

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

**CRI 2011-070-1249
[2012] NZHC 1849**

THE QUEEN

v

TAMATI BENSON MASON

Hearing: 27 July 2012

Counsel: R G Ronayne for Crown
A T Sykes and T T Tuari for Prisoner

Judgment: 27 July 2012

SENTENCING NOTES OF HEATH J

Solicitors:

Crown Solicitor, Tauranga
Aurere Law, Rotorua

Counsel:

P G Mabey QC, Tauranga

Introduction

[1] Tamati Benson Mason, you appear for sentence today having pleaded guilty to one charge of murder and one of attempted murder. You pleaded on 3 May 2012, following a ruling that I gave on your challenge to this Court's jurisdiction to deal with you.¹ Convictions were entered on that day.

[2] The offence of murder, in these circumstances, carries a penalty of life imprisonment. On the murder charge, the only issue on which I need to rule today is the minimum period of imprisonment that you must serve before you become eligible to apply for parole. I emphasise that the sentence is life imprisonment. The impact of the minimum term is simply to identify the first occasion on which you are entitled to apply for parole. There is, of course, no guarantee that parole would be granted at that time.

[3] The attempted murder charge carries a maximum penalty of 14 years imprisonment. Any sentence that is imposed on that charge would run concurrently with the term of life imprisonment to which you will be sentenced on the murder charge.

[4] I would like to say something at the outset about the statements that have been read to the Court today. Usually, the Court is very careful to ensure that victim impact statements and statements of the type Mr Paul has read, are couched in very moderate terms.

[5] Throughout, you have emphasised your desire to be treated in accordance with tikanga Maori. Had we been on the Marae, people would have been entitled to say what they think in very clear terms, both ways. For that reason, I thought it appropriate for the victim and her family to say in as clear as words to you today as you had imparted to them about your reasons as to why this happened.

¹ *R v Mason* [2012] 2 NZLR 695 (HC).

[6] That leads on to the nature of today's sentencing exercise. It is rare on such serious charges for the Court to be considering cross-cultural information. For me, as a Pakeha Judge, it is easy to articulate the purposes and principles of sentencing for such serious crimes. It is less easy, in the absence of informative reports and submissions, for me to understand how kaupapa Maori apply in the circumstances. How does it transcend and impact on the outcome?

[7] In this case, cultural considerations are relevant, but they have little weight in the circumstances in which I have to decide. As I have said, there can be only one penalty and that is life imprisonment. But the cultural considerations will impact on the length of any minimum term of imprisonment that is imposed and I take them into account as far as that is concerned.

[8] While cultural values are relevant to sentencing, there is one law for all in New Zealand. Nobody is above the law. All are subject to the same sanctions for criminal offences.

The facts

[9] My first task is to explain the facts, in an objective and dispassionate way.

[10] About eight years ago, you met Kate Brown, a Pakeha. You entered into a relationship which lasted about five years. You were engaged to be married. After about three years into the engagement, Kate ended the relationship. You had been separated for around three years when the fateful events of 20 February 2011 occurred.

[11] During that period, you had limited contact with Kate. Indeed, there was only one occasion, some six months before February 2011, when you had a chance meeting with her in a supermarket carpark. On that occasion, you confronted her and became abusive.

[12] During February 2011, Kate was living with her parents, Sandra and Max, and her brother Dennis, at an address in Tauranga. In the early hours of Sunday 20

February 2011 you drove to her home, with the intention of damaging something belonging to the Brown family. You parked some distance from the house and walked up to a vehicle that was parked on the roadside. Though you did not know that at the time, that vehicle was owned by Dennis Brown.

[13] You smashed the front passenger window of the vehicle by punching it with your fist. In doing so, you cut your forearm. This made you angry. You walked back towards your vehicle and drove home to attend to your arm, which was bleeding heavily.

[14] When you got home you went to the bathroom to tend to your injury. As you did so you became angrier. You went into the kitchen and armed yourself with two large carving knives. You then drove back to Kate's address and parked in the driveway.

[15] You gained entry to the house by kicking in a locked door. You were familiar with the layout of the house and the location of the bedrooms upstairs. As you walked upstairs, Kate's mother, Sandra, walked out of her bedroom. You confronted her. You stabbed her in the back, upper chest, buttock and upper arm. You also caused wounds to both of her hands and her right forearm. They were defensive wounds suffered as she tried to avoid your attack.

[16] Kate was awoken by her mother's screams. She rushed to her bedroom and found her lying on the floor. You were standing over her and bending down. Kate heard her mother say: "Stop Tamati". When you saw Kate enter the room you moved towards her, still carrying the knives. You stabbed Kate in the chest and punched her in the face, causing her to fall on the bed. At this stage Kate regained her feet, only to be stabbed in her chest on a second occasion. Again, she fell onto the bed. You then stabbed her in the upper back.

[17] Kate rolled over to face you. You yelled: "This is your fault. You're the one that broke up with me and you didn't even give me any reason why". During the attack Kate also received superficial lacerations to her forehead and left wrist, as well as bruising to her right eye.

[18] You left the bedroom and walked through the house. You told Kate that you were going to look for her brother, Dennis. You kicked his bedroom door open and told him that you had just killed his mother. You said to Dennis: "I thought you were a brother, you're supposed to be my mate" and asked "why did you leave me?" At this stage, you were still holding one of the knives. Dennis saw blood on you, as well as on the knife.

[19] You walked downstairs and called emergency services, using a cordless landline telephone. You placed the knives on the kitchen table. You became frustrated with the person taking the 111 call and threw a chair through a ranch-slider window on the ground floor of the house.

[20] In the meantime, Dennis had gone into his mother's bedroom. He was trying to put pressure on her wounds, to stem the bleeding. He continued to do this for some minutes while she remained alive. About 10 to 15 minutes later, Kate's mother stopped breathing. Dennis began an attempt to resuscitate her using CPR. Sadly, it was unsuccessful.

[21] At this stage you reappeared in the bedroom doorway with a cordless telephone and asked Dennis if he had called the Police. On being told that they had, you walked downstairs and sat outside on the front porch. The bedroom door had been barricaded with a chest of drawers to prevent you from re-entering. The police officers who attended found you lying on the pathway, bleeding heavily from deep cuts to your right hand and right forearm.

[22] Sandra Brown passed away at the scene. A subsequent post-mortem examination revealed that she had suffered some 20 separate stab wounds; three of which were to the chest cavity. They had punctured vital organs, including both lungs. Those wounds are likely to have been the cause of death.

[23] Kate was treated in Tauranga Hospital. After remaining in the intensive care unit for several days, she was transferred to a ward. She was discharged on 2 March 2011, after 10 days hospitalisation.

[24] Kate was stabbed five times in total: once in her back between the shoulder blades; once below the collar bone on the left side of her chest; once at the rib margin below the ribcage on the left, resulting in a laceration to her spleen; once around the mid-line of her forehead between her eyebrows and once in the inner right mid thigh.

[25] After accepting that you had stabbed the deceased and Kate, you said, in explanation, that you were angry and bitter about the way in which the long-standing relationship had ended. You were hurt at the way in which the Brown family had treated you and your family. Your anger boiled over that night.

[26] It is clear that Sandra's needless death and the serious injuries caused to Kate were the utterly unnecessary results of that outpouring of anger.

Acknowledgement of victim and family

[27] I acknowledge the presence today in Court of the Brown family and their friends and supporters who are here. I acknowledge Kate Brown for reading her victim impact statement so movingly. I also acknowledge the victim impact statements that I heard on behalf of other family members.

[28] Those statements make clear their losses and the effect of your actions that night. Those effects will be long-standing and, in all likelihood, will be with them for the rest of their lives. What you took away from them cannot be returned.

Personal circumstances

[29] I refer first to information contained in the pre-sentence report about your personal circumstances. I will deal separately with the cultural material later.

[30] You are now 42 years old. You are of Ngati Awa and Ngati Ranginui descent. You began life in a happy and close-knit family environment but that later deteriorated as a result of domestic violence perpetrated by your mother's then partner.

[31] You were placed in a foster home. You began to offend. You fell into bad company. You joined the “Nomads” gang and became a patched member. In the 1990s you were convicted and sentenced to lengthy terms of imprisonment for offences involving violence, including grievous bodily harm and aggravated robbery.

[32] However, after your release from prison, in about 2001, you moved away from the gang environment. You immersed yourself in tikanga Maori and you tried to better yourself through education; something in which you were successful.

[33] It is clear that you blamed the Brown family for the break-up of your relationship with Kate. You felt insulted and humiliated by what had happened. That sense of whakama stayed with you until the offending occurred.

[34] That said, I sense a degree of reconstruction about the reasons for the relationship ending. Often, as a matter of experience gained in this Court from judging, whether Maori, Pakeha or any other ethnicity or race, we tend to want to see ourselves in the best possible light when things go wrong. As a result, we can convince ourselves that an unhappy event was caused through the fault of others.

[35] Undoubtedly, you truly believe that the Browns were responsible for the break-up of your relationship with Kate. Objectively, however, there is no evidence of any racism or hatred in their attitude towards you. I suspect that you have come to believe honestly something that is objectively false.

Cultural information

[36] I now turn to the cultural material that has been presented to the Court today by Mr Maanu Paul.

[37] I made directions after the hearing on 3 May 2012, to enable a hui to be held to discuss what had occurred and to give you an opportunity to explain your actions. Kate and other members of the Brown family were invited to attend but I made it clear that they were under no compulsion to do so. Understandably, they elected not

to participate. Nevertheless, I have considered a report from that hui that was prepared by Mr Paul and have had the benefit of hearing from him today.

[38] While many New Zealanders are still coming to grips with cross-cultural issues, it is clear that those who live at the crossroads of the two cultures tend to see the world in different ways. I accept tikanga is a living concept. I accept the importance of wairua. I accept the ties of whanaungatanga that exist in te ao Maori.

[39] I understand why you regarded what you perceived as Kate's rejection of you with a sense of shame and unworthiness. I accept the various conditions of whakama through which you went. All of that explains the lead up to the tragic events but, explanation though they be, they cannot and are not an excuse for your behaviour on that day. Still less, are they any justification for what occurred. Deep down, I think you recognise that they do not amount to excuses or justifications. But, they do serve to explain how you arrived in that place at that time.

[40] As I said in the judgment I gave on the jurisdictional question,² there are problems in taking the tikanga approach too far, particularly in cases of serious crime. Tikanga Maori emphasises notions of reconciliation and reciprocity. Such matters are relevant to the sentencing process but they cannot drive it. The community, as a whole, also has an interest in seeing that the Courts respond appropriately and consistently to the offending of people who commit similar offences.

[41] As far as I am aware, there has never been any debate, whether within Maori, Pakeha or otherwise, in this country, about the use of a presumptive life sentence for murder. Such has always been considered an appropriate community response. It recognises the sanctity of human life. The sentence that I am required to impose in terms of our statutes is one that responds adequately on the part of the community to particular wrongdoing.

² Ibid, at paras [47]–[53].

Analysis

[42] My task is to apply the provisions of the Sentencing Act 2002, a law that is common to all New Zealanders, while taking account of the cultural concerns to which I have referred.

[43] The issue to which I turn first is the question of the minimum term of imprisonment. This is a case which, in my view, plainly falls into the category in which a minimum term of not less than 17 years is appropriate.³ There are two factors that make that clear. There is a third that might also be termed an exceptional circumstance; that is the co-existence of the crimes of murder and attempted murder on that night.⁴

[44] The two factors that require that minimum sentence to be imposed are:

- (a) The fact that the murder and attempted murder occurred in the context of a home invasion.⁵ Someone coming into the home of another late at night while they may be sleeping, leaves those people in an extremely vulnerable state.⁶ Those are very significant aggravating factors.
- (b) The second is the high level of brutality and callousness with which you attacked the victims.⁷ Callousness is defined, in one sense, as a want of feeling or insensibility amounting to a numbness of the soul. That actually describes perfectly the way in which you acted that night. It is consistent too, with the depressive state in which you found yourself. Whether one analyses that in psychiatric or cultural terms, the way in which you behaved did resemble something in the nature of an “out of body” experience. The fact that you went on such a frenzied attack and then sat down with the telephone to call emergency services is quite bizarre in itself.

³ Sentencing Act 2002, s 104(1).

⁴ Ibid, s 104(1)(i).

⁵ Ibid, s 104(1)(c).

⁶ Ibid, s 104(1)(g).

⁷ Ibid, s 104(1)(e).

[45] Mr Paul has offered a sincere apology today to the Brown family, on behalf of you, your iwi and your whanau. You have offered an apology today, read by Ms Sykes, to the Brown family. Taken together with the entry of guilty pleas, they demonstrate acceptance of responsibility for what occurred.

[46] As you heard me say during Ms Sykes' submissions, the great shame is that that was not communicated earlier. Had the Brown family been clearly aware of those types of sentiments, expressed in the moving way they were today, much earlier than today's sentencing, they may have understood better the circumstances in which the crimes came to be committed.

[47] The tangle you got yourself into in dealing with the way in which the Courts approach matters such as this and issues of tikanga Maori proved a distraction and stopped the most important thing from happening; namely an understanding by the victim and the victim's family of what had occurred, why it had occurred, and your acknowledgement of responsibility for it.

[48] On the other side of the ledger, an aggravating aspect is your record of prior violent offending to which I have already referred. I have also referred to the efforts you made after that to better yourself. Sadly, these events have now intervened and that will require you to serve an extremely long time in jail.

[49] In my view, those factors balance each other out. In other words, taking the acceptance of responsibility and the guilty pleas and your circumstances (on the one hand) and your prior offending in this way and the way in which it occurred in this case (on the other) there is no need, in my view, to increase the minimum period of imprisonment beyond one of 17 years.

[50] Mr Mason, you acted callously and brutally in attempting to kill your former partner and in murdering her mother. Even accepting the reasons why this came to be, although you were bitter about the relationship ending and a long time had passed for you to brood on that, there was no provocation towards you. Nor was there any excuse for your despicable and inhumane acts.

[51] You have brought unimaginable grief and sorrow on a family whom you described yourself, “as an extension of me and my whanau”. You have brought shame on yourself, your iwi and your whanau by what you have done, which is encapsulated in the apology offered by Mr Paul today.

[52] Nothing can undo what was done. You must now pay your debt to society by losing your liberty for many years. Reconciliation may come later. Time can be a healer, but there is much healing to be done here before reconciliation is possible. Sometime in the future, maybe; but for now things are just too raw from the Brown family’s perspective for that to happen or for there to be any realistic expectation that that would happen. That is something for the future.

Result

[53] Mr Mason, on the charge of murder, you are sentenced to life imprisonment with a minimum term of imprisonment of 17 years. On the charge of attempted murder, you are sentenced to a concurrent term of 10 years imprisonment.

[54] The offences bring you within what is called the “three strikes” regime. I am required to give a warning to you by Parliament. I use the words that Parliament requires me to give that warning in.

[55] Given your convictions for murder and attempted murder, you are now subject to the three strikes law. I am going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[56] If you convicted of any serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment. That will be served without parole, unless it would be manifestly unjust. In that event, the Judge must sentence you to a minimum term of imprisonment.

[57] Mr Mason, stand down.


P R Heath