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WITNESS/CONNECTED PERSONS PURSUANT TO S 202 CRIMINAL
PROCEDURE ACT 2011. SEE**

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html>

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2018-092-7843
[2020] NZHC 1115**

THE QUEEN

v

**TOKO (ASHLEY) SHANE REI WINTER
KERRY TE AMO**

Counsel: N E Walker and J C Toebes for Crown
M E Goodwin and E I Haronga for Winter
S Tait and J M Hudson for Te Amo

Sentenced: 26 May 2020

Charges: Murder, kidnapping

Plea: Not Guilty

SENTENCING NOTES OF BREWER J

Solicitors/Counsel:
Kayes Fletcher Walker (Manukau) for Crown
Matthew Goodwin (Auckland) for Winter
Shane Tait (Manukau) for Te Amo

Introduction

[1] Ms Winter and Mr Te Amo, I have to sentence you on your convictions for kidnapping and murdering Dimetrius Pairama. The maximum penalty for murder is life imprisonment. The maximum finite sentence for kidnapping is 14 years' imprisonment. Ms Winter, in your case, because this offending was your second strike, I also have to consider whether you should be sentenced to life imprisonment without parole.

[2] It is important to realise that the sentences I will impose on you are not intended to somehow compensate Ms Pairama's family for what you did to her. Nothing that I can do could achieve that. You have heard this morning from members of Ms Pairama's family through their victim impact statements. I acknowledge that the pain and sense of loss they feel will not be made better by today's sentencing.

[3] I also make it clear that my task in sentencing you is to respond as the law requires and on behalf of the community to what the jury found you to have done. As a Judge, I will do that clinically and without emotion.

Background facts

[4] The facts of your case were established in evidence at the trial. However, I have to be careful when sentencing each of you to apply only the evidence which was admissible against each of you and which I accept beyond reasonable doubt. In particular, I will not use any of the contents of Ms Winter's police interview of 15 July 2018 against you, Mr Te Amo.

[5] This tragedy began on Friday, 6 July 2018. Ms Pairama was a vulnerable 17-year-old. She had learning difficulties and often acted like a 10-12 year old rather than someone in her late teens. She had personal problems and spent time sleeping rough on the streets of Auckland city. Nevertheless, she was described by one of her tutors as "beautiful, bubbly, happy, caring, just a lovely, lovely teenager".

[6] At some point on the evening of 6 July 2018 Ms Pairama encountered you two and the sisters MT, aged 16, and RT, aged 14. You, Ms Winter, were then aged 27 and you, Mr Te Amo, were then aged 24.

[7] It seems MT knew Ms Pairama from school. Mr Te Amo, it was said that you had some connection with MT but I note from what Mr Tait says that you clearly do not accept you had any connection with MT. Of course, you had never met Ms Pairama before and, Ms Winter, you had never met Ms Pairama either.

[8] Eventually, the five of you ended up at an abandoned property at Buckland Road. You two and MT got there first. RT and Ms Pairama arrived 20-30 minutes after you did. I am satisfied that by the time RT and Ms Pairama arrived the three of you had decided to do harm to Ms Pairama.

[9] I am not sure why the three of you decided to harm Ms Pairama. From what RT said in her evidence, I infer that MT had some grievance around rumours circulating which she attributed to Ms Pairama. There might have been a grievance about an ex-boyfriend. Mr Te Amo, I thought that you became involved because you supported MT. If that is not the case then I have no idea why you became involved. Ms Winter, you became involved, I believe, because you found the situation exciting and because of the way your personality had been shaped by your background. You say you thought that Ms Pairama had been spreading rumours about a friend of yours. I am not sure of that. You have a tendency to be dramatic as you showed in your police interview of 9 July 2018.

[10] In any event, RT said in evidence that when she and Ms Pairama arrived at the property you, Ms Winter, pulled her aside and told her she needed to hit Ms Pairama.

[11] Almost as soon as you all were in 308 Buckland Road the violence against Ms Pairama began. You, Ms Winter, accepted you gave Ms Pairama a hiding. You pulled her to the floor by her hair and punched her face and kicked her in the stomach. MT also assaulted Ms Pairama while she was on the ground. Ms Pairama was crying and asking for help.

[12] Then there was an incident that demonstrates both how vulnerable Ms Pairama was and how easily you, Ms Winter, were able to switch from being involved in a violent assault to projecting a facade of normality.

[13] Quite by chance, police officers came to the door of the property looking for someone. Ms Pairama went to the door and you, Ms Winter, went with her. To the police, it was obvious you were in charge. The police noticed Ms Pairama's distressed condition but Ms Pairama assured them there was nothing wrong. You joined in to assure the police that nothing was wrong. The police went away. The violence against Ms Pairama resumed.

[14] Mr Te Amo, when the police came you left the house through a window because you were scared Ms Pairama would make a complaint. That was your chance to remove yourself from what was happening. Instead, after the police had gone, you chose to go back into the house and continue to be involved with the violence against Ms Pairama.

[15] Ms Pairama was made to strip naked and to sit on a chair. Ms Winter, you and MT used tape to bind her to the chair. Ms Winter, you put tape over Ms Pairama's mouth because you did not want her screams to be heard.

[16] Mr Te Amo, I accept RT's evidence (and Mr Tait tells me that you accept) that you also helped tie Ms Pairama to the chair.

[17] After that, Ms Pairama was degraded, tortured and beaten further. Ms Winter, you and MT cut and shaved Ms Pairama's hair. MT fashioned a makeshift blowtorch using an aerosol can and a lighter. She used it on Ms Pairama's genital area and on her breasts. Ms Pairama screamed. RT said that there was one blast of fire directed at each region for a short time. The pathologist found charred pubic hair but no burns to the genitals and no burns to the chest area.

[18] Ms Winter, you told the police you poured milk powder over Ms Pairama's head. MT poured bleach over Ms Pairama's head. RT said she heard Ms Pairama cry out and complain about her eyes.

[19] Mr Te Amo, I accept RT's evidence that you joined in and beat Ms Pairama while she was tied naked to the chair. At some point the chair fell over. RT, who heard the beating but did not see it, thought you were breaking Ms Pairama's bones. The pathology evidence shows that she was mistaken and I accept also that the pathology did not reveal evidence of traumatic injury arising from your assault.

[20] Ms Winter, you told the police that around this time you gave Ms Pairama a second hiding during which you punched and kicked her.

[21] Around about this time it dawned on you all that if you released Ms Pairama she would likely go to the police. You had gone too far with your abuse of her. You held a meeting and you two and MT decided that Ms Pairama had to die. Ms Winter, you told Ms Pairama that she could choose whether to die by hanging or by being stabbed by you. You and Mr Te Amo went to see if you could find a shovel with which to bury Ms Pairama. You did not find one.

[22] On your return, Ms Pairama chose to be hanged.

[23] Between the three of you, you worked out how the hanging would take place. You found a wooden bar in a wardrobe and worked out you could place that across the top of a manhole in the ceiling and fashion a rope from torn sheets which could also be used to make a noose. Mr Te Amo, I am satisfied you were fully involved with these preparations and that you fashioned the noose that was used to hang Ms Pairama.

[24] Once the preparations had been made, including positioning a chair beneath the manhole, Ms Pairama was brought in. Her hands were still tied but her feet had been freed. She was still naked. Ms Pairama was made to stand on the chair and the noose was fixed around her head. The chair was then removed. The noose was too loose and Ms Pairama fell to the ground. Ms Winter, you told the police this is what happened. Mr Te Amo, I am satisfied that RT was told about this by one or more of you immediately after the event and I accept that in the circumstances what she was told was reliable.

[25] The noose was adjusted and Ms Pairama was again made to stand on the chair. The noose was again put around her neck and the chair removed. This time it worked. The three of you stood and watched Ms Pairama die.

[26] Mr Te Amo, after Ms Pairama was dead you cut her down. Ms Winter, you repaired your makeup. The three of you then agreed on how to dispose of her body. She was wrapped in sheets and plastic rubbish bags and stuffed into a drum which was at the back of the house. You planned to set fire to the house to conceal evidence of your presence and activities but your presence had been noted by neighbours who called out to you. You left the house.

[27] Neither of you displayed any sense of remorse at the time for what you had done. Ms Winter, you almost boasted of it, to the extent that you and MT took a young person back to the address to show her where you had disposed of Ms Pairama's body.

Discussion

[28] Ms Winter and Mr Te Amo, in this case I must sentence you to life imprisonment. A sentence of life imprisonment means what it says. You will both spend the rest of your lives in prison unless the Parole Board, at some time in the future, decides you are safe to be released into the community. My task is to decide how long each of you should remain in prison before the Parole Board can even consider whether you are safe to reintroduce into the community. And, Ms Winter, as I have said, because this is a second strike offence, I also have to consider whether it would be manifestly unjust for you to have no prospect of parole ever.

[29] What I am going to do is decide what your minimum periods of imprisonment should be, applying the standard principles of sentencing.¹ Then I will look at the statutory provisions which might increase those periods. In doing this I am going to take a global view of your offending and not separate your culpability for the kidnapping from the murder. Finally, I will take into account your personal circumstances.

¹ Sentencing Act 2002, ss 7-9.

[30] I consider these factors to be relevant:

- (a) Ms Pairama was murdered so that you would avoid criminal responsibility for detaining her and subjecting her to the violence and degradation I have described.
- (b) The method of murder required planning and preparation, although I accept this took place within a reasonably short period of time and I do not regard this factor as the most important.
- (c) The murder was committed with a high level of cruelty, depravity and callousness.
- (d) Ms Pairama was particularly vulnerable because of her intellectual limitations, her young age, the physical mistreatment she had been subjected to before being hanged, the fact there were three of you, and because her hands were bound.

[31] I have been referred to a number of other cases which I will not discuss with you but will list in the written record of this sentencing.²

[32] The Crown submits that for each of you a starting point of 21 years should be adopted as your minimum period of imprisonment. Your counsel, Ms Winter, submits an appropriate starting point should be 18 or 19 years. Mr Te Amo, your counsel submits your starting point should be 20 years. Mr Tait this morning, having reviewed the cases, told me that he now considered that to be the appropriate starting point rather than the 19 years which was the point in his written submissions.

[33] Ms Winter, I find that you were the dominant offender. RT's description of your behaviour that night is compelling. You were excited, loud, made threats, involved your gang affiliation and you directed the others as to what they should do.

² *R v Williams* [2005] 2 NZLR 506 (CA); *Malik v R* [2015] NZCA 597; *R v Kumar* [2015] NZHC 954; *R v Goodman* [2008] NZCA 384; *Kaur v R* [2017] NZCA 465, citing *Desai v R* [2012] NZCA 534; *R v Gottermeyer* [2014] NZCA 205; *Bracken v R* [2016] NZCA 79; *R v Lothian* [2019] NZHC 2938; *R v Davies* [2017] NZHC 729.

Generally, you were in charge. I adopt a starting point for your minimum period of imprisonment of 21 years.

[34] Mr Te Amo, you were fully involved in everything that happened, both by approving and encouraging the brutality of the others and also by directly participating. However, your role was not as dominant as Ms Winter's. I adopt a starting point for your minimum period of imprisonment of 20 years.

Personal circumstances

Ms Winter

[35] Ms Winter, I have had the advantage of reading mental health reports on you by Ms Visser and by Dr Goodwin. I have also read a cultural report by Ms Turner. These reports are important because they shed light on your personality and give me insight into why you acted as you did.

[36] First, it is clear you have a moderate intellectual disability. You had a very difficult and damaging childhood (although much of this is self-reported). As Ms Turner says, from a Māori perspective you are culturally and spiritually impoverished. Dr Goodwin says that your developmental history and your criminal history are consistent with diagnoses of conduct disorder in childhood, as well as antisocial personality disorder in adulthood. Although you do not fulfil the criteria for mental disorder,³ you likely have a mental impairment.⁴

[37] There is also no doubt that you are a streetwise person who has lived independently for many years. As RT described, you can act in a dramatic and self-justifying way. I am sure the contrast between your first interview with the police recorded on 9 July 2018 and your interview on 15 July 2018 had a major impact on the jury. In the first interview you portrayed yourself in dramatic terms as a victim forced to watch your best friend suffer at the hands of the others who were there. In the second interview you largely admitted what you had done.

³ Mental Health (Compulsory Assessment and Treatment) Act 1992, ss 2 and 4.

⁴ Criminal Procedure (Mentally Impaired Persons) Act 2003.

[38] Overall, I assess you as an adult whose offending is partly explained by your intellectual disability and your deprived and difficult upbringing (which includes your cultural deprivation).

[39] You also have an extensive criminal record. Your first strike offending occurred in 2014 when you attempted to rape a woman in circumstances where you first assaulted her with weapons and also tried to force her to give you oral sex. The Crown submits I should uplift your minimum period of imprisonment to take account of this offending. Your counsel suggests a lesser uplift. I think your previous offending means there should be an uplift in the interests of community safety. I will adopt your lawyer's suggestion of six months. Your starting point is 21 years and six months.

[40] Taking your personal circumstances together, I find myself largely in agreement with Mr Goodwin. I have decided I will reduce the starting point by 10 per cent. That means that your minimum period of imprisonment is 19 years and four months on standard principles.

[41] I now have to consider whether, because this is a second strike, you should serve your sentence of life imprisonment without parole. I am satisfied that you should not. I am satisfied that given the circumstances of your offending and your personal circumstances it would be manifestly unjust for you to serve your life sentence without the prospect of parole.⁵

[42] My principal reason for reaching this decision is that I have accepted your intellectual disability, deprived upbringing and cultural impoverishment are causative factors in your offending. This does not excuse your offending or to the slightest degree condone it. You are an adult and you made your choices. But it would be wrong, particularly at your age, and against the background I have described, to require you to serve your sentence with no hope ever of parole. It would be a wholly disproportionate sentence.⁶ The sentence I will impose means that if you can

⁵ Sentencing Act 2002, s 86E.

⁶ *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR 602 at [108](a) and (c)(ii).

eventually persuade the Parole Board that you no longer are a danger to the community then you have the hope of release into the community.

Mr Te Amo

[43] Mr Te Amo, in addition to your pre-sentence report and the submissions of Mr Tait, I have had the benefit of a report by Mr Skelton, a registered clinical psychologist, and a cultural report by Ms Turner.

[44] Your upbringing was not an easy one, but neither was it marked with the sort of abuse and deprivation that the Court so often sees in young violent offenders. Your parents were hardworking and they stayed together until your mother died when you were 19 years old. You attended kohanga reo pre-school and you spent the first two years of your primary school at a bilingual school. Thereafter you had little contact with your Māori heritage. Your parents drank heavily and you experienced little consistent discipline in your formative years. You took early to drugs and alcohol, dropped out of school and became involved with gangs (something very much a part of your family experience).

[45] You became involved in petty crime which became more serious by 2017. On 16 January 2018 you were sentenced to one year and two months' imprisonment for offences of violence and dishonesty.

[46] You chose to live on the streets. You enjoyed being able to live your life without rules. You used drugs and alcohol extensively.

[47] Mr Skelton in his report says this:

A combination of drug and alcohol intoxication, an established pattern of low self-control, a history of emotion suppression and vulnerability to the influence of others, and a dominant co-offender who had a strong grievance against the 17 year old female victim, may explain why Mr Te Amo exhibited the capacity to engage in extreme violence.

[48] You are unable to explain why it was that you participated in the violence against and murder of Ms Pairama. From what I have read, you cannot explain it to yourself. I am satisfied you are remorseful and that you have prospects of

rehabilitation. You are engaging with programmes offered to you in prison and there is always the possibility that re-engagement with your Māori heritage might provide you with the pride and self-worth which you lack.

[49] To recognise these aspects of your situation, I will reduce your minimum period of imprisonment by 5 per cent. I will disregard your criminal history.

Sentence

[50] Ms Winter, on the charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 19 years and four months.

[51] On the charge of kidnapping, I sentence you to seven years' imprisonment.

[52] Mr Te Amo, on the charge of murder, I sentence you to life imprisonment with a minimum period of imprisonment of 19 years.

[53] On the charge of kidnapping, I sentence you to seven years' imprisonment.

[54] You may stand down.

Brewer J