IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CRI-2008-269-62

THE QUEEN

v

JAHCHE TE MANAWA KAHA BROUGHTON

Hearing: 26 March 2009

Appearances: Mr F Pilditch and Mr M Wright for Crown
Mr C Wilkinson-Smith for Broughton

Judgment: 26 March 2009

SENTENCING REMARKS OF LANG J

Solicitors:
Crown Solicitor, Rotorua
Counsel:
Mr C Wilkinson-Smith, Auckland

[1] At the outset, I wish to acknowledge and recognise the presence here today of members of Ms Aim's family who are in New Zealand as part of a visit from Scotland. This has been a tragic event for you. It is none of your fault that you have been tied up in everything that has happened over the past year. It is a tragedy for your family and the sympathy of the Court is extended to you.

[2] Ms Schofield, I acknowledge you also. You, too, have been through a terrible ordeal. Nothing the Court can do can directly undo the damage that has been done to you but, again, I extend the sympathy of the Court to you.

[3] I also recognise and acknowledge today the whanau, family and friends of Mr Broughton who are here also at a very important in this young man's life.

[4] Mr Broughton, you pleaded guilty in this Court to a charge of murdering Karen Elizabeth Aim. You have also pleaded guilty to a charge of wounding Zara Jade Schofield with intent to cause her grievous bodily harm. The maximum sentence on the charge of murder is one of life imprisonment. The maximum sentence on the charge of wounding with intent is one of 14 years imprisonment.

[5] You also faced two charges of robbery. They related to the theft of items from Ms Schofield and Ms Aim. The Crown accepts that your culpability in relation to those charges is properly captured by the charges to which you have pleaded guilty. For that reason the Crown offers no evidence on those charges and I now discharge you on them pursuant to the provisions of s 347 of the Crimes Act 1961.

Factual background

[6] In order to place your offending in perspective it is necessary to have regard to the factual background. This is contained in an agreed summary of facts that was read to the Court by the Crown prosecutor when you pleaded guilty on 5 February 2009. To some extent the Crown prosecutor has also repeated aspects of the summary during his submissions today. Because my sentencing remarks are a

matter of record, it is also necessary for me to recount the facts as the summary details them.

Ms Schofield

[7] I deal first with the charge that relates to Zara Schofield. I do so because it is earlier in time.

[8] The events that give rise to this charge occurred on the late evening of 4 January 2008 and the early hours of the following morning. At that time, Mr Broughton, you were living in Taupo with your grandparents. You were just 14 and a half years of age at the time.

[9] The summary records that you left your home that evening and obtained a 40-ounce bottle of vodka. You then met with an associate, whom it appears that you had not known before that night. You and he went to a party at a house in McDonnell Street. By coincidence, Ms Schofield was also at that party.

[10] Neither you nor your associate had been invited to the party and several times during the evening you were asked to leave. You did so eventually around midnight. By that stage, you had been drinking vodka from the bottle. Your associate, it seems, was in an extremely intoxicated state.

[11] You then went to a nearby house that was occupied by a person by the name of Mr Leigh Herewini. He was known to you because he had been involved in a relationship with your aunt, although that was not current at this time. It appears that he was some form of friend or confidante so far as you were concerned.

[12] Now Mr Herewini was a security guard who did security rounds at various locations in Taupo at various stages during the night and on this particular night be was actually on duty. The summary records that you arrived at Mr Herewini's house at approximately 12.30 am. By this stage your associate was in such an advanced state of intoxication that he could hardly stand. You told Mr Herewini that you had just come from a party. You remained outside with your associate who

appears, at about this time, to have fallen into a state of unconsciousness. Mr Herewini was obliged to ask you to move him out of the way on the driveway so that he could leave his address to go on his security rounds.

[13] Mr Herewini came back to his house at about 1.30 am. You were sitting on the doorstep of his property at that time and your associate was still lying prone in or about the driveway. Mr Herewini went inside, leaving you sitting on the step. When he came out a short time later, you had gone.

[14] Now it appears that after this you went back in the direction of the house where the party had been held in MacDonnell Street, and it seems also that Ms Schofield had left the party at MacDonnell Street at about the same time in order to make her way home via MacDonnell Street and Invergarry Road.

[15] It is clear that you came into contact with Ms Schofield at about 2.37 am because at that time she sent a text message to a friend asking for help. She did this after she became aware of a person near her, and was concerned for her own safety. You then followed Ms Schofield a short distance down Invergarry Road past Tauhara College. In the vicinity of No. 96 Invergarry Road you grabbed Ms Schofield around her waist and tried to pull her towards you. She told you to "fuck off". When you grabbed her you were initially at her side but you then came around in front of her. You initially let go of her but then grabbed her again from the front. She bravely tried to resist your advances. She grabbed your wrists and tried to dig her nails into your wrists. She then attempted to turn around and go back towards MacDonnell Street.

[16] When she turned her back to you, you used a rock that you had picked up from a nearby garden to hit her on the back of her head. This caused her to immediately fall to the ground and lie on her back. You then approached her. She lifted her leg up to fend you off and you backed off initially, but then began striking her with the rock. It is clear that you struck her numerous blows to the head using that rock. This eventually rendered her unconscious. You then took her pink handbag and departed from the scene.

[17] You returned to Mr Herewini's house. When you arrived, you had blood on your T-shirt and your hands. When Mr Herewini asked you what had happened, you told him that you had just been in a fight at the party and that the people at the party had asked you to leave. You said that you "might have broken the other guy's nose".

[18] Mr Herewini then took you to a tap beside his house and got you to wash your hands. He took your T-shirt, put it in the washing machine and then gave you another T-shirt to wear. You and Mr Herewini then rummaged through Ms Schofield's handbag and found her purse. In her purse she had the sum of $40. Mr Herewini kept $20 for himself and gave $20 to you. He then hid the handbag in a bush at the back of his property. You and Mr Herewini then removed your associate by moving him through a gap in the fence into the grounds of Tauhara College.

[19] Ms Schofield, in the meantime, had been able to stagger back along Invergarry Road and into MacDonnell Street, where she went into a house and sought help. The police and the ambulance services were called immediately to the address.

[20] Once the police and the ambulance were in attendance at Invergarry Road, Mr Herewini decided to take you home. He then returned you to your grandparents' house. By the time he returned from that trip the police were already at his house. They had used a police dog to track from the scene of the attack and this had taken them to Mr Herewini's address. An ambulance was also in attendance there, because your associate had been found still in an unconscious state.

[21] A few days later, whilst the police were still investigating the attack on Ms Schofield, you rang Mr Herewini and the two of you discussed that issue. By that stage it had been the subject of considerable publicity in the media. You told Mr Herewini that you had found the handbag on the footpath. He asked you if you were sure that you had not hurt Ms Schofield and you denied having anything to do with the attack on her.

[22] About three days later, Mr Herewini took the Ms Schofield's handbag and disposed of it by putting it in scrub near a sewage plant on Centennial Drive. When the police later questioned him about that, he took them to that area and they retrieved the handbag. Obviously Mr Herewini's actions did him little credit. He was subsequently charged with being an accessory after the fact to the attack on Ms Schofield and he has pleaded guilty and been dealt with on that.

[23] Ms Schofield received severe injuries as a result of your attack on her. She received no fewer than ten separate wounds to her head. Nine of these were in the back of her skull and one was to the right side of her eye. She had a conjunctival haemorrhage in the lateral corner of her right eye. Her left eye also was swollen and went black. She received bruising on her right hand and her fingers were cut and bruised as well. When she was taken to hospital she required over 30 sutures and staples to close up her wounds. That is an issue to which I will refer when dealing with the overall effect that this offending has had on Ms Schofield.

[24] I turn now to the charge in relation to Karen Aim.

Ms Aim

[25] This charge arises as a result of the events on the late evening of 16 January 2008 and the early hours of the following morning. This was just 12 days after your attack on Ms Schofield.

[26] Ms Aim was a 27-year-old Scottish national who had visited New Zealand in December 2006 for several months. She returned home but, having liked this country so much, she returned in late 2007 to live here and work. She chose Taupo as her place of residence and work, and she was flatting there with several friends and associates at the time that this incident occurred.

[27] On the evening of 16 January 2008 she went into town to meet friends at various bars and nightclubs in the central city area. She was wearing a denim skirt and a white singlet top, and had with her a black handbag containing her wallet and personal effects. These included a small digital camera.

[28] On that same evening, although the exact time is not known, you took a distinctive bicycle, which you rode regularly, from your home and made your way to Taupo Nui-**A**-Tia College. This is a secondary school near Mr Herewini's address in the Taupo City area. You took with you a baseball bat.

[29] Ms Aim left her friends at a nightclub at about 1.57 am on the morning of 17 January to walk home. She was captured on videotape at a service station in the City area purchasing food at approximately 2.20 am. She then continued on her journey home on foot and alone. Her house was about two kilometres away from the City area. Although the precise route that she took is not known, it is likely that she walked up Spa Road towards the south west corner of Taupo Nui-A-Tia College.

[30] It is now known that you were in the grounds of the College on your bike at about this time. This is because you were captured on security camera footage in the school grounds at 2.04 am. The last sighting of you in the school was at 2.10 am. During this time you were using your baseball bat to smash windows and glass-framed doors on various buildings within the college. The summary records that many of the broken windows were reinforced with wire mesh, so a considerable amount of force must have been necessary to smash them.

[31] Your activities in and around the college building set off a security alarm at about 2.14 am. By coincidence, the security guard who was on duty at that time was Mr Herewini. He responded to the alarm signal from the school.

[32] It is clear also that at about this time Ms Aim was walking through or past the college grounds. You must have seen her, and followed her on your bike with the baseball bat. We have no way of knowing whether she ever became aware of your presence. She continued on her journey home until she reached the corner of Waikato Street and Matutahae Street, which was only metres from her home. You then attacked Ms Aim with the baseball bat on the footpath at the southeast corner of the intersection. You struck her a severe blow on the left side of her face, causing significant contusions and abrasions on that side. This caused Ms Aim to fall to the ground where she lay on her back. Whilst she was lying on the ground with her head on the concrete, you struck at least one further heavy blow to the front of her

face with the baseball bat. This blow resulted in extensive fractures to Ms Aim's face and to the area of her mouth on the left side. It also caused skull fractures and contusions to the back of her scalp and to her head on the right hand side. This blow or blows caused immediate and massive brain injury which proved to be fatal after a very short period.

[33] At some stage, which I take to be shortly after she was rendered unconscious, you hitched Ms Aim's denim skirt up around her waist. You then tore her underpants across the crotch at the back of the gusset. You then pushed or placed the front part of her torn underpants to the left side of her body, thereby exposing her pubic hair. You hitched up and left the hem of her skirt far enough up her body so that when her body was discovered a short time later, her genitalia and pubic hair were exposed and visible to the attending constable.

[34] After the attack you took Ms Aim's handbag containing her personal effects. For some reason you removed her purse and left it sitting on her body. You then left the scene on your bicycle taking with you the baseball bat and the handbag containing Ms Aim's personal effects including her digital camera. You removed Ms Aim's sunglasses and makeup from the bag near the entrance to the college, and you hid those items in some bushes there. You then returned to your home with the handbag, the digital camera and the baseball bat.

[35] The alarm activation at the college resulted in the police being called to search for suspects in relation to the damage that had been caused to the windows and doors of the school. At about 2.34 am a police constable who was walking along Waikato Street came to the intersection of Motutahae Street and found Ms Aim lying in a pool of blood. She was unresponsive, her face was covered in blood and she was making a gargling noise. Not surprisingly, he immediately called an ambulance and requested further police to attend.

[36] The ambulance arrived a few minutes later. Ms Aim was still unconscious at that time but was still making noises. She was rushed to the Taupo hospital and arrived there at about 3.08 am. Extensive attempts were made to resuscitate her but at 3.16 am she was not breathing, her heart had stopped and her pupils were fixed

and dilated. She was therefore declared dead on arrival at the hospital because her condition had not changed since she had arrived at the hospital.

[37] As I have said, you returned to your home with the baseball bat and the other items. You hid the baseball bat under your house. Later that morning you telephoned Mr Herewini to ask if he had heard about "the girl". You told him that a person you referred to as "Brian", who was a Mongrel Mob prospect, had been involved in Ms Aim's death. You told him that this person Brian had hit Ms Aim over the head with a baseball bat and that he was planning to throw her into the Waikato River but there was too much traffic around so he left. You told Mr Herewini that Brian had been to your house and had borrowed the bike and baseball bat from you. Later, and in what I regard as a cynical act that occurred after Ms Aim's death, you deleted many of her photographs of her travels around New Zealand that were stored in her camera. You then used the camera yourself to take photographs of your own family and home.

[38] A few days after Ms Aim's death, Mr Herewini came to your house to pick up his son. You came out and told him that the weapon that Brian had used was still under the house. You brought out the baseball bat and showed it to Mr Herewini. You told him that you had washed it in order to try and wash the blood off it. Mr Herewini asked if Brian was going to turn himself in to the police and you said no. You then put the baseball bat back under your house.

[39] The police subsequently executed a search warrant on your house. There they found Ms Aim's camera in your uncle's bedroom. They then searched an incinerator at the rear of the property and found Ms Aim's handbag, which was sitting under rubbish on top of the incinerator. The police also found the baseball bat which had numerous cuts and chips out of it. The bat was embedded with glass from the college windows and had Ms Aim's blood on it. The police also found and seized the distinctive bicycle that you had been riding on the night that you damaged the windows at the college and attacked Ms Aim.

[40] You were subsequently interviewed by the police in Palmerston North on 23 January 2008. You said that on the evening of 4 January 2008 you had been to a

party with your associates and that you went to Mr Herewini's house after the party. You said that you had seen four guys run away from MacDonnell Street, up Invergarry Street towards Tauhara College and 30 seconds later you had seen a girl running. You told the police that you had seen that girl at the party earlier in the evening. You said that the girl had disappeared into the darkness and that you had found the pink handbag with fresh blood on it in MacDonnell Street and that you had taken it to Mr Herewini's house. There you said that you had washed the blood off your hands and changed clothes.

[41] When you were asked about the events on the night of Ms Aim's death, you told the police that you had been asleep in your bed at your grandparents' house the whole night. You said that you had heard your aunty talking about the incident the next morning and later contacted Mr Herewini to ask him what had happened. You denied to the police that you had ever mentioned to Mr Herewini about the involvement of a person called Brian. You also said to the police that Ms Aim's camera had been purchased by your uncle in Thailand.

[42] When the police asked you about the baseball bat under your house, you said that that had been used by all the family. You said that you had last used the bat to break bottles in the back yard of your house and across the road at a rugby ground on 21 January 2008. That story was also obviously not true because, although you did not know it when you spoke to the police, you had been under constant surveillance since 19 January 2008 and at no stage were you seen breaking bottles anywhere with the baseball bat. You denied, in fact, Mr Broughton, having any responsibility at all on the attack on Ms Aim until such time as you entered pleas in this proceeding on 5 February 2009.

[43] Today, for the first time through your counsel, you have endeavoured to shed further light on what happened on the evening of 4 January. To some extent this version of events departs from what is in the summary of facts. To the extent that it does, I rely on the summary of facts because that is the basis upon which you pleaded guilty and no challenge has ever been made to the summary that I have just recounted.

[44] You said that on the evening of 16 January you went to bed at your grandparents' house. You said that after the others were asleep you got up and slipped out of the house, as you had been wont to do on other occasions. You met up with some associates. You got in some form of disagreement with them over some missing property. This left you in a rage and you went up to the college grounds with your baseball bat. The smashing of the windows was the way in which you expressed the anger that you were then feeling.

[45] You then saw Ms Aim and in an impulsive act you approached her. You say that you felled her with a single blow to the side of her head and that she would then have known nothing further. You then took the items from her in the manner that I have described.

[46] Importantly, however, you confirmed to me through your counsel that you maintain your version of events involving this person Brian. It seems that, as you described to the Probation Officer, you maintain that this person was primarily responsible for Ms Aim's death. You say that you accept that you should be held liable for her death because you were a party to what occurred. You also accept that you should be sentenced as a principal to that offending and not as a party.

[47] I put to one side, Mr Broughton, the issue of Brian. I am sentencing you upon the basis that you, and you alone, were the person who attacked Ms Aim. First, although I accept that you have raised the issue of Brian before, there has been never any shred of evidence to suggest that anyone else was involved. Secondly, you were seen on your own at the college that night smashing windows. There is no suggestion that any other party was involved. And, thirdly, it was your DNA that was found on Ms Aim's body. I consider that the evidence is overwhelming that you personally were involved in the attack with the baseball bat.

The approach to be taken

[48] In any case where a person is charged with murder the maximum sentence, as I have said, is one of life imprisonment. The Court does have the power to impose a lesser sentence in certain situations, but your counsel realistically accepts on your

behalf that that argument cannot be advanced for you. So at the very least, the sentence that must be imposed upon you, is a sentence of life imprisonment and I now impose that sentence.

[49] In relation to the charge of wounding with intent to cause grievous bodily harm it is not legally possible to impose a cumulative sentence in relation to that charge, so any sentence that I impose on that charge must be imposed concurrently on the life sentence for murder. I will impose that sentence when I come to the concluding part of my sentencing remarks.

[50] One of the issues I need to decide, Mr Broughton, is whether, and to what extent, the attack on Ms Schofield should be reflected in another aspect of the orders that I am about to make.

[51] When I impose a sentence of life imprisonment I must also impose a minimum term of imprisonment that the offender must serve. Now the minimum term must not be less than ten years and it must be the minimum term that the Court considers necessary to satisfy all, or any, of certain specified purposes. I will come back to that issue shortly, but the approach that I propose to adopt is as follows.

[52] First, I will determine the minimum period of imprisonment for the charge of murder. Secondly, I will decide whether, and if so to what extent, I should increase that minimum term of imprisonment to reflect the offending involving Ms Schofield. Finally, I will determine the final minimum term of imprisonment by taking into account mitigating factors that both counsel accept are present in your case.

[53] As you can appreciate, that decision-making process requires me to make determinations on several separate issues. In making each of those decisions, however, I am guided by the purposes and principles of sentencing as set out in our Sentencing Act 2002.

Sentencing Act 2002

[54] Virtually all the purposes of sentencing set out in s 7 of the Act apply in your case. To the forefront is the need to hold you accountable for the harm that you have done both to your victims and to the wider community by your offending. There is also the need to hold you accountable for what you have done and to promote in you a sense of responsibility for the infliction of that harm. I am to provide for the interests of the victims and to denounce the conduct in which you were involved. There is also a distinct need to impose a sentence that deters both you, and others who might be minded to commit similar acts, from the acting in the way that you have acted in the past in the future. There is also a need to protect the community from you for a period of time. Finally, there is a need, so far as possible, to assist in your rehabilitation and reintegration into the community.

[55] Similarly I need to bear in mind the principles of sentencing set out in s 8 of the Act. These include the need to take into account the seriousness of your offending and where it fits with other like offending. I need to assess the extent to which you are blameworthy. I am required to impose a sentence that is consistent, so far as that is possible, with other sentences imposed for like offending. Consistency is very important because the interests of justice are not served if a sentence imposed on one case is wildly out of kilter with those sentenced for broadly similar offending in other cases. I use the words "broadly similar" advisedly because, as the cases show, the circumstances of no two cases are ever exactly the same.

[56] I will return to many of these principles and purposes later in my sentencing remarks. At this stage, however, I consider it appropriate to expressly refer to the effects that your offending has had on your victims. I deal first with the effect that you offending has had on those people who were the direct victims of your attack, namely Ms Aim and Ms Schofield.

Effect on victims

[57] As I have said, Karen Aim was just 27 years of age when she met her death at your hands. It is clear from all of the material that I have read that she was a vibrant person who enriched and enlivened the lives of all of those who were around her.

[58] Like many young people she was travelling the world. She was visiting New Zealand to meet the people, to work here, to experience the richness that this country has to offer. She had a future. She was writing a book. She planned to go into a business with her brother, Alan. You took all of those things away, Mr Broughton, when you stopped her life at the young age of 27 years.

[59] Similarly, the effect on Ms Schofield has been dramatic. She received very serious physical injuries as a result of your attack. As I have said, it required many stitches and sutures to repair the physical damage that you inflicted. That has taken many, many months to heal. Many visits to the Doctor to deal with issues arising out of her physical injuries. At the time that she completed her victim impact statement she was unsure as to whether she would have lasting damage as a result of your attack. She now knows that she has the distinct prospect of lasting injury from what you did. She has also been assessed as suffering from posttraumatic stress disorder. That is not surprising given what happened to her.

[60] The physical injuries are bad enough but the emotional injuries are also horrific. She has detailed to me, and to your counsel in her victim impact statement, the effects that your offending has had. Not surprisingly, she doesn't trust people any more. She finds it hard to mix and mingle and socialise with people in her peer group. She will find it very hard in the years to come to get over just what you have done to her.

[61] The effects of your offending travel far wider though, Mr Broughton, than your immediate victims. First, there is the effect of your offending on the victims' families, friends and associates. I have had the very helpful benefit of the balanced victim impact statement that Mr and Mrs Aim, and also Karen's brother Alan, prepared for this sentencing.

[62] You heard Mr and Mrs Aim's statement read to you and I really cannot say it any better than he did. You will, no doubt, have taken on board his comment to the effect that he would have been so proud to walk down the aisle of a church with her on her wedding day. Instead, he had to walk down the aisle of the church with her in a coffin. There can be few statements more poignant than that to describe the loss that this family has suffered. And no sentence that this Court imposes can bring that back.

[63] The effects go even wider. As the prosecutor says, this occurred in the streets of Taupo late at night when young people were walking alone as they should be entitled to do free of worry about being attacked by strangers. This kind of offending, Mr Broughton, has a very wide ripple effect. It means that people will no longer feel free to walk the streets at night. It means that young women particularly will be anxious about that. People will not trust each other. They will not trust those they pass in the street. Everybody will be suspicious about others whom they encounter on the streets at night.

[64] And it goes wider, because this case has an international flavour. You have murdered the citizen of another country whilst she was on holiday and a guest of our country. We encourage people to come to New Zealand to enjoy what this country has to offer. One of the principal things that we believe we have to offer is a safe environment. You have created so much damage on such a broad scale, Mr Broughton, by this type of offending. I hope you understand that. So the effects of this offending have been widespread, not only to the people who are directly involved, but to those around them and to the wider community. That is a matter that this Court must bear fully in mind when it passes sentence.

[65] And, before I leave the topic of the victims, Ms Schofield has mentioned in her victim impact statement that in a sense she feels guilty for the fact that she survived this attack when Karen Aim didn't. Ms Schofield, you have no cause whatsoever to feel guilty. Guilt in this case rests in one place and one place alone and that is with you, Mr Broughton. You, alone, did what happened to Ms Schofield and Ms Aim and you alone must feel guilty about it.

[66] I now turn to the first issue that I am required to decide and that is whether I should increase the length of the minimum term of imprisonment on the charge of murder beyond the ten years that Parliament anticipates will ordinarily be imposed whenever anybody is convicted on a charge of murder.

Length of minimum term on the charge of murder

[67] Because the focus of argument to me and submission to me has been on the minimum term, I want to emphasise something Mr Wilkinson-Smith said during his submissions. Because I am dealing with a minimum term and imposing a minimum term, that is not the sentence of the Court. The sentence of the Court is the sentence that I have already passed, namely a sentence of life imprisonment. And that is a very real sentence and not a hollow sentence in any way at all. As Mr Wilkinson-Smith says, it means that you will be subject for the rest of your natural life to the sentence. You will only be released when the Parole Board believes that it is safe to release you. If and when you are released, you will be on life parole. This means that if you transgress again you can be recalled to prison to continue serving the life sentence that I have imposed. So that is the sentence that is imposed. What I am doing is making an order that the Parole Board cannot consider an application for parole by you until a minimum period has passed. There is no guarantee of the stage at which, if ever, the Parole Board will make that determination.

[68] Determination of whether I should impose a minimum term of imprisonment beyond ten years requires me to assess your culpability or blameworthiness. I must then measure that against the datum point, if you like, that Parliament has set for sentences in what has been described as an "ordinary" case of murder, if there is such a thing, when the minimum term of imprisonment must be ten years.

[69] In reaching a decision as to the length of any minimum term of imprisonment, the Court must act on the basis that it considers that the minimum term that it selects is necessary to satisfy all or any of the following purposes:

a) Holding the offender accountable for the harm done to the victim and the community for 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.

[70] Those are the principles that inform the minimum term that I must impose.

[71] There are several aspects of your offending that I consider operate to aggravate or make worse the level of blameworthiness on your part. The first of these is that this was an attack in the early hours of the morning against a vulnerable and defenceless pedestrian. That person was completely innocent in every way. She had done nothing whatsoever to harm you or to provoke you into doing what you did.

[72] Secondly, it involved the use of what, in the circumstances, was a lethal weapon. You used a baseball bat in such a manner that it became a weapon. And by the time that you came to use it, it must have been embedded with glass from the windows that you had smashed in the college.

[73] Thirdly, I am satisfied that you must have used a very significant degree of force, both when you initially struck Ms Aim thereby causing her to fall to the ground and then subsequently when you struck her at least one more blow to the face with the bat whilst she was lying on the ground with her head on the concrete.

[74] Your mood that night, even putting aside your own explanation, would be best assessed by what you had been doing earlier in the evening. You had been up at the college smashing windows with a baseball bat. That indicates, in my view, quite apart from what you told the Court today through your counsel, that you were in an extremely aggressive frame of mind that night. It is little wonder then that when you struck Ms Aim you did so in an extremely forceful manner.

[75] Next, I am satisfied that, although this was not a pre-planned murder in the sense of one that has been planned days, weeks or even, hours in advance,

nevertheless, there was a degree of premeditation about it. You accept that on this night you were stone cold sober. You were not affected in any way by drugs or alcohol. You were out and about in the early hours of the morning with a baseball bat. At some point you made a decision to attack Ms Aim, probably soon after you saw her walking in the vicinity of, or through, the college grounds.

[76] I agree with counsel that the force of your attack and the ferocity of it, is such that mere robbery does not provide a satisfactory explanation. Had robbery alone been the motive, I have no doubt that you would have taken Ms Aim's handbag as soon as you had rendered her defenceless and incapacitated with the first blow. Instead, you struck the second blow that effectively ended her life.

[77] So I take your actions to be those of a person who has first and foremost decided to attack another defenceless, innocent person with the intention of causing very, very serious harm to them. You carried out that through the two blows that I have described.

[78] The next aggravating factor is that you decided to rob your victim. As if incapacitating Ms Aim was not enough, you then elected to take her personal possessions from her.

[79] Next, and importantly, you engaged in acts that have a sexual element. I accept, as does the Crown, that you did not at any stage sexually violate Karen Aim. Nevertheless, her dress was not pulled up, her panties torn and pushed to one side as a result of accident, or as a result of anything that occurred during the course of your attack upon her. Those things could only have been caused by you deliberately lifting her dress up, deliberately ripping her underpants and deliberately pulling them over to one side so that her genitalia and pubic hair were exposed to anybody who approached.

[80] There is no real explanation for that. All I can say is that it was an act that can only have been done for your own gratification, for your own pleasure in some way. But, at the very least, what you did was offer a severe indignity to Ms Aim in her incapacitated state. And you left her in that state of indignity when you departed

the scene so that everybody who came across her saw her in that state. That, in my view, is an aggravating factor of your offending.

[81] Next, you left the scene without any thought to the welfare of your victim. It would have been a simple matter to use a phone somewhere and call 111 saying there is somebody hurt, even if you stayed anonymous. You didn't do that. Instead, you simply went back to your house with the handbag. As I have said, there is also the cynical act of using Ms Aim's camera in subsequent days but I really put that to one side in the context of the minimum term to be imposed. I am focussing in this context on the issues raised by the actual attack.

[82] The Crown takes the view that this attack deserves an increase in the minimum term. It says that it should operate to increase your sentence between the range, I think, of between 12 and 16 years or thereabouts. Your counsel does not accept that. On your behalf he contends that the circumstances of your offending are such that the standard minimum term of ten years should apply.

[83] Counsel have referred me to a large number of cases. I have read those cases and you will have heard that I discussed some of them with counsel. The problem with the other cases is that all of them involve a different factual background. Many of them were concerned with different legal issues than those that arise in the present case, and in many of them the sentencing Judge has not articulated, clearly at least, the approach that he or she has taken in relation to vital issues. By way of example, in some cases the sentencing Judge has not indicated whether he has turned his mind to the issue of whether a sentence should be increased at all to reflect other factors. Be that as it may, I accept that other cases do provide a guideline for the sentence to be imposed in your case. At the very least, they provide a measuring point against which I can determine whether or not the minimum term that I impose on you is consistent with those imposed in other cases. As I have said, consistency is an important thing.

[84] Your counsel places great store on a case called *R v Rapira* [2003] 3 NZLR 794, often known as the Michael Choy case, in which the Crown did not seek a minimum term beyond the ten year period. That obviously is different to the present

case where the Crown does seek a longer minimum term. I agree that there are some similarities between that of your case and *Rapira* but your case has the important added feature of the sexual angle that was simply not present in *Rapira.*

[85] Perhaps the cases that I have found of most assistance are those of *R v Piilua* HC CHCH CRI 2005-009-011878, 1 September 2006 and *R v Abraham* CA139/03 & CA330/03, 28 October 2003. In *Piilua* the offender was sentenced to life imprisonment with a minimum non-parole period of 12 years after he was found guilty of murder. The offender had encountered his victim who was walking home in the early hours of the morning. After shouting abuse at the victim the offender and another man got out of the car. The offender had a baseball bat and he hit the victim once about the head thereby causing his death. The offender was 17 years of age at the time of the offence. He was sentenced to life imprisonment with a minimum non-parole period of 12 years.

[86] In *R v Abraham* the offender had attacked a female victim and strangled her before leaving her in riverside bushes. Before doing so he adjusted her clothing to expose her breasts and genital area and robbed her of her jacket. The offender in that case was sentenced to life imprisonment with a minimum non-parole period of 13 years.

[87] On appeal the Court of Appeal upheld the sentence and said that it was a brutal merciless killing with an unusual and rather chilling combination of randomness and apparent premeditation. Its seriousness was compounded by the desecration and indignity of the way in which the victim's body was left exposed.

[88] Similar comments, Mr Broughton, can be said about the circumstances of your offending.

[89] In the end, I am brought back to consider whether the factors to which I have referred at [69] require a sentence of more than ten years imprisonment to be imposed on the charge of murder. Viewing the matter overall, and taking the factors to which I have referred at [71] and [81] into account, I have no doubt that your case falls outside the range of what Parliament would describe as the usual situation in a

charge of murder. For that reason I am satisfied in this case that I should increase the minimum term of imprisonment beyond the ten-year period stipulated by Parliament. I consider that all of the purposes referred to in the Act in relation to the minimum term can only properly be achieved if I take a minimum starting point minimum term for imprisonment of 13 years.

[90] I now turn to the next issue, which is whether I should increase that minimum term to reflect the earlier attack on Ms Schofield.

To what extent should the minimum term be increased to take account of the earlier offending?

[91] There is no doubt that a minimum term can be adjusted in circumstances where there is separate offending for which recognition needs to be given.

[92] Counsel have referred me two cases in where that principle has been recognised: *R v Hoko* (2003) 20 CRNZ 464 and *R v Houma* [2008] NZCA 512. Those cases involved associated offending, and the Court of Appeal held that the Court may increase a minimum term of imprisonment to take into account such offending. The offending in relation to Ms Schofield was not what could be called associated offending. I see no difference in principle, however, between the ability to take into account associated offending and the ability to take into account completely separate offending. If anything, the policy factors in favour of increasing a minimum term where there is completely separate and serious offending are even stronger than in circumstances where associated offending occurs.

[93] I consider that it would be wrong in principle if this Court did not recognise the earlier attack on Ms Schofield in setting the minimum term of imprisonment that you must serve before the Parole Board may determine any application for parole by you.

[94] The real issue is to determine the extent by which I should increase the minimum term to reflect this factor.

[95] Counsel agree that, had it been viewed on a standalone basis, the charge of wounding Ms Schofield with intent to cause your grievous bodily harm, would be dictated by the decision of the Court of Appeal *R v Taueki* [2005] 3 NZLR 372. In that case the Court of Appeal identified a number of bands of offending in cases such as this. It identified a number of factors, such as the use of a weapon and severe force, that will operate to place offending in one band of seriousness or another.

[96] Counsel agree that your offending falls within a band in which the starting point for a finite sentence of imprisonment will be between five and ten years imprisonment. The Crown says that the severity of the attack, the use of the weapon and the injuries that you inflicted, coupled with the other aggravating factors that I have identified, would put your case towards the top of that range. The Crown suggests a starting point of nine years imprisonment is appropriate on that charge. I have to say that I consider that that is a realistic assessment of where your culpability lies on the wounding charge.

[97] Had you pleaded to that charge at an early stage, you would have received a one-third discount which would have brought the sentence down to six years. It may well be that you would receive an additional discount because of your age which may have brought the final sentence down to one of about five years imprisonment.

[98] The circumstances of your offending are such that the minimum term provisions would undoubtedly have been invoked, and you would probably have been sentenced to serve a minimum term of two-thirds of any sentence that the Court finally selected. So that means, if you had been sentenced on a standalone basis without the complication of the murder charge, it is likely that you would have received a sentence of around five to six years imprisonment, coupled with a minimum term of imprisonment of around three to four years imprisonment. In a finite sentence the Court cannot impose a minimum term of more than two-thirds of the finite sentence. So if a six-year sentence had been imposed the Court could never have imposed a minimum term of more than four years.

[99] That assists, perhaps, in finding where the outer limits of the minimum term lie. The Crown accepts that the outer limit really is one of 16 years in this case. I do not derive a great deal of assistance from the authorities as to the approach that the Court should take in this type of situation because it does not appear that the Court of Appeal has considered the issue of the uplift to apply to a minimum period of imprisonment when the issue of completely separate offending arises.

[100] The best that I can do is go back to the starting point, which is to select the minimum term of imprisonment that I must impose having regard to the four factors that I have outlined. When I do that I am driven inevitably, Mr Broughton, to the conclusion that your minimum term of imprisonment should be increased by three years to take into account the offending in relation to Ms Schofield. That brings the end starting point for the minimum term of imprisonment to one of 16 years.

Reduction of the starting point to reflect mitigating factors

[101] I am now required to consider the extent to which I reduce that to take into account your guilty pleas and your age.

[102] I deal first with your age. You were only 14 and a half at the date that you committed these offences. You are now not a great deal older.

[103] I have had the benefit of a reasonably comprehensive pre-sentence report. This is helpful in some ways but not perhaps particularly helpful to your cause in others. The pre-sentence report confirms that you had what you describe as an "awesome" upbringing. That would indicate to me that you had most of the advantages that children in this country can reasonably expect to enjoy.

[104] Notwithstanding this, you appear to have become involved in drugs and alcohol at a relatively early age, around 12. By the age of 14 it seems you were drinking on a reasonably regular basis and that is confirmed by your actions on the night of the incident involving Ms Schofield. You were also, as I have said, involved in cannabis.

[105] The difficulties that you are now in stem, I have no doubt, from the fact that you have associated with a peer group that hangs around town late at night, gets involved in drinking, smoking, and it is in just that kind of environment that problems such as the present arise. Having said that, I do not accept that on these particular nights you were involved in a group or subject to peer pressure in any way. You made your own decision to become involved in these activities.

[106] You continue to say to the Probation Officer that you only accept partial responsibility for what happened to Ms Aim. You maintain that you accept responsibility but that you are only liable because you were present at the address at the time of the attack on Ms aim and you knew what was going on and you then took the handbag. You told the Probation Officer that you had no recollection of the events involving Ms Schofield.

[107] Whilst in prison, I see that you have undertaken a number of courses. That is obviously to your credit. You will need to continue to demonstrate, Mr Broughton, that you are progressing in a positive and not negative manner if you are to have a hope of gaining parole at any time in the future.

[108] Those personal aspects of your character and upbringing are important to some extent but, as counsel realistically recognise, the only matters in respect of which I can give you an actual deduction from the starting point that I have selected is your age and the guilty pleas. The courts have consistently said that age is a factor to be taken into account when sentencing generally. That policy factor has received recognition in the Sentencing Act 2002 in s 9(2)(a). It is a mitigating factor that the Court must take into account. On the other hand, there are numerous references in the authorities to the fact that where really serious crime is involved, only limited recognition can be given to age because other factors come into play: see *Rapira* at [122].

[109] I have reached the view that I can only give your age limited recognition given the severity of your criminal wrong-doing. I am not prepared to reduce the starting point that I have selected by more than one year to reflect your age.

[110] The next issue is your guilty pleas. I have to give that more recognition. Again, for good policy reasons, our courts have always accepted in any field involving sentencing that recognition should be given to guilty pleas. First, although this is perhaps not evident to the fullest extent in your case, it represents the acceptance of responsibility by the wrong-doer for his or her actions. Secondly, and perhaps more importantly in your case, it saves the State the cost of a trial, which in your case would have been at least three or four weeks. It also saves the wider victims of your offending, in this case Ms Aim's family and Ms Schofield, the added anguish of having to go through the trial process including, in Ms Schofield's case, the need to give evidence and relive what happened to her on that terrible night.

[111] For those reasons, I, as does the Crown, accept that the minimum term must be reduced further to reflect your guilty pleas. The real issue is the extent to which that should occur.

[112] The authorities do not provide a great deal of assistance on that score. I note that in *R v Walsh* the Court of Appeal selected a 14 year starting point for the minimum term and took into account the only mitigating factor which was a guilty plea. It reduced the minimum term by two and a half years to 11 and a half years to 14 years.

[113] In another case to which I have been referred, the Court in dealing with a 20 year term was prepared to reduce that minimum term by three years to reflect guilty pleas. I suspect that the answer might lie in the fact that the higher the length of the minimum term, the greater the reduction for guilty pleas.

[114] I do not consider that there is any material difference between the starting point that was adopted in *Walsh*, namely 14 years and the starting point and the point which I have now reached which is 15 years. I consider that the minimum term should be reduced by two and a half years to reflect that fact.

Sentence

[115] On the charge of murder, you are sentenced to life imprisonment and you are directed to serve a minimum term of 12 and a half years imprisonment.

[116] On the charge of wounding with intent to cause grievous bodily harm, you are sentenced to six years imprisonment.

[117] Those sentences are to be served concurrently.

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Lang J