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R v Reekers HC Auckland CRI 2008-029-658 [2010] NZHC 540 (20 April 2010)

Last Updated: 10 May 2010

IN THE HIGH COURT OF NEW ZEALAND

AUCKLAND REGISTRY

CRI-2008-029-000658

THE QUEEN

v

JOSEPH MARTIN REEKERS

Hearing: 20 April 2010

Counsel: K Raftery, K Glubb and J Carruthers for the Crown

C Comeskey and J Soondram for the prisoner

Judgment: 20 April 2010

SENTENCING REMARKS OF STEVENS J

Solicitors/Counsel :

Crown Solicitor, PO Box 2213, Shortland Street, Auckland 1140 C Comeskey, PO Box 4304, Shortland Street, Auckland 1140

R V JOSEPH MARTIN REEKERS HC AK CRI-2008-029-000658 20 April 2010

Introduction

[1] Joesph Martin Reekers, you appear for sentence today having pleaded guilty

to one count of murder under the Crimes Act 1961, for which the mandatory penalty is life imprisonment.

[2] For the purposes of sentencing today, I have been assisted by helpful and comprehensive submissions from both the Crown and your counsel, Mr Comeskey. In addition, I have heard the oral submissions presented in Court this afternoon. I have also received a pre-sentence report and a number of victim impact statements from members of Ms Jamieson's family and friends, each of which I have read. Ms Jamieson's sister read her statement to the Court this afternoon. I found these statements to be deeply moving and to portray meaningfully the various ways in which your actions in killing Ms Jamieson have devastated their lives, effects which continue to this day and probably for the rest of their lives.

Factual background

[3] On 12 February 2001, the victim, 23 year old Auckland woman Marie Jamieson was reported missing to the Balmoral Police Station. She had failed to return home after going out with friends in the early evening of 10 February 2001. Inquiries with associates established that she had been at the Tonic bar in central Auckland at about 8.45pm and had left intending to catch a bus to her home in Avondale. Video surveillance footage showed that she had gone to a liquor store and past a petrol station, both on New North Road. The last known sighting of her alive was of her walking past the petrol station at 9.17pm on 10 February 2001.

[4] On Monday, 19 February 2001 the naked and decomposing body of a female, together with clothes, including a skirt and underwear, were discovered at the rear of a factory in Ranui. This was a remote location and one not easily accessed. It was clear from the surroundings that the body had been carried into that area before being discarded. The post-mortem examination identified the victim as Marie Jamieson. The examination established that she had suffered at least three stab wounds to the

chest and it appeared she had also suffered a throat injury. Despite the advanced state of decomposition, the injury around her throat was consistent with it having been slit. You deny, however, that you slit Marie Jamieson's throat. The clothing items located near the body were also identified as having belonged to Ms Jamieson. Upon analysis they were found to contain semen stains and from those stains a DNA profile was obtained.

[5] The Police were unable to identify the person to whom the DNA belonged until April 2008 when you were convicted of theft. You were served with a suspect compulsion order and required to provide a DNA sample to the Police. That sample matched the one obtained from the Ms Jamieson's clothing.

[6] Inquiries established that at the time Ms Jamieson was killed you were living in a motor camp in West Auckland and that you had previously worked at the factory, behind which Ms Jamieson's body and clothing were discovered. When you were interviewed by the Henderson Police on 23 June 2008, you admitted that you had contact with Ms Jamieson on New North Road around the time she disappeared, but refused to say anything further and you declined to make a statement to the Police. You were released and interviewed again by the Police in Kaitaia on 26 June 2008. Again, you refused to make any statement to the Police.

[7] Given the circumstances surrounding the offence, there is limited evidence as to the exact sequence of events leading up to, and including, the murder. What is known is that you picked Ms Jamieson up from New North Road, Kingsland on 10 February 2001. Then, between that date and 19 February 2001 when she was discovered, you stabbed her at least three times to the chest and either stabbed or slit her throat. You then transported her to Ranui and took her to the rear of the factory where you left her naked body to rot.

Personal circumstances and pre-sentence report

[8] You are 51 years old. You were born in the Netherlands but came to New Zealand when you were five years old. You have two daughters with whom you report a good relationship. You are currently single.

[9] You grew up in Mount Albert where you completed your schooling. At the

conclusion of your secondary education, you embarked on a variety of jobs including car painting, welding and security work. In 1998 you became a solo father to your eldest daughter, who is now 23 years of age. You were also the sole caregiver of your 12 year old daughter. The probation officer stated that during the interview you spoke fondly of your family and noted that they have visited you regularly in prison.

[10] You stated to the probation officer that you and Ms Jamieson had spent the preceding four days prior to the murder in each others company, and that the interaction between you during that time was centered around the heavy use of methamphetamine. You stated that the murder occurred after an argument developed about drugs.

[11] The probation officer considered that you were remorseful for your offending. The report states that you insisted that your actions were not premeditated. You further stated that you pleaded guilty as you did not want to compound the anguish of her parents. You also disclosed to the probation officer that immediately following the incident you thought about turning yourself into the Police, but decided against it, given the consequences for you and your family.

[12] The probation officer considered that the main contributing factors in your offending are your propensity to use violence and your abuse of methamphetamine. You report a long history of drug abuse, though you say you have never been a big drinker. You advise that following the death of Ms Jamieson you voluntarily gave up drugs. You were in custody for a considerable period of time before the probation report, so it was not possible to do relevant screening tests. You are recorded as having chronic emphysema and Hepatitis C. You advise you are on medication for these illnesses.

[13] The probation officer stated that you did not attempt to minimise your involvement in the murder of the victim, and that you accepted full responsibility for your actions. The probation officer further stated that you are under no illusion as to the inevitability of being imprisoned for a considerable length of time, and that you plan to use your time in prison to further educate yourself.

[14] Based on severity of your offending and your extensive criminal history, the probation officer considered you to be at high risk of re-offending.

[15] The probation report records, on page three, that by way of explanation you stated that you had met Marie Jamieson a few times and were an acquaintance of her partner at the time. To this claim, the Crown provided a supplementary submission for the Court with further information.

[16] After the disappearance of Ms Jamieson, there was a very extensive Police inquiry directed at discovering her whereabouts. After the discovery of her body there was a further extensive inquiry and investigation to discover her killer. I am told that at no time during this phase of the inquiry, was your name mentioned as being an acquaintance, either of Ms Jamieson nor her partner. A total of 1,614 people were identified during this phase of the inquiry and you were not one of them. Nor was yours one of the 389 reference DNA samples sent for comparison with the unknown male DNA sample found on Ms Jamieson's underwear.

[17] Your name first came into the inquiry in February 2008 after ESR were asked to do a familial DNA search in relation to the crime scene sample, as Mr Raftery told the Court this afternoon. That indicated a likelihood of a male relative of someone who was in the database as being the offender. That is how you came to the attention of the authorities. Then, following your conviction for theft in April 2008, the Police obtained the match that identified you.

[18] Following the suggestion in the probation report that you were an acquaintance of Ms Jamieson, or more particularly her partner, the Police have gone back to the partner and other friends at the time. They state that they never knew you and that the first they had heard of your name was following your arrest in June 2008. When shown photographs of you from the time, they confirmed that they had never met you before.

[19] I mention these matters to put what you said to the probation officer in its proper context. This is because the Crown does not agree with your account, nor does it appear to be consistent with the facts that have been presented to this Court.

Previous convictions

[20] You have an extensive criminal history involving 90 convictions dating back to 1972. As Mr Raftery accepted, the majority of these are dishonesty related, with over 70 convictions for burglary and theft.

[21] Of relevance to your sentencing today, are your convictions in 1978 for rape and indecent assault, for which you were sentenced to five and a half years imprisonment. Also of relevance to your sentencing is your conviction in 1991 for male assaults female.

Crown submissions

[22] Mr Raftery accepted that the inevitable sentence is one of life imprisonment. The only issue for this Court is the length of the minimum term before which you may apply for parole. The Crown submitted that your offending falls within s 103 of the Sentencing Act 2002 (the Act), thus warranting a sentence of life imprisonment with a minimum non-parole period between, according to Mr Raftery's submissions this afternoon, 13 and 18 years.

[23] The Crown submitted that the purposes to be considered on sentencing involve holding you accountable for the harm done to the victim and her family, and to the community by your offending; the need to promote in you a sense of responsibility for that harm; and importantly to denounce your conduct, deterring you and others from committing the same or similar offences. Mr Raftery emphasised the interests of the victims and the need to protect the community from you.

[24] The aggravating factors that were emphasised included the use of a weapon; the manner of the disposal of Ms Jamieson's body and the impact on the victims, which is said to be profound and devastating. I agree with that observation. Finally, in terms of aggravating factors, there are obviously your previous convictions.

[25] Apart from the mitigating factor of your guilty plea, the Crown was unaware of any other relevant mitigating factor.

[26] My attention was drawn to a number of cases including *R v Abraham* CA139/03, 330/03, 28 October 2003, *R v Hoko* CA420/02, 30 June 2003, and *R v Wallace* HC New Plymouth CRI 2006-043-00292, 5 October 2007, which I have considered.

[27] The Crown recognised that you should be given a discount for your guilty plea, and a period of between nine and 12 months was suggested. So it was left to the Court's discretion to fix an appropriate sentence in terms of the minimum period of imprisonment between 13 and 18 years.

Defence submissions

[28] Mr Comeskey, on your behalf, accepted that the appropriate penalty in this case is life imprisonment, and that there are no circumstances that would make such a sentence manifestly unjust. In other words, the very minimum non-parole period would be at least ten years. But Mr Comeskey responsibly accepted that there are aggravating features here that warrant a departure from the statutory minimum period of ten years, but not to the same extent submitted by the Crown.

[29] Mr Comeskey acknowledged the use of a weapon, the manner of disposal of the victim's body and the effect on the victims. He submitted that limited weight ought to be attached to the manner of disposal of the body and sought to differentiate the facts in the *Abraham* case, to which I was referred. Mr Comeskey did accept, however, that the impact on the victims, including of course the ultimate price paid by Ms Jamieson, to be an aggravating factor that can properly be taken into account.

[30] In terms of aggravating factors, Mr Comeskey accepted that an uplift is appropriate to take into account your previous convictions. However, he referred to the fact that the conviction for rape and indecency was back in 1978 and I should take the time that has elapsed into account. With respect to the absence of violence submission made by Mr Comeskey, the Crown very properly drew my attention to the fact that the incident involving rape in 1978 involved the use of a knife to force the victim to submit to various indecencies. The case also involved a charge of attempting to pervert the course of justice which involved serious threats of violence

against a witness to the events that night. The Crown noted that you had pleaded guilty to those offences in the 1978 indictment. Mr Comeskey accepted that there should be an uplift of approximately 12 months' imprisonment to take into account your previous convictions.

[31] Mr Comeskey also emphasised your guilty plea and your genuine expression of remorse and submitted that a reduction in sentence of 12 months would be appropriate to take into account those factors. He submitted, therefore, that there should be a minimum period of imprisonment of less than 13 years.

Aggravating and mitigating features of the offending

[32] I have already referred to the principles and purposes of sentencing that were mentioned by Mr Raftery in his written submissions, and I will not repeat those. But in terms of the aggravating features in your case, I must take into account the following aggravating factors: the use of the weapon, the indignity involved in the manner of the disposal of the victim's naked body and the profound and devastating effect on the victims, who include Ms Jamieson and her family and friends.

[33] In terms of mitigating features surrounding the offending, there are none.

[34] So far as you the offender are concerned, I do take into account as an aggravating factor the previous convictions already referred to. But, as I am required to by the law, the most significant mitigating factor is your guilty plea and the remorse that is inherent in that, and the remorse which you belatedly are showing to the plight of the victims in this case. I note that you have also expressed a desire to improve yourself while in prison and use your time productively.

Sentencing approach for murder

[35] The Court of Appeal in *R v Howse* [2003] 3 NZLR 767 set the primary task in

sentencing as being to compare the culpability of your case with the culpability inherent in cases which are within the range of offending which attracts the statutory

norm of ten years minimum non-parole. The task must be approached in a broad and realistic way. In other words, I have an evaluative task to make, comparing your case with others that are similar.

[36] First, there is no question that life imprisonment is appropriate in your case. There is nothing that would make a sentence of life imprisonment manifestly unjust, and your counsel did not argue otherwise. I therefore sentence you to life imprisonment.

[37] Next, I am required to look at the factors listed in s 103 of the Act and consider the question of an appropriate minimum term of imprisonment. Lest anyone be under any misapprehension, what I am about to say is not the sentence. It is just a recording by me of the minimum period which must elapse before you are eligible to apply for parole. What happens after the time that I set is a matter for the Parole Board and that will depend on a large number of matters, including what progress, if any, you have made during your time in prison. So I therefore have to consider the cases and the factors in s 103(2).

Analysis

[38] The first step is to assess the seriousness of your actions taking into account all of the aggravating and mitigating factors to which I have already referred. I will not repeat the aggravating factors. But taking into account all of the factors, I consider that a minimum term of imprisonment of 15 years would be appropriate in your case. First, I have regard to the use of the weapon. Even on your own explanation, which because of the circumstances is the only one available (apart from limited forensic evidence), you claimed that the context was one in which there was apparently the heavy use of methamphetamine. But that is no excuse. Allegedly because of an argument, you took up a weapon comprising a sharp object and inflicted at least three stab wounds. Then when the body was found there was a further, obviously serious throat or neck injury. I note that you deny that, albeit that you accept that you may have possibly have stabbed the victim in the throat or neck area, but have no specific memory of doing so.

[39] But beyond inflicting those dreadful injuries in what was undoubtedly a brutal killing, you then took Ms Jamieson's body to a remote location and dumped her behind a factory to decompose. No doubt you hoped that any delay in discovering the body and the resulting decomposition would assist you to avoid detection. Those are the factors which I rely upon in relation to the purposes discussed in s 103(2) of the Act. Of particular relevance is the need to hold you accountable for the harm done to the victim, the need to denounce your conduct and the need to deter you or others like you from committing the same or a similar offence. Protection of the community from you, which is also mentioned in that section, is also a relevant factor.

[40] Then there must be an uplift. I fix 12 months' imprisonment to reflect your extensive list of previous convictions, particularly the ones that I have identified earlier. This would mean a minimum term of imprisonment, before giving you credit for your guilty plea and remorse, of 16 years' imprisonment.

[41] Then I have to apply a discount to reflect your guilty plea and remorse. I have taken into account the recent decision of the Court of Appeal in *R v Hessel* [2009] NZCA 450 and in this area there is no disagreement between your counsel and Mr Raftery. I have a range to apply and in your case I apply a discount of 12 months' imprisonment.

Conclusion

[42] You are hereby sentenced to life imprisonment in respect of the murder of Ms Marie Jamieson. I further direct that you must serve a minimum period of imprisonment for that murder of at least 15 years.

[43] You may stand down.

Stevens J

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