be 10 years.

Approach to sentencing

[17] The law requires me to take a particular approach to sentencing. It is a two-step approach and was outlined in *Moses v R*.[3] The first step is to calculate the starting point, incorporating the aggravating and mitigating factors of the offence. These are the features which add to or reduce the seriousness of the conduct and the criminality involved. The overall objective is to adopt a starting point which reflects that culpability, or blameworthiness, that is inherent in the offending.[4]

[18] In the second step I then apply uplifts and discounts to the starting point to reflect the aggravating factors and mitigating factors which are personal to you and your circumstances to reach a final sentence.

[19] I must consider and take into account the principles of sentencing. In this particular case the need to take account of the gravity of the offending, including the

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3 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.
4 *Orchard v R* [2019] NZCA 529, [2020] 2 NZLR 37 at [28] and [32].

degree of your culpability,[5] the seriousness of the offence,[6] and the need to take into account your particular circumstances[7] and your personal, community, cultural and mental health background[8] are important. I must also take into account the general desirability of consistency in sentencing,[9] and I must impose the least restrictive outcome that is appropriate in the circumstances.[10]

[20] I consider that of the purposes of sentencing, the most relevant here today, Mr Taumata, are holding you accountable for the harm that you have done,[11] denouncing that conduct,[12] deterring you and others from this sort of offending,[13] and protecting the community from you.[14] Nevertheless, I must also consider assisting your rehabilitation and reintegration into society.[15]

[21] The lead charge that I focus on is the murder charge. The charge of assault with intent to injure will be encompassed as an included or concurrent sentence in the minimum period of imprisonment, meaning you will serve both sentences at the same time.

Murder sentence

[22] I turn to the murder sentence. As I noted, the presumption that the sentence will be life imprisonment is accepted here. There is no argument that that sentence would be manifestly unjust.[16]

[23] Where a sentence of life imprisonment is imposed, you must also serve a minimum period of imprisonment and that must satisfy the following purposes:[17]

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5 Sentencing Act 2002, s 8(a).
6 Section 8(b).
7 Section 8(h).
8 Section 8(i).
9 Section 8(e).
10 Section 8(g).
11 Section 7(1)(a).
12 Section 7(1)(e).
13 Section 7(1)(f).
14 Section 7(1)(g).
15 Section 7(1)(h).
16 Section 102(1).
17 Sentencing Act, s 103(1) and (2).

(a) Firstly, to hold you accountable for the harm done to the victims and the community.

(b) Secondly, denounce the conduct which you were involved in.

(c) Thirdly, deter you and other persons from committing the same or similar offences.

(d) Protecting the community from you.

Minimum period of imprisonment — starting point

[24] That minimum period of imprisonment for murder cannot be less than 10 years.[18] The Crown accepts the circumstances of your offending do not give rise to a level, which is the higher level, of 17 years of minimum imprisonment or more.[19]

Aggravating and mitigating factors

[25] There are no mitigating factors in respect of this offending. I consider that although you helped to take the victim to the hospital, that does not reduce the culpability of the offending. In particular, I note there was delay in your seeking help for her, and in misleading the medical staff at the hospital by telling them that Ms Hira had been found in her condition in the park. Those factors contributed to the delay in her receiving appropriate treatment.

[26] There are a number of aggravating factors, all of which your counsel accept are present. I now consider those.

Extent of violence (harm caused)

[27] First, as Mr Blaschke pointed out on behalf of the Crown, the extent of violence in your actions. This was significant. As the many injuries she suffered demonstrate, your attack on the victim was serious and targeted many parts of her body with significant force. In particular, you inflicted serious injuries to her head which can

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18 Section 103(2).
19 Pursuant to s 104.

only have been caused through significant force. The extent of the injuries she suffered reflect the degree of force that you must have used on her.

[28] Ms Hira never regained consciousness from when you dragged her out of the sleepout.

[29] The attack was also sustained over a period of time. You were first violent to her, as we saw on the CCTV footage, on the driveway. You continued the violence when she was lying, probably unconscious, on the ground outside the sleepout and the overall fatal assault lasted over a period of more than 20 minutes.

Vulnerability

[30] I also accept Mr Blaschke's submission for the Crown that Ms Hira was also highly vulnerable. The evidence of her friends and family established that she was controlled by you. She was scared of you and she had become withdrawn from them. You were physically larger than her, you inflicted considerable violence against her over a long period of time prior to that fatal assault.

[31] She had become effectively conditioned to your violence against her.

Breach of trust

[32] There was also a breach of trust. You two were in a relationship. Mr Blaschke for the Crown rightly points out that she was entitled to trust you, as her partner, not to hurt her. Your assault on her resulting in her death represents a considerable breach of that trust.

Offending in the home

[33] The offending happened in the home where Ms Hira should have been safe. That is where you lived. She had effectively moved in there with you, she was isolated from her family as a result of your relationship with her and your conditioning. The fact that she was not safe in that space in the sleepout is a further aggravating factor.

Relevant cases

[34] When I consider the appropriate minimum period of imprisonment, I have had regard to a number of cases that both counsel have referred to me.

[35] Mr Schulze, for the defence, pointed to the case which he suggested was the most similar to your offending, *R v Poihipi*.[20] In that case Mr Poihipi and the deceased had been in an on-again, off-again relationship for about two years. The defendant assaulted the victim by punching her in the head and, while she was on the ground, struck her about 11 to 20 blows to her head and kicked her in the face. The blows were powerful and damaged her brain. She was pregnant at the time. Mr Poihipi sat nearby for about 20 minutes while she lay on the ground dying. Eventually he became concerned and went to get his cousin who called an ambulance. They attempted to resuscitate the victim but were unsuccessful. The Court in that case adopted a starting point for the minimum period of imprisonment of 12 years.

[36] There are other cases with similarities, such as *R v Callaghan*.[21] In that case the deceased and the defendant were in a relatively brief relationship and had a child together. After the attack which occurred when Mr Callaghan used a blunt object, said to be a child's baseball bat, on her, causing a fatal injury to the back of her head, Mr Callaghan then sought to cover up his involvement in a number of ways, which led to separate charges for which an uplift was applied. However, for the murder charge, the Court took a minimum period of imprisonment of 11 years.

[37] Another similar case is *R v Wallace* but the violence in that case was at a higher level than your offending.[22] In that case Mr Wallace punched the victim in the face during an argument and pushed her backwards into the wall. That rendered her unconscious, but there had been a previous history the day before of violence as well. The background of violence in that case was more serious than is your offending, as it had involved a number of previous occasions where the defendant had followed the victim and seriously assaulted her, and previously threatened to kill her on numerous

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20 *R v Poihipi* [2019] NZHC 3048.
21 *R v Callaghan* [2012] NZHC 596.
22 *R v Wallace* [2022] NZHC 2390.

occasions. In that case, the Court adopted a starting point for the minimum period of imprisonment of 15 years.

Conclusion on starting point

[38] Standing back and looking at those cases, I take the view that your offending was less serious than the offending in *R v Wallace* where the starting point of 15 years was set. I do consider it was most similar to the offending in *R v Poihipi* and to an extent *R v Callaghan*. In *Poihipi* there were punches and kicks to the victim, including while the victim was on the ground, leading to her death, and included attempts to assist after the assault was inflicted. The offending in *Callaghan* was less prolonged, but involved a weapon, which was absent in your case.

[39] Given the circumstances of the case, involving the aggravating factors which I have listed, I consider the starting point should be 12 years' imprisonment.

Second step — personal aggravating and mitigating factors

[40] The second step that I must take is to adjust that starting point with uplifts and discounts to reflect factors personal to you.

Uplift for previous convictions

[41] You have a considerable previous history of offending, including five previous convictions for family violence — offending which relates to a previous partner and the mother of one of your children. As the pre-sentence report notes, your relationships have been marked by violent and controlling behaviour.

[42] You also have convictions for robbery, aggravated robbery, and assault with a weapon, and a history of youth offending. You have been found to have posed a risk of serious violence and a general risk of re-offending. You have violently offended since you were young and I accept there is a need for protection against the clear risk that you pose the community given your past offending.

[43] The Court may impose an uplift to recognise the need for a greater deterrent response and the risk of reoffending.[23] However, I must be careful to ensure that the uplift does not punish you twice for the same offending.[24] In this case, I consider an uplift of 12 months is warranted. There is a clear risk of you reoffending in violent ways and I do not think an uplift of this size punishes you again for the offending for which you have already been convicted and served a sentence. It rather reflects a need for protection from the risk you pose.

Discounts for personal mitigating factors

[44] I now turn to consider the personal discount mitigating factors. There are two main respects in which discounts to your sentence are sought in view of your personal circumstances. The first is your low level of intellectual and cognitive functioning and mental health issues. The second is your personal background as particularly detailed in the s 27 report which has been put before me, a report that was prepared by Professor Gallavin for the sentencing.

[45] That report focuses both on the deprivation caused by the social, cultural and economic factors that you faced growing up, as well as the factors addressing the agency or reasonable choice which you had available in view of your mental health issues. This affects both culpability and goes to personal circumstances. Professor Gallavin comments that your personal circumstances and background are directly relevant to the current offending. This includes not only the mental health factors, but the related methamphetamine addiction. Professor Gallavin points out those factors are intertwined and difficult to separate. He puts it that those factors gave rise to a situation where "opportunistic and reckless decision-making symbolic of a man easily led and typical of a habitual meth addict and a person who has faced significant mental health challenges" lead to offending.

[46] I consider each of those factors separately.

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23 *Orchard v R* [2019] NZCA 529 at [36]–[37].
24 New Zealand Bill of Rights Act 1990, s 26(2); and *R v Casey* [1931] NZLR 594 (CA) at 597.

Low level of intellectual functioning

[47] First, the low level of intellectual functioning. Diminished mental capacity may be a mitigating personal circumstance.[25] Where there is a causal link between the lack of capacity or the impairment and the offending, it may reduce moral culpability,[26] which I must take into account as one of the principles of sentencing.[27]

[48] I have considered the numerous reports by health assessors, psychologists and psychiatrists. These give a relatively detailed overview of your cognitive and psychotic illnesses. You are on the cusp between "borderline" and "extremely low" categories of intellectual functioning.

[49] You were diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) when you were a child and you have been diagnosed as having a psychotic illness for which you are medicated.

[50] You have a history of drug abuse, particularly use of cannabis and methamphetamine, since you were young, and you told a report writer that your use of methamphetamine increased greatly in the time leading up to the offending.

[51] You have also reported hearing voices, which led to the psychotic illness diagnosis. That includes auditory and visual hallucinations and paranoid ideas.

[52] Special arrangements were made during the trial to make sure you were able to follow the trial, understand the process and evidence.

[53] Although you suffer from a psychotic illness, that issue was canvassed during the trial. You were not insane at the time of the offending.

[54] It is accepted by all parties that an intellectual disability can result in problems exercising judgement, in particular assessing facts, analysing them and deciding on a course of action in response, especially in situations where someone is under stress or

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25 Sentencing Act, s 9(2)(e).
26 *Poi v R* [2020] NZCA 312 at [49].
27 Sentencing Act, s 8(a).

in distress. Moreover, people with an intellectual disability are typically poor at analysing facts or events, lack the mental capacity and reasoning ability to do so, as well as placing a strong emphasis on their immediate needs and self-protection. It can also manifest in a low tolerance level for frustration or provocation and lead to someone reacting to a difficult or stressful situation in a manner that lacks the same kind of assessment and thinking that people without an intellectual disability are capable of. However, it was accepted that your intellectual disability does *not* impact on your cognitive ability to make assessments about whether something is right or wrong or to understand the nature and quality of your actions.

[55] Professor Gallavin pointed out that the Supreme Court in *Berkland* noted there was no set formula to apply in relation to the connection between deprivation and personal offending, but what must be shown is a logical connection between the offender's background and offending that is core to the choice to act in the manner giving rise to the offending.[28]

[56] On this basis Mr Schultze says your mental impairments are directly relevant in assessing both your culpability as well as the future impact of imprisonment. The extent of a discount can depend upon both the extent to which the mental impairment is causally linked to the offending, as well as the extent to which it increases the punitive impact of the sentence that would otherwise be imposed.[29]

[57] The Crown disputes that your low intellectual functioning is directly or causally relevant to your offending and suggests that your now-admitted use of methamphetamine is a far greater contributor to your violence against the deceased than your cognitive impairments. Mr Blaschke for the Crown rightly accepts that some allowance for your impairments is appropriate but submits that it should be constrained, given the limited relationship between the impairments and the offending.

[58] The jury's verdict is predicated on the view that your impairments did not prevent you from forming a reckless murderous intent. All parties also accept that you were not incapable of understanding the nature and quality of your actions or knowing

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28 Citing *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [115].
29 *L (CA719/17) v R* [2019] NZCA 676 at [48]; and *Shailer v R* [2017] NZCA 38 at [45].

that your actions were wrong. I note that you said there were a number of factors that affected your state of mind at the time of the offending, including heavy methamphetamine use, sleep deprivation and conflict with Ms Hira. Dr Young, one of the psychiatrists, was of the professional opinion that your intellectual disability was not a "substantial factor" in your offending.

[59] However, while in my view your cognitive impairments and intellectual disability were not a "substantial factor" contributing at the time, nevertheless they should be taken into account in personal factors. Other factors were also involved in your acting in the way that you did. There is a causal connection between your low level of intellectual functioning and your moral culpability for such offending, although in my view it was not the greatest contributor to your offending. Your offending appears to have been more strongly driven by other factors, including significant methamphetamine use. However, that itself to a certain extent is intertwined with your disabilities and deprivation background. The evidence is clear that you are less capable of processing what was going on and exercising careful and rational judgement in the situation.

[60] I consider there is a need for a reduction to the MPI to reflect this.

Personal background

[61] Mr Schulze also submits there is a clear causal connection between your background and the deprivation you suffered growing up and the offending and seeks a discount for this of up to 15 per cent. Professor Gallavin, in the s 27 report, goes into some detail about your background. You were subjected to violence and abuse from a young age from people in your whānau that you should have been able to trust. You are not connected to te ao Māori or your whakapapa. You are Ngāti Kahungunu on your mother's side and now have had an opportunity of exploring te ao Māori and whakapapa since you have been imprisoned. You did not do well learning at school but you were sporty. You had ongoing difficulties with learning, so you were the "naughty kid".

[62] You did have some assistance but, as Mr Schulze said, not great assistance — not what you should have had to support the disabilities you were suffering from. You

left school at 14 years of age, you offended early, you got into substance abuse early and you were addicted to methamphetamine by the time you were 18 years of age. You were surrounded by gang influences the whole of your life; that was essentially your family. You had children early on but have no relationship with them. You have few social supports although your mother and a former partner do support you. There is little they can do of a concrete nature.

[63] The Crown acknowledges your background supports some discount for deprivation but submits there is a limited causal connection between that background and the offending and that the allowance should be small.

[64] However, I accept Professor Gallivan's comments that the contribution of mental health issues, intellectual disabilities, cognitive impairment, drug and alcohol abuse, societal, familial and cultural deprivation and abuse, as well as gang violence and little or no pro-social support throughout your upbringing, had some causal effect leading to the offending.

[65] This is an appropriate case to recognise those factors. They are here to a significant level as well as drug addiction.[30] The Supreme Court recently stated it does not need to be shown that the background factors were the "operative" or "proximate" cause of offending (although where this can be shown, it is likely to be a "potent" factor at sentencing).[31] They must, however, have a "causative contribution" to the offending,[32] which is made out if those background factors help to explain how an offender has come to offend.[33]

[66] There is no set formula to calculate the connection between deprivation and the related factors I have talked about in individual offending.[34] However, deprivation and those factors constrain individual choice, including the "choice" not to offend.[35]

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30 Sentencing Act, s 8(h)-(i) and 27.
31 *Berkland v R*, above n 28 at [107]–[108].
32 At [109].
33 At [121].
34 At [115].
35 At [115].

Generally, the more criminogenic risk factors present through a person's childhood, the stronger the correlation with offending later in life.[36]

[67] In this case there are a number of those causative criminogenic factors. I consider a discount is appropriate to acknowledge that, as submitted by Mr Schulze.

Remorse

[68] Mr Schulze also suggested you had expressed a limited level of remorse. While this may be the case, I do not think there is remorse at a level which would justify any additional discount and of course there is no guilty plea discount in this case.

Overall discount

[69] I consider in this case an overall global discount is appropriate to recognise in your sentence personal mitigating factors relating to your cognitive impairment and intellectual disability and personal background including deprivation. Whether this is taken as a discrete discount of one year for the mental health and intellectual disability factors and 18 months for the deprivation related issues, or a global discount of two years six months, the result is the same. This discount also recognises the difficulties you are likely to face in prison from multiple factors and the relationship between the methamphetamine addiction, the deprivation and mental health issues. I recognise that you will face considerable difficulties in jail as you try and break away from previous associations and affiliations. That is to your credit and hopefully you will be assisted and supported in prison to try and find some other pathes so you do not end up here again.

Sentence calculation

[70] In conclusion, I have identified an appropriate starting point in respect of the minimum period of imprisonment of 12 years' imprisonment.

[71] I add an uplift of 12 months in relation to the previous convictions.

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[36] At [116].

[72] I consider an overall discount of two years six months is appropriate to recognise the personal factors relating to cognitive impairment, intellectual disability and the matters I have referred to as well as personal background and deprivation, again as I have referred to earlier.

[73] This results in a final minimum period of imprisonment of 10 years and six months on the life imprisonment for the murder charge.

Sentence — assault with intent to injure

[74] I now turn to the assault with intent to injure. The sentence for the assault with intent to injure charge will be served concurrently, or at the same time, as your sentence for murder. Counsel did not make submissions as to an appropriate period for this sentence but, in setting the appropriate sentence, I have regard to a number of cases in which there has been a charge of assault with intent to injure accompanying a murder or manslaughter charge.

[75] I have referred to the case *R v Wallace*,[37] which involved more serious offending as I have said than your offending and in that case, the Court imposed a sentence of two years' imprisonment, to be served concurrently with the sentence for murder.

[76] In *R v Havili*, the Court sentenced Mr Havili to 16 months' imprisonment for punching and dragging the victim of the assault and kneeing him in the head after a fight in which he caused the death of another victim.[38] This was concurrent with the manslaughter sentence.

[77] In a case called *R v Bracken*, the Court sentenced Mr Bracken to imprisonment for 18 months for a "cruel and heartless assault, inflicted on a man who was already injured".[39] That was concurrent with his 21-year sentence for murdering a different victim.

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37 *R v Wallace* [2022] NZHC 2390.
38 *R v Havili* [2022] NZHC 753.
39 *R v Bracken* [2012] NZHC 3158.

[78] I consider the assault offending in this case is less serious than in *R v Wallace* but is most similar to *R v Havili*. Having considered these cases and the circumstances of your offending, and taking account again of the personal circumstances and matters I referred to in considering the MPI, I consider a sentence of 14 months' imprisonment is warranted on that charge.

Conclusion

[79] Mr Taumata, in conclusion, on the charge of murder you are sentenced to life imprisonment, with a minimum period of imprisonment of 10 years and six months.

[80] On the charge of assault with intent to injure, you are sentenced to 14 months' imprisonment, which will be served concurrently, that is at the same time as the murder charge.

Grice J

Solicitors:
Crown Solicitor, Napier