IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY
HEARD AT ROTORUA

CRI-2008-270-000361

THE QUEEN

v

COURTNEY PAULINE CHURCHWARD
LORI-LEA WAIORA TE WINI

Charges:	Murder
Plea:	Not Guilty
Appearances:	G Hollister-Jones and D McWilliam for Crown P Mabey QC and for Prisoner Churchward G Tomlinson for Prisoner Te Wini
Sentenced:	18 December 2009 Life imprisonment – minimum term of 17 years

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SENTENCING NOTES OF VENNING J

Solicitors:	Crown Solicitor, Tauranga Gowing & Co, Whakatane
Copy to:	P Mabey QC, Tauranga

[1] Courtney Pauline Churchward at the age of 18 and Lori-Lea Waiora Te Wini at 16, you are for sentence having been found guilty of the murder of John Alan Rowe.

[2] You were found guilty following a jury trial in this Court last month. The jury heard that in the early hours of 25 November 2008 you broke into Mr Rowe's home and savagely beat him to death.

[3] Sentencing is perhaps the most difficult aspect of a Judge's role. Sentencing two young people for the crime of murder is particularly difficult. But it is my responsibility to do so and to explain to you, to the victims and to the community the reasons for the sentences that I am obliged to impose in this case.

[4] That night you were both out looking for money for cannabis. You had broken into a number of properties to steal money or valuables. In the end you chose to go to Mr Rowe's house. Ms Te Wini, you knew him as "the old man through the fence". You thought he might have the money or valuables you were after. You first broke into his garage. There was nothing there. Then, you saw him through the window, saw him leave the toilet and go to his bedroom. You both then broke into his home. You looked through his lounge, put on surgical gloves you had found there. You had earlier taken steps to ensure you wouldn't leave fingerprints and you covered your mouths with scarves. You then went to his bedroom because you thought he might have valuables there. Ms Churchward, you were an experienced burglar, even by that stage. You knew that people kept their valuables in their bedroom. Before going to his room you both had armed yourselves. Ms Churchward you had picked up a wooden walking staff and given it to Ms Te Wini. The staff was no standard walking stick used by an old person. This was a solid wooden staff. Ms Te Wini you didn't want to use that. You gave it back and instead armed yourself with a wooden rod that the deceased used to close his curtains.

[5] Once in his room, Ms Churchward you raised the staff above his head, intending to hit him. But at first it seems you couldn't bring yourself to do it.

Perhaps at that stage you sensed it was wrong. The two of you left his bedroom, went out into the passage or back to the lounge where you each encouraged the other to go back and hit the deceased. Ms Te Wini described it to the probation officer as getting "hyped up". You then both went back to the room. Ms Churchward you again stood above his bed by his head, held the staff above him and brought it down on his head. The deceased tried to get up and defend himself. You continued to hit him with the staff. You tried to beat him down and to stop the noise he was making.

[6] Ms Te Wini you joined in the attack with the stick you had. You hit the deceased hard enough and often enough with that stick that you broke the end of it. Even after it broke you continued to strike the deceased with it, in your words to "whack him". The broken end of the stick you used was soaked in blood by the end of the assault. The medical evidence discloses that the deceased received over 20 blows to his body. Both of you joined in that vicious assault on him. You moved around the bed to follow him as he tried to sit up. The deceased sustained at least 12 separate severe injuries to his head and face area.

[7] The evidence of Ms Crenfeldt, the scientist, confirmed that there were up to seven points about the room where the various blows had been struck from. There was blood spatter up the walls and over the ceiling caused by the weapons that you were using trailing blood from the deceased's existing injuries and wounds. The deceased sustained at least 12 separate severe injuries to his head and face. The front of his skull was fractured. The doctor described it as broken like an egg shell. His right arm, which he must have raised in defence, was fractured in several places. His elbow was broken. He sustained a number of other defensive injuries, a number of bones in his hands were broken.

[8] The deceased died from respiratory failure caused by the head injuries and blood loss. It can only be hoped that he lapsed into unconsciousness at a relatively early stage of this assault. You only stopped when you switched the light on and saw the terrible injuries you had inflicted on him. You panicked and left, leaving the deceased for dead. After trying to cover up your attack by ransacking his lounge you took his wallet, car keys and CD radio player.

[9] Ms Churchward you said you tried to get help by calling 111 from his phone but the phone wasn't working. I don't accept that. There was no record of any fault with the phone and the phone was working a few days later when the police arranged for a security system to be installed at the property. You then tried to start his car. When you were unable to you returned home and divided up the money that you had taken from his property. Over the next few days and weeks that was spent. You took steps to cover up your involvement in what you had done.

[10] In sentencing you I am required to take account of the purposes and principles of the Sentencing Act. In this case the particularly relevant purposes are:

- to hold you accountable for the harm done to the deceased and the community by such violent offending;

- to promote in you a sense of responsibility for and acknowledgement of that harm;

- to provide for the interests of the deceased, his family as the victims of this offence;

- to denounce such senseless and wanton violence;

- to deter you and others from committing similar offences.

[11] The particularly relevant principles are:

- to take into account the gravity of the offending, including your degree of culpability;

- the seriousness of the offending. Murder carries the term of life imprisonment and is the most serious offence in the Crimes Act.

[12] You have now heard the effect of what you did has had on the deceased's family. I hope that now you may have some understanding of that. The deceased came to New Zealand to make a better life for his family. He was a respected

member of the community. He served that community for years as a school teacher. In that role he would have helped and encouraged young people like you. He had a quiet and simple retirement. He enjoyed listening to classical music and he kept a record of the weather. He was liked by his close neighbours. He was entitled to look forward to a long and peaceful retirement. The actions of you two brought all of that to a terrible end. His death and the circumstances of it have been a terrible burden for his family to bear. They have acted with dignity and restraint throughout this process.

[13] I turn to your personal circumstances Ms Te Wini. You are now 16 years old. At the time of the offence you were 14, almost 15. You had lived, even at that age, a transient lifestyle shifting between your mother in Opotiki and your grandmother in Auckland for most of your life. You were expelled from college because of your disruptive behaviour. You did not continue any form of study or education thereafter. You told the probation officer you just stayed home and slept. If you weren't sleeping you smoked cannabis, that's what you did each day, every day. If you needed cannabis or a drink you'd give money to your brother or boyfriend and they'd get it for you. While you have no formal previous convictions recorded the report writer noted there was evidence you had in the past broken and entered properties and stolen from them. Certainly and in any event on the night in question you admit doing just that prior to going to the deceased's home.

[14] At the age of 14 you had been in relationships with two young men, both affiliated with gangs. You suffer from post-traumatic stress disorder and receive medication for stress. Since being in custody you have had treatment. You have responded to that. While you express remorse by words, in the report writer's opinion you still fail to realise the seriousness of what you have done.

[15] Ms Churchward your life history position is unfortunately much the same. You were brought up by your mother and stepfather until they separated when you were about 10. It seems that after that matters deteriorated and certainly your relationship with your mother did. From about 13 your behaviour became increasingly anti-social. Your mother could not cope. You were sent to relatives in Opotiki but ran away. You moved between your mother and relatives. You began

drinking and using drugs, often when in the company of relatives. You became involved in criminal activity which was almost inevitable given the situation you lived in and the lack of direction in your life. You were abused by an older relative, and were left without support by your family.

[16] As Mr Mabey submitted and as confirmed by the probation officer's report you are an intelligent young woman and in other circumstances might have had and expected a completely different life.

[17] You enrolled in and were doing well at a hairdressing course but did not complete it. In May 2008 you became involved with a man associated with a gang, just released from prison. In his association you became further involved in drugs and more serious drugs. He physically abused you. At the age of 17 you had by then already been abused by an older relative and were living in an abusive relationship.

[18] The probation officer notes that you did not or were not able to show remorse or empathy with the deceased.

[19] As counsel have suggested, in a way, both you Ms Churchward and you Ms Te Wini are victims as well. But you are not victims of society or the various support agencies or schools that you have had contact with. I make that clear. You are victims of the failure by your own families and those close to you to provide any sort of positive direction, encouragement to learn or values to you as you grew up. Your families and those who were supposedly caring for you need to look long and hard at themselves in relation to their responsibility for what has happened in this case. How those responsible for you could allow 13 and 14 year olds, as you were, Ms Churchward a little older but from 13 or 14, to live as you have both described is difficult to understand. Those responsible for you and who should have had some oversight to your lives, have failed in the most basic way to support you and keep you from the sort of influences that have led you to behave and act as you have.

[20] It is a tragedy, but the reality is that you will receive more chance of education and will be taught more life skills in prison than you have been provided to date by those responsible for you.

[21] I turn to the sentence I must impose. The presumption is the sentence for murder is imprisonment for life. Neither of your counsel suggest that is not appropriate. Nor could they. This is a brutal murder. Your own personal circumstances cannot weigh against that. The appropriate sentence is life imprisonment.

[22] For the benefit of the media I make it clear that life imprisonment is the sentence for murder. The focus is far too often on the minimum non-parole period, which is the period that must be served before parole can even be considered. But as Mr Tomlinson has identified, the sentence for murder is life imprisonment.

[23] I turn to consider the minimum non-parole period, which the Court must fix as part of that sentence. The minimum non-parole period in these circumstances may not be less than 10 years and in certain circumstances, the Court is directed to impose a minimum period of at least 17 years unless satisfied it would be manifestly unjust to do so.

[24] The first issue is whether there are circumstances which support a minimum term of imprisonment of 17 years. In this case there are a number of such features:

- the murder involved the unlawful entry into and unlawful presence by you in the deceased's home, a home invasion;

- the murder was committed in the course of another serious offence, robbery. You intended to take property from the deceased and, if necessary, to use violence against him to overcome his resistance;

- it could also be said the murder was committed with a high level of brutality. This was not one act of violence or assault but a sustained beating meted out to the deceased by the two of you in combination using weapons;

- finally, the deceased was particularly vulnerable in this case because of his age and health. He was a frail, 78 year old man weighing only 57 kilograms in ill health. You were generally aware of his situation, particularly you Ms Te Wini because you had referred to him as "the old man next door" and knew him.

[25] Given those features of the offending s 104 of the Sentencing Act provides or directs the Court to impose a minimum term of 17 years unless it would be manifestly unjust to impose that minimum period. Given the features of the offending I have described were it not for your ages a figure of 19 or 20 years could be appropriate.

[26] The Crown argue for the imposition of a minimum period of 17 years.

[27] In your case Ms Churchward, Mr Mabey realistically and responsibly accepts that such a minimum term cannot be argued against.

[28] For you Ms Te Wini, Mr Tomlinson submits the minimum term should be 14 years or in that range because he says that to apply a 17 year minimum non-parole period in your case, given your age and circumstances and the role you played, would be unjust. He refers to the decision of *R v Trevithick* HC AK CRI-2007-244-000009 19 June 2007 Venning J.

[29] Mr Tomlinson submitted that the assault was not necessarily high level brutality, such as one might associate with a knife attack or where someone is kicked to death. I do not accept that submission. The assault in this case was a sustained attack involving the use of weapons. Beating a frail, elderly man to death in his own bed in his own home with the use of a wooden staff and wooden stick, with blows directed to his head and with him being pursued by you about the bed is just as bad if not worse than stabbing someone a number of times or kicking them in the head.

[30] In the case of *R v Williams* [2005] 2 NZLR 506 at [52] to [54] the Court of Appeal identified a two-stage approach the Court must take. First the Court must consider the degree of the prisoner's culpability in relation to culpability involved in

the standard range of murders. And in doing so the Court must have regard to the policy of s 104 that in general the presence of one or more of the factors establishes the murder is sufficiently serious to justify the minimum term of not less than 17 years. The Court is then required to decide what minimum term was justified in all the circumstances of the case including those of the offender.

[31] Where the first step indicates the appropriate minimum period is 17 years or more then the minimum term must reflect that assessment. However, in cases where the first step points to a lesser minimum term being justified, the Court must go on and consider the second stage and consider whether to impose a minimum term of 17 years in those circumstances would be manifestly unjust. If it is, then the minimum term must be readjusted, reassessed to what the Court considers justified.

[32] The authorities make it clear, however, the Court may not approach the sentence on the basis the 17 year minimum can be reduced to whatever sentence the Court considers appropriate. The question of whether the outcome of the assessment would make a 17 year minimum term manifestly unjust must be approached in a principled way.

[33] In *Trevithick*, this Court accepted that a minimum period of less than 17 years was justified and 17 years would have been manifestly unjust in the particular circumstances of that case and that offender. The particularly relevant factors in that case were an early acceptance of guilt confirmed by a guilty plea at an early stage, limited emotional and intellectual maturity, remorse which the Court accepted was genuine, and the age of the offender at 15 with no previous convictions.

[34] Mr Tomlinson has argued strongly but like *Trevithick,* you are young Ms Te Wini and have no previous convictions. He also says you were not a principal offender in this case, so the Court could properly conclude a minimum term of 17 years would be manifestly unjust. He submitted that you lacked true involvement in the offence in terms of personal murderous intent and only assisted in striking the victim at Ms Churchward's insistence. If I accepted his submissions that your role was much less than Ms Churchward then a minimum non-parole period of 17 years might in your case be manifestly unjust. In *R v Slade* [2005] 21 NZLR 526 the

Court of Appeal accepted that the appellant had played a lesser role in the offending as because of that reduced the term from minimum non-parole period from 17 years.

[35] Ms Te Wini I accept that your cousin Ms Churchward was older than you by two and a half years and that she wielded the larger weapon, the walking staff and struck the first blow or blows. However, on my assessment of the evidence the jury and I heard, taken overall, you were both equally responsible for the death of Mr Rowe. Both of you went to his home to burgle or rob him to obtain money for drugs for both your benefits. It was your idea to go to the deceased's house for that purpose. You identified him as a likely target. You knew he was vulnerable. If he resisted you were both prepared to use violence. The evidence confirms Ms Churchward could not bring herself to strike the deceased at first, and it was only after you had left the room and encouraged each other that you both went back in and began the attack on the deceased. As you said hyped each other up. Ms Te Wini without you pointing out the deceased as a target neither of you would have been there that night. Without your encouragement and "hyping up" Ms Churchward would not have gone back in and started the attack, which you then took a full part in. This I repeat was a savage attack of the worst kind by both of you in the course of a home invasion. You were a full and important part of that attack. You must have understood the risk to the old man as you knew him. Those factors distinguish your case from the case of *Slade*.

[36] Your case is also different from *Trevithick's*. As noted in that case the principal factor was his acknowledgement of responsibility at an early stage and he confirmed that in the most practical way by pleading guilty. He spared the victim's family the trauma of the trial process. He also expressed remorse which was genuine. On the other hand you did not accept your responsibility in this matter. You sought to deny or minimise your involvement throughout the trial. While you are quite entitled to exercise a right to silence and you are not to be punished for defending the charge, nor are you entitled to a credit in the same way you would have if you had accepted responsibility at an early stage as Mr Trevithick did. And finally there are aspects of the probation officer's report which lead me to doubt whether the remorse you now express is genuine.

[37] The principal factor which is of real concern to the Court is your young age and lack of maturity at the time you offended. But as the Court of Appeal has confirmed on a number of occasions, Parliament has not chosen to make a specific exception for youth. I refer to the case of *R v Rapira* [2003] 3 NZLR 794.

[38] While *Rapira* was concerned with whether it would be manifestly unjust to impose life imprisonment under s 102, the approach taken is also applicable to the use of manifestly unjust in s 104 as the Court of Appeal confirmed in *R v Parrish* CA295/03 12 December2003.

[39] In *Slade* the Court of Appeal had this to say about young offenders:

> [48] The human problems raised by this case have given us cause for very distinct concern. The select committee considering these reforms was told that there are upwards of 50 murders a year in New Zealand today. There is a fair prospect that a respectable percentage of that number of murders may come from "youth crime" which has, as in this case, simply got out of hand. It would have been open to Parliament to create an exception (as for instance by a floor age before the long-term sentence kicked in). But it has to be said, as the Court has already had occasion to say in other cases, that this Court cannot, as it were "create" a youth exception as such. The Parliamentary language is general in its application.

[40] Finally reference can be made also to the Court of Appeal decision of *R v Green and Morice* CA461/04 CA 462/04 2 June 2005 where the Court upheld a minimum non-parole period of 17 years imposed on two young men for beating a homeless man to death. As this Court observed in the first instance in that case unfortunately the cases that come before the Court show that young people are able to and do commit the most serious of crimes such as murder.

[41] The fact is that a 14 year old armed with a weapon – as you were – can inflict just as much damage as a person twice that age. While you lacked maturity at 14 you must have understood the risk to an old man with the use of such weapons against his head.

[42] My consideration of the circumstances of the offending, your attitude to it, the relevant authorities and Parliament's direction in this area lead me to conclude that despite your age the appropriate minimum period of imprisonment is 17 years.

[43] The result is that I am driven to conclude I must impose such a minimum term in your case as well.

[44] **Please stand**. Courtney Pauline Churchward and Lori-Lea Wairoa Te Wini for the murder of John Alan Rowe, you are each sentenced to life imprisonment. You are also each to serve a minimum term of imprisonment before parole is considered of 17 years.

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Venning J