

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

CRI-2008-088-004443

THE QUEEN

v

ROTA JOHN KOHI RANAPIA

Hearing: 23 October 2009

Counsel: M B Smith for the Crown
A B Fairley for the prisoner

Judgment: 23 October 2009

SENTENCING REMARKS OF STEVENS J

Solicitors/Counsel:
Crown Solicitor, PO Box 146, Whangarei 0140
A B Fairley, PO Box 1042, Whangarei 0140

Introduction

[1] Rota Ranapia, you appear for sentence today having pleaded guilty to three charges under the Crimes Act 1961: one count of murder, for which the maximum penalty is life imprisonment; and two counts of threatening to do grievous bodily harm, for which the maximum penalty is seven years' imprisonment.

[2] For the purposes of your sentencing today, I have been assisted by helpful and comprehensive written submissions both from the Crown and your counsel, Mr Fairley. In addition, I have heard the oral submissions which they made today. I have also received victim impact statements from Mr Rundlett's parents and brother and the two police officers involved in your offending. I have also heard read out in court, what can only be described as extremely moving comments from members of the Rundlett family. Additionally, I have received and read a letter from you in which you record in writing your remorse, regret and pain for the family.

Factual background

[3] On 7 September 2008, you and one of your cousins visited the victim's flat on Anzac Road in Whangarei. You and some of your relatives had been drinking since that afternoon. The victim was a friend of one of your cousins whom you had never met before.

[4] After having a few drinks at the victim's house, the three of you returned to your home at Waitotira. All three of you continued drinking and you also smoked cannabis throughout the evening.

[5] Some time around midnight, an argument developed between yourself and the victim. According to you, you say he attempted to strike you, but missed. You then grabbed the victim by his clothing and started punching him. The victim eventually fell to the ground. You then got on top of him and started punching him with both fists about his head and his face.

[6] At this stage your partner, who was in one of the bedrooms with her 11 year old daughter, was alerted to the assault by the noise. She tried to drag you off the victim. However, you ordered her back to her room. Your cousin, who was asleep in a car in the garage, had also been awoken by the noise of the assault. As he entered the kitchen from the garage, he could see the victim lying motionless on the floor covered with blood, with you standing over him.

[7] Your cousin confronted you about what you had done to the victim. You answered by throwing several punches at him, striking him once in the forehead and once in the mouth area. He then left your address.

[8] After a short while, you grabbed the victim and dragged him through the doorway and threw him outside onto the garage floor. You then got on top of the victim again and started punching him again with both fists about the head and face. You also kicked him. Your partner again came out of the bedroom and attempted to drag you off the victim, but was told again to go back to the room.

[9] As a result of your brutal attack, the victim had cuts to his head, a broken neck, bruising to the face and body, and some bleeding to the brain area. The victim was also holding handfuls of his own hair from an attempt to protect himself by covering his face.

[10] Later you went to your partner's bedroom, hugged her, told her that you were sorry, but thought that you had killed the victim.

[11] In the early hours of the 8 September 2008, you and your cousin drove to see your supervisor and told him that you "had bashed someone" and that you believed that "he was hurt really bad". Your supervisor then travelled back to your address and located the victim lying on the garage floor in a pool of blood. The supervisor then called for an ambulance and the Police. On arrival of the Police and Ambulance, the victim was found to be dead.

[12] You told the Police, immediately on their arrival, that it was you who had done this to the victim. You put your hands in the air and were later handcuffed.

However, you then started challenging your supervisor to a fight and you had to be held back by the police officers. You also started abusing the officers at the scene and had to be placed in a patrol car.

[13] Whilst in the patrol car, you verbally abused both Constables and threatened to rape them and their families. At one stage you attempted to undo your seatbelt and lean over towards one of the Constables, who had to put her arm up to protect herself.

[14] On arrival at the Whangarei Police Station, you were interviewed on video during which you made admissions regarding what had transpired that evening. You stated that you had an argument with the victim and that you had then set about punching him continuously. In explanation you told the interviewing officer that there had been an argument about a friend and that you wanted the victim to leave the house.

Personal circumstances and pre-sentence report

[15] You are a 31 years old, of Maori race from Whakatohea and Ngati Porou descent. You describe a childhood dominated by substance abuse. You started using both cannabis and alcohol from a very early age. By the age of 15 you were using both substances on a daily basis and continued this use until the date of this horrific attack.

[16] You have also described traumatic events in your life. You have been subject to both physical and sexual abuse by family and extended family members, and you have had counselling to assist you to deal with this.

[17] You further note that you were expelled from school at the age of 13 for repeated violence against other students. You then entered into trade training in carpentry and panel beating before settling into dairy farming. At the time of your arrest, you had been working for six months on a dairy farm and the tragedy of it is that you had actually started to attempt to turn your life around.

[18] When you were interviewed by the probation officer, you expressed remorse and stated that the reality of your actions was now dawning upon you. You said that you could not believe that you had taken someone's life and that "you were gutted" about what had happened.

[19] The probation officer, however, stated realistically that she assessed you as having little insight into your offending, as you are unable to recollect what had sparked your anger or your attack on the victim. She also observed that this offence continues a pattern of violent offending that first came to notice when you were 17 years of age when you lit fires and burnt down a school classroom.

[20] Your other previous convictions include aggravated robbery, attempted aggravated robbery, assault on a prison officer (as a result of which the officer's eardrum was perforated), injuring with intent to injure, commission of a crime with a firearm, threatening to kill, assault, wilful damage and male assaults female. The majority of these offences were committed in circumstances where alcohol abuse was a driving factor.

[21] You have been assessed as being at medium risk of re-offending due to the nature and frequency of your previous offending, but your continuous substance abuse and inability to manage your anger raises this risk. You have also been assessed as having a low motivation to change, predominantly based on your lack of insight into some of your offending and your unwillingness to engage in psychological treatment. You tend to seek to rationalise your behaviour, even though you acknowledge having a problem with alcohol and admit having a propensity for violence. You have previously completed a Living Without Violence programme and other rehabilitative programmes and, although you recognise some of your triggers, up until now you have been unable to distance yourself or know how to react to those triggers.

Previous convictions

[22] I have already referred to the variety of previous convictions, the majority of which involve violence. At the time of your arrest you also had outstanding fines in excess of \$11,000.

Crown submissions

[23] The Crown submitted that your offending falls within s 103 of the Sentencing Act 2002 thus warranting a sentence of life imprisonment with a minimum non-parole period between ten and 17 years. The Crown submitted that the purposes to be considered on sentencing involve holding you accountable for the harm done to the victim and the community by the offending, denouncing your conduct, deterring you and other persons from committing the same or similar offences, and protecting the community from you.

[24] The Crown referred to a number of aggravating factors, including the level of actual violence, the fact that the attack was prolonged and sustained and the extent of loss, damage or harm resulting from the offending. Mr Rundlett, the victim, suffered the ultimate harm by losing his life. His family have lost a son, a brother, a father and an uncle and the victim here was particularly vulnerable. In terms of the losses, the Court has been informed, and I hope you have appreciated, the extent of those losses and harm to the family by what has been said in court today.

[25] Other aggravating features involve the fact that the attack took place in your house in an isolated area without the victim having transport to leave. Finally, in terms of aggravating factors, there are your previous convictions.

[26] Crown counsel recognised that the Court of Appeal in *R v Howse* [2003] 3 NZLR 767 sets the primary task in sentencing as being to compare the culpability of your case with the culpability inherent in cases which are within the range of offending which attracts the statutory norm of ten years minimum non-parole. That task must be approached in a broad and realistic way. In other words, I have an evaluative task to make comparing your case with others that are similar.

[27] The Crown submitted that a starting point of 12 to 12 ½ years minimum non-parole is appropriate, with an uplift to reflect the other offending. I was referred to a number of cases: *R v Houma* [2008] NZCA 512, *R v Marsh* HC CHCH CRI-2005-409-1635 13 December 2005, *R v Ryan* HC HAM CRI-2005-019-9389 26 July 2007 and *R v MacLaughlin* HC AK CRI-2004-092-4430 11 October 2005, which I have considered.

[28] The Crown recognised that you should be given a discount of around ten percent in the minimum period of imprisonment as a result of your guilty pleas before the trial started.

Defence submissions

[29] Mr Fairley, on your behalf, accepted that the appropriate penalty in this case is life imprisonment, and the very minimum non-parole period should be at least ten years. Counsel drew attention to a number of mitigating factors, including the fact that you remained at the scene and made certain admissions in your video interview, and demonstrated by your guilty pleas that you accepted responsibility for the dreadful things that you had done. The guilty plea to murder, I note, was on the basis of an admission of intent under s 167(d).

[30] With regard to the aggravating features, your counsel stressed the nature of the actual violence involved and noted that you did not use a weapon. But in fact, your weapon was your fists and feet. Counsel acknowledged that the victim, particularly in the latter part of the attack, was vulnerable. Your counsel emphasised that both you and the victim had been drinking and drew my attention to other features of yourself and the victim.

[31] In terms of mitigating factors, your counsel submitted that, along with your guilty pleas, your remorse should be taken into account. In that regard, I have considered what you have said, both to the probation officer and in your letter to the Court. You have offered your remorse and apologies to the family of the deceased. You have expressed your concern about the impact of your offending on the family of the victim.

[32] The tragedy of these events is that you were probably starting to come right, in that you were in a settled relationship, you had changed employment to become a farmhand and, despite your previous convictions, including the convictions for violent offending, were setting off down a new path. Counsel acknowledged that you had expressed a determination to take advantage of the courses available to you in prison for drug and alcohol abuse and anger management.

[33] Counsel's written submissions helpfully referred to a number of cases which inform the judgment that I have to make in terms of setting a minimum period of imprisonment. Counsel agreed that a discount of ten percent would be appropriate given the nature and circumstances of the guilty pleas.

[34] In relation to the offending against the two police officers, your counsel drew attention to the nature of the offending and accepted that this offending should be taken into account when considering the totality of the offending when setting the minimum period of imprisonment. But of course I must take care to avoid double counting.

Relevant purposes and principles of sentencing

[35] There are a number of purposes and principles that I am required to keep in mind. In terms of the purposes of s 7 of the Sentencing Act, I refer to the need to hold you accountable for the harm done to the community and to promote a sense of responsibility in you for that harm. There is also a need to provide for the interests of the victim of your offending. On behalf of the community, as sentencing Judge, I must also denounce your conduct and reflect the need to deter you and others from committing the same or similar offences. Furthermore, there is a need to protect the community from you, which is another highly relevant factor in this case.

[36] I must also have regard for the principles of sentencing as set out in s 8 of the Sentencing Act, for example the gravity of the offending, the degree of culpability, and the seriousness of your offending, bearing in mind the maximum penalties prescribed. I also need to take into account the desirability of consistency in

sentencing and impose the least restrictive outcome that is appropriate in your circumstances.

Aggravating factors of the offending

[37] In terms of aggravating factors of this offending, I am satisfied that this was a brutal and cowardly attack on a sustained basis. Perhaps one of the most significant features is the level of actual violence. You punched and kicked the victim over a prolonged period of time and, after the victim had lost consciousness and was at his most vulnerable, you could not resist going back and attacking him for a second time. That, Mr Ranapia, is the most despicable part of your vicious attack.

[38] I also take into account and will make an uplift because of the two counts of threatening to do grievous bodily harm to the police officers concerned.

Aggravating and mitigating factors pertaining to the offender

[39] In terms of you personally, in your case I take into account the previous convictions, many of which involved violent offending. That is an aggravating factor. However, there are some mitigating factors, the most significant of which are your guilty pleas. They at least have resulted in a significant benefit by sparing the family of the agony of having to relive these dreadful events over a two week trial. They also spared the witnesses and had a meaningful impact on the judicial system in terms of saving time and appeals and the like. You have shown remorse for your offending and expressed a desire, while in prison, to undertake appropriate rehabilitative courses.

Sentencing approach for murder

[40] First, there is a no question that life imprisonment is appropriate in this case. There is nothing that would make a sentence of life imprisonment manifestly unjust. Your counsel did not argue otherwise. I therefore sentence you to life imprisonment.

[41] Next, I am required to look at the factors listed in s 103 of the Sentencing Act and consider the question of an appropriate minimum term of imprisonment. Lest anyone should be under any misapprehension, this is not the sentence. It is just a recording by me of the minimum period before which you are eligible to apply for parole. What happens after the time that I set is a matter for the Parole Board and that will depend on whether you have made progress during your time in prison. So the starting point is a ten year minimum term of imprisonment. But then I have to consider the purposes in s 103(2), to which I have already referred.

[42] I have considered a range of cases referred to by the Crown, particularly *MacLaughlin*. I have considered the cases cited by your counsel, particularly the case of *R v Walsh* CA281/04 19 May 2005. I have also considered a range of other cases: *R v Reti* HC WHA CRI-2007-027-2103 9 December 2008; *R v Fennell* HC WN CRI-2007-085-238 13 June 2008; and *R v Barlow* HC AK CRI-2003-019-1 27 April 2007.

Analysis

[43] The first step is to assess the seriousness of your actions taking into account all of the aggravating and mitigating factors and the criteria to which I must have regard. I have already noted the aggravating features in this case and will not repeat them. I also note the aggravating features of your previous convictions and the other offending. I consider perhaps the most similar cases to be *Walsh* and *MacLaughlin*, but in the end each case must turn on its own facts.

[44] Taking into account all of the factors to which I must have regard, I consider that a minimum term of imprisonment of 11 years would be appropriate in your case. Then there must be an uplift. The uplift I fix is six months' imprisonment to reflect your previous violent convictions. Then I also take an uplift of 12 months to reflect the two counts of threatening to do grievous bodily harm, so that in total a minimum period of 12 years and six months' imprisonment would apply.

[45] Then I have to apply a discount to reflect your guilty pleas and your remorse. I have taken into account the recent decision of the Court of Appeal in *R v Hessel*

[2009] NZCA 450, particularly at [63] – [73]. I conclude that a deduction from the minimum period of imprisonment of ten percent is warranted in the particular circumstances of your case. The application of this discount figure across the full starting point of the minimum period should not be seen as a precedent, but rather as the exercise of a discretion based on the facts of this case.

Conclusion

[46] You are hereby sentenced to life imprisonment in respect of the murder of Mr Rundlett. I further direct that you must serve a minimum period of imprisonment of 11 years and three months.

[47] In respect of the other offences, I impose concurrent sentences of 18 months' imprisonment on each.

[48] You may stand down.

Stevens J