

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

CRI 2008-009-013852

REGINA

v

ASHLEY DONALD PEACH

Hearing: 3 December 2009
Counsel: P A Currie for Crown
P H B Hall and D J H Stringer for Prisoner
Sentence: 3 December 2009

SENTENCE OF PANCKHURST J

Mr Peach:

[1] You are for sentence this morning in relation to an offence of murder. You pleaded guilty to that crime on Friday, 6 November, a matter of days, perhaps a week, out from the scheduled commencement of your trial.

[2] As I have already commented it is necessary in sentencing you to outline the facts of your crime. Your victim was Kerry Downey. She was 52 years of age and obviously a very vibrant person. She worked for an organisation named the Cats Unloved Society.

[3] On 15 August 2008 you contacted the Society and requested that a volunteer come to your home in Riccarton Road and uplift a cat. It was the following Monday,

18 August, that Kerry Downey undertook that task and went to your flat at about 7.00 pm.

[4] She was seen by a neighbour of yours entering your address. What happened from that point remains a matter of supposition. You have not been open and forthcoming to the police. What however is plain is that Ms Downey was attacked and strangled. The subsequent post-mortem examination of her body provides the best evidence of what must have occurred. She sustained bruising to her upper arms and to the area of her mouth and neck. A hyoid bone in her neck was damaged which is a classic sign of manual strangulation. And indeed the opinion of the pathologist, Dr Sage, is that she died of that cause. There was also a bruise to one of her breasts and a small injury to the entrance to her vagina.

[5] Sometime after the event you placed her body in her car. You drove to Westmoreland on the Port Hills and then, to use a word which appears in the summary of facts which, for understandable reasons, has particularly distressed Mr Downey, Kerry's father, you "dumped" her body down a bank. You then drove her vehicle to a street in Sydenham and abandoned it before you returned to your flat in Riccarton Road.

[6] Inevitably the following morning, Tuesday 19 August, Ms Downey's absence from work was noted. A phone call was made from somebody from the Society to you concerning her scheduled visit. You denied that she had been to your home.

[7] At about 6.00 pm that day, the Tuesday, the police went to your flat and received a similar denial of any involvement in her disappearance. But then later that evening at about 8.30 pm a search warrant was executed at your flat. Two cat cages belonging to the Society were located, together with items of clothing belonging to Kerry. At that point you changed your story. You said there had been an altercation after she called; that you had some scratches as a result of that altercation and, somewhat curiously, you referred to tea-towels which you acknowledged would disclose forensic DNA evidence which would establish the fact that Kerry had been to your home. But you still claimed, even at that late point, that she had left the flat of her own accord and was effectively unharmed.

[8] You then told the police that perchance you had gone for a walk that evening and you had seen Ms Downey's car parked in the street at Sydenham and had noticed a male leaving the area of the car, an account which was an obvious fabrication.

[9] As members of the Downey family have said in reading their victim impact statements this morning it was not until the next day, Wednesday 20 August in the early morning, that Kerry Downey's body was discovered. Even then you still did not give an account of your actions to the authorities. Perhaps you have said the most about what in fact occurred in the accounts you gave to Dr Brinded, a psychiatrist who interviewed you and provided a report to the Court quite recently.

[10] Four members of the family and two members of the Cats Unloved Society have read victim impact statements this morning. Mr Downey senior, two of Kerry's sisters and her brother have done so. It is impossible for me to capture the essence of what they have said in a sentence or two. Perhaps the flavour of what they said can however be signified if I mention some of the words which cried out to me when I read those victim impact statements before this morning. Some of those words are: virtuous, gentle, demure, generous, feminine, intelligent, vulnerable and trusting. They are words which are both descriptive of your victim and, perhaps, they also explain to a significant degree how it was that she fell into your vices.

[11] With regard to your personal circumstances you are 42 years of age. I have considered in depth the pre-sentence report written about you. It makes for sad reading. A number of aspects from it together with aspects from the psychiatric report have been properly referred to by Mr Hall. I am in no doubt that you had a disadvantaged upbringing. I accept you have significant intellectual impairments. You have had issues with your mental health at times and you have lived in institutions. And at the time of this crime I have no doubt you were socially isolated and living in the community as something of a loner.

[12] The pre-sentence report also contains this as the penultimate paragraph and I quote it:

It is difficult to avoid the conclusion that Mr Peach has now shown himself to be unpredictable, capable of extreme violence, and having little or no capacity to change; it may never be safe to release him back into the community.

I thought it necessary to record that observation. Ultimately as I have already explained the issue of release is one for the Parole Board, but that is an assessment, at this point in time, which impressed me as warranting recognition in these sentencing remarks.

[13] You also have an extensive list of previous criminal convictions. These are for a range of offences including driving matters, numerous offences of dishonesty including burglary and then three offences to which Mrs Curry has particularly drawn attention. In 1990 you were convicted for an offence of having sexual intercourse with a girl, in 2000 for an offence of assaulting a female and in 2002 an offence of indecent assault.

[14] As already noted I have also had the benefit of a comprehensive psychiatric report obtained by your counsel and written by Professor Philip Brinded. I do not propose to go into the details of that report. The pertinent features to my mind are these. First and foremost, despite your limitations, you are a person who is accountable for your actions. He stresses, as did the pre-sentence report writer, the various intellectual deficits from which you undoubtedly suffer. You are also, as the psychiatrist has described, socially inept. His conclusion in relation to the causes for your offending are that you were in a position of significant social isolation. You were not coping at a personal level at the relevant time and as he said Ms Kerry Downey became your victim and “the tragic focus of your emotional disintegration”, and I add, through entirely no fault of her own. She was a volunteer who went to your home to do a good deed but met her death.

[15] Regrettably there are many people in our community who suffer from difficulties of the kind from which you suffer. At this point protection of the community, however, must be the predominant sentencing consideration. I direct

that a copy of the report of Professor Brinded dated 30 November be provided to the authorities for the assistance of the Parole Board in years to come.

[16] As I have already explained the prescribed sentence for murder is life imprisonment. There is no question that in your case that sentence is appropriate and I hereby sentence you to life imprisonment. I stress that that is the primary penalty. It means that you may potentially remain in prison for the balance of your natural life. If it is assessed by the Parole Board that you no longer pose a risk to the community you may at some point in the future be released. This as I have already commented is commonly overlooked. Many erroneously treat the minimum period of imprisonment which I must impose as the sentence. It is not. It is nothing more than the period which must be served before the Parole Board can even consider you for release back into the community and I think it is extremely important, that particularly the Downey family understand this aspect of our sentencing system.

[17] Having already sentenced you to life imprisonment I must therefore turn and consider that further issue of the minimum period of imprisonment. Section 103 of the Sentencing Act 2002 provides that the period imposed must serve a number of purposes and must reflect four principles of sentencing: the need to hold you accountable, the need to denounce your conduct, to deter you and others and to protect the community.

[18] Mrs Curry in her submissions has explained the Crown's approach to this case which I endorse as an appropriate one. It is an invidious task for any prosecutor to have to place a particular murder in the spectrum of murders which are considered by Judges in this country. The fact is we do have some murders which are even worse than others, but murder is always an atrocious crime.

[19] Mrs Curry submitted that I should adopt a starting-point for imposing the minimum term near to the point which is reserved for s104 cases, that is about 16 years before allowance is made for your belated plea of guilty.

[20] Mr Hall, on the other hand, contended for a minimum period of imprisonment close to the minimum of 10 years, particularly after allowance was

made for your plea of guilty and his contention that you have shown remorse, if belatedly.

[21] Murder is always an atrocious crime and this case is certainly no exception. I must, however, endeavour to place this offence within the spectrum of murders and to do so on an objective basis without being swayed by the powerful emotional considerations which are always at play in a case such as this. To my mind the aggravating features of this particular murder are the extreme vulnerability of your victim. She was a petite woman. She went to your flat alone and as a volunteer to provide help, and this is a particular aggravating feature.

[22] There is also to my mind a sexual dimension to your crime. I have mentioned two intimate injuries which your victim suffered. There were also items of clothing retained by you at your flat. And then it seems to me a partial admission was made to the police and repeated, if not amplified, to Professor Brinded. You, it seems, tied up your victim at one point in the flat, and in the absence of anything else to suggest a motive, I am in little doubt that it was a sexual motive which actuated this murderous attack.

[23] The third aggravating feature is your offending profile which, combined with your personality issues, indicates to me a propensity for you to commit a crime of this magnitude. I have already referred to the sexual offending, to the violent offence convictions which you have, also to a number of burglaries that you have committed. This represents, in my experience, a mix of past offending which not infrequently precedes the progression to a crime of this calibre.

[24] It has been necessary for me to consider a number of other recent cases of murder in order to make a judgment as to where your crime fits in the spectrum. I have been most influenced by two cases, the first concerning a man named Abraham (*The Queen v Abraham* CA139/03, CA330/03 28 October 2003 Tipping J) who was dealt with in 2003 in Wellington who likewise had murdered a vulnerable woman who was out walking her dog on the banks of the Hutt River. She too was a stranger, she too suffered a sexual attack, of sorts, and in her case a minimum non-

parole period of 13 years was set, albeit for a crime which slightly preceded the passing of the present Sentencing Act.

[25] The other case concerns a very young offender named Broughton (*R v Broughton* HC ROT CRI-2008-269-62 26 March 2009 Lang J) who was sentenced in the Rotorua High Court earlier this year for a fatal attack upon a young woman who was from Scotland and on a working holiday in New Zealand. This too was an attack, not in a home but in the street, committed upon a complete stranger who was vulnerable and which also involved a sexual element. There a similar minimum non-parole period of 12½ years was imposed, although that I apprehend was greatly influenced by the immaturity, the youthfulness of the offender. I have found these cases of some assistance and I have mentioned them for that reason.

[26] All crimes of this nature are necessarily unique. Yours is no exception. The view I reach is that I should adopt a minimum non-parole period starting-point of 14½ years. I accept Mr Hall's plea that some allowance should be made for your guilty plea, and I make a reduction of 18 months and impose a minimum non-parole period of 13 years. As I have already said this means nothing more than that you will serve that term before the issue of your release may even be considered. Whether you will be released into the community is for the Parole Board and that will depend upon the assessment of risk.

You may stand down.