

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

**CRI-2011-044-6255  
CRI-2011-044-7906  
[2012] NZHC 2746**

**QUEEN**

v

**AKSHAY ANAND CHAND**

Hearing: 18 October 2012

Counsel: S Moore SC and B Smith for Crown  
M K Lowe for Mr Chand

Judgment: 18 October 2012

---

**SENTENCE OF WINKELMANN J**

---

Meredith Connell, Auckland

[ben.smith@meredithconnell.co.nz](mailto:ben.smith@meredithconnell.co.nz)  
[Simon.Moore@meredithconnell.co.nz](mailto:Simon.Moore@meredithconnell.co.nz)  
[mk.lowe@xtra.co.nz](mailto:mk.lowe@xtra.co.nz)

Mary-Anne Lowe, Auckland

[1] Akshay Anand Chand you appear for sentence on charges of one count of kidnapping for which the maximum sentence is 14 years' imprisonment, one count of threatening to cause grievous bodily harm for which the maximum sentence is seven years' imprisonment, and one count of assault with intent to sexually violate for which the maximum sentence is 10 years' imprisonment. Having pleaded guilty to each of those charges you are convicted on them.

[2] Given your convictions for kidnapping and assault with intent to sexually violate, you are now subject to the three strikes law. I must therefore warn you 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'. I warn you as follows:

1. If you are convicted of any serious violence 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.
2. 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.

[3] The facts in connection with the offending for which you are to be sentenced today are as follows. On the morning of Tuesday 6 September 2011 you telephoned Christie Marceau. She was an acquaintance of yours. She was someone you turned to for emotional support from time to time. You told her you were at home and that you were going to kill yourself unless she came over to your house. Concerned about your wellbeing and fearing the worst, Christie drove over to your home. In an interview you gave to the Police after the incident, you said that your intention was to rape Christie because she had abandoned you and did not care what happened to you. You were seeking "vengeance". Before Christie arrived, you armed himself with a 20 centimetre long kitchen knife which you hid in the waistband of your

tracksuit pants. A few minutes later Christie arrived. You invited her in and locked the door behind her. Together you went to the sitting room, sitting opposite each other in separate chairs. There was no one else home. You began to discuss personal issues, and at some point you became agitated. You stood up and walked over to Christie. Standing in front of her you pulled the knife out of your waist band and demanded her cell phone, snatching it from her hand. You threatened that if she did not obey you or made attempts to make a noise or escape that you would knife her. You told her to take her clothes off and throw them over to you. Although she initially refused, following further threats from you, she handed over her jacket, top and track pants. She was left wearing only her underwear.

[4] You continued to tell Christie about your personal problems. Throughout she was terrified and tearful. She believed that she was about to be sexually assaulted or stabbed. She was detained in this manner by you for about 35 minutes before you changed your mind as to what you would do. You then told Christie that although it had initially been your intention to rape her, you had changed your mind and she could leave. You gave her back her phone and her clothing and allowed her to get dressed.

[5] You told her, however, that you were going to kill yourself by consuming some crushed pills (actually vitamin tablets he had crushed earlier). Although terrified, Christie again attempted to dissuade you from this course of action. She then left and returned to her home where her mother and grandmother took her to the local police station. You were arrested later that day by Police. You made a full statement admitting detaining Christie against her will, threatening her with a knife with the intention of raping her and threatening to stab her.

[6] You were initially detained in custody, and an application for bail was declined. You then wrote a letter to the court in support of a fresh application for bail in which you expressed deep remorse and a desire to make amends. Your application for bail was granted and you were released to your home, on a 24 hour curfew. Several weeks later you used that freedom to act out a plan to take Christie's life. As I found yesterday, you are for the purposes of the Court, not guilty on account of insanity, of the murder of Christie. For this reason you are being

sentenced today only in relation to the September offending, and it is that to which I now direct my remarks.

[7] Your actions had and continue to have a terrible and lasting impact on the family of Christie Marceau. I have gained some insight into the impact on Christie by reading the letter that she wrote to the Court in the context of the bail hearing, and also by reading some parts of the journal that she kept following your initial offending against her. Christie's parents have allowed me access to this. Following that kidnapping it is clear that she continued to be afraid of you. She was frightened that you would return to harm her or her family, and that fear only increased on your release on bail to a property nearby. Her journal also makes clear that she regarded her life as having been fundamentally changed by what you did to her. Notwithstanding that, she was struggling – and it seems to me struggling successfully – to work through her feelings in relation to your offending. It is clear that although you had harmed Christie, she was determined that she would not let this drag her into depression and she was beginning to make positive plans for the future for her and her family.

[8] I have also read the victim impact statements provided by Christie's mother and father who are in Court today, along with other members of their family. Mr Chand, because you are not being sentenced in respect of the killing of Christie, Christie's family have been asked to provide impact statements only in relation to the September offending. They observe that that is an artificial construct but one which they accept. I acknowledge the point that they make, because as they have said to me in their statements, this was a series of events – a terrible series of events. But as determined by me yesterday, because of your mental state, your culpability in relation to the September offending is far different than your culpability in relation to your actions in taking Christie's life.

[9] Both Mr and Mrs Marceau speak of their sense of having failed to protect Christie from you in September. Mr Marceau was away from home working in Australia and Mrs Marceau was also at work on that day. Following the offending they speak of the stress and the sorrow they experienced seeing Christie struggling to protect them from the effect on her of the offending, and they both say that this

became worse during the time that you were on bail. At that time, they observed the level of fear that she was having to deal with.

[10] Mr Marceau said that your actions have caused him to have ongoing fears for his family's safety. That is so even though the family now live in Australia. Mrs Marceau says that she lives with the fear of violence every day. Although there is a specific fear of you, there is also a general fear which she says has at times been crippling.

[11] I have received a pre-sentence report in relation to you, but it is apparent from reading that report that mental health issues affecting you mean that it will be of little value to me in sentencing you. I had the benefit yesterday of hearing two forensic psychiatrists give evidence as to your probable mental health history and your present mental health. Both Dr Chaplow and Professor Mellsop agree that you have a psychotic illness, most likely schizophrenia or Dr Chaplow thinks perhaps a schizophreniform illness. They both consider that you were suffering from it for most of 2011. When you kidnapped and assaulted Christie in September 2011 the illness was not as fully manifested as it subsequently became, but you were nevertheless suffering from paranoid delusions, personality change and lack of insight. Both Dr Chaplow and Professor Mellsop considered that although you were mentally ill in September, you knew that what you were doing was morally wrong, and it was for that reason that you did not carry through your original intention to rape. Your thinking was sufficiently coherent and rational to allow you to make that moral judgment, and ultimately at least, to act in a manner consistent with it.

[12] I acknowledge that today you are supported in Court by members of your family.

[13] I now turn to consider the submissions that have been made to me in relation to the sentence I should impose upon you.

[14] The Crown submits that a global starting point of between four and a half and five and a half years imprisonment is appropriate to reflect the totality of your offending on that day. It identifies a number of aggravating features of the offending

as follows: the extent of your premeditation, your use of a weapon in threatening violence. The Crown also points to the particular vulnerability of Christie, who was slight, and, by reason of your plan and how you executed it, physically isolated from others who could help her during the length of the detention of her, which was approximately 35 minutes. They also point to the extent of harm that you caused Christie.

[15] The Crown submits that the kidnapping charge alone would justify a starting point of three and a half years imprisonment, but a substantial uplift is necessary to reflect the additional offending. It therefore suggests an uplift of between one and two years to reflect that additional factor.

[16] As to matters by way of mitigation for you, the Crown acknowledges that you have no previous convictions. It also accepts that some discount is appropriate on the grounds of mental illness, but suggests that there should be no discount on account of your youth because mental illness rather than youth was likely to have played a far greater role in the offending than youth based neurology. It is now recognised by psychiatrists and psychologists that youth based neurology is associated with impulsive behaviour, and in particular with a phase of offending which occurs particularly in young men in their teens and early 20s. Moreover, the outcome of the s 20 hearing and disposition hearing is such that the rehabilitation considerations associated with youth, usually a powerful consideration, plays no part here. Your rehabilitative needs in connection with your mental health displace, or at least subsume the rehabilitative concerns usually associated with youth.

[17] Finally, in relation to the guilty plea, while acknowledging that you are entitled to some recognition of that in sentence, the Crown submits that it was not at the earliest opportunity and that the discount should be modest.

[18] Your counsel accepts that the starting point as identified by the Crown is appropriate. She identifies your youth at the time of the offending as a significant mitigating factor. You were 18 at the time that you kidnapped Christie in September 2011. She also points to your mental illness. But she says that youth should be given separate recognition because you were a young man struggling to deal with a

mental illness. She submits that separate recognition should be given for the remorse that you have shown, and as to an evidentiary basis for that she points to the evidence of Professor Mellsoy yesterday that he could not discount the remorse that you have now expressed is genuine. She submits that a discount of approximately 25% to 30% is appropriate for these factors. And in addition that a full 25% discount for an early guilty plea should be afforded to you because you made the plea at the first opportunity once you had the chance to make a fully informed decision in the light of Dr Chaplow's psychiatric assessment. On the whole, the defence contends that a global discount in the region of 50% should be applied.

[19] I have considered the various authorities that have been referred to me by the Crown, and by your counsel.<sup>1</sup> I accept the Crown's analysis that a starting point of three and a half years' imprisonment is appropriate in relation to the kidnapping charge. To that however there must be a substantial uplift for your additional offending on that day. Your threats to Christie involved the use of a knife. Christie was a vulnerable victim, detained by you for over half an hour. Your conduct put her in fear of her life. It was conduct designed not just to seek vengeance but also for the purpose of rape. You intended to terrify Christie and you did. For these reasons I consider that an uplift in sentence to five years' imprisonment is appropriate.

[20] Turning to matters that can be said on your behalf in relation to mitigation. It is true that you were young when you committed these offences – you were only 18. But I accept the Crown's submission, and for the reasons they advance, that there should be no separate reduction on account of youth. As to your mental state, I have heard the evidence of two psychiatrists in relation to your mental state at the time of this offending, and on the basis of that evidence, propose to allow a substantial discount on account of your mental health. It is apparent from the evidence of Dr Chaplow and Professor Mellsoy that your thought processes were likely to have been substantially affected by your mental illness. You are culpable at law for this offending as the evidence is that your thought processes were nevertheless sufficiently composed so that you were able to understand that what you were doing

---

<sup>1</sup> Particularly on the kidnapping charge: *R v Nevin* HC Auckland CRI-2005-004-18658, 12 September 2007; *R v Wharton* (2003) 20 CRNZ 109; *R v Oram* (2003) 20 CRNZ 87; *R v Silva* HC Auckland CRI-2003-004-38908.

was wrong. But the law gives recognition to the fact that mental illness reduces culpability for offending, and I accept that it did here. I also accept that there should be some limited recognition of the fact that you had not previously offended. For these matters together I allow an approximately a 30% reduction.

[21] I then turn to the credit that you should be given on account of your guilty plea. I accept your counsel's submission that It was reasonable to seek psychiatric assessment in relation to the availability of an insanity defence, particularly given the development of your mental illness, and to delay the plea until that was available. Responsible counsel would have advised you to do that, as is acknowledged in Court today by the Crown. But Dr Chaplow's report was received in June and that report provided no support for the insanity defence. Delay then occurred because of a defence request for a second opinion. That was an approach that was available to the defence, and I accept it was an approach which was responsibly taken. But in my assessment the defence of insanity had been sufficiently investigated for a fully informed decision as to plea to be made by you by June, on the basis of Dr Chaplow's report.

[22] I should say that I do not propose to give any recognition in sentencing you for remorse, separate to the recognition implicit in a discount for your guilty plea. This remorse is recently expressed and I am not satisfied it is genuine. I acknowledge what Professor Mellsop said, but that is not an evidentiary basis for a conclusion that you are genuinely remorseful. In saying this, I realise that given the severity of your illness you may well not have reached the point that you have confronted the nature of your conduct, your culpability for it and the harm that you have caused. Nevertheless I am satisfied that the credit that I give you for a guilty plea is sufficient recognition of your remorse.

[23] Having taken all these matters into account I consider that you should be entitled to a 15% discount on account of your guilty plea. I do not propose to give a full 25% discount because I consider there was approximately a three month delay following receipt of Dr Chaplow's report before your plea was entered.

[24] Mr Chand please stand. That brings me to a final sentence of three years imprisonment which is the sentence I impose on you for the count of kidnapping. I sentence you to one years' imprisonment on the count of threatening to cause grievous bodily harm, and two years on the count of assault with intent to sexually violate. All of these sentences are to be served concurrently.

[25] Yesterday I made an order detaining you as a special patient in terms of s 24 of the Criminal Procedure (Mentally Impaired Persons) Act. Pursuant to s 28 of that Act, when a term of imprisonment is imposed on an offender subject to detention as a special patient, the sentence runs during the currency of this order. This means that your sentence will run while you are detained as a special patient.

Winkelmann J