

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

**CRI-2015-012-2978
[2017] NZHC 232**

R

v

ALEXANDER JAMES WILLIAM MERRITT

Hearing: 17 February 2017
Appearances: R P Bates and R D Smith for the Crown
M A Stevens and A J Logan for the Defendant
Sentencing: 17 February 2017

SENTENCING NOTES OF NICHOLAS DAVIDSON J

[Mr Merritt you may remain seated until the end of my remarks]

Your appearance today

[1] Alexander Merritt: You appear for sentence for the murder of Ms Karin Ross in the early hours of Wednesday 2 December 2015.

[2] I acknowledge Ms Ross's family who are here this morning. Your grief and the profound effect on your lives will be reflected in this sentencing. I express the sympathy of the Court, and of the community to you.

[3] A life sentence of imprisonment for murder must be imposed unless the Court considers that would be manifestly unjust.¹ Your counsel, Mrs Stevens with Mr Logan, accept that you must be sentenced to life imprisonment.

[4] I am required by law to determine the minimum period you will spend in prison before you become eligible for release on parole. Your counsel submit that should be the minimum, absolute minimum, of 10 years, and the Crown submits 14½ years.

The facts

[5] Your defence was mounted with considerable skill by Mrs Stevens and Mr Logan, that this was a “who dunnit”, and that the Crown had not proved that you murdered Ms Ross. The jury found otherwise. The evidence was overwhelming.

[6] I must first consider the circumstances in which Ms Ross died, your reasons, and your attitude to her death. You still deny that you murdered Ms Ross.

[7] There is firm professional opinion that you have, or lie on the Autistic Spectrum Disorder range or (“ASD”). There are thorough reports to which I will refer, and they influence the sentence which I will impose. I hope they allow Ms Ross’ family a better understanding of your underlying makeup. Without that her death is simply inexplicable. Your attitude to her is callous and cruel.

[8] Ms Ross was 51 years old, your supervisor with Spotless Cleaning. You were 20 years old. A dislike and conflict developed between you and Ms Ross. The background was the way you parked your car, the way Ms Ross parked, and you thought you were badly treated by her.

[9] When a disciplinary process unfolded, your reaction was extreme. You said you would like to burn her family in front of her and, your words, “that lazy bitch, it would be fine if she died”. These might seem overblown threats, but in their malice they tragically came to pass.

¹ Sentencing Act 2002, s 102(1).

[10] A disciplinary meeting was to be held on 1 December 2015, the day before Ms Ross died, but that did not eventuate. That evening at work your mother told you what was alleged against you. Anyone reading this material would have thought it a minor matter, as Mrs Stevens submits.

[11] You finished work and went home to where you lived with your parents and brothers. Ms Ross finished her work at about 1am on 2 December 2015. She returned to the Spotless premises at Strathallan Street to unload her van.

[12] On the evidence accepted by the jury, you drove your brother's Toyota car there. You had a tack hammer and gloves and wore a hooded jacket. Your cell phone pulled away from your home at 1:34am. No one saw what happened. There was no video footage, but you attacked Ms Ross with a hammer and struck her repeatedly around the head. There were multiple bruises to her arms, consistent with the evidence from the pathologist, Dr Sage, of her fighting to defend herself, for her life.

[13] Ms Ross's blood was found in and on the van and over a wide area. It is probable she tried to drive, as the van hit the skip in front. She fell to the ground in the car park and died there.

[14] The inference from the evidence is that you continued to strike her while she was on the ground, as Mr Bates submits.

[15] The blunt force injuries caused subdural and subarachnoid haemorrhage. There were 14 full thickness scalp lacerations, tearing or splitting wounds, several of these large and complex. There were extensive superficial injuries to the face and sides of her head, bruising on her temples, across the bridge of her nose and part of the forehead.

[16] Ms Ross's blood was found on the driver's side of the Toyota you drove. Blood stains were found on the recycling bin at your home, on some newspapers and a pizza box. A sweatshirt contained a small hammer wrapped in a piece of cloth, and in the right front pocket a rolled up single woollen glove was found. The sweatshirt,

the hammer, the cloth in the sweatshirt pocket, all had blood stains and hairs. The evidence was that Ms Ross' DNA was on some of these items, and your DNA.

[17] You went to work later that morning, on 2 December. Spotless workers noticed cuts and scratches to your face. You said you had done this to yourself in your sleep. Ms Ross' death was mentioned and you said "I don't care; you know how I feel about her".

[18] Neither drugs nor alcohol explain your behaviour. You are reported to use neither.

Victim Impact Statements

[19] Ms Ross' family have chosen not to speak today in Court, but I will convey what they have told the Court. You and the community should know the impact of this murder.

[20] Ms Ross is a mother of a son aged 17 and a daughter aged 20. The trauma and grief at the loss of their mother, with all the loving support she provided, can only be imagined.

[21] Ms Ross was the only child born to her own mother. Her father died many years ago. Ms Ross, her partner Mr Leckie, and children lived in two houses on the same section as her mother. Every day mother and daughter met. Her mother relied on her to take her to medical appointments, and to care for her. With considerable understatement she says "It has left a huge hole in my life" and "I always expected to die before my daughter".

[22] Ms Ross was the main income earner. The two homes are on a single title so the pressure to retain them without her income is real. The only satisfaction her mother can take from this prosecution is that you will be held to account.

[23] Her partner, Mr Leckie was with Ms Ross for 10 years. They knew each other most of their lives. He helped to raise her two children, and will continue to support them. They had plans to move south to a small farm, but as Mr Leckie says

“That dream won’t be happening now”. He and Ms Ross complemented each other. She was his rock. He says, “I miss her every day and it is difficult for me to express just how much of an impact her death has had on me and the family”. He hopes that they will not have to sell the family home. Mr Leckie needs counselling for his grief and believes it will be some years before he is back on an even keel.

[24] He expresses his bewilderment. He finds it unbelievable she was killed *over such a trivial issue*, with the result causing so much harm for everyone. He says you have thrown your life away too, but you have deprived Ms Ross from growing old with her family, and caused so much grief for those who loved her.

[25] This tragedy was the result of your becoming angered by events at work. For this, you took Ms Ross’ life. For the purpose of sentencing, I have had to reflect on these facts with the assistance of health professionals, a report to the Court from the Department of Corrections, and the submissions of counsel with reference to these.

[26] I have to say I have been much assisted by the reports and submissions I have received.

[27] I hope the family of Ms Ross and the community gain some understanding of what otherwise is beyond comprehension, as I outline the background to this otherwise senseless murder.

Your personal circumstances

Report to Court from Corrections

[28] A report has been made to the Court by Corrections.

[29] You were born on 15 December 1994, and 20 years old when Ms Ross died. You are now 22 years old. You have no previous convictions. You attended primary, and very briefly secondary schools. You are dyslexic. Your mother provided home schooling. You were isolated, with few, if any, friends. You lived at home with your parents, who I have to say the evidence have shows have stood with you before and through this trial process. You share an interest in classic cars with your father.

[30] Your mother and father tried to help you get work but your reading ability prevented your undertaking preliminary courses and applications on line. Your mother helped you get a permanent position at Spotless Cleaners in 2013. There are reports of some good quality work by you when there.

[31] The report says that you disliked Ms Ross. You take no responsibility for your crime, which you continue to deny. Thus you show no remorse for her death. You showed no emotion about any subjects discussed. You exhibited a strong sense of entitlement and distorted thinking and deny experiencing strong emotions. You were unable to demonstrate any empathy for Ms Ross or her family, or your family, even allowing for your denial that you took her life.

[32] Your age and lack of criminal history stand against the gravity of this murder. Your likelihood of re-offending is assessed as medium, but the risk of harm you pose to others is high. That risk is said to be increased given the lack of insight, and your disassociation from your behaviour, and the consequence of your behaviour.

[33] You have a limited emotional capacity or ability to recognise or interpret other's emotions, and you are unable to consider the impact of death or bereavement on yourself or others.

[34] You could not identify anything to the report writer you have missed since you have been in custody, as Mrs Stevens has just told the Court. You said that you "do not do emotions". You seem to have comfortably adjusted to the prison regime, reassured by its structure. Your unpredictability and extreme out of character behaviour will have to be understood and addressed while you are in prison. Your mother says you were not prone to angry outbursts and there was no clue that you were planning anything, as that was not part of your makeup.

Your attitude to Ms Ross

[35] Mr Kelsall worked for Spotless and he thought Ms Ross tended to talk down to you and he did not think that fair. When you told him you would like to burn her family alive in front of her, you were challenged by Mr Kelsall and you told him that was not an overreaction, and she would deserve it. You were described as livid,

“very very angry”. This was about three weeks before 1 December 2015. You were critical of her work ethic and called her a “lazy bitch”. You said words to the effect “Lazy bitch. It would be fine if she died”.

[36] Those would seem idle remarks, extreme but getting something off your chest. It did not prove the case. You killed Ms Ross in a sudden, violent and callous way.

[37] Mr Kelsall said you would show no emotion when talking about Ms Ross, but when you got frustrated and angry you would “just look furious”, and “there wasn’t much middle ground between nothing and furious...”. Evidence which rather is reflected in the submission that Mrs Stevens has just made to me about the way someone with your condition may react when challenged.

[38] The morning she died, Mr Kelsall asked about the scratches and marks on your face. When he discussed Ms Ross’ death you said “I don’t care. You know how I feel about her”.

[39] Detective Smail video interviewed you. You described in minute detail your cleaning work on the night of 1-2 December. You told him that Ms Ross would talk quite rudely to you and Mr Kelsall.

[40] You told him that it was alleged you had not followed orders and gave “back talk”. You said this was “a load of lies”, and one allegation against you was wrong because “the date was wrong”.

[41] You explained that you were dyslexic. When asked about the statements read to you by your mother on the night of 1 December 2015 you said “Yea. Thought load of crap. And will go into this thing, thinking. Point out all the bloody lies and their crap and see how long it takes them to get fired for all this shit. Trying to get me fired on bullshit”.

[42] Detective Smail asked about the scratches and marks on your face and body. He tested your answer then put it to you that “You don’t want to tell me the whole truth just at the moment”. You answered “no”.

[43] When asked about your saying “I would like to burn her family in front of her”, you said “Yea. That make her suffer”. It was put to you that Mr Kelsall had said you were overreacting but you said “No it’s not she deserves it”. You told the Detective “It does sound like something I’d say”. You agreed that you said words to the effect that “She was a lazy bitch and I wouldn’t really care if she was dead”.

[44] Then Detective Smail said “You don’t care that she’s dead because she’s spoken to you rudely?”. You answered “Yea”.

[45] To the Court, and to Ms Ross’ family and those following this trial and sentencing, all this seems beyond understanding. To feel so strongly about such a minor matter that you would brutally kill Ms Ross, and then express your satisfaction or not caring with the result, demonstrates something in your makeup which must be identified and assessed.

Reports

[46] The Court has been provided reports from Dr Justin Barry-Walsh, forensic psychiatrist, Louisa Medlicott, registered clinical psychologist, and Dr David Bathgate, countersigned by Dr Anthony Fernando, consultant psychiatrists.

[47] Dr Barry-Walsh made a second report in December 2016 and used those earlier reports. Mrs Stevens is quite right to lay emphasis on your long background of early childhood behavioural disturbance and learning difficulties, and other characteristics which point to clearly, the Autistic Spectrum Disorder.

[48] Dr Barry-Walsh observed some of this in his interview with you and concluded on balance you have an autistic disorder and was at first rather equivocal but with the later material available to him he has reached a firm diagnosis of ASD and I agree with that diagnosis to the extent I take it from the reports before me and the Crown I think with responsibility has acknowledged that as well.

[49] Dr Barry-Walsh in his latest report says the diagnosis of ASD is clinically sustainable and robust. Again, Mrs Stevens is right, ASD is a lifelong disorder first presenting in childhood, with impairments in social interaction, language, diminished imagination, and a narrow range of routines and interest.

[50] Of consequence to this sentencing, Dr Barry-Walsh says the contribution of ASD to all the many difficulties in your life has not been recognised and there has been no effective response. It could be that the relatively mild nature of the disorder in your case has meant it was not diagnosed.

[51] Reference to the “mild” end of the ASD spectrum should not, in my view and Dr Barry-Walsh’s view, trivialise your impairment, as your problems have been lifelong. Your disturbance behaviourally, your temper tantrums and anger, the way you have responded to challenges and other people, your ASD condition, your learning difficulties, and your family environment have all come together to make you what you are today and were on the night of 1 and 2 December (2015).

[52] Dr Barry-Walsh considers the murder a grossly disproportionate response to growing employment difficulties, and antagonism with Ms Ross. You developed an obsessive preoccupation with her and those issues and the situation escalated. You have limited ability to see things from another person’s standpoint which affects your capacity to feel for others and to consider the consequences of your actions.

[53] There are treatments and programmes for ASD of which you have never had the benefit.

[54] Integration with other interventions and risk management may improve your functioning. I will come back to this at the end of these Remarks. You do suffer from a mental disorder as the law understands it. It is a real factor in your makeup and part of the reason that you killed Ms Ross, and for your complete indifference to her and her family.

Court’s perspective

[55] My own perspective drawn from this is as follows.

[56] Your world has over time shrunk around you. This job at Spotless clearly meant everything to you. You had no friends and limited interests, other than that with your father, in old cars or classic cars. You were isolated. You were also defiant and difficult. Faced with the possibility you might lose your employment, and because you had a problem with Ms Ross, you decided that night to take her life and you thought rid yourself of the problem. Your reaction was extreme, rational only to you, cold blooded and callous, and afterwards you thought you could simply go on with your life, having dealt with the problem you thought Ms Ross posed for you.

[57] I think Dr Barry-Walsh is right, that the missing diagnosis of ASD means that your abnormal understanding of yourself and other people, and your thinking, has never been addressed. No one could have foreseen the risk that you posed, but it was real and it crystallised and you responded decisively and brutally when you were confronted with something which threatened the centre of your world – your job – your income – your status.

[58] I know all of this will come as cold comfort to Ms Ross' family, but it may help them to understand your makeup which has left you with none of the understanding of other people, none of the feelings we naturally have for one another, and no regret in your case at having taken Ms Ross' life and devastating her family. For you, it was simply dealing with a problem.

Purposes and principles of sentencing

[59] I turn now to the purposes and principles of sentencing. You have committed the most serious of crimes and your sentence must reflect that. The law requires that I must also consider your personal circumstances in various ways and you were still, I regard, a young man at the time of this offending without any criminal record. Unlike Ms Ross, you should have a long life ahead of you. I bring to account your mental state and your psychological makeup, and I must reach a sentence which is not crushing and which encourages you to recognise that there is a path which you may choose to follow.

[60] All counsel acknowledge that I must sentence you to life imprisonment. I must also now consider when you may be released on parole, should parole be granted, after you have served what I decide is the minimum period of imprisonment.

[61] The absolute minimum period must be 10 years, as Mrs Stevens has recognised.² But I must impose a minimum period of imprisonment of at least 17 years if I consider that the Crown is right, the murder was committed with a high level of brutality, cruelty, depravity or callousness unless that sentence would be manifestly unjust.

[62] These matters are first addressed in sections 103 and 104 of the Sentencing Act. The minimum period must be that term which the Court considers necessary to meet the purposes of holding you to account for the harm done to Ms Ross and the community, to denounce that conduct, to deter you or others from committing the same or similar offence, and protecting the community from you.

[63] Section 104(1) is engaged when a murder has certain features which Parliament has identified as requiring a 17 year minimum term. Only one of the subsections involved, in section 104, has application in this case. I want to explain how I am directed to proceed to consider whether I should impose a minimum non parole period, starting from a 17 year period and reduce that if there is manifest injustice in that.

[64] The first step is to determine culpability in relation to what is called the “standard range of murders”, bring to account aggravating factors set out in s 104 of the Act and any other aggravating factors and any mitigation. The policy of s 104 applies and if the murder is sufficiently serious to justify a minimum term of imprisonment of not less than 17 years then in that way the intended effect of s 104 will be given full weight.

[65] Then I have to decide what minimum period is justified in all the circumstances of the case. The underlying purpose of s 104 is to ensure that persons

² Section 103(2) Sentencing Act 2002.

who commit murders which fall within it are not released for a lengthy period of time. That will be 17 years or more, or if it is manifestly unjust, something less.

Section 104(1)(e)

[66] The Court of Appeal in *Gottermeyer*,³ has said that for a s 104 factor to apply it should be exceptional, but the list is not exhaustive. Here only one matter is advanced by the Crown, s 104(1)(e) which reads:

- (e) if the murder was committed with a high level of brutality, cruelty, depravity, or callousness;

[67] The Court of Appeal has said that “brutality” is “savage violence”, “cruelty” is “callous indifference”, and “callousness” is “insensitive and cruel disregard for others”. It seems to me that the word depravity has little or no application in this particular case. The other three descriptions do.

[68] The brutality, cruelty or callousness must be at a high level, and many murders fall into that category as Mrs Stevens says. But the “high level” requirement means there will be distinctions drawn between different murders depending on the brutality, cruelty or callousness.

Submissions

Crown

[69] The Crown submits that there are aggravating features of the crime which include a limited element of premeditation, in other words, some planning, including use of gloves, the disproportionate response to a perceived slight, the shock nature of the attack on a vulnerable Ms Ross, the use of hammer, the multiple blows to Ms Ross, and then while she was on the ground, and then the attempt, in a naïve way, to dispose of the items involved, and to return to work with visible marks of the confrontation and your expressed disinterest in Ms Ross’ death.

[70] The Crown acknowledges the consensus that you have ASD at the mild end of the range and it says that there is application of s 104(1)(e) because this is a high

³ *R v Gottermeyer* [2014] NZCA 205 at [78].

level degree of brutality, cruelty or callousness. The callousness may be addressed not just by the crime itself, but conduct afterwards.

[71] The Crown recognises properly the ASD diagnosis and submits a credit in the region of 15 to 20 per cent, to reflect other cases where mental disorder is involved. The Crown acknowledges this may turn in part on your rehabilitative prospects, and that the need for deterrence may be moderated by the unusual factors in this case. With the lack of remorse and insight and the link to your ASD, on that basis it submits a minimum period of 14½ years imprisonment should be imposed.

Defence

[72] Mrs Stevens submits s 104(1)(e) does not apply. All murders are, to some degree brutal, cruel, depraved or callous. Your level of violence is submitted not “out of the ordinary” for a murder and not therefore an *exceptional* circumstances. She refers to a number of authorities which I have read, to say that this murder does not meet that test.⁴

[73] Mrs Stevens advances Dr Sage’s evidence that here the blunt force injuries, what is called posterior fossa subdural and subarachnoid haemorrhage and multiple blunt force impact to the head using an instrument. The volume of blood loss was inconsequential, in terms of its effect on the body as a whole but there is a limited capacity in this posterior fossa, and bleeding surrounding the vital centres and the brain stem meant quite modest flows of blood into the space proved fatal, as Dr Sage said. There was no skull fracture, and Mrs Stevens says that means less force was used and the wounds were confined to the other parts of the head. Death did not come from bleeding from scalp wounds. The tack hammer was light compared with a carpenter’s hammer. Mrs Stevens acknowledges the brutality of 14 scalp wounds inflicted with a tack hammer, but not to the required high level of brutality for the purpose of s 104(1)(e).

⁴ *R v Boskell* [2015] NZHC 286; *R v Namana* [[2001] 2 NZLR 448; and *R v Weatherston* [CRI-2008-012-137, 15 September 2009, para [23].

[74] On the other hand, today, the Court has heard the submission by Mr Bates that the fact that there were no skull fractures merely prolonged the nature and severity of the attack that the victim had to endure.

Aggravating and mitigating factors of the offending

[75] In the way directed by the Court of Appeal, I address briefly aggravating and mitigating factors of the offending. There was not much planning but there was enough planning to proceed in a stealthy way to Strathallan Street with gloves, a hammer and for the purpose of killing Ms Ross. The jury has found you intended to kill her.

[76] You had it in your head that you would not mind seeing Ms Ross dead and I conclude that you moved rapidly to the decision to kill Ms Ross when your mother read out what was alleged against you that night. You used a weapon,⁵ you struck her repeatedly to the head.⁶ It was a callous, sudden, brutal attack on a woman who was in a weak position to resist such a determined violence without warning. You left Ms Ross dead or dying and fled the scene. You showed no remorse then, the next day, or in later interviews, or indeed now. This was a vengeful attack for a perceived threat and you display a remarkably cold blooded indifference to her plight and that of the family. These aggravating factors indicate a minimum period of imprisonment of more than 10 years is appropriate.

Personal mitigating factors

[77] At a personal level, you are young and have no criminal record. The Crown recognises that your response was so disproportionate and violent and there is something in your makeup to help explain what is otherwise inexplicable. You have had multiple barriers to a normal life, and normal development, and it may be that as a young man some of the things which develop with maturity are still to take place in your case.⁷

⁵ Section 9(1)(a) Sentencing Act 2002.

⁶ Sections 9(1)(a) and s 9(4)(a) Sentencing Act 2002.

⁷ *R v Churchward* [2011].

[78] I conclude you are truly unable to show remorse because you do not feel it. You do not pretend remorse because apart from denying the murder you do not make the connection between what you did and the devastation to Ms Ross and her family. Your ASD condition is, I conclude, a real factor in your makeup and has contributed to the distorted and disassociated view you hold of yourself and others.

[79] I am conscious you are a young man still, and to begin a life sentence with a too long a period before you are even eligible for parole is in the end counterproductive as one day you will be released, but only if that is a safe course for the community and you, and you must look to that.

[80] I turn now to the critical considerations to conclude this sentencing.

Does s 104(1)(e) apply? - Discussion

[81] First, does s 104(1)(e) apply? There has been judicial scepticism about whether there really is a standard range of murder, but benchmarking is required for sentencing..

[82] The Crown rests its position on the fact that the murder was committed with a high level of brutality, cruelty, or callousness under that section and this is to be approached purposively rather than mechanically, at a “high level”. Your conduct after the murder, and your attitude, is properly part of these considerations.⁸

[83] I have considered all the sentencings put to me by counsel and others. I refer briefly to one or two only.

[84] In *R v Churchward and Te Wini*,⁹ the Court held an assault with weapons which caused 12 separate injuries to the head and face of a frail, elderly man in his own bed was as bad, if not worse, than stabbing someone or kicking them in the head, and a minimum term of 17 years imprisonment was imposed.

⁸ *R v Frost* [2008] NZCA 406 at [40].

⁹ *R v Churchward and Te Wini*, HC, Tauranga, 18 December 2009, Venning J.

[85] In *Wyjuana Smith v R*,¹⁰ the defendant went to the victim's home and struck him with a hammer, some 24 blows to the face, head and body and the Court found that the offending was at the high level of brutality and met the threshold for the 17 year minimum term.¹¹ Allowing for the defendant's guilty plea, his age (18), his "dreadful upbringing and psychological difficulties" a minimum period of 13 years was imposed.

[86] In *Gottermeyer*,¹² the Court of Appeal addressed the murder by a man of his wife by multiple lacerations, stabbing lacerations and cutting wounds. She bled to death with a young daughter in the house. The High Court Judge had imposed a minimum term of 10 years and the Crown sought a minimum of 15 years. The sentencing Judge decided s 104 was not applicable and that led to the 10 year minimum period. The Court of Appeal concluded that s 104(1)(e) did apply, that which the Crown advances here, and imposed a minimum non parole period of 12 years.

[87] I conclude that s 104(1)(e) is engaged in this case, reserved for the most serious murders.¹³ You took decisive steps to kill Ms Ross, you killed her brutally, and you deny, and do not care about her death and indeed seem to be satisfied that she died. This was brutality and callousness of a very high order.

Manifest injustice

[88] I turn to the question of manifest injustice.

[89] In New Zealand the mental health of a defendant may be a relevant mitigating factor and may reduce the moral culpability so that the requirements for general and specific deterrence may be moderated.¹⁴ In the case of *Nixon v R*,¹⁵ there was a belated diagnosis of ASD and the Court of Appeal said that:¹⁶

¹⁰ *Wujuana Smith v R* [2016] NZHC 2581.

¹¹ At [15].

¹² *R v Gottermeyer* [2014] NZCA 205 at [78].

¹³ *R v Williams* [2005] 2 NZLR 506 (CA).

¹⁴ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [93] referring to *E (CA689/2010 v R* at [70].

¹⁵ *Nixon v R* [2016] NZCA 589.

¹⁶ At [42].

A mental disorder falling short of exculpating insanity may be capable of mitigating a sentence either because: if causative of the offending, it moderates culpability; it renders less appropriate or more subjectively punitive a sentence of imprisonment; or because of a combination of those reasons. The moderation of culpability follows from the principle that any general criminal liability is founded on conduct performed rationally by one who exercises a willed choice to offend.

[90] You did make a willed choice but sentencing does have “an essentially moral base” and “lesser moral fault requires recognition”.

[91] Hence, in *Gottermeyer* with the allowance for a guilty plea, remorse and good record, the 17 years reduced to 15 years and a further 20 per cent was taken off to recognise the reduced moral culpability and to moderate the requirement for deterrence.¹⁷

[92] The Crown says you appear to be at a high risk of causing further harm having expressed intense anger towards persons other than Ms Ross as well, including your mother, over trivial matters. You did tell Dr Barry-Walsh you would have no problem shooting someone when asked about comments you had made to that effect. It is not clear that you have good rehabilitative prospects, or that the need for deterrence should be moderated as in *Gottermeyer*. But the Crown still points to a credit in the region of 15 to 20 per cent.

[93] You have no prior record and you are still young in my view. You have a mental disorder which should have been addressed had it been recognised earlier. I conclude there is no doubt about that now. You simply do not have it in you to understand the significance of what you have done, and how it affects others.

[94] There are many questions to ask about your future in society, which will be addressed only over time. You are at risk of further violence as things stand, and it will only be after a long, cautious and thorough evaluation and care that the risk may be reduced to an acceptable level.

[95] I have concluded the Crown submission by Mr Bates and Mr Smith is well founded and s 104(1)(e) applies, but Mrs Stevens and Mr Logan are correct to

¹⁷ At [95].

remind me I should recognise yours as a real mental disorder, and it is not your fault that years have passed without recognition of what is an influential ASD condition.

[96] That does not mean that you should not be held accountable. It is not a defence. You must be accountable for taking Ms Ross' life and there is still a denunciation and deterrent element required for you, and for others. There is still a need to protect other people.

[97] I therefore conclude there must be allowance for your age and the fact you have a clear record, and then a further allowance for your ASD condition as part of your overall psychology, in the order of some 20 per cent. I separate those two to produce the result which I will advise you in a few moments.

[98] The effect of the sentence I will shortly impose is that you will be sentenced to life imprisonment and under the control of the Department of Corrections for the rest of your life. The minimum period of imprisonment does not mean that you will then be released on parole, or that you should be. But after the minimum period has expired, you will have a chance to demonstrate to the Parole Board changes in your thinking which may make it safe to allow you to go back to the community.

[99] What sort of man the Parole Board sees before it depends on you and the help you receive and I hope when your counsel assist you, with others, to understand this sentencing, you will come to understand that it is likely that only be when you accept responsibility for your actions and admit what you have done and take advantage of the help that will be offered you, that you will be allowed parole. You are capable of working, and sticking to a task. The prospect of rehabilitation is before you, and one of the most significant things for the Court, and I expect the family of Ms Ross, is that at some point you account to her and to that family that you acknowledge what you have done.

Three Strikes

[100] The law requires I now give you a three strikes warning.

[101] Given your conviction for 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 which contains a list of these 'serious violent crimes.

- (1) If you are convicted of any one or more serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, you will serve that sentence without parole or early release.
- (2) If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment without parole unless it would be manifestly unjust to do so. In that event the Judge must sentence you to a minimum term of imprisonment.

Sentence

[102] Mr Merritt, please stand.

[103] On the charge of murder, I sentence you to life imprisonment. I order you serve a minimum period of imprisonment of 12 years.

[104] Please stand down.

.....
Nicholas Davidson J

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M A Stevens, Barrister, Dunedin

Concluding Comments

- (a) I want to make some concluding comments to counsel and those in Court.
- (b) The Police had to investigate and then the Crown adduce a great deal of evidence and did so in a thorough and well presented way. I want to commend them.
- (c) This trial, and the sentencing, has been closely covered by the media and during it I have had to explain evolving events and make various orders to ensure a fair trial process. I want to say the media co-operation and coverage was exemplary.
- (d) The trial has engendered strong emotions in a setting of considerable grief. I want to commend Ms Ross's family and wider family for exercising restraint and I am conscious that the firm but gentle hand of the security officers has assisted this. I want to acknowledge you.
- (e) I remarked after verdict, this is yet another example of a jury painstakingly and attentively going about its work. There were disruptions for the jury towards the end of the trial which could not be helped which they, with the Foreperson, resolved in a highly responsible and co-operative manner.
- (f) These acknowledgements are intended to reflect the Court's appreciation of the well tried and orderly disposition of the Court's business, much assisted here by the experience, the competence and restraint of counsel and the officers of the Dunedin Court.
- (g) Thank you. I will retire.