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

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

**CRI-2018-004-011138**
**[2020] NZHC 233**

**THE QUEEN**

v

**"K"**

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| Hearing: | 21 February 2020 |
| Appearances: | B H Dickey, R M A McCoubrey, A L V Tuiburelevu for the Crown<br>I M Brookie, R M Mansfield and C G Farquhar for the Defendant |
| Date: | 21 February 2020 |

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**SENTENCING REMARKS OF MOORE J**

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**Introduction**

[1] "K", at the age of 27, you appear before me to be sentenced for the murder of Grace Emmie Rose Millane. On 22 November last year a jury of 12 found you guilty of her murder. I entered a conviction and remanded you to today for sentence.

**Structure**

[2] Before I start my sentencing remarks it may be helpful to you, the media and, through them, the public to explain how I propose to structure my sentencing remarks. There will be four main parts.

(a) First, I shall start with a description of the facts. Of course, the facts will be well known to you. The jury's verdict necessarily means that it rejected some aspects of your defence. An obvious example was your claim that Ms Millane consented to you putting your hands around her neck and applying and sustaining the level of pressure which led to her death. Had they accepted that, you would have been acquitted. But they did not. That is plain from their verdict. However, the jury's verdict does not reveal how they may have treated other parts of the evidence which are now relevant for sentencing purposes. On those aspects I must, as the trial Judge who heard and saw all the evidence, come to my own conclusions. Where those conclusions make an assessment of your offending worse, what we call aggravating factors, I must be satisfied to the high criminal standard.

(b) After I have dealt with the facts, I shall briefly discuss the victim impact statements which have been prepared by Ms Millane's immediate and extended family as well as her many friends. I shall also refer to the pre-sentence report, the cultural report and the letters written in your support.

(c) Next I shall cover your personal circumstances.

(d) And then in the fourth and final part I shall discuss what the law requires when someone is sentenced for murder. In your case life imprisonment must be imposed. The significant issue, and the one which I must decide, is the length of the minimum period of imprisonment or MPI. That is where the real contest in this sentence lies. The Crown says that yours is a case which requires an MPI of at least 17 years. Your defence says that facts of the case fall short of requiring an MPI of that order. Mr Brookie says a 12 year MPI starting point should be set with a one year reduction for mitigating factors. To a considerable extent the resolution of that issue rests on what findings of fact I make in terms of any aggravating and mitigating factors.

**The facts**

[3] So I first turn to the facts.

[4] Ms Millane was 21 when she arrived in Auckland on 20 November 2018. She grew up in Essex. She was the youngest of three children. She graduated from the University of Lincoln in September 2018 with a degree in advertising and marketing. As with so many young people in her position she decided to spend a year travelling the world before returning home in about June 2019 for a family wedding.

[5] On 26 October 2018 she flew out of Heathrow bound for Lima, Peru. After a month or so travelling in South America she arrived, as planned, in Auckland. Almost daily she was in touch with her family and friends. It was obvious to them that she was thoroughly enjoying herself.

[6] Ms Millane used the dating application, Tinder. She was travelling alone and, unsurprisingly, wanted to meet others.

[7] On Friday, 31 November 2018 she matched you on Tinder. The following day, which was Saturday, 1 December 2018, you messaged her and agreed to meet up in Auckland's CBD for a drink. You met outside Sky City. Your meeting was captured on CCTV. It was there that Ms Millane sent her parents a photograph of the Christmas decorations set out on the forecourt. That would be the last communication the

Millanes would have from their daughter who was to celebrate her 22nd birthday the next day.

[8] The time was about 5:45 pm. From that moment until approximately 9:40 pm, when the CCTV picked up Ms Millane following you out of the lift onto the third floor of the City Life Apartments where you were then living, most of your movements were captured on CCTV.

[9] You and Ms Millane visited a number of bars over the next four hours or so. Neither of you had any food during that time and judging by the till receipts and invoices a good deal of alcohol was consumed. It is fair to say you both must have been drunk. How drunk is difficult to gauge. But certainly not so drunk either of you seemed unsteady on your feet.

[10] Your last stop was the Blue Stone Room behind the City Life Apartments. The CCTV footage shows you both were plainly enjoying each other's company. At one point Ms Millane messaged her close friend, Ameena Ashcroft. She told Ms Ashcroft that she was on a date with the manager of an oil company who lived in a hotel. This was followed by the message, "cocktails all round" and then a reference to her birthday the next day and getting "smashed". She also told her friend she clicked so well with you. That was the last message she ever sent.

[11] Exactly what happened from the moment Ms Millane first stepped into Apartment 308 we will never know. Only two people were witness to those events and one is not alive to tell us. The jury had only the account you gave the Police in your second interview on 8 December 2018. By their verdict they plainly rejected your claim of consensual sexual activity gone wrong. That is unsurprising given not only the elaborate and detailed lies you told in your first interview, but also the patent untruths which peppered the second.

[12] So what happened? In your second interview, conducted in the presence of counsel two days after the first, you gave a reasonably detailed version of what you said happened. This was the version which was promoted at trial as the true account despite containing demonstrable lies. In several respects you tailored your story so

that it would match not only what you already knew of the Police investigation, such as your movements captured by CCTV, but also what you knew the Police would likely uncover. For example you would have known that the post mortem would probably reveal that Ms Millane had a blood nose which bled into the carpet. You knew the Police would find out where you went the next day, what you bought to do the clean up and how you disposed of Ms Millane's body. You insisted that Ms Millane's death was some terrible accident arising out of a casual, consensual, sexual encounter involving manual strangulation. You told the Police that she was the initiator and that you were "new to all that sort of stuff". I accept that at some point you and Ms Millane must have discussed BDSM practices but any claim that this was somehow novel to you runs contrary to the evidence the jury heard from other women you had met on Tinder; women you told about your sexual preferences, including your liking for rough sex and possibly strangulation.

[13] You also told the Police that you and Ms Millane took intimate photographs of each other but for reasons which I will discuss later, I am satisfied that the photographs found on your phone were taken after you killed her. I am satisfied you disclosed that detail because you knew the Police would have your phone and discover those photographs. You also knew Ms Millane's phone could never be checked because you had thrown it away three days earlier. You did not tell the Police about the pornographic searches you made before and after you took the photographs.

[14] In your interview you said that because you were sweating you went to have a shower. Improbably you said you fell asleep in the shower. When you awoke you went back to your bed. The room was dark. You said you assumed Ms Millane had left. It was only in the morning that you discovered her lying lifeless on the floor. You said you panicked. You said you didn't know what to do.

[15] But you didn't ring an ambulance. You didn't call the Police which had this been the tragic accident you insisted it was, would be expected. Instead, you embarked on a well-planned, sustained and co-ordinated course of conduct in an attempt to conceal any evidence of what had happened in your room. For example, just after 6:00 am you used your phone to search for "car hire Auckland". Then you searched for "large bags near me". Shortly afterwards you tellingly searched for "rigor mortis".

[16] Then, just before 8:00 am, you messaged "M" **[name permanently suppressed]**. You had matched her on Tinder a couple of weeks before. You sent her a message which read, "Morning, how are you today?". Then you sent an identical message to another young woman you had met a month before.

[17] You and "M" agreed to meet later that day in a Ponsonby bar. Then you made more searches on your phone. You searched for carpet cleaner, rug doctors and rigor mortis (again). You searched for large bags.

[18] You also searched for "time in London" no doubt because you knew it was Ms Millane's birthday and that it wouldn't be long before her family became concerned at her uncharacteristic silence and would sound the alarm (which is just what they did).

[19] The jury saw the CCTV footage of you at The Warehouse in Elliott Street checking out the suitcases before buying one and taking it back to your apartment. The jury also saw your movements at Countdown buying cleaning equipment. Then you took a taxi to pick up the rental car which you would later use to transport Ms Millane's body to the Waitakeres.

[20] At no point in this sequence is the faintest impression given that you were a man in a hurry or that you were a man panicking. Indeed, the very opposite is the case because as I mentioned, later that day you were socialising with "M" at the Ponsonby bar. It was at that bar you told her the story about your friend who had been charged with manslaughter after a consensual strangling had gone wrong and how full the Waitakeres are with bodies. I mention this only because both Mr Brookie and the Crown have referred to it in their submissions. They have advanced their respective theories on why you may have said these things. In my view these are speculative. We will never know why you said those things and for that reason I put that evidence to one side.

[21] Mr Brookie points out that the date with "M" had been arranged the previous week and that maintaining the meeting in an attempt to continue a semblance of

normality is not unusual. Whatever the reason, what cannot be overlooked is that while you and "M" were together, Ms Millane's body was back in your room.

[22] After you and "M" parted company you returned to your apartment before heading over to Countdown again, this time to hire a Rug Doctor to clean the carpet.

[23] Later that evening you squeezed Ms Millane's body inside the suitcase, wheeled it out to the car and placed it in the boot.

[24] Early the next morning, which was Monday, 3 December 2018, you drove out to Kumeu where you bought a shovel before heading into the Waitakere Ranges and burying Ms Millane in a shallow grave which you attempted to conceal under foliage and fern fronds.

[25] Then you went to The Warehouse at St Lukes and bought an identical suitcase, an action plainly designed to put the Police off your trail. You knew they would find out you had bought a suitcase from The Warehouse early on Sunday morning. You needed a duplicate, but not from the same shop. It needed to be bought from somewhere you thought the Police wouldn't look. In fact, in your first interview with the Police, you made reference to the suitcase claiming you had bought it to move personal items.

[26] Then you went to a car cleaning booth. You washed the car and left the shovel there.

[27] Your final act in this sequence was dumping Ms Millane's personal effects including her phone in a rubbish bin in Albert Park. They have not been recovered.

[28] So those are the facts. I shall return to some of those facts later when discussing the MPI.

[29] I now turn to consider the victim impact statements and the pre-sentence report.

**Victim impact statements**

[30] 26 victim impact statements have been filed.

[31] We have heard statements read by members of Ms Millane's immediate family from their home in Essex.

[32] In addition, a large number of statements have been filed by friends of Ms Millane. The Crown seeks leave to have those statements received by the Court.[1] Mr Brookie does not object. I am satisfied that given the particular circumstances of this case, it is appropriate to grant leave.

[33] I have listened carefully to the statements read to the Court by Gillian Millane, Declan Millane and Victoria Millane. I have closely read David Millane's statement. I have received and read statements from Ms Millane's uncles and aunts from both sides, her grandparents, her cousins, her godparents and her many friends. They make harrowing and desperately sad reading and it is impossible not to be moved by both the sincerity and love implicit in the tributes and the fathomless sense of loss her death has brought to so many.

[34] I need to say no more.

**Personal circumstances**

[35] I turn now to discuss your personal circumstances. These are covered in several documents received for the purpose of sentencing.

*Pre-sentence report*

[36] First, the pre-sentence report. Given the narrowness of the options available at your sentencing, the report necessarily has its limitations. Unsurprisingly, the risk you pose to others has been assessed as being very high. The report writer noted that given your complex needs and the severity of your offending you will be referred to a departmental psychologist to assess a suitable treatment plan while you are in prison.

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1 Victims' Rights Act 2002, s 21(2).

[37] I do not overlook the letters from your family. In certain respects they reflect what the pre-sentence report says.

*Section 27 cultural report*

[38] A cultural report has also been filed. It is a detailed and extensive document. The report writer has concluded that your childhood and upbringing has been affected by various traumatic influences which have impacted on your transition to adulthood and your ability to make good decisions and the right decisions. There may be, as the pre-sentence report writer also touched on, some mental health issues. But none has been diagnosed. It is said that your background, including your cultural estrangement, may be relied on to mitigate your moral culpability in terms of an assessment of your personal circumstances. But, correctly, the writer observes that that is a matter for this Court to decide. I shall return to your personal circumstances later.

*Previous convictions*

[39] You have no criminal convictions. The pre-sentence report records two relatively minor traffic convictions. I thus treat you as a first offender.

[40] I now turn to the fourth and final part of my comments; that is what should the appropriate MPI be? It is common ground that I must sentence you to life imprisonment. But as mentioned earlier, the primary issue in this case is what MPI should be imposed as part of your sentence.

[41] The first step in that process is to compare this case with other murders taking into account the aggravating and mitigating factors to decide what the MPI should be. If I decide that it would attract an MPI of 17 years or more that will be the MPI.

[42] There is also s 104 of the Sentencing Act 2002. That provision requires me to impose an MPI of at least 17 years if one or more of the aggravating factors listed in that provision are present unless I am satisfied it would be manifestly unjust to do so.

[43] So what do the respective counsel say about this.

[44] Mr Dickey, for the Crown, says that this was a murder committed with a high level of brutality, cruelty, depravity and callousness. Because of that he says that under s 104(1)(e) I must sentence you to an MPI of 17 years. He says there are four aspects of your offending which meet that test. They are:

(a) the nature of the offending, that is manual strangulation;

(b) the vulnerability of your victim;

(c) your conduct after the death of Ms Millane, both immediately and in the following days; and

(d) your lies to the Police.

[45] On the other hand, Mr Brookie says that your case does not engage s 104; the method of the killing was not callous, it was not the result of a sustained violent attack. He says that compared with other cases this is not one out of the ordinary. He also submits there is no credible evidence that Ms Millane suffered before her death. Instead, her death resulted from an impulsive act borne of poor judgement and risk-taking, exacerbated by alcohol. He also says that while your later conduct might properly aggravate the offending it falls short of what is required to meet the s 104 test.

**Discussion**

[46] So let me now analyse the competing positions.

[47] It is true that by definition almost all murders are brutal, cruel, depraved or callous in some way. What the law requires is the presence of these factors to a high level.[2] But callousness does not require prolonged activity.[3] It has been defined as a

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2 *R v Slade* [2005] 2 NZLR 526 at [40].
3 *R v Weatherston* [2009] NZHC 1260 at [27]–[31]. See also *R v Frost* [2008] NZCA 406 at [39].

"hardened state of mind".[4] It involves a lack of feeling, empathy and sensibility, once recently and colourfully described as a "numbness of the soul".[5]

[48] It is common ground that Ms Millane was murdered by manual strangulation. In your second interview to the Police you gave a description of how you held her arms and then her throat. You gave no detail of how long you held her throat or what pressure you applied. The evidence on that point came from the pathology. At the trial there was some discussion about the four mechanisms which could cause death through manual strangulation. For a variety of reasons given by the experts, venous obstruction was regarded as the most likely. The experts said that it requires some effort to kill by manual strangulation. It cannot be achieved by the kind of gentle or low level consensual touching you suggested in your interview.

[49] Mr Brookie points out that you may not have appreciated Ms Millane was in difficulty until it was too late, a scenario which he says is supported by the absence of defence injuries. But as I have already commented, the jury, by its verdict, was necessarily satisfied that at the time you had your hands around Ms Millane's throat, you intended, at the very least, to cause her the sort of bodily injury which you knew was likely to cause her death and were reckless whether she died or not.

[50] On the question of timing, both Dr Garavan and Dr Stables agreed that the 90 seconds, apparently suggested by Dr Healy as being at the lower limit of her range, was too short to cause death if the mechanism was venous congestion. Both agreed that it would take some period of sustained pressure, measured in minutes, to cause death. Dr Stables did not give a precise answer on the question of timing but Dr Garavan favoured a period of between five to 10 minutes, possibly longer due to Ms Millane's youth and apparent health. In giving that range he was aware of the probability Ms Millane was intoxicated and how alcohol may have affected that timing.

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4 *R v Mason* [2012] NZHC 1849 at [44]; *R v Christison* [2013] NZHC 2813 at [38].
5 *R v Beazley* [2019] NZHC 672 at [36].

[51] It was also common ground that at some point during her strangulation Ms Millane would have lost consciousness and gone limp. When in the sequence that occurred cannot be fixed. But for her to have died it required you to have knowingly maintained sufficient pressure past that point and continued to apply that pressure until she died. Again, that is necessarily implicit in the jury's verdict.

[52] We do not know whether Ms Millane struggled but it is likely she did. Most certainly she would have been aware of what was happening to her. Your admission that she had a nose bleed and the finding of her blood at the scene supports the conclusion that her nose bled as a result of the pressure you applied to her neck. But there is also the pathological evidence. First, there was the significant and deep bruising to Ms Millane's neck. Dr Stables described it. Bruises only form while someone is alive; while their blood is circulating. The extensive and deep bruising on the left side of her neck described by Dr Stables means that Ms Millane must have been alive long enough for that bruise to form after the assault to her neck. This further supports the conclusion she died from venous congestion and that the process of strangulation occurred over time and required sustained and prolonged pressure.

[53] Although by the time Ms Millane's body was recovered there was some decomposition, all experts were agreed that the bruising to her upper left chest, arms and elbows (by my calculation six separate bruises) was consistent with physical restraint. The bruises to the inside of her upper arms, described by Dr Stables as "concerning", were regarded by him to be consistent with restraint injuries caused by the assailant's fingers. Dr Garavan was more equivocal on this bruising but, of course, it was Dr Stables who conducted the post-mortem and actually examined these marks. The lack of defence injuries and an absence of your DNA under Ms Millane's fingernails is also consistent with her being forcibly restrained.

[54] I also have regard to the evidence of "A" **[name permanently suppressed]** who described a sexual encounter she had with you a month before you met Ms Millane. She described being restrained against her will and violently struggling against your weight. She believed that she would die and although the mechanism of suffocation in that case was different, the parallels of restraint in a sexual context are obvious.

[55] I agree with the Crown that manual strangulation is a particularly intimate and intimidating form of physical violence. By definition Ms Millane was at but an arm's length from you. On your account she would have been facing you although I accept the room may have been darkened at the time. However, no matter what way the mechanism of death by strangulation is viewed, it requires close physical and intimate proximity.

[56] Mr Brookie has helpfully analysed all of the cases involving manual strangulation since s 104 was passed. He found 10 where s 104(1)(e) was found to apply. He submits that nowhere in those cases has manual strangulation, in and of itself, has been held to be a mode of killing which will invoke section. Each, he says, involved more serious or other aggravating factors.

[57] I agree that there can be no sentencing principle which necessarily requires manual strangulation in murder cases to automatically engage s 104(1)(e). What all the cases confirm is that consistent with most issues in sentencing, it is the context which is important. As this Court recently commented, although a manual strangulation may be a less obvious contender for s 104(1)(e), it is necessary to view the conduct in context.[6] In that case, the Court considered that the combined "cold-blooded" circumstances of the offending coupled with strangulation brought it well inside the scope of the legislative policy that attracted a 17 year minimum term.[7] In my view that must be the correct and principled approach. To do otherwise would be to ignore the clear Parliamentary intention around s 104 and would introduce a level of artificiality to the sentencing process.

[58] This is not a case where the strangulation was driven by rage or a loss of self-control. On the other hand neither is it a case where the killing was for a motive such as covering up another crime. I also accept it was not premeditated in the way of other comparable cases.

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6 *R v Marong* [2018] NZHC 748 at [9] and [20].
7 At [20]; *Marong v R* [2018] NZCA 531.

[59] Viewed in isolation, the actual mechanics leading to Ms Millane's death may not meet the threshold of a high level of brutality, cruelty, depravity or callousness when compared to other cases. But to stop there would be to view your offending in a vacuum and that I must not do.

[60] There are other factors which need to be considered and the first of these is Ms Millane's vulnerability. There can be no doubt that she was vulnerable. Certainly she was vulnerable in the sense that she was a young woman on her own travelling in a foreign land. You were a complete stranger. She trusted you. Her messages to her friend reveal that she believed the lies you told her about yourself. She trusted you enough to go into your room with you alone. That certainly placed her in a position of some vulnerability. But, in my view, what then happened after she entered your room made her particularly vulnerable.

[61] On your admission you were both naked. You were engaged in the most personal and intimate of human activity. You are a large and powerful man. She was diminutive. On your account she asked you to hold her arms and then her throat. On your account this was happening while you were having sexual intercourse. In that position and in those circumstances, Ms Millane was particularly vulnerable. You were in a position of total physical dominance. In my view that meets the definition of particular vulnerability. But even if it does not it is a material and highly relevant aggravating factor in the assessment of the circumstances of Ms Millane's death. It also meets the definition in s 104(1)(c).

[62] The next aggravating factor which particularly goes to callousness and depravity is your behaviour after you had killed Ms Millane. It is uncontroversial that an offender's conduct subsequent to murder may be taken into account in terms of the s 104(1)(e) analysis.[8] Under this heading, the Crown lists four factors; what you did immediately after Ms Millane's death; what you did the following day; your treatment and disposal of Ms Millane's body and, finally, the lies you told the Police in an

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[8] *R v Frost* [2008] NZCA 406; see too *Singh v R* [2019] NZHC 436, *R v Solomon* [2016] NZHC 1653, *R v Swain* [2015] NZHC 3241; *Bracken v R* [2016] NZCA; Preston v R [2016] NZCA 568; [2017] 2 NZLR 358; *R v Marong* [2018] NZHC 748 and *Roigard v R* [2019] NZCA 8.

attempt to avoid detection. Your counsel has provided explanations for your post-death conduct, but s 104(1)(e) is applied to the objective circumstances of a murder.[9]

[63] I agree that each of these aggravating factors is engaged and relevant to varying levels in the contextual assessment of culpability. I shall deal with each.

[64] I start with what you did immediately after Ms Millane was murdered. I find as a fact that Ms Millane must have died at some time before 1:29 am on Sunday, 2 December 2018. That is because at that time you undertook a Google search of the Waitakeres. Self-evidently, you would not have done that unless you knew that Ms Millane was dead and you were researching possible places to dump her body. That the Waitakeres were, in fact, where you concealed her supports that conclusion. It is also reinforced by the second search conducted five minutes later when you looked for "hottest fire".

[65] But what then followed over the next three minutes provides an insight into your state of mind at that time. Ms Millane's lifeless body was with you in that room when you searched for and accessed four pornographic sites. The title to the first was extremely explicit. The next three related to teenagers and slaves.

[66] Then, over the following three minutes, you took seven photographs of Ms Millane's dead body. These photographs were highly sexualised and grossly intrusive. In one your hand is visible. Such a violation of a victim's body is relevant to the s 104(1)(e) assessment, even when it occurs after death.[10]

[67] Then, over the next quarter of an hour or so, you went back to the same porn site and searched and viewed eight further images. To borrow a phrase from the Court of Appeal, this was "hardly the spontaneous outpouring of remorse that might point away from callousness."[11]

[68] This conduct also strongly supports the statutory requirement of callousness and depravity to a high degree. It is plainly a serious aggravating factor. It was

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9 *Gottermeyer v R* [2014] NZSC 115 at [5].
10 *R v Somerville* HC Christchurch CRI-2009–009–14005, 29 January 2010 at [13].
11 *R v Frost* [2008] NZCA 406 at [40].

conduct closely connected in time to Ms Millane's death. It is rightly described as depraved. These were not the actions of a man in panic. Far from it. Your actions reveal a complete disregard for your victim. This conduct is inextricably connected to the manner in which the murder itself was committed.[12] It is conduct which underscores not only the total lack of empathy you had for Ms Millane but the sense of self-entitlement, objectification and sexualisation that is reflected in other parts of the evidence.

[69] And then, as I have already discussed, you set about covering your tracks by searching for car hire businesses, buying suitcases and cleaning products. Again, this conduct on its own would not attract the application of s 104. But it must be relevant to a broader, contextual assessment of callousness. That you also contacted other women and went to a bar with one of them must also be relevant to this assessment.

[70] When you got back to your room after meeting with "M" you set about squeezing Ms Millane's naked body into the suitcase. You then carried it downstairs and put it in the back of the car. That conduct compounds the other indignities you had already subjected her body to.

[71] The next morning you buried her before embarking on further, elaborate activities designed to shift the eye of suspicion from you.

[72] In my view you can claim little credit for showing the Police where Ms Millane's body was buried. At the trial we heard that the Police, through cellphone polling off your phone, were already close on your heels and would certainly have discovered Ms Millane in short order even without your help.

[73] But your attempts to divert suspicion did not end there. I have already discussed the two Police interviews undertaken on 6 and 8 December 2018. Giving false accounts to the Police may also support a finding of a high degree of callousness, particularly where the behaviour involves attempts to avoid detection and the return of a loved one's body to their family.[13]

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12 *Gottermeyer v R* [2014] NZCA 205 at [79]; *Bracken v R* [2016] NZCA 79 at [63].

13 *Singh v R* [2019] NZCA 436; *R v Solomon* [2016] NZHC 1653; *Roigard v R* [2019] NZCA 8 at [113]; and *R v Marong* [2018] NZHC 748 at [26].

[74] Standing back and viewing all these factors of varying weight in combination and comparing your offending with other cases of murder, to the limited extent that is possible in this case, I am of the view that the starting point for the MPI should be 17 years.

[75] The next question is whether your personal circumstances, which I have already listed, should operate to reduce that MPI. Mr Brookie submits that the mitigating factors would justify a 12 month reduction, albeit on a 12 year starting point. He points to your personal circumstances as set out in the pre-sentence report, the letters of support, and the cultural report. He refers to the adverse influences in your early life and your estrangement from your family and your culture. Finally, he points to your lack of criminal convictions, your relative youth and your willingness to re-engage with your family and culture for the purposes of rehabilitation.

[76] I accept that you had a volatile upbringing and that may well have influenced the person you are today. I also accept you have experienced a degree of cultural isolation. As is suggested those influences may well have led you to lie to those you wanted to impress by pretending you were a man of affluence and social standing. In fact that appears to have been your modus operandi when attempting to impress the women you met. But I struggle to see the connection between that presentation and what led you to strangle Ms Millane to death.

[77] As for your previous relative youth and good character, quite frankly given the enormity of your offending I can give those factors little or no weight.[14] I can find no factors shifting my view of your culpability or justifying any leniency.

[78] Certainly none of these lead me to conclude that it would be appropriate to reduce the 17 year MPI.

[79] But even if I had come to the conclusion a lesser MPI was appropriate, for the reasons I have discussed, I am satisfied that two s 104(1) factors are engaged in your case; a high level of brutality, cruelty, depravity and callousness as well as particular vulnerability. That finding would require me to impose an MPI of at least 17 years

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[14] *Hamidzadeh v R* [2012] NZCA 550 at [87]; *Momoisea v R* [2019] NZCA 528 at [31].

unless I considered it manifestly unjust to do so. For the reasons I have already covered I am not so satisfied.

[80] Before I formally hand down your sentence I should explain the effect of the sentence I will shortly impose. That is because there is a widespread public misunderstanding about what life imprisonment actually means. I often hear people say "… life imprisonment; that just means 10 years in jail". They are wrong. Life imprisonment means just what it says. A person sentenced to life imprisonment will spend the rest of their life in prison unless and until, at some future point, they are able to persuade the Parole Board they no longer present a risk to the public and should be let out on parole. There are plenty of examples of prisoners sentenced to life imprisonment who will never be released because the Parole Board is of the view they pose an unacceptable risk to the public. But even someone released on parole is still subject to the life imprisonment sentence. They are required to live and work where their probation officer directs. They are not permitted to leave the country. They can be recalled to prison at any time if they are causing concern or if they if they commit another offence. In that case they will stay in prison until they can reconvince the Parole Board they should be given another chance.

[81] What then is an MPI and how does it work? The MPI is not the sentence the person must serve. It is the time they must wait before they are entitled to be considered for release on parole. By my order, "K" will not be eligible for parole consideration before he has served 17 years in prison. At that time the Parole Board may or may not release him. The decision to release is all about public risk and in 17 years' time the Parole Board will be in a much better position to assess that question than I am now.

[82] [Before passing sentence, a first strike warning was given.]

**Sentence**

[83] "K" please stand. For the murder of Ms Millane I sentence you to life imprisonment and order I that you serve a minimum of 17 years in prison.

[84] Stand down.

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**Moore J**

*Solicitors:*
Crown Solicitor, Auckland
Mr Brookie, Auckland
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