

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

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

**CRI-2020-009-7199
[2021] NZHC 1843**

THE QUEEN

v

TRISTAN ROSS LOCKE

Hearing: 21 July 2021

Appearances: B Hawes and W S Taffs for the Crown
K J Gray and B P A Shamy for Defendant

Judgment: 21 July 2021

SENTENCING REMARKS OF MANDER J

[1] Mr Locke, you can remain seated until I conclude my sentencing remarks and then I will ask you to stand for the purpose of formally imposing sentence.

[2] Mr Locke, you are for sentence this morning for the murder of Mark Cowling.¹ It is necessary that I set out the factual basis upon which I proceed to sentence you.

The facts

[3] You and Mr Cowling occupied dwellings in a set of adjoining townhouses. In the last four weeks prior to the murder you had periodically been playing loud music, much to the frustration of Mr Cowling and other residents who were disturbed by the

¹ Crimes Act 1961, ss 167(b) and 172(1).

noise. Mr Cowling lived with his partner and their six-month-old baby and he was concerned about the effect of the noise on them.

[4] On 5 September last year, you were playing loud music from inside your home. Over the course of the night, Mr Cowling repeatedly phoned noise control. His efforts to have the noise stopped were unsuccessful so he resorted to turning off the power to your property by accessing the fuse box that was located on the outside of his house. It appears he did this on at least two occasions.

[5] In response to the power being switched off you contacted the local supply authority and after the power was restored you again began playing loud music. After the power was switched off again you left your house armed with a kitchen knife, and you walked over to Mr Cowling's address. It is not entirely clear what occurred when you got to his property. You told Dr Monasterio that Mr Cowling was outside and, when confronted by you, he retreated to his front door, alternatively you may simply have come to his door which he opened — it is not clear. However, it is plain that at the front door of his house you stabbed Mr Cowling three times in the chest. One of those blows was fatal. Mr Cowling was likely trying to shut the door prior to being stabbed. The single fatal stab wound was to the left side of his chest, which the pathologist estimated had a depth of over 10 cm. The other two wounds were superficial.

[6] Mr Cowling collapsed to the ground in the entranceway. You remained with him. The glass window pane to the front door was broken during the stabbing and this woke Mr Cowling's partner, Ms McMaster. She came downstairs and saw you bending over Mr Cowling with your hands on his chest, trying to stem the bleeding. You phoned for emergency assistance, as did Ms McMaster. When the police and ambulance staff arrived at the address, they located you still with Mr Cowling.

Victim impact statements

[7] The devastating effect of Mr Cowling's death on his family and loved ones is evident from the victim impact statements that have been read to the Court and I am grateful for the information that they have provided about Mark and for their courage in telling the Court about their unbearable grief.

[8] Mr Cowling's mother has this morning remarked on how her son had a natural ability to be empathetic and protective of others. She said, while physically a small man, he had a large and loving heart. She has told the Court of the outpouring of grief and pain his death has caused and how the stress of that grief has caused her health to deteriorate. Because of her inability to concentrate and socialise, she has had to resign from her job of 31 years. She said her joy in life has dimmed.

[9] Mr Cowling's father described his son's death as the most distressing and heartbreaking thing he has ever endured, and that it has thrust his life into a deep state of depression. He said his son's death has left him feeling angry, helpless and scared.

[10] Ms McMaster has described how her partner's death has torn her and her daughter's lives apart and that she remains traumatised by having witnessed the aftermath of the murder. She has lost the love and support Mr Cowling gave to their very young daughter and she is now forced to provide for her child as a single parent. She described being constantly scared, anxious and lonely, and that having to endure the trial exacerbated her pain. There is, of course, a young child who will never know her father.

[11] The mother of Mr Cowling's two sons, Ms Allen, has spoken of the devastation and anger she has experienced as a result of your actions. Her sons are broken — their future with their father has been stolen from them. She must now raise their two boys on their own, and Mr Cowling's death has forced her to put her new career on hold. Mr Cowling's youngest son, Connor, has described being heartbroken over his father's death and he continues to feel deeply upset.

[12] Mr Cowling's brother, Russell, was devastated upon hearing the news of Mark's death. His career has been disrupted and he is haunted by the image of your figure looming over his brother in his final moments. He has been left with the sole burden of taking responsibility for his parents, whose health in recent months has deteriorated.

[13] There is no sentence which in any way can provide solace to those who must bear the loss of Mr Cowling. The sentence I am required to impose cannot in any way

remedy or mitigate that terrible loss. What I am required to do in sentencing you today is to respond as the law requires me to do on behalf of the community.

Personal circumstances

[14] Mr Locke, you had refused or were unable to engage with the pre-sentence report writer for the purposes of preparing a pre-sentence report but I have the benefit of Dr Monasterio's psychiatric reports and I have also read a very detailed letter that was carefully prepared by your mother, with the assistance of your grandparents and uncle, and a further letter written by a person that has known you since you were a child.

[15] You have a longstanding diagnosis of Autism Spectrum Disorder (ASD) in the form of Asperger's Syndrome (Asperger's) and you suffer from anxiety and depression. You are a 31-year-old man who has had difficulty retaining employment and has largely lived alone as an adult due to your lifelong impairment, about which I will say more later in these remarks.

[16] Your family have attempted to assist you over the course of your life as best they have been able but it has been difficult. It is apparent that you have developed a growing reliance on alcohol.

[17] You are assessed in the pre-sentence report as now presenting a "very high risk of harm to the community" and of medium risk of reoffending. The report writer stressed this risk becomes more significant when your mental health is unstable and when you engage in problematic drinking.

[18] You have demonstrated a propensity to use violence and threatening language, and as having an alcohol dependency that you cannot always control. Your mental health issues, abuse of alcohol and propensity for violence are factors that have hampered previous attempts to engage you in rehabilitative programs, as has your inability to participate in groups, which is, of course, a product of your Autism.

The approach to sentence

[19] On a charge of murder the sentence can only be one of life imprisonment.² There is no suggestion that such a sentence would be manifestly unjust in the circumstances of this case, and counsel are agreed that this case does not meet the exceptional circumstances required to displace the strong presumption in favour of life imprisonment for murder.³ It is also accepted that s 104 of the Sentencing Act is not engaged.⁴ Life imprisonment will be the sentence that I will be imposing on you today. The issue that arises, however, is the question of the minimum period of imprisonment that should be imposed as a condition of that sentence.⁵

Minimum period of imprisonment

[20] The minimum period is the term you must serve before you can be eligible for consideration for parole. In undertaking that task, I am required to compare your culpability with cases of murder that attract the normal statutory minimum of 10 years which serves as a benchmark for the sentencing exercise. Taking into account aggravating and mitigating factors, I am required to decide whether an additional minimum period is required to satisfy the sentencing purposes of accountability, denunciation, deterrence and community protection.⁶

Aggravating features of the offending

[21] There are a number of aggravating features that support the imposition of a higher minimum term, although there are also some mitigating factors that I must take into account. The following aggravating features are present:

² Sentencing Act 2002, s 102.

³ *R v Rapira* [2003] 3 NZLR 794 (CA) at [121].

⁴ The Crown acknowledged the offending occurred at the door of Mr Cowling's home but that this did not engage s 104, which requires unlawful entry into or unlawful presence in the dwelling or house.

⁵ Sentencing Act, s 103.

⁶ Sentencing Act, s 103(2); *R v Williams* [2005] 2 NZLR 506 (CA) at [49]; *Robertson v R* [2016] NZCA 99 at [80].

- (a) there was the deliberate arming of yourself with a knife that you used to confront Mr Cowling and with which you stabbed him without any apparent hesitation;⁷
- (b) there was a degree of premeditation involved in your attack on Mr Cowling. As I have noted, you deliberately armed yourself and made your way to Mr Cowling's address. This was not an entirely spontaneous or spur of the moment reaction, as is sometimes the case when people come into conflict;⁸
- (c) the offending occurred at the door to Mr Cowling's home, on his property, albeit not in a way so as to engage s 104;⁹
- (d) the loss of life and of a loved one is inherent in all instances of murder, but the significant grief and trauma, and the extent of the resulting damage and harm you have caused must be recognised.¹⁰

Mitigating features of the offending

[22] Ms Gray, on your behalf, submitted that because there is no evidence of you making any prior threats or having previously been involved in violence towards Mr Cowling, the Court can safely conclude that you were found guilty of a reckless killing, rather than an intentional one. Even if this was so, however, I do not consider it constitutes a mitigating feature.

[23] Your conduct immediately following the stabbing is relevant.¹¹ For some period you tried to assist your victim by attempting to staunch the bleeding, albeit in vain. You rang emergency services and you demonstrated an unwillingness to leave Mr Cowling when Ms McMaster, understandably, wanted you out of her house, and when police and paramedics arrived. This suggests that you immediately regretted

⁷ Sentencing Act, s 9(1)(a).

⁸ Section 9(1)(i).

⁹ Section 9(1)(b).

¹⁰ Section 9(1)(d).

¹¹ Section 9(2)(c).

what you had done. Tragically it was, of course, too late. But I consider it provides an insight into your true feelings about the terrible thing that you had done.

Comparison with other cases

[24] In an endeavour to set an appropriate starting point for the minimum period of imprisonment, I have reviewed a number of sentencing decisions, including those which have attracted the statutory minimum of 10 years' imprisonment and those where higher minimum periods have been imposed. No two cases are the same and the circumstances of each invariably differ. However, I have had particular regard to past cases that have involved murders where the circumstances have some similarities.¹²

[25] Mr Hawes, on behalf of the Crown, submitted that a review of these cases, when coupled with the application of the purposes and principles of sentencing for murder that the Court is required to take into account, results in a minimum period of imprisonment in the vicinity of 11 to 12 years. Ms Gray, on the other hand, argued that the authorities support a minimum period of imprisonment of 10 and no more than 11 years.

[26] I am satisfied that you approached Mr Cowling's property incensed as a result of the escalating issue of the loud music, but primarily because your power had been turned off again. Although your decision to carry the knife was not the result of significant premeditation, you did have time to reconsider your options. When Mr Cowling was fatally stabbed he was unarmed and effectively defenceless. He died inside his own property where he was entitled to be safe, and it is apparent you were determined to press home your attack. All Mr Cowling sought to do was to shut the door in order to protect himself. When regard is had to the background to this murder, Mr Cowling's death was the result of an entirely senseless act on your part. Tragically, the whole chain of events was avoidable.

¹² *Gempton v R* [2011] NZCA 349; *R v Ham* HC Rotorua CRI-2009-069-1181, 20 October 2010; *R v Ballantyne* [2016] NZHC 1681; *R v Browne* [2017] NZHC 2389; *R v Mataki* [2016] NZHC 600; *R v Millar* HC Auckland CRI-2010-090-5044, 21 June 2011; *R v Tauariki* HC Auckland CRI-2010-092-011776, 29 November 2011; *R v Te Maru* [2020] NZHC 2084; *Fraser v R* [2010] NZCA 313; and *R v Ray* [2014] NZHC 599.

[27] Despite various things that you have written in prison, it is obvious you immediately regretted your actions and tried to offer assistance. Once you realised what you had done you clearly did not want Mr Cowling to die.

[28] I consider your offending warrants a marginally higher starting point than the mandatory minimum term of imprisonment because you had time to think and stop — to stop yourself from reacting the way you did — and because Mr Cowling was attempting to prevent you gaining entry to his house in the middle of the night. The fact that the aftermath of the attack resulted in Ms McMaster having to witness her partner bleeding to death on the floor of her own home is also a distressing part of Mr Cowling's murder.

[29] Having carefully considered the authorities that have been referred to me and counsel's submissions, and compared your actions with past cases of murder that have attracted the statutory minimum period of 10 years, I consider that an appropriate starting point is a minimum period of imprisonment of 11 years.

Personal circumstances

[30] However, I now turn to your personal circumstances that may impact on the minimum term of imprisonment.

Aggravating features of the offender

[31] The Crown have noted that you have convictions for violence-related offending. You have some 28 previous convictions for various types of offending that date back to 2008, as well as two convictions entered since the murder occurred that relate to the possession of a knife. Your history includes a number of convictions for threatening violence, and you have a propensity to arm yourself when engaging in confrontation. This is borne out by the fact that, in 2012, you were convicted of injuring with intent to injure for stabbing an associate during a fight, and you recently approached a noise control officer outside your house with a knife in hand, as well as having brought a knife to the Christchurch City Council building to demand the return of your confiscated speakers.

[32] I consider the nature of your previous convictions, particularly in light of the murder of Mr Cowling, demonstrate a worrying pattern of escalating violence that shows you present a danger to the community. That needs to be marked by an uplift of six months and brings the adjusted starting point for the minimum period of imprisonment to 11 and a half years.

Mitigating features of the offender

[33] A unique aspect of your personal make-up is that you labour from an Autistic Spectrum Disorder — Asperger’s Syndrome. I have the benefit of two reports prepared by the forensic psychiatrist, Dr Monasterio, who also gave evidence at your trial. He provides important information about your background. You had an unstable childhood and experienced developmental difficulties that resulted in you being diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) at the age of five, although there is no evidence that this has persisted into adulthood. However, your Autistic Spectrum condition accounts for your longstanding deficits in social skills, impaired ability to modulate your emotions and deal with stress, and is why you present with obsessive-compulsive traits. It is a pervasive condition.

[34] Dr Monasterio concluded that you have suffered from “a lifelong history of impairment in a range of areas of psychological and neurodevelopmental functioning”. A consequence of these deficits is that you present with (and I quote from Dr Monasterio’s report):

... marked deficits of interpersonal functioning affecting the areas of verbal communication, understanding and adapting to non-verbal aspects of social communication and understanding another’s perspective ... and engagement in rigid obsessional behaviours.

[35] Dr Monasterio noted that you exhibited mood instability in situations of conflict, and that you are influenced by your inability to understand other people’s perspectives. This has seemingly contributed to episodes of violence. This violence has then been exacerbated by your heavy alcohol use.

[36] It is apparent from information that has been made available to me that your family and others have attempted to assist you as best they can or have been able to do to overcome your pervasive feelings of alienation and the challenges you have

faced in having to cope with your Autism. Certain situations cause you to have “meltdowns” where your emotional reactions cause you to lose control and make rash decisions. I consider it likely that this is what occurred on the night you murdered Mr Cowling.

[37] Ms Gray has referred me to Dr Monasterio’s evidence where he canvassed the well-documented history of how your Autistic Spectrum Disorder has affected you and how your condition is likely connected with your offending.¹³ The Crown too has accepted your psychological make-up was a contributing cause of the murder and is a mitigating feature that reduces your culpability. Although, Mr Hawes also submitted that your difficulty with Autism is not the sole cause. As Dr Monasterio himself mentioned, a factor in the offending was your heavy consumption of alcohol which, as a matter of law, cannot constitute a mitigating factor.

[38] The Crown also submitted that account needed to be taken of the fact that your impairment may affect the risk you present to others and of further offending, and that your conduct and comments since the offending may demonstrate a lack of insight and remorse. However, I think fairly, the Crown has also acknowledged that this too is likely to be because of your Autistic Spectrum condition and possibly, as Dr Monasterio comments, a personality disorder.

[39] Your response to Mr Cowling turning off your power and preventing you from playing loud music may in part have been a product of an inflated view or skewed view of the perceived threat that Mr Cowling posed, but I think it more likely that your difficulty in understanding and adapting to others’ perspectives and being able to moderate your own behaviour in response to how it affected others is at the root of what unfolded. Moreover, I accept that you were unlikely to be able to cope with the stress of your power being turned off again and that the escalating situation between yourself and Mr Cowling led you to be emotionally overwhelmed. You reacted in the same disproportionate way you had, unfortunately, done in the past — by arming yourself with a knife and allowing your anger to dictate your actions.

¹³ *E(CA689/2010) v R* [2011] NZCA 13, (2011) 25 CRNZ 411 at [68]–[70], citing *R v Verdins, Buckley and Vo* [2007] VSCA 102, (2007) 16 VR 269 at [32].

[40] I have little doubt that your Autism was a contributing factor in how you came to murder Mr Cowling. There must be a reduction in the starting point to reflect this aspect of your offending and how your impairment which, to a considerable extent, was beyond your control and affected your conduct.¹⁴

[41] I also acknowledge that your Autistic condition may make the sentence of life imprisonment more punitive because of your tendency to feel distressed in stressful situations, particularly when you cannot have recourse to your apparent coping mechanisms of intense sensory input. However, to some extent, that consideration is offset by the likely heightened risk you present of reoffending as a result of your impairment. This is marked by a willingness to address confronting issues by arming yourself with knives and is exacerbated by your consumption of alcohol in heavy quantities.

[42] The need to adjust the starting point to reflect your Autism and its linkage with this offending results in an 18 month deduction, which I consider accords with the range of discount that is appropriate when mental impairment has contributed to a person's offending.¹⁵ This brings the final minimum period of imprisonment back to one of 10 years.

[43] Before concluding my sentencing remarks, I need to emphasise that the sentence that I impose is one of life imprisonment. In some respects the setting of the minimum period of imprisonment is something of a distraction. Life in prison means

¹⁴ *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [50].

¹⁵ *E(CA689/2010) v R*, above n 13, at [71]. The Court of Appeal cited the following cases: *R v Wright* [2001] 3 NZLR 22 (CA) (discount of 30 per cent where offender smothered her child while suffering from Munchausen's Syndrome by Proxy, where a parent causes or feigns sickness in a young child for sympathy and attention); *R v Tuia* CA312/02, 27 November 2002 (discount of 25 per cent where the offending had been contributed to by a medical condition for which he could be seen to bear no responsibility); *R v Whiu* CA195/07, 20 December 2007 (discount of 20 to 25 per cent given where there was some causal relationship between the drink driving offending and the offender's post-traumatic stress disorder insofar as the offender's decisions had been affected by her disorder); *R v Edwards* [2007] NZCA 382 (discount of 15 to 20 per cent justified where offender's schizophrenic condition reduced moral culpability to the extent that it contributed to the rape offending and reduced need for deterrence); *Dalley v R* [2010] NZCA 290 (13 per cent discount given where Court accepted hypermanic episode explained offender's attack on the victim, even though it was likely due to lack of medication, but offender was not responsible for his manic state as he could not be relied upon to take his medication); and *R v M* [2008] NZCA 148 (discount of 12 per cent where, although there was no causal nexus between the offender's low intellectual levels and the offending, because of his diminished ability to cope with the stresses of life, a term of imprisonment may weigh more heavily on him than others).

just that. You will spend the rest of your life in prison unless and until the Parole Board is able to conclude that you can safely be released into the community. The effect of setting a minimum term of imprisonment is only to impose a period which must elapse before the Parole Board can commence any such consideration of such a possibility.

Result

[44] Mr Locke, will you now please stand.

[45] Mr Locke, you are sentenced on the charge of murdering Mark Cowling to life imprisonment with a minimum period of imprisonment of 10 years.

Strike warning

[46] Finally, before you stand down, there is the three strikes warning that I must give you. I am required to give you a formal warning. If you are released and ever commit a further serious violent offence, you will serve the resulting sentence without parole. If you are ever convicted of murder again, you will be sentenced to life imprisonment without parole. The full terms of this warning will be supplied to you in writing.

[47] You may stand down.

Solicitors:
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