

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

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

**CRI-1997-404-198997  
[2019] NZHC 577**

**THE QUEEN**

v

**MALCOLM REWA**

Hearing: 26 March 2019

Appearances: G Kayes, Z R Hamill and Y H Olsen for Crown  
P F Chambers for Prisoner

Sentenced: 26 March 2019

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**SENTENCING NOTES OF VENNING J**

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Solicitors: Kayes Fletcher Walker Ltd, Manukau  
Henley-Smith Law, Auckland  
Counsel: P F Chambers, Auckland

[1] Malcolm Rewa, on the night of 23 March 1992 you broke into Susan Burdett's home. You attacked her. You raped her and you killed her. You killed her by hitting her at least five times to the head with a blunt object, her own baseball bat which she had for her protection. You left her body in the same way you had left a number of your other rape victims.

[2] At your first two trials the jury were unable to agree on the charge of murder. You were, however, convicted of Ms Burdett's rape at your second trial. At your third trial the jury rejected your evidence and found you guilty on the charge of murder. The jury were satisfied there was no reasonable possibility your evidence was true. I understand why the jury came to that view. The evidence against you was overwhelming.

[3] DNA confirmed your semen was inside Ms Burdett. To explain that you said that you and she had had a consensual sexual relationship for some time and had had sex earlier that day, the day of her death, after she had taken drugs with you. By advancing that story you inflicted a further injustice and indignity on Ms Burdett and her memory. The evidence did not support any such relationship with you at all. The evidence was also very clear that Ms Burdett had an abhorrence for drugs. The family as victims have had to live with your refusal to accept responsibility for Ms Burdett's death and the consequences and have had that hanging over them for 27 years.

[4] At the first two trials you were able to take advantage of a false confession by Mr Teina Pora, which has now been seen for what it was. You also took advantage of the fact Ms Burdett's son had recently come into her life and financially benefitted from her death to suggest he had travelled from Whangarei and killed her in the middle of the night, and then returned to Whangarei to work the next morning. The jury rightly rejected that suggestion. It was without any evidential foundation. The evidence overwhelmingly established Ms Burdett returned home from bowling at about 11.15 to 11.20 pm on 23 March 1992 and was attacked about 20 minutes later and by you. At that time Ms Burdett's son was still in Whangarei.

[5] You are currently serving preventive detention with a minimum non-parole period of 22 years. Justice Anderson imposed that sentence on you on 3 July 1998.<sup>1</sup> The minimum period of imprisonment was imposed on 11 of the offences committed after 1 September 1993 when the relevant provisions of the Criminal Justice Act were changed to permit the imposition of such a sentence. Your other offending predated the change. Following a second trial on 29 January 1999 when you were convicted of the rape of Ms Burdett you received a further concurrent sentence of 14 years' imprisonment. In sentencing you on that occasion Justice Robertson noted that the jury had rejected as a reasonable possibility your assertion that there had been a consensual sexual relationship between you and Ms Burdett.<sup>2</sup> Two juries have now rejected that assertion.

[6] Section 154 of the Sentencing Act 2002 requires this Court to sentence you in accordance with the provisions of that Act.<sup>3</sup>

[7] The Court must impose a sentence of life imprisonment on you unless such a sentence would be manifestly unjust.<sup>4</sup>

[8] While s 103 provides for a minimum period of imprisonment for murder the imposition of a Court imposed minimum period of imprisonment would be contrary to s 6 of the Sentencing Act. Section 6 confirms that penal enactments are not to have retrospective effect to the disadvantage of an offender. For the Court to apply a minimum non-parole period in accordance with the Sentencing Act would result in a penalty greater than the Court could have imposed on you in 1992. The law that applied at the time you committed the murder of Ms Burdett did not provide for the Court to impose a minimum non-parole period.<sup>5</sup>

[9] However, if a sentence of life imprisonment is imposed on you, s 84 of the Parole Act 2002 applies. It provides for a non-parole period of 10 years for a sentence of life imprisonment. The start date of the sentence is the date the sentence is

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<sup>1</sup> *R v Rewa* HC Auckland T322/96, 3 July 1998.

<sup>2</sup> *R v Rewa* HC Auckland T322/96, 20 January 1999.

<sup>3</sup> Sentencing Act 2002, s 154 confirms that s 104 does not apply to the sentencing of an offender to whom the section applies.

<sup>4</sup> Section 120.

<sup>5</sup> *R v Hallett* [2013] NZHC 1757; and *R v B*(CA398/02) CA 398/02 at [11]–[12].

imposed.<sup>6</sup> Taking into account the existing 22 year minimum non-parole period imposed in 1998 this would result in an effective 32 year minimum non-parole period. You have apparently however served over two years that would be applied to reduce that period between the time of your first arrest and when you first became a sentenced prisoner. The result would be an effective minimum non-parole period of some 30 years approximately.

[10] While normally a sentence of imprisonment will be determined without regard to parole considerations,<sup>7</sup> the Court of Appeal has recognised that in certain circumstances it may be appropriate to consider parole outcomes to ensure that the purposes of the Sentencing and Parole Acts are served,<sup>8</sup> particularly where the Court is required to consider whether to impose a particular sentence would be manifestly unjust.

[11] Mr Chambers submits the imposition of life imprisonment would in this case be manifestly unjust because of the consequences of the Parole Act.

[12] In determining whether a concurrent life sentence of imprisonment would be manifestly unjust it is necessary to consider the circumstances of the offending and your personal circumstances in the context of the purposes and principles of the Sentencing Act, and having regard to s 9 of the Act.

[13] The Court of Appeal have stated that the discretion in s 102 and the consideration of manifest injustice is intended for cases “where the offending is at the lowest end of the range of culpability for murder”.<sup>9</sup> Another Court of Appeal decision confirmed it is a conclusion that is to be reached in exceptional circumstances only.<sup>10</sup>

[14] The predominant purposes of sentencing in your case are the need to denounce your actions, provide for the interests of the victims of your offending and the protection of the community. The Court is also required to consider the gravity of the

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<sup>6</sup> Parole Act 2002, s 76.

<sup>7</sup> *R v Stockdale* [1981] 2 NZLR 189 (CA), at 190–191.

<sup>8</sup> *Barnes v R* [2018] 3 NZLR 49; *Paerau v R* [2018] NZCA 139 at [30].

<sup>9</sup> *R v Smail* [2007] 1 NZLR 411 (CA) at [14].

<sup>10</sup> *R v Rapira* [2003] 3 NZLR 794 (CA) at [121].

offending, the seriousness of the offence, and your particular culpability. This was a particularly brutal attack following a home invasion and committed in the course of another serious offence, namely the rape of Ms Burdett.

[15] There is nothing in the circumstances of the offending which would make a sentence of life imprisonment and its consequences under the provisions of the Parole Act unjust. This was as I have said brutal murder with a number of aggravating features. Further, your previous offending for which you were sentenced by Anderson J was described by the Judge as a chronicle of remorseless, depraved and destructive cruelty towards the numerous victims of that offending. If you had been convicted of Ms Burdett's murder and sentenced at that time, and if a minimum non-parole period had been available to the Judge or otherwise prescribed by statute, it could not be said that a minimum non-parole period of 30 plus years would have been excessive for the totality of the offending.

[16] I turn to your personal circumstances. You told the jury you are now remorseful and accepted your criminality in relation to the previous rapes you were guilty of and were coming to terms with how your actions had affected the various victims. Those protestations of a change in attitude do not sit easily with your evidence the jury rejected in this case and your continued refusal to accept responsibility for what you have done to Ms Burdett. Your refusal to accept responsibility for that echoes what Anderson J observed when sentencing you in 1998, namely any expressions of remorse were self-centred and perfunctory.

[17] You are fortunate in that it seems you have received support from a number of sources whilst in prison. But having seen you give evidence, observed you during the course of the trial and during this sentencing hearing I have seen no indication of remorse whatsoever for Ms Burdett's death.

[18] Even at the age of 66 I consider you to still be a manipulative and controlling person who remains a danger to the community.

[19] In my assessment there are no personal mitigating features that would make the imposition of life imprisonment with the consequences that will have as a result of the Parole Act manifestly unjust.

[20] I also note the provision under the Parole Act for early referral and consideration of parole in exceptional circumstances.<sup>11</sup> If in the event any such application was made it would be for the Parole Board to assess whether your attitude in relation to your offending against Ms Burdett has changed and to consider such application in light of all relevant circumstances.

[21] I repeat, however, this Court is satisfied that, having regard to the circumstances of the offending and your personal circumstances, it would not be manifestly unjust to impose the sentence of life imprisonment on you, notwithstanding the impact of the Parole Act.

[22] Mr Rewa please stand. For the murder of Susan Burdett you are sentenced to imprisonment for life. The sentence is to be served concurrently with your existing sentence.

[23] Stand down.

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Venning J

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<sup>11</sup> Parole Act 2002, s 25.