



[2] Mr Samson appeals against his sentence. He contends the MPI was manifestly excessive taking account of his mental health issues and disadvantaged upbringing. Mr Samson applies to adduce further evidence in support of his appeal, being a report from Dr Erik Monasterio, a consultant psychiatrist, addressing these issues.

[3] The Crown opposes the application to adduce this further evidence on the basis it is neither fresh nor cogent. The report was prepared prior to sentencing and is therefore not fresh. In any case, the Crown argues the report is not cogent because the information contained in it was covered in two reports which were presented to the Judge for the purposes of sentencing, namely a PAC report and a cultural report prepared under s 27 of the Sentencing Act 2002 (the Act).

[4] The Crown's position is that the Judge was correct to find that a 17-year MPI was required because the murder was committed with a "high level of brutality, cruelty, depravity, or callousness" in terms of s 104(1)(e) of the Act.<sup>2</sup> Any discount for personal mitigating factors would be more than offset by an appropriate uplift for Mr Samson's history of violent offending.<sup>3</sup>

[5] It will be convenient to deal with the application to adduce further evidence after we have summarised the facts of the offending, Mr Samson's history of violent offending, the pre-sentence reports considered by the Judge and the sentencing judgment.

### **The offending**

[6] The facts of the offending are detailed in the sentencing judgment and do not need to be fully repeated here.

[7] On Friday 15 November 2019, Ms Wilson, who was not living with Mr Samson, made arrangements for the two of them and their baby to spend the weekend together, staying at a motel in Invercargill. Mr Samson, who was then aged 31, went to various venues on the Saturday night while Ms Wilson and the baby remained at the motel. Mr Samson returned by taxi at 1.42 am in an agitated state.

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<sup>2</sup> At [68].

<sup>3</sup> At [82].

He gave the taxi driver \$150 for what was only a \$15 fare and told him he could expect to see him in the news. Once inside the motel room, Mr Samson attacked Ms Wilson and brutally murdered her. At around 2.30 am, he contacted an associate on Facebook Messenger and showed him, and a female who happened to be with him, images of Ms Wilson's badly battered head. She was unrecognisable. Mr Samson made statements to the associate to the effect "you fuck my baby momma" and "look what I have done to your bitch".

[8] Mr Samson then proceeded to dispose of various items near the Ōreti River, including a knife, a singlet that had been worn by Ms Wilson and the baby's bassinette. He left Ms Wilson's naked body lying on the bed in the motel, where she was found by police later that morning at about 11 am. Mr Samson turned himself in to the police on the morning of Tuesday 19 November 2019, but he denied the offending, a position he has maintained until very recently.<sup>4</sup>

[9] Ms Wilson suffered fractures to her skull, extensive subdural haemorrhages, a fractured jaw and extensive bruising on her face, jaw, neck, arms and body. The neck bruising was caused by compression, consistent with choking. Ms Wilson also sustained multiple stab wounds, including one to her right flank, her stomach and her right lower back, and significant cuts to her legs and torso. She also had two stab wounds just above her pubic area, a large full thickness incised wound through her left cheek and a significant laceration next to her mouth. Mr Samson also stomped on Ms Wilson's naked torso with such force as to leave a boot print.

### **Prior convictions for violent offending**

[10] Mr Samson's first conviction for violent offending was for male assaults female. He received a sentence of 60 hours' community work for this offending which took place in August 2006, shortly after he turned 18.

[11] Mr Samson was convicted of common assault arising out of domestic violence in August 2010 for which he received a suspended sentence. Mr Samson was almost 22 at the time of this offending.

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<sup>4</sup> Mr Samson's appeal against conviction was abandoned on 18 March 2022.

[12] Some seven years later, in September 2017, Mr Samson contravened a protection order and injured his former partner with intent to injure her. He was sentenced in July 2018 to one year and 10 months' imprisonment for this offending. Mr Samson was aged 29 at the time of this offending.

[13] Mr Samson was still subject to release conditions for this offending when he committed the murder. These included special conditions requiring him to attend alcohol counselling and a non-violence programme, both of which he had completed.

### **Pre-sentence reports**

#### *PAC report*

[14] Mr Samson declined to discuss the offending or the lead up to it with the probation officer because of his intention to appeal against conviction. Mr Samson also did not wish to discuss his upbringing in any detail because he said he had traversed these matters with a psychologist a few days earlier (this was a reference to his earlier consultation with Dr Monasterio). Nevertheless, the probation officer was able to provide some helpful information and insights which we summarise below.

[15] Mr Samson is of Ngāi Tūhoe and Ngāi Tahu descent. He has three children from three different relationships. He described his upbringing as horrific and traumatic. At age four, he said he witnessed his biological father commit a violent act (unspecified) and that was the last time he saw him. This resulted in him being placed in foster care and being moved between several different foster homes.

[16] Mr Samson formed a close relationship with one of his foster parents and a foster brother with whom he lived for about four years, from the time he was aged seven or eight. He remains close to, and receives regular visits from, his older daughter, one of his biological sisters and his foster brother. Mr Samson reported that he receives considerable support from his marae.

[17] Mr Samson told the probation officer that he is proud of the fact that he maintained paid employment over a 10-year period, between the ages of 18 and 28. This was prior to his first sentence of imprisonment.

[18] The probation officer noted that Mr Samson was very reluctant to talk about anything of a personal nature and tends to deny any personal relationships he may have. Mr Samson's risk of reoffending in a violent manner against any female he might be in a relationship with, or has links to through children, was assessed as being high. This risk was not expected to abate until Mr Samson is willing and able to engage meaningfully in appropriate treatment and rehabilitation. It was noted that Mr Samson is yet to address the underlying trauma he experienced as a child and as an adolescent.

### *Cultural report*

[19] A brief cultural report was prepared by a lawyer based on Mr Samson's self-report and discussions with his biological mother.

[20] The report provides further detail of the stabbing Mr Samson witnessed as a young child. Mr Samson says his father made him and his older siblings line up and watch him beat their mother and stab her with a large roasting fork. The police attended and he witnessed his father stab a police dog. Mr Samson's mother confirmed that her husband was violent to her and their children and she lived in fear of him for 25 years until he suffered a debilitating stroke. She said that Mr Samson was subjected to beatings from the time he was 10 months old. Following the stabbing, Mr Samson's mother said she was unable to care for her children and Mr Samson was placed in State care. He was later diagnosed with Post-Traumatic Stress Disorder (PTSD).

[21] Mr Samson had multiple placements in foster homes throughout New Zealand, including Invercargill, Dunedin, Christchurch, Tauranga and Auckland. He says he lost count of these placements. He says he suffered emotional, sexual and other physical abuse while in State care. He says he found it hard to concentrate at school and struggled to learn. He was expelled from school numerous times. Mr Samson ran away from his foster homes on many occasions to live on the streets where he said he felt accepted.

## Sentencing judgment

[22] The Judge considered that Mr Samson’s offending was aggravated by a number of features, including that it occurred in the context of a domestic relationship and involved a gross breach of trust, Ms Wilson’s vulnerability, the use of a weapon, the particularly callous nature of some of the wounds inflicted, and premeditation.<sup>5</sup> It was common ground that s 104(1)(e) of the Act was engaged and that an MPI of at least 17 years had to be imposed unless this would be manifestly unjust.<sup>6</sup>

[23] The Judge observed that the value of the cultural report was limited because it was based solely on what Mr Samson and his mother had told the report writer.<sup>7</sup> The Judge expressed concern that he did not have the “benefit of independent information” to show the “whole picture”, but acknowledged that a reduction in sentence can be given to reflect these types of personal circumstances.<sup>8</sup> The Judge noted that Mr Samson had refused to discuss his upbringing with the probation officer who prepared the PAC report.<sup>9</sup> Despite these reservations, the Judge proceeded on the basis that “some or even most” of the information in the cultural report “might be true”.<sup>10</sup>

[24] Working from that premise, the Judge nevertheless considered this background information did not explain Mr Samson’s offending, or reduce his culpability:

[79] The information in the report does not explain how, in your relationships with women with whom you have had children, you have been intensely distrustful, possessive, controlling and jealous. That background does not explain why you could not tolerate the prospect of someone you were involved with being involved socially with others in a way that you could not control. The background does not explain why you think that, when a woman you are involved with does not act in the way you want, you are entitled to inflict on them or threaten them with the most serious violence.

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<sup>5</sup> Sentencing judgment, above n 1, at [52]–[56].

<sup>6</sup> At [68]–[69].

<sup>7</sup> At [71].

<sup>8</sup> At [75].

<sup>9</sup> At [75].

<sup>10</sup> At [78].

[25] The Judge concluded that, even if there was a proper basis to regard Mr Samson's upbringing as a mitigating factor, this would have been more than matched by an appropriate uplift for his history of violent offending against females.<sup>11</sup>

### **Application to adduce further evidence**

[26] Dr Monasterio's report is dated 15 May 2021, prior to sentencing. The report is therefore not fresh. Ms Levy QC, who was not counsel for Mr Samson at the trial or at sentencing, advises that this report was not provided to the Judge on Mr Samson's instructions. This was because of Mr Samson's concern the report could undermine his conviction appeal. Dr Monasterio considered that Mr Samson's claimed amnesia in respect of the offending due to his alleged alcohol consumption was "extremely unlikely" to be correct. He added that the "alleged total memory loss for only the violent aspects of the offence and factors contributing to this is very unlikely as there appears to be fairly normal or partial memory loss either side of this".

[27] We would not normally permit the admission of evidence on appeal that was deliberately withheld from the sentencing judge for strategic reasons. Nevertheless, after careful consideration and with some reluctance, we have decided that the report should be admitted in accordance with the overall interests of justice. The Judge was clearly concerned about the lack of a report from an appropriately qualified expert to inform his sentencing decision, and in particular, whether there was any causal nexus between Mr Samson's disadvantaged background and his offending.<sup>12</sup> Dr Monasterio's report provides the more complete picture the Judge was expecting. The report is helpfully informed by Dr Monasterio's review of clinical records going back to the time Mr Samson was very young. Importantly, the report offers expert opinion on whether Mr Samson's experiences as a child and as an adolescent may provide an explanation for his offending, potentially mitigating his culpability.

[28] Dr Monasterio commences his report with a detailed account of Mr Samson's personal history. This section is broadly consistent with the information contained in

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<sup>11</sup> At [82] and [85].

<sup>12</sup> At [75].

the other two reports but contains more detail. The following summary is drawn from Dr Monasterio's report.

[29] Mr Samson is one of six children. He suffered considerable disadvantage and adversity, commencing even before his birth. The clinical files record that his mother reported suffering multiple assaults by her husband when she was pregnant with Mr Samson, including blows to her stomach. Mr Samson's early childhood was characterised by extreme violence. He suffered significant and repeated physical abuse from a very early age and sustained a number of head injuries with associated loss of consciousness and periods of hospital care. He first came to the attention of Child Youth and Family Services (CYFS) following notification of abuse and neglect in 1991, when he was aged three.

[30] Further CYFS notifications in 1992 and 1994 ultimately led to Mr Samson and one of his brothers being placed in the care of the Director-General of Social Welfare in December 1994, when Mr Samson was aged six. Assessment reports from that time confirm that Mr Samson had suffered serious violence himself and had been witness to other serious violence, including his father stabbing his mother. Mr Samson's father was sentenced to imprisonment for attempted murder arising out of this incident.

[31] Mr Samson's severe conduct disorder and prominent symptoms of Attention Deficit Hyperactivity Disorder (ADHD) manifested in severe conflict with school authority figures and intolerable risks to other children. This led to Mr Samson being repeatedly suspended from school and ultimately unable to attend any school in Invercargill by 1995. Mr Samson was then only seven.

[32] Mr Samson was subsequently placed in various residential school facilities in other locations, Christchurch, Dunedin and Tauranga. A specialist assessment report from May 1997 (when Mr Samson was aged nine) records the opinion of a caregiver who supported Mr Samson and his brother around this time that "these two boys would be the most neglected children I have worked with".

[33] The out of town placements led to significant estrangement from his family and a sense of abandonment contributing to self-destructive behaviours and a number

of suicide attempts. Although Mr Samson exhibited some periods of stability and improved relationships with peers and teachers, he eventually resorted to dangerous and violent behaviours and was expelled from all of these facilities.

[34] Mr Samson exhibited recurrent episodes of severe violent outbursts, impulsive behaviours and marked property destruction. This resulted in a breakdown in foster placements and eventual separation from his brother with whom he had shared foster homes. Although Mr Samson's siblings were eventually able to return home, Mr Samson could not do so because of the severe nature of his behaviour disturbance. The clinical records document that Mr Samson was subjected to physical and emotional abuse (and possibly sexual abuse) while he was in respite care with family and friends.

[35] Psychological assessments from his pre-teenage years concluded that Mr Samson exhibited two broad patterns in his outbursts of violence. One appeared to be driven by escalating frustration and anger with a marked degree of explosiveness and impulsivity involving indiscriminate violence and property destruction. The other was a desire to impress other children in order to maintain a position of dominance and as part of a fear structure favouring violence for conflict resolution and control.

[36] Mr Samson is reported to have first used cannabis at the age of 10 and becoming dependent on this substance, with daily use between the age of 12 and 25. He first started using alcohol at the age of 11 and developed a pattern of heavy alcohol use, including binge drinking between one and three times a week.

[37] Dr Monasterio considers that Mr Samson experienced physical, sexual and psychological trauma at the most severe end of the spectrum. He says a combination of severe family dysfunction, separation from family, frequent changes of foster placements and lengthy stays in residential child and youth facilities, prevented Mr Samson from establishing any semblance of predictable and stable attachments. These attachments ordinarily form the basis for healthy personality development, social adaptability and impulse control. He considers it is very likely that Mr Samson suffered a number of traumatic brain injuries which also contributed to his impaired impulse control, low frustration tolerance, impaired anger control and impaired

cognitive functioning. However, Dr Monasterio says there is no indication that Mr Samson has any significant intellectual impairment.

[38] In Dr Monasterio's opinion, Mr Samson suffers from Complex Post-Traumatic Stress Disorder, a broader, more serious and persistent condition than PTSD:

In addition and beyond these symptoms of PTSD [Mr Samson] also reports a number of persisting dissociative symptoms, including depersonalisation, derealisation and dissociative amnesia often occurring in the context of interpersonal conflicts or in situations which trigger memories related to adversity in childhood. He has co-existing severe drug and alcohol use disorders, mixed personality disorder, anxious arousal, impaired anger management, and a past history of serious suicide and deliberate self-harm behaviours. There is growing evidence in clinical practice and in the scientific literature that exposure to sustained, repeated and/or multiple traumas, particularly in the childhood years, can result in the complex symptom presentation as evidenced by [Mr Samson] and which is also conceptualized as Complex Post Traumatic Stress Disorder, which is a broader, more serious and persistent disorder than PTSD. In brief there is ... significant evidence for [the] relationship between cumulative trauma and symptom complexity which extends beyond that of PTSD, particularly leading to significant personality dysfunction, and [the] requirement for complex and integrated treatment interventions.

(Emphasis in original).

[39] Dr Monasterio concludes his report by expressing the following opinion as to the principal drivers of Mr Samson's offending:

In my opinion and as indicated above, the considerable adversity and trauma throughout [Mr Samson's] childhood years led to the development of Complex PTSD, which in turn has contributed to marked deficits of personality functioning, a propensity to violence in intimate partner relationships, drug and alcohol addictions, and neuropsychological deficits contributing to impaired impulse control and dissociative experiences. It is likely that a combination of these factors were the principal drivers of the offence. In the absence of appropriate treatment interventions [Mr Samson] poses [an] ongoing risk of serious violent offending. While these conditions contribute to significant impulse control deficits they do not contribute to impairment in reality testing or an inability to understand the wrongful nature of the offence or criminal behaviours in general.

### **Was the MPI manifestly excessive?**

[40] Manifest injustice in the context of s 104 is a high threshold that will only be met in exceptional cases, although these will not necessarily be rare.<sup>13</sup> In *R v Williams*,

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<sup>13</sup> *R v Williams* [2005] 2 NZLR 506 (CA) at [67].

this Court explained that a lesser MPI will be warranted where the sentencing judge concludes, as a matter of overall impression, that the case falls outside the legislative policy that certain murders are sufficiently serious to warrant a MPI of at least 17 years. Such a conclusion may only be reached on the basis of clearly demonstrated factors that withstand objective scrutiny.<sup>14</sup> A combination of youth, psychological background, guilty plea and remorse may well qualify.<sup>15</sup> A defendant's mental impairment may reduce his or her culpability to such an extent that a reduction from the statutory MPI will be justified.<sup>16</sup> A disadvantaged upbringing on its own is unlikely to be sufficient in this context.<sup>17</sup>

[41] There is no doubt that the aggravating features of Mr Samson's offending justify the imposition of a MPI of 17 years. On the basis of the information available to the Judge, we agree with his assessment that such a sentence could not be regarded as being manifestly unjust in Mr Samson's case. The only question on appeal is whether the further information provided in Dr Monasterio's report materially alters the assessment.

[42] Ms Levy relies on this Court's decision in *R v Gottermeyer* to support her contention that a three-and-a-half year reduction in the MPI would be appropriate in all the circumstances of Mr Samson's case.<sup>18</sup> However, we see *Gottermeyer* as being a very different case and readily distinguishable from the present. This Court considered that a three-year reduction in the presumptive MPI of 17 years was justified for Mr Gottermeyer's mental health at the time he murdered his estranged wife.<sup>19</sup> He had recently been admitted to hospital for treatment for his mental health and released subject to ongoing intensive supervision, including by a psychiatrist.<sup>20</sup> Unfortunately, his treating team was unaware of the severity of Mr Gottermeyer's

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<sup>14</sup> At [67].

<sup>15</sup> See for example *R v Job* HC Whangārei CRI 2009-029-1324, 7 October 2010 at [58]–[62]; *R v Morris* [2012] NZHC 616 at [41]–[43] and [48]; *R v Ellery* [2013] NZHC 2609 at [31]–[32]; *R v Nicholls* [2015] NZHC 2185 at [37]–[47]; *R v Waitokia* [2017] NZHC 178 at [30]–[37] and [40]; and *R v Garson* [2020] NZHC 3259 at [75]–[77].

<sup>16</sup> *R v Gottermeyer* [2014] NZCA 205 at [86], referring to *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [93].

<sup>17</sup> See for example *R v Rakuraku* [2014] NZHC 3270 at [56]–[60]; *Hohua v R* [2019] NZCA 533 at [43]–[44]; and *Duff v R* [2020] NZCA 116 at [60]–[62].

<sup>18</sup> *R v Gottermeyer*, above n 18.

<sup>19</sup> At [95].

<sup>20</sup> At [5].

ongoing psychotic symptoms at the time of the homicide.<sup>21</sup> Two eminent psychiatrists gave evidence at sentencing that Mr Gottermeyer was suffering a major depressive episode with mood congruent psychotic features at the time. They agreed that Mr Gottermeyer's responsibility was in all probability diminished as a result of this recognised disease of the mind.<sup>22</sup> Mr Gottermeyer's actions were also an aberration. He received additional credit for his early guilty plea, remorse and absence of any previous record.<sup>23</sup> An MPI of 12 years was substituted for the 10-year MPI imposed by the sentencing Judge.<sup>24</sup>

[43] We accept that Mr Samson's truly dreadful upbringing helps to explain his offending. In a normal sentencing exercise, a discount for it could well be warranted. However, we do not consider Mr Samson's culpability for the offending is sufficiently diminished to justify a departure on manifest injustice grounds from the statutorily required MPI of at least 17 years. We acknowledge Mr Samson has deeply ingrained impulse and anger control deficits. But, as Dr Monasterio observes, there is no evidence of any significant intellectual impairment and these control deficits do not contribute to any impairment in reality testing or an inability to understand the wrongful nature of his behaviour. In short, there is no real evidence to support a conclusion that Mr Samson had diminished responsibility.

[44] As the Judge found, the offending was premeditated. Intoxication played little part in it. The evidence shows that Mr Samson had been brooding for some time about the perceived issue that ultimately triggered his attack.<sup>25</sup> There is no doubt he went to the hotel that night intending to brutally murder Ms Wilson. Mr Samson's actions following the murder were also calculated and extremely callous. None of this is adequately explained by a lack of impulse control. Moreover, any discount that might otherwise have been justified would have to be reduced to take account of Mr Samson's long history of serious and escalating domestic violence.

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<sup>21</sup> At [41(c)].

<sup>22</sup> At [41]–[42].

<sup>23</sup> At [94].

<sup>24</sup> At [104].

<sup>25</sup> Sentencing judgment, above n 1, at [56].

[45] In summary, we are not persuaded as a matter of overall impression that the case falls outside the legislative policy that a MPI of at least 17 years was required for this particularly callous and brutal murder.

### **Result**

[46] The application to adduce further evidence is granted.

[47] The appeal against sentence is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent