

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

CRI-2009-091-2763

THE QUEEN

v

JOSEPH OGLE

Hearing: 16 October 2009

Appearances: G Burston and S Verrall for the Crown
G King and C Milnes for the prisoner

Sentence: 16 October 2009

SENTENCING NOTES OF CLIFFORD J

Introduction

[1] Mr Ogle, you appear for sentence having pleaded guilty to the murders – on Friday 26 June this year – of your former partner, Joelene Edmonds and of Jashana Robinson, a 16 year old student who had been boarding with Ms Edmonds for just four days. You have also pleaded guilty to contravening a protection order in Ms Edmonds' favour. I am to sentence you today.

[2] Whilst I read my sentencing notes Mr Ogle you may sit down and I will ask you to stand again at the end when I formally sentence you.

[3] I first acknowledge the presence in Court today of the immediate family, whanau and the friends of the two victims Joelene and Jashana. I also acknowledge any members of Mr Ogle's family who may be present.

[4] I want first to explain to you the decisions that I must make today to decide on Mr Ogle's sentence.

[5] As you have heard, where a person is convicted of murder, our law requires the Court to impose a life sentence, unless such a sentence would be manifestly unjust. Such a sentence is clearly not manifestly unjust here, and, Mr Ogle, you are therefore sentenced to life imprisonment.

[6] Where a Court imposes a life sentence for murder, the Court must also decide on the minimum period of imprisonment the convicted person must serve. This is because, even though, as you have heard, a person receives a sentence of life, they may still during that sentence apply for parole. Eligibility for parole does not mean that the convicted person will necessarily be released. The Parole Board is required to consider the safety of the community and whether the convicted person would pose an undue risk to the community upon release. Even when released on parole, a person sentenced to life imprisonment remains subject to that sentence for the rest of their life, and may be recalled to prison.

[7] The minimum period of imprisonment is the time that must elapse before a person convicted of murder is eligible for consideration for parole. Generally, that minimum period must be at least 10 years.

[8] Our law further provides, however, that for some murders the minimum period must be at least 17 years. That longer minimum period is to be imposed in what the Court of Appeal has called the most serious cases of the crime of murder.

[9] Both the Crown and, on your behalf, Mr King, accept Mr Ogle that this is such a case. I agree with that. Therefore the minimum period you must serve in prison before you may be considered for parole is at least 17 years. What I must decide this morning is what that minimum period will be.

[10] In deciding on that minimum period in your case, I also need to take account of your guilty plea. The Court of Appeal has recently decided that, in the case of murder, the Court is first to set a period of imprisonment, taking account of all relevant factors other than an offender's guilty plea [*R v Hessel* [2009] NZCA 450]. Once that minimum period has been set, the Court is then to consider the appropriate reduction for that guilty plea.

[11] That is how I will go about determining your minimum period of imprisonment Mr Ogle.

Facts

[12] I turn now to the facts of these events.

[13] Because of the way this matter has come to Court, the Crown has this morning read out the detailed statement of facts accepted by Mr Ogle as being those that relate to his offending. In those circumstances, and although my formal sentencing notes will record the facts, I do not propose to go through the whole factual narrative again at this point. I will return to parts of it at relevant points in my sentencing notes. I am very aware that for the whanau, family and friends of the victims, it must be very distressing to have listened today to that narrative here in Court.

[14] Counsel, I will, however, record in my formal sentencing notes my understanding of the effect of the essential facts that are relevant in sentencing Mr Ogle.

[Paragraphs [15] to [39] inclusive not read out in Court]

[15] In large part, my version of the essential facts of these murders is based on Mr Ogle's account to the Police as to what happened, supplemented by information he provided to the probation officer.

[16] By August of last year you and Ms Edmonds had been in a relationship for some time. You had two young children together, little girls now aged two and one.

[17] Around that time you were sentenced to a term of imprisonment for assaulting your sister. Whilst you were serving that term of imprisonment, Ms Edmonds began a relationship with another man. She informed you of this shortly before you were released from prison in late May of this year. You told her that the relationship with this other person had to end when you got out of prison. You and Ms Edmonds agreed to give your relationship another chance for the sake of your children, and Ms Edmonds ended her relationship with that other man.

[18] On your release from prison on 26 May this year, you resumed living with Ms Edmonds and your two children at Titahi Bay. Around this time you told several associates that you wanted to kill Ms Edmonds and the man with whom she had been involved in a relationship whilst you were in prison.

[19] On Wednesday 17 June, there was an argument between you and Ms Edmonds. You have admitted assaulting Ms Edmonds during that argument. At that point Ms Edmonds ended her relationship with you, and asked you to move out. You did so, but continued to have contact with her, your two children and her wider family. Some days later Ms Edmonds moved back to Whangamata to be with her father as she feared for her safety. Missing her mother and sisters however, she subsequently moved back to Titahi Bay.

[20] On 22 June Jashana Robinson moved in with Ms Edmonds as a boarder while attending a local college.

[21] You became aware that Ms Edmonds was having friends over to her address for drinks and to play cards on the evening of 25 June. It would appear that you became frustrated that you were not there, and spent the evening thinking about who might be there. You were generally very unhappy that your relationship had ended. You found that hard to accept.

[22] You woke early on 26 June. You decided to go to Ms Edmonds' address, with the aim of catching her in bed with the other man she had had a relationship

with. You took a stainless steel baseball bat with you, concealing it under your clothing. You walked to Ms Edmonds' address from Linden, taking an hour to get there.

[23] On arriving at Ms Edmonds' house, you entered through the unlocked back door and found Ms Edmonds in bed alone in one of the children's bedroom. Jashana and the two children were asleep in the other bedroom. Joelene sat up and the two of you had a brief conversation. She asked you to move a nearby bucket closer as she felt unwell. While she vomited into the bucket, you hit her once on the left side of her head with the baseball bat. She lay back on the bed and continued to vomit.

[24] Seeing that Ms Edmonds was dazed and was not going anywhere, you hid the bat behind the door and made your way to the other bedroom. As you entered the room Jashana woke and asked you who was there. You told her it was you. You said that Ms Edmonds was not feeling well and wanted her. Jashana got up and you followed her back into the first bedroom.

[25] Ms Robinson spoke briefly to Ms Edmonds, and then sat on the other bed facing her. Jashana's back was to you. You were standing in the bedroom doorway. You then retrieved the baseball bat from behind the door. Standing behind Jashana, you hit her once on the side of her head, causing her to fall onto the floor.

[26] You put the baseball bat back behind the door. You then helped Joelene to sit up. She asked you what had happened. You told her you did not know. Joelene then pleaded with you to call an ambulance and to leave. She told you not to do anything stupid, and she promised not to tell anyone what had happened.

[27] While the two of you were talking Jashana crawled slowly up onto the other bed and pulled a blanket over herself. She lay there, dazed and groaning.

[28] You then picked up the bat again. You approached Ms Edmonds, who said "No, Joe, don't, don't". You hit Ms Edmonds a second time on the head. She fell down on the bed. Ms Edmonds got up and went to a seat by the door. The two of you talked briefly again. You then moved towards Jashana and – whilst Ms Edmonds looked on – you brought the bat down with significant force onto

Jashana's head approximately three more times. After the last blow you saw blood spray up onto the wall.

[29] Ms Edmonds told you to go. You turned and hit her in the head a third time. This was with sufficient force to cause blood to spatter over the curtains and wall.

[30] Ms Edmonds then tried to walk out of the room. You followed and ordered her back into the bedroom. At some point, based on what you told the probation officer, you made Ms Edmonds read your last letter to her from prison.

[31] When she was back inside the bedroom, you hit her on the head a fourth time with the baseball bat, causing her to fall to the floor. You then struck her on the head with the baseball bat several more times.

[32] By this time you could hear both your victims making groaning noises. You could tell from the amount of blood that their injuries were serious and that they would both die.

[33] You then left the house, with the bat again concealed beneath your clothing. You walked to a nearby park where you hid the bat in some bushes. You met up with the associates you were living with and, after visiting a number of addresses, requested to be driven to Ms Edmonds' residence.

[34] On arriving you entered the house. You acted as though you did not know what had happened. You walked with your two children through the house asking where was Mummy. Your older child replied "in the bedroom". When you approached the bedroom door you called out for help. You acted the innocent party, saying "what's happened, who's done this, who's done this" before dialling 111. During the 111 call you asked for Police and an ambulance, saying something had gone wrong. Your family was dead and you were freaking out. You then went outside. You spoke to a neighbour, asking who had been at the party the previous evening in a purported attempt to find out who had killed the mother of your two children.

[35] A female associate of yours ran into the house and grabbed the two young children, who had been wandering around freely inside the address, including where the victims lay. When the Police arrived the victims were found dead in the bedroom.

[36] You initially denied involvement to the Police. Later that same evening you admitted your offending. You also took the Police to where you had hidden the baseball bat. You said you had killed Jashana Robinson as you did not want her to be a witness to your killing Ms Edmonds. You told the probation officer that part of your reason for killing Jashana was that it might scare Joelene.

[37] The post mortem revealed that Ms Edmonds had at least five separate impact injuries to her head, plus one to her left shoulder, one to her left upper arm and one to her left forearm, all of which were consistent with being hit with a baseball bat with “significant force”. She also had multiple fractures and injuries to her hands, consistent with her having raised her hands to protect herself. She had multiple and extensive fractures to her skull and a fractured jaw.

[38] The post mortem on Ms Robinson found she had received at least three separate impact injuries to her head consistent with being hit with a baseball bat with “considerable force”. She had multiple and extensive fractures to her skull. The pathologist found that, although she had received fewer blows than Ms Edmonds, more force had been used. She had no other injuries.

[39] The pathologist’s opinion was that the victims may have survived for “many minutes rather than hours” after the blows were inflicted.

Other background material

[40] In addition to that essential factual narrative – and I say immediately, it discloses violence of the most callous and cruel kind – there are other background materials I need to refer to.

Pre-sentence report

[41] The pre-sentence report refers to you having had a difficult and violent upbringing Mr Ogle.

[42] A relationship with a previous partner, with whom you also had two children, was marked by violence. She obtained a protection order against you. That relationship ended when you were imprisoned on a previous occasion.

[43] On your release from prison on that occasion, you met the deceased Joelene Edmonds. You began a relationship with her. Joelene at one point also obtained a protection order against you. The report discusses the difficulties that have occurred between you and Joelene on your release from prison in May this year, which culminated in these tragic events. The report records you saying to the probation officer that you felt you had let yourself down during that period, that you had come to a very low place and felt suicidal.

[44] The report writer noted, however, that you had had a clear opportunity to address the increasing level of violence towards Joelene through the Family Court Protection Order intervention but had chosen not to do so.

[45] The report records your previous criminal history, including, by my count, seven convictions for various types of assault and a number of convictions for breach of protection orders. The report writer identified a clear and escalating pattern of violence in that criminal history.

[46] You are assessed as being at a high risk of re-offending and as requiring significant and intense treatment during your term of imprisonment.

Psychiatric report

[47] The psychiatric report prepared on your behalf also recorded that you had a neglected childhood in an unstable household. You suffered considerable violence at the hands of your father. Because of your significant interpersonal relationship

difficulties, both significant relationships you have had with women have broken down, particularly around your propensity for violence.

[48] Although you showed little emotion to Dr Chaplow, he assessed you as having been adversely affected by these events and, as he said is not unusual in homicide cases, suffering from a quite pronounced post-traumatic stress disorder.

Victim impact statements

[49] I turn now to the victim impact statements that have been provided and some of which have been read in Court today.

[50] I have read and carefully considered those victim impact statements. I acknowledge again the presence in Court today of all who have provided victim impact statements and of the wider whanau of each of the two victims.

[51] I do not think I can add to those victim impact statements other than to record the obvious horror for the members of the victims' families and the victims' friends at the way these two young women met their deaths, to record and acknowledge the tragedy that this event represents to all of those involved and the grief and sorrow you will feel throughout your lives as a result. For grandparents and parents, it is perhaps the worst thing in life to face to have to bury a child or a grandchild. That is something we all dread. At the same time, Mr Ogle, you have deprived two little children of their mother's love and support. Their lives have, before they realise it, already in many ways been shattered.

Sentencing discussion

[52] I turn now to the two specific decisions I need to make, the minimum period of imprisonment and – in that – the discount for your guilty plea.

MPI

[53] The Crown submission is that the appropriate minimum period of imprisonment – before considering the significance of your guilty plea – would be

25 years. Mr King does not separately identify that starting point, but from his submission that the appropriate minimum period, taking into account the guilty plea would be 17 years, he is indicating a starting point of around 20 years and six months.

[54] In my judgment – and with reference to relevant cases – those submissions set reasonable boundaries within which I need to fix a minimum period.

[55] It is never a particularly pleasant nor – from the point of view of families of the victims – an apparently meaningful exercise, to make fine points of comparison between what are all violent and awful crimes. On the other hand, I must be guided by the decisions of this Court and, of course, the Court of Appeal in terms both of appellate guiding principles and the parity that is required between sentences for offending of a similar nature. It is, therefore, necessary to have regard to sentences imposed in similar cases.

[56] The Crown has suggested that the facts of this case are, taken overall, just as serious as the facts of the case known as *R v Howse* [2003] 3 NZLR 767, where a minimum period of imprisonment of 25 years was imposed.

[57] In *Howse*, a father brutally murdered his two defenceless step-daughters in their beds. He would appear, most callously of all, to have stood by as one of his victims slowly bled to death. He would appear to have committed the crimes to avoid detection of alleged earlier sexual offending against his children. Based on sentences in subsequent cases, *Howse* is to be seen as representing the most serious example of a double homicide that has been encountered by the Courts in New Zealand. Certainly other double homicides have not resulted in sentences as high as that in *Howse*.

[58] Mr King, in effect, is saying that you Mr Ogle should be treated in the same way as the range of offenders in those other cases. Some reference to those other cases is therefore appropriate.

[59] In the case known as *R v Lundy* (2002) 19 CRNZ 574, a man killed his wife and seven year old daughter. He did so apparently for financial reasons. He killed

them with a high degree of brutality and callousness, shown in particular in the way that he killed his little daughter to prevent her being a witness against him for the killing of her mother and in circumstances where her last living memory would have been the awful injuries her father had caused to her mother. On appeal, by the Solicitor-General, Mr Lundy was sentenced to a minimum period of imprisonment of 20 years. The Court of Appeal has subsequently commented that, if a longer period had been imposed in the High Court, it might well have been upheld on appeal [*Howse* at [60]].

[60] In other examples of brutal and callous double murders starting minimum periods of imprisonment between 20 and 22 years either have been or, where no starting point was separately identified, would have been adopted. Such cases include *R v Reihana* HC ROT CRI-2005-070-7328 29 June 2007, *R v Konia* HC PMN CRI-2005-054-2095 30 June 2006, *R v Ying* (2004) 20 CRNZ 1078 and *R v Doyle* HC AK CRI-2005-070-6451 13 October 2006. I also note that, as regards *R v Cui* CA333/05 28 September 2006, Courts have subsequently commented that the 19 year minimum period imposed there was somewhat lenient.

[61] Considering the facts involved in this matter, in light of those other cases, has led me to conclude that the appropriate minimum period of imprisonment in your case Mr Ogle, before I consider the significance of your guilty plea, is 23 years.

[62] Constrained as I am by other cases, I do not consider I can accept the Crown's submission as to the 25 year starting point. At the same time, by fixing the starting point at 23 years, one year higher than that in the next highest (reported) case, *Reihana*, I am indicating that I do consider this to be one of the most serious cases indeed.

[63] In terms of s 104, which lists aggravating circumstances you have heard referred to, there are, in my view, four and possibly five factors that are relevant. These are:

- a) the murder of two people;

- b) the murders were committed with a high level of brutality, cruelty and callousness;
- c) your offending involved you being unlawfully present in Ms Edmonds' house;
- d) you killed Jashana Robinson, by your own admission, at least in part to avoid detection for the murder of Joelene; and
- e) in my view both the deceased were particularly vulnerable to you: Ms Edmonds was lying ill in bed when you first struck her; Ms Robinson was just 16 years old and had, in effect, been lured by you into Ms Edmonds' bedroom and then hit from behind.

[64] In addition, I acknowledge the aggravating features of your breach of protection order, your earlier history of violence and the degree of pre-meditation involved. You took the baseball bat with you and walked for an hour before arriving at Ms Edmonds' residence. The statements you made to your associates, namely that you wanted to kill Ms Edmonds and her new partner, also are consistent with a material degree of pre-meditation.

[65] The particular feature of your offending which, in my view, indicates that 23 years is the appropriate starting point, is what I consider to be the extreme brutality and callousness involved. When you first entered Joelene's room you found her ill. She asked you to move a bucket closer to her, and whilst she was vomiting into that bucket you hit her on the side of her head with the baseball bat. The first blow knocked her back on the bed. You then woke up Jashana and brought her into the room. Jashana had until then not been involved. She had no connection with the difficulties between you and Joelene. She had not witnessed anything. Nevertheless, you struck her from behind, by your own admission to avoid her being a witness against you. Your blows against her were executed with particular force.

[66] Sickeningly, you then engaged with Joelene over quite some period of time whilst she begged for her life, and tried to get away. You struck her at least another

five times. You made her read one of your letters to her. During this period, to scare, or even torture Joelene, you completed the murder of Jashana in front of her.

[67] Your victims' suffering cannot be imagined.

[68] You committed these actions whilst your two little children were in the house. When you returned, you would appear to have asked your two year old where her mother was. She told you her mother was in the bedroom. I can only infer that your two year old must have – whether knowingly or not – seen her dead or dying mother before you returned home. This too is a chilling feature of your behaviour.

[69] In my view, this combination of features means that, even by reference to *Reihana*, your offending is to be regarded as being particularly serious.

[70] It is for that reason that I set the starting point of 23 years.

Discount for guilty plea

[71] I turn now to the question of the discount for your guilty pleas.

[72] The Court of Appeal, in a case known as *R v Hessel* [2009] NZCA 450, has recently provided guidance to Judges of the High Court and the District Court as to sentencing for guilty pleas.

[73] In the circumstances of this morning's hearing, I do not think it is necessary for me to go into all the legal implications and discussions contained in the *Hessel* case. I simply note that, as a general principle, guilty pleas are recognised on a sliding scale starting from 33% of the sentence that would otherwise be imposed when a guilty plea is entered at what is known as the first reasonable opportunity. As regards murder, the Court of Appeal noted particular difficulties that courts encounter when taking account of guilty pleas in murder cases. The Court of Appeal did not set firm guidelines, but adopted the Law Commission's recommendation that where murder is concerned, guilty pleas should be recognised.

[74] In doing so, the Court of Appeal regretted that it could not be more definitive. More specifically, however, and of relevance here, it recorded that it was “arguable that some of the discounts that have been given [in murder cases] – which tend to have been in the range of one to two years – have been too light” [at [70]].

[75] The Court went on to acknowledge two approaches which have been discussed by counsel this morning, and the Crown and counsel for the defence agree on the approach that should be adopted but differ as to whether or not the guilty plea was entered at the first available opportunity.

[76] In light of the discretion left to me by *Hessell*, I need to decide whether to adopt the approach taken by the Crown and Mr King. The Court of Appeal adopted the Law Commission’s clear recommendation that appropriate discounts be given for guilty pleas in murder cases. In doing so, and as I have recorded, the Court acknowledged the discounts given in the past may no longer be adequate. The Court of Appeal pointed to the relevance and potential helpfulness of the approach adopted by the Crown and Mr King. Taking those indications together, I conclude that adopting that approach, that is, applying the discount range to the discretionary element of the minimum period of imprisonment, is an appropriate response to the Court of Appeal’s decision in *Hessell*.

[77] The principal decision for me, therefore, is whether your guilty plea was offered at the first possible opportunity. Mr King submits that in substance it was. The Crown does not consider that to be the case. Taken overall, however, the Crown suggests that a discount, at the upper end its range, of 30% would be available to the Court.

[78] As I have discussed with counsel, the application of the Court of Appeal’s comment in *Hessell* regarding the significance – in terms of time prior to the entry of a guilty plea – of engagement of the procedures under subpart 1 of Part 2 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 may require further consideration by counsel and the Courts in applying that decision. Having said that, I am satisfied that in substance similar issues were being engaged in the case of Mr

Ogle prior to the entry of his plea, and that a discount at the upper end of the available range is one that is appropriate.

[79] Allowing for rounding, I therefore fix that discount at four years.

[80] Mr Ogle, please stand.

[81] Mr Ogle, you are sentenced to life imprisonment. You will serve a minimum period of imprisonment of 19 years, on both counts of murder. As to the charge of breaching a protection order, there can be no more serious breach of such an order. You will serve a concurrent term of six months' imprisonment on the count of breach of a protection order, the maximum term available.

[82] Mr Ogle, you may stand down.

“Clifford J”

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