

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

CRI 2006-092-016632

THE QUEEN

v

**PAUL JUNIOR GRACE
ANNETTE LOUISE ELAINE HETA**

Hearing: 24 March 2009

Appearances: Ms Lummis for Crown
Mr Edgar for Mr Grace
Mr Tucker for Ms Heta

Judgment: 24 March 2009

SENTENCE OF WINKELMANN J

Crown Solicitor, Auckland
M Edgar, Barrister, Auckland
Tucker & Co, Takapuna

[1] Mr Grace, you pleaded guilty at the commencement of trial to one count of assault with intent to rob for which the maximum sentence is 14 years imprisonment. You were convicted following trial of one count of manslaughter. The maximum penalty for that offence is life imprisonment. You appear for sentence today on those two matters. Ms Heta, you appear for sentence having been found guilty following trial of one count of assault with intent to rob, and one count of manslaughter.

[2] All of these offences were committed against the deceased Mr Jason Boon. On the evening in question Mr Boon was at home with his partner, Ms Brussow and their infant daughter. You two went together with your co-offender, Mr Wilson to Mr Boon's address with the intention of using standover tactics to commit a robbery to obtain money and alternatively drugs. Mr Wilson is your uncle, Mr Grace. Mr Wilson attempted to disguise himself by wearing a wig, hat and facial make up to conceal his very distinctive facial tattoo. He was armed with a knife. Mr Grace, you and Mr Wilson also wore gloves. The group of you went to the address with a roll of duct tape, plainly intending to tie Mr Boon up as part of this plan. All three of you were driven to the address by a fourth person who gave evidence at trial. Her account was that the original plan was that she was to knock on the door to gain entry. When she refused to do that you, Ms Heta performed that task for her. Mr Boon was someone who was known to you from school days.

[3] When Mr Boon opened the door Mr Grace you, together with Mr Wilson, forced your way in. Ms Brussow, hearing a struggle and with considerable presence of mind, ran upstairs, grabbing her sleeping child, a mobile phone and locking herself in a bathroom from where she was able to call the police. Downstairs an intense struggle took place. I am satisfied that Mr Wilson took the lead in this, subduing Mr Boon. That finding is consistent with the evidence as to blood transfer, and with the conviction of Mr Wilson on the count of murder following trial.

[4] Mr Grace, you assisted Mr Wilson in subduing Mr Boon. Mr Boon was a fit young man who was experienced in martial arts. He would not have been easy to

subdue. Ms Brussow heard the sounds of an intense struggle from her hiding place upstairs. Mr Boon was bound up with electrical tape, with his arms behind his back. His eyes and mouth were taped with duct tape. During the struggle he was bruised and was stabbed once in the arm.

[5] From the medical evidence at trial it seems that someone applied considerable pressure to Mr Boon's chest and further restricting his neck. Consistent with the jury's verdict, I am satisfied that the person who inflicted that restriction to the air flow for Mr Boon was Mr Wilson. At some point during or shortly after the struggle Mr Boon ceased breathing. Once Mr Boon had been subdued and was lying dead or dying on the lounge floor, all three of you looked around the house for things to take. Ms Heta, you took a cellphone belonging to Ms Brussow. Mr Grace, you took car keys. The police arrived while all three of you were still at the address. You absconded but were captured shortly afterward.

[6] I have had made available to me a victim impact statement from Ms Brussow. She says that she heard everything that was happening downstairs. She thought she was going to die and felt powerless. When she looks back at events she says that she is devastated, and that what occurred to her was something that you see in a horror movie. She reports that since the events she has not been able to return to work and has had to move out of her home and start again on her own. She reports feeling like she is living on a knife edge. She is too scared to sleep at night and could not live on her own, even if she could afford it. She has suffered stress related physical illness and has on-going problems with relationships. She also has concern for her daughter who, although now a school age child, has difficulty in communication. Ms Brussow reports that her daughter is terrified of all adults and will not look anyone in the face and that she hides behind Ms Brussow. So those are the human implications of your actions which go beyond taking the life of Mr Boon. You have also through your actions damaged the life of his wife and child.

[7] Today in Court I also acknowledge the presence of Ms Brussow's mother who has provided support to her daughter in the years following the events the subject of the charges.

[8] Mr Grace, I have a pre-sentence report in respect of you. It tells me that you are 26 years old. Your parents were both killed when you were only six years old, and I understand that was in a violent incident. You were brought up with your extended family, but away from your siblings. It is clear that you have had a difficult upbringing although at some stage, your aunt who is here in court to support you today, provided important stability in your life. You left school at 15 and you report on-going drug abuse. You have four children to the same partner, but you are no longer together. Your children range in age from 5-10 years and you apparently continue to have some contact with them.

[9] You were released on parole in August 2006, only four months before the offences for which you now appear to be sentenced. You report use of cannabis and methamphetamine and during your four months of freedom following parole you used drugs daily. You report that during that period of time you were offending to support your drug habit.

[10] Mr Wilson is your uncle. You have consistently maintained that you became involved in the offending because of your fear of him. Your use of drugs and criminal associates is seen as the major contributor to your offending. The pre-sentence report writer identifies that you are a follower and that you seek out relationships with others, possibly because of the difficulty in your childhood. You report that you want to change and do the best by your family, and by that I take it you mean your children. You hope to use the time in prison to get some education. Your risk of reoffending is however assessed as high, with likely on-going dishonesty rather than violent offending. You are assessed as having a medium to high level of motivation to change and that is to your credit.

[11] I also have a report prepared by Mr Charles Donahue, a performance psychology coach, who is present in court today. He has become involved with you during your time in prison through his interest in assisting prison inmates with their rehabilitation. He says that he has been working with you for six months and believes that you are a person who is easily led, who likes close personal relationships but who normally avoids confrontation.

[12] I also have information that you have a lengthy history of previous convictions totalling 36, including a conviction for aggravated robbery in 2004 for which you received 3½ years imprisonment (imposed cumulatively on sentences for other offending). You have 28 offences of a dishonesty type nature covering shoplifting, burglary, theft, receiving and unlawfully taking a motor vehicle. You have offences of possession of cannabis, plant supply, failure to answer District Court bail and male assaults female, but in respect of the latter that is one count only. You have amassed \$17,000 worth of unpaid fines.

[13] The Crown submits an appropriate starting point reflecting the seriousness of the offending in relation to the manslaughter count and the assault with intent to rob would be 12 years, but uplifted to reflect the fact that your offending occurred whilst on parole for similar offending and to reflect your criminal history.

[14] The Crown accepts that some small discount is appropriate in the light of your late guilty plea on the count of assault with intent to rob. It submits that an appropriate end sentence is then 12 years and seeks a minimum non-parole period of a half of that. It says that a minimum non-parole period is necessary in light of the combination of the following aggravating factors in your offending:

[15] The planning and premeditation involved. This is evidenced by the use of gloves and duct tape taken with you to the address.

- You participated in a group assault on the deceased Mr Boon.
- Disguises were used during the course of the attack, although the Crown concedes not by you.
- A knife was used, although again the Crown concedes not by you.
- That the offending involved a home invasion type attack.
- That actual violence on top of threats and intimidation was used.
- The severe impact of the offending on the victims.

[16] Your counsel submits that the lead offence is manslaughter but that the focus of the sentence should be rehabilitation. He accepts as aggravating factors that manslaughter involved the threat of violence, that you were party to binding Mr Boon in a way that rendered him vulnerable and there was some planning involved on your part. But Mr Edgar says that your role was more limited than that of Mr Wilson's and so too was the planning involved on your part. Your counsel also accepts as an aggravating matter, as indeed he must, that you had previous convictions for violent offending and that you offended whilst you were on parole.

[17] Mitigating features identified on your behalf are that you are were an unwilling participant in the offending and your account to that effect is corroborated to some extent by the fourth member of the group who gave evidence for the Crown at trial. Your uncle was the organiser and you were a reluctant participant. At least initially you were simply a follower. Mr Edgar has addressed the suggestion in the pre-sentence report that you are in some way affiliated to the Killer Bees. He says that is not so.

[18] He notes that you have expressed remorse and that the remorse is genuine is evidenced by the making of a very full videotape statement to the police when arrested. You said then and you maintain now that you never intended this outcome. Mr Edgar emphasises that when Mr Boon was bound his nasal airways were kept free to ensure he was not asphyxiated. Your account also was that you shouted at your uncle to get off Mr Boon's chest when you saw Mr Boon going blue.

[19] Your counsel submits that a starting point of 7 years is appropriate and that in the light of all of the mitigating factors no minimum non-parole period is necessary. In that regard your counsel submits that your culpability does not warrant the imposition of a minimum period of imprisonment because you did not want to go with your uncle to commit the standover of the deceased, nor did you do so with the intention of killing the deceased. He submits that a finite sentence without a minimum period of imprisonment is sufficient to hold you accountable for the crimes you committed and to deter you from committing further offences of that nature.

[20] In sentencing you I have to have regard to the purposes of sentencing set out in the Sentencing Act. The sentence I impose on you should have as a purpose denouncing your conduct and deterring you and others from similar offending. Deterrence is a significant factor in your case, especially in the light of your recidivism, the fact that you have offended previously and almost as soon as released from prison on parole you have offended again.

[21] Given your criminal record protection of the community must also play a part. But against that too I must provide for your rehabilitation.. Given your age society has a considerable interest in your rehabilitation. I must say that when I look at the information in front of me, it is easy to see you following a path very similar to your uncle, unless you take positive steps toward your rehabilitation. Although I acknowledge that you have different personality characteristics to him, you are not dissimilar from him in the fact that by the age of 26 you have accumulated a lengthy list of prior convictions. I take it from the pre-sentence report that you do not want the path that your uncle has followed to be your future, spending much of your life in prison. In those circumstances I urge you to take advantage of every opportunity you have to educate yourself whilst in prison.

[22] Finally, in sentencing you I must provide for the victims of your offending.

[23] As identified already the offending did have significant aggravating features as accepted by your counsel. This was a manslaughter committed in the course of the carrying out of a plan to rob the victim, that plan including the use of stand over tactics, and also clearly involved tying up Mr Boon and making threats. It is also a significant aggravating factor that the plan as devised and executed involved forceful entry into Mr Boon's home at night time. It must have been without your contemplation that there would be other people present, including members of Mr Boon's family. But I accept that your role was significantly less than that of your co-offender Mr Wilson, and indeed to some extent that is reflected in the jury's verdict, Mr Wilson being found guilty of murder and you of the lesser offence of manslaughter. It was undoubtedly Mr Wilson's plan and you followed along. I also accept that you followed along without enthusiasm, and indeed reluctantly. Nevertheless, you knew of the essential elements and you participated in the

execution of the plan. I have no doubt that you knew that it was intended to use stand over tactics in respect of Mr Boon, you would have known of the presence of the duct tape, you saw Mr Wilson wearing a disguise, and you knew of the essentials of what was to occur.

[24] I have considered the authorities referred to me by the Crown and your counsel in terms of setting a starting point. I consider that in sentencing you the lead offence must be the offence of manslaughter. In sentencing in relation to the offence of manslaughter it is important to acknowledge that no two offences are exactly alike. But I have to make sure that any sentence I impose on you is consistent with sentences imposed on offenders in similar type cases. I have therefore been assisted in my consideration by *R v Matautia* HC AK CRI 2006-092-013486, *R v Kopelani* HC AK CRI 2003-092-035815, *R v Hughes & Shortland* HC WHG CRI 2005-088-4349 and *R v Challis* [2008] NZCA 470 and other authorities. I consider that your offending is more serious than that in *Matautia*. In that case premeditation and planning were absent. There was also not the aggravating factor of a home invasion. You were actively involved in the offending, unlike the offending in *Kopelani*. Your offending is marginally less serious than that in *Challis* in my assessment.

[25] You were reluctant in your involvement, but you were still there willingly. The fact that you were there willingly was evidenced by your taking of the car keys during the course of the offending. I take it from the narrative of events that this was after Mr Boon had been subdued.

[26] I therefore consider that a starting point of 9 years is appropriate in light of the fact that you were not the lead offender. If you had been the lead offender, then a significantly higher starting point would have been appropriate even in respect of manslaughter. I am minded to uplift that starting point one year only to reflect the considerably aggravating factor that you were on parole and also the previous violent offences for which you have been convicted. In uplifting only one year in respect of that I acknowledge there may be an element of double counting in the fact that you offended whilst on parole, and that you do have previous convictions for violent offending. Balancing that out is the reduction I propose to make of one year in light of your remorse, which I accept is genuine and by the entry of your guilty plea in

respect of the assault with intent to rob. In respect of the latter point, the Crown's submission is well made that that guilty plea was late, entered at the commencement of trial. Therefore a sentence of 9 years imprisonment is appropriate in respect of the manslaughter count.

[27] In fixing that final sentence I take into account your counsel's submission that it is necessary not to crush your hopes of rehabilitation. You say you want to take an active role in the lives of your family, and I take it you mean your children. If you are to play any kind of a meaningful role in their lives then you must take this opportunity to rehabilitate yourself.

[28] I then turn to consider the Crown's submission that a minimum non-parole period of a half should be imposed. Of course, the Crown was suggesting a half of 12 years which would result in a minimum non-parole period of six years. Section 86 of the Sentencing Act 2006 provides:

- (2) The court may impose a minimum period of imprisonment that is longer than the period otherwise applicable under section 84(1) of the Parole Act 2002 if it is satisfied that that period is insufficient for all or any of the following purposes: -
 - (a) holding the offender accountable for the harm done to the victim and the community by the offending:
 - (b) denouncing the conduct in which the offender was involved:
 - (c) deterring the offender or other persons from committing the same or a similar offence:
 - (d) protecting the community from the offender.

[29] The Crown submits that a minimum period is appropriate because of the combination of aggravating features in this offending. The Crown submits that a minimum term would duly reflect society's abhorrence of this type of offending, and would provide appropriate deterrence and denunciation.

[30] It is not an easy issue to decide matters such as this. In considering this I have reflected long and hard about your counsel's submission that you do have good prospects of rehabilitation. But against that I have to balance the fact that you involved yourself in a very serious crime, and in the course of doing so a man lost

his life. There is a need to denounce such conduct. There is also in your case the added need to deter you from similar offending in the future. That is a particular consideration because of your criminal history. In the end I am satisfied that it is necessary to impose a minimum term of imprisonment upon you, but taking into account the need to preserve hopes of rehabilitation for you, that that minimum term of imprisonment should only be 4 years. In fixing that sum I have taken into account that you do have family support, and I note the presence of your aunt in court today. It is to be hoped that your family can support you to ensure that you make the most of any opportunities you have for rehabilitation.

[31] Mr Grace, please stand. On the offence of manslaughter you are sentenced to 9 years imprisonment with a 4 year minimum non-parole period. For the offence of assault with intent to rob you are sentenced to 4 years imprisonment. That term of imprisonment is to be served concurrently with the 9 year term of imprisonment. I also make orders remitting fines. I request the prison authorities to make every effort to ensure that you serve your sentence of imprisonment separately from your uncle.

[32] Ms Heta, I have a pre-sentence report in respect of you also. It tells me that you are 30 years old. Like Mr Grace you had a difficult childhood. You have a daughter who is 5, who is currently living with your parents. You were introduced to methamphetamine use by your former partner in 2004 or 2005 and that escalated. However, since you have been in prison you have been free of drug use, which is to your credit. You have not had any long term employment during your working life. You have no assets or savings and you have outstanding fines. You became involved in this offending, you say, at the request of one of your friends who was the fourth member of the group who gave evidence at trial.

[33] You say that you were a reluctant participant, you felt you had to get in the car to avoid being physically harmed because you had seen one of the male associates previously stabbing another woman. You expressed remorse to the report writer and empathy for the victims. You have previous convictions for shoplifting, minor property, drugs and driving offences. You have previously served a 2 month sentence of imprisonment for a range of minor offences.

[34] The report writer identified you as being at low risk of reoffending and he agrees with your self report that you are now clean of the use of drugs. No rehabilitative needs were identified at interview. You say you hate your male co-offenders and you are remorseful and have empathy for the victims of the offending. You were identified as being at no risk to others or the public.

[35] You have family support and your father is present in court today to show that support for you. It is good that you have family support.

[36] The Crown's submissions in relation to you are essentially the same as they have made in relation to your co-offender Mr Grace. It is submitted that the same starting point is appropriate.

[37] Your counsel submits that your culpability for the offending is much lesser than either of your co-offenders. Mr Tucker submits that you were not involved in restraining the victim and that your role was simply to get into the house. You knocked on the door, but you could never have envisioned what happened once that door was opened. Mr Tucker submits that you did not know of any plan to use stand over tactics. You were not aware of the presence of the duct tape or the knife. He submits that it is a significant mitigating factor in the offending that you were such a reluctant participant and that there is no evidence of planning on your part. In particular, you did not have any gloves unlike your co-offenders.

[38] Mitigating features identified for you by your counsel are your genuine remorse and Mr Tucker submitted that was evident as soon as you were told of the offending, and the police gave evidence in relation to that. Mr Tucker submits that in light of these matters there is no need for a minimum sentence of imprisonment.

[39] In sentencing you I take into account the same purposes as for Mr Grace, although in your case deterrence is a much less potent consideration because you don't have the extensive history of previous offending that Mr Grace had. I have considered your culpability carefully, and in particular I have considered the submissions of Mr Tucker. But in the final analysis I consider it to be very similar to that of Mr Grace. It is true that you were not involved in the physical tussle, but you

were an active participant in what occurred. Your role was key in that you assisted in gaining access to the address. I do not accept that your role should be minimised to the extent your counsel seeks to persuade me. You knew what the plan was, you knew your role was to obtain entry to the house.

[40] I am also satisfied that you knew of the plan to use stand over tactics. You saw your co-offender Mr Wilson in disguise. You must have known that there was serious offending afoot. You would have known of the presence of duct tape. You were a passenger in the car and the evidence was that someone commenced unrolling and cutting the duct tape whilst you were in the car. Although you may not have initially been a willing participant in the attack, you nevertheless played your role. Even though the fourth participant in the group pulled out, you stayed involved. You knocked on the door and then you entered the house. You also helped yourself to the mobile phone. In this your role I consider was more serious than that played by the offender in *Kopelani*. But I take into account the pressure you were under to participate in the offending, and for that reason I adopt a starting point of nine years. I do however think that you are entitled to some reduction on account of steps towards rehabilitation that you have taken and your remorse and for that I give you a reduction of six months, which leaves a finite sentence of 8 years 6 months.

[41] I have given consideration to the Crown's request that I impose a minimum non-parole period on you. The Crown says that there is no basis to distinguish you from your co-offender Mr Grace, but I do not accept that submission. Although denunciation is obviously still a compelling factor for the imposition of a minimum period, here deterrence is a much less significant factor. This is a finely balanced issue because I consider that the offending in which you involved yourself to be very serious offending. You do not have the history of previous violent offending and I am satisfied that given the steps you are presently taking towards rehabilitation, you are unlikely to reoffend on release. In those circumstances I do not propose to impose a minimum period of imprisonment on you. So Ms Heta please take that into account in deciding what you do with the rest of your life. I would not want to hear that you are going to appear before the courts again, especially when you are the mother of a 5 year old daughter. It is in your interests to take this opportunity, which you seem to be doing, to turn your life around.

[42] Ms Heta please stand. On the one count of manslaughter you are sentenced to 8 years 6 months imprisonment. On the count of assault with intent to rob you are sentenced to 4 years imprisonment. Those sentences are to be served concurrently. I remit outstanding fines. Stand down.

Winkelmann J