

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

**I TE KŌTI MATUA O AOTEAROA
KIRIKIROA ROHE**

**CRI-2020-019-5021
[2023] NZHC 2420**

THE KING

v

**MIHINGARANGI TYNNEAL RAMEKA
DANIEL JAMES PAYNE
NEHA WIREMU GREY
ANTON RITE**

Counsel: D J McWilliam and S A Teki-Clark for Crown
R A A Weir and G C Prentice for Rameka
S L McColgan for Payne
J E Tarrant and R L Brown for Grey
A J Holland and D S Niven for Rite

Sentenced: 1 September 2023

Charges: Rameka: Wounding/injuring with intent to cause grievous bodily harm (3); Kidnapping (2); Murder

Payne: Kidnapping (3); Wounding with intent to cause grievous bodily harm; Murder

Grey: Kidnapping (3); Wounding with intent to cause grievous bodily harm; Murder

Rite: Murder

SENTENCING NOTES OF BREWER J

Introduction

[1] Ms Rameka, Mr Payne, Mr Grey and Mr Rite, I have to sentence you in accordance with the jury's verdicts.

[2] Ms Rameka, you were found guilty of the following charges:

- *Charge 2:* Injuring Mr Dean Mihinui with intent to cause him grievous bodily harm. The maximum penalty is 14 years' imprisonment.
- *Charge 3:* Kidnapping Mr Jesse Whitiora. The maximum penalty is 14 years' imprisonment.
- *Charge 4:* Wounding Mr Whitiora with intent to cause him grievous bodily harm. The maximum penalty is 14 years' imprisonment.
- *Charge 5:* A further charge of wounding Mr Whitiora with intent to cause him grievous bodily harm.
- *Charge 7:* Kidnapping Mr Sao Yean.
- *Charge 8:* The murder of Mr Sao Yean. The maximum penalty is life imprisonment.

[3] Mr Payne, you were found guilty of charge 3 (kidnapping Mr Whitiora), charge 5 (wounding Mr Whitiora with intent to cause him grievous bodily harm), charge 6 (kidnapping Mr Whitiora), charge 7 (kidnapping Mr Yean) and charge 8 (the murder of Mr Yean).

[4] Mr Grey, you were found guilty of charge 3 (kidnapping Mr Whitiora), charge 5 (wounding Mr Whitiora with intent to cause him grievous bodily harm), charge 6 (kidnapping Mr Whitiora), charge 7 (kidnapping Mr Yean) and charge 8 (the murder of Mr Yean).

[5] Mr Rite, you were found guilty of charge 8 (the murder of Mr Yean).

Background

[6] I will start by setting out the facts relevant to the sentencing. I get those from the essential elements of the charges which the jury must have found proved and from the evidence which, as the trial Judge, I am satisfied were proved.

[7] Mr Payne, you are patched Black Power. All of you lived in a world dominated by gangs. Illegal drugs — buying, selling and consuming — were part of everyday life. Violence, or the threat of it, was common. You lived outside the law and within the norms of conduct of your group. That is what led you to commit the offences for which you have been convicted. The kidnappings, the beatings and finally the murder.

[8] Mr Rite, you came into the situation created by the other defendants right at the end. You were not part of their group, and indeed during the trial Mr Payne and Mr Grey tried to put the blame for Mr Yean's death on to you, the outsider. But, you did become involved and to an extent which the jury was sure made you guilty as a party to Mr Yean's murder.

[9] Everything started with the death of CZN. Ms Rameka, you supplied the contaminated drug which killed him and you were worried that you might be blamed. Mr Payne, you wanted to find out what had happened. And to get revenge if you could. Mr Grey, you were Mr Payne's right-hand-man and would support him in, really, anything he wanted to do.

[10] Mr Payne, eventually you met Ms Rameka. You accepted her explanation. Ms Rameka had access to considerable amounts of methamphetamine and she made it freely available to you, and you were very happy to take it. Ms Rameka, I think you did that partly to keep on Mr Payne's good side and partly for the protection that he and Mr Grey offered.

[11] The first victim of the growing relationship between you, Ms Rameka, and you, Mr Payne, was Dean Mihinui. He was associated with Ms Venk, someone Ms Rameka was after. The evidence was that Mr Mihinui was abducted from a blue

Falcon vehicle by members of the Mongrel Mob and taken to Ms Rameka's home at 7 Byron Road. I tend to the view that this was down to Ms Rameka's activities rather than her showing loyalty to you, Mr Payne, and neither you nor Mr Grey face charges in respect of Mr Mihinui so this is entirely separate.

[12] Mr Mihinui was assaulted while at 7 Byron Road. Ms Rameka, your sister, Ms Taniwha, pleaded guilty to her part in that offending. He was attacked with a weapon, probably a baseball bat, and his arm was badly broken. He had to have surgery and have a plate inserted to control the break. I will not go over the evidence as to your involvement, Ms Rameka. The jury found you guilty of the charge. For my part, I am not satisfied the evidence proves that you had the bat. I will sentence you on the basis that you took an active part in the assault on Mr Mihinui and you were a party to the breaking of his arm.

[13] The next victim was Jesse Whitiora. On 12 March 2020 he was taken to 7 Byron Road. He was illegally detained there for a period which began when you were there, Ms Rameka, and which continued when Mr Payne and Mr Grey arrived (charge 3). Mr Payne and Mr Grey, in my view the jury found you were parties to the illegal detention of Mr Whitiora in the period before you arrived.

[14] Before Mr Payne and Mr Grey arrived, Mr Whitiora was beaten by Ms Rameka, Ms Taniwha and Mr Kirkwood. The other two pleaded guilty. Mr Whitiora was wounded and bleeding. In particular, a significant gash on his head through a strike with a weapon. The jury found you to be a party to that beating, Ms Rameka (charge 4).

[15] After Mr Payne and Mr Grey arrived the beating of Mr Whitiora continued with them joining in. Mr Whitiora was further wounded (charge 5). Mr Payne and Mr Grey, I am satisfied your motive was that you thought Mr Whitiora had some blame for the death of CZN.

[16] Mr Payne and Mr Grey, you then forced Mr Whitiora to go with you to the address in Casey Avenue where CZN had died. If Ms Puke had not been there and made it clear that you had the wrong man, I suspect Mr Whitiora would not have

survived. But that does not matter for your sentencing. Charge 6 is the kidnapping charge relating to taking Mr Whitiora from 7 Byron Road to the Casey Avenue address. After that, you let Mr Whitiora go.

[17] Ms Rameka, while Mr Payne and Mr Grey were away you received news from Ms Chourn that another person you were looking for, Mr Sao Yean, had been located. At your instruction Ms Chourn delivered Mr Yean to 7 Byron Road. You sent texts to Mr Payne so that he and Mr Grey would come back.

[18] Mr Rite, you had arrived at 7 Byron Road by the time Mr Yean was brought there. You had some acquaintance with Ms Rameka but you had had nothing to do with the previous events. However, you physically took charge of Mr Yean and you physically forced him into the shed, and then you kept him there. Mr Payne and Mr Grey arrived. They went to the shed. You, Mr Rite, were there. Mr Yean could not leave (charge 7). In the shed Mr Yean was brutally beaten to death (charge 8).

[19] There is evidence that Ms Rameka, Mr Payne and Mr Grey were in the shed while Mr Yean was being beaten. I do not know which of you physically inflicted the fatal injuries. I will take it that the jury decided you were all in it together and were parties to the actions of the others. If that was s 66(1) or s 66(2), I do not think it matters. Mr Rite, as I will come to, I cannot be sure you had a direct part in the physical assaults on Mr Yean.

[20] After Mr Yean was dead, his body was, somewhat improbably, put in the boot of the BMW sportscar that you were using, Mr Rite. You and Mr Grey disposed of the body in a water trough in a field of maize.

Victim Impact Statements

[21] I have received victim impact statements from Mr Yean's children, his siblings and his niece.

[22] In a sentencing like this, the emphasis tends to be on the defendants – the people who are being sentenced. And often the person who was murdered is lost sight of. In this case, the victims have chosen not to read their victim impact statements,

and that is largely because they are lengthy and very detailed and I had asked them to choose one of their number to read a statement because of the time it would take to read them all. But Mr Sao Yean must not be lost sight of in this sentencing. So, for the benefit of you four defendants, I am just going to read a part of one of the statements about Mr Yean's background:

Sao was born during the Cambodian genocide in the middle of the jungle on the border between Cambodia and Thailand. Our mother travelled on foot for days on end while heavily pregnant with Sao to escape the Khmer Rouge's genocide. She did everything in her power to survive the war-torn country for them both. Sao was born into the hardest time imaginable for our parents, a time of hunger, loss and displacement.

Because of the trauma Sao suffered as a child being born into a war-torn country, living and breathing fear every day, he was fiercely protective of all us siblings. He was a loving, caring person with a huge heart, and a caring soul. All his children and nieces and nephew loved him, he always found a way to make them laugh. Sao loved all his children dearly and was a proud father. He would bring them up in conversation any chance he could. He was generous with everyone, with what little possessions he had.

[23] That is the man you murdered, and his family grieve him deeply.

Minimum period of imprisonment

[24] The only possible sentence on the charge of murder is life imprisonment. I also have to decide what the minimum period of imprisonment (the MPI) should be before you each can be considered for parole.

[25] There is a common misunderstanding about a life sentence for murder. Many people think that the sentence is the minimum period of imprisonment. Even some journalists. But that is not the case. A life sentence means what it says. You might spend the rest of your life in prison. All that the minimum period of imprisonment does is put off the time when you can apply to be released on parole. The Parole Board will not release you on parole unless it is satisfied that you do not pose a future risk to the community. Even if you are released on parole, if you further offend you can be recalled to prison to continue to serve your life sentence.

[26] So, that means I must now decide, individually, your minimum periods of imprisonment.

[27] The main issue is whether any of the circumstances in s 104 of the Sentencing Act applies. If so, your MPI must be at least 17 years, unless that period would be manifestly unjust.

Committed in the course of another serious offence

[28] I turn to the first s 104 circumstance. The Crown says that the murder was committed in the course of other serious offending, namely the kidnapping of Mr Yean. The Crown says this s 104 circumstance is applicable to Messrs Grey and Payne and Ms Rameka, but not Mr Rite because he was not charged with kidnapping.

[29] Mr Grey, Mr Payne and Ms Rameka, your lawyers have conceded that this s 104 circumstance applies. Mr Rite, your lawyer agrees with the Crown.

[30] As I have said, for my part, I am not at all sure that this s 104 circumstance applies in this case. When the murder was committed Mr Yean was illegally detained in the shed. But that was inherent in the circumstances. This was not at all like, say, a murder committed in the course of an armed robbery. I simply have not had the time to reach a considered decision on this point. But, I do not think it can have any effect on your sentencing for reasons I will come to. So, I will not include this as an applicable s 104 circumstance in this sentencing.

Brutality

[31] Turning to another s 104 circumstance, the Crown says the murder was committed with a high level of brutality. Of course, most murders are brutal. But some possess a higher level of brutality and are denoted by savage violence; callous indifference; moral corruption; and insensitive and cruel disregard for others.¹

[32] A number of details of the murder are unknown because of the decomposition of the body. However, some facts and inferences are clear, and, in my view, the murder was aggravated by:

¹ *R v Gottermeyer* [2014] NZCA 205 at [79].

- (a) Mr Yean was kidnapped and brought to 7 Byron Road for the purpose, at least, of receiving a beating. That was Ms Rameka's intention and your intention, Mr Payne and Mr Grey. Mr Rite, you put him in the shed and you kept him there until Mr Payne and Mr Grey arrived. You expected there would be violence;
- (b) The duration of the incident:
 - (i) Mr Yean was brought to the property at some time around 3.20 am;
 - (ii) by 4.49 am all of you were present;
 - (iii) a witness overheard yelling around this time;
 - (iv) Mr Yean was dead by 6.15 am and his body was taken away around that time; and
 - (v) Mr Yean had ingested blood, indicating he remained alive for some time after being attacked. However, the extent of the time is unknown;
- (c) Mr Yean received at least five blows to his head, causing complete fractures of the skull and jaw;
- (d) Mr Yean's shoulder blade was completely fractured;
- (e) There was too much decomposition of the body for soft tissue injuries to be detected. But there must have been some. Ms Horotini heard Mr Yean being hit and yelling for help;
- (f) There were multiple attackers; and
- (g) There was callous disposal of his body.

[33] I cannot say how long the assault lasted. I consider that the evidence supports the assault very likely lasted a short to moderate duration. The evidence that Mr Yean had ingested his own blood shows that he did not die immediately from his injuries. It is likely he suffered a great deal of pain, especially since the blows inflicted were delivered with sufficient force to fracture his bones. The pathology does not show a quick death. Regardless of how long the assault lasted, it was undoubtedly cruel to detain Mr Yean for such a long period of time. To be kept captive and awaiting serious violence would have been a terrifying experience.

[34] I am satisfied that the murder was especially brutal and callous, and this s 104 circumstance applies.

Calculated or lengthy planning

[35] Turning to the final s 104 circumstance, the Crown says the murder involved calculated or lengthy planning. I accept there is a degree of premeditation present. The kidnapping of Mr Yean is part of an ongoing plan to inflict violence. There is evidence suggesting that planning by Ms Rameka to inflict violence extended to days before the offending. The evidence is clear that she was seeking to locate Mr Yean and to have him brought to 7 Byron Road, and indeed that is what she did that night.

[36] But I am not satisfied that this s 104 circumstance is engaged because I am not satisfied that there was a plan to murder Mr Yean. I think that murderous intent was formed during the course of the fatal beating.

Appropriate starting point

[37] The Court of Appeal has recently affirmed a streamlined sentencing process for s 104 murders² so long as there are sufficient comparator cases.

² *Frost v R* [2023] NZCA 294.

Case comparison

[38] The lawyers have referred me to quite a number of cases.³ I consider two of them to be most relevant.

[39] The first is *R v Candy*. There the two defendants wanted to recover a debt from a co-worker. The two lured the deceased to a secluded area. On his arrival, he was quickly overpowered. After being beaten and detained for some time, he was chained by his leg to the back of a car and he was then dragged behind it. He died from his injuries and his body was dumped in a rubbish dump. A preliminary MPI of 19 years was adopted.

[40] The second is *R v Bracken*. In that case, there was hostility between the defendant and the deceased. The defendant threatened the deceased and managed to detain in a woolshed. He remained detained for up to 20 hours. Eventually, the defendant attacked the deceased and struck seven blows with a weapon. He died from his injuries. The defendant burned the deceased's body and his belongings. A preliminary MPI of 20 years was adopted.

[41] Both of these cases are more serious than your case. Each involve more serious proven violence and, in *Bracken*, a longer period of detention. However, like the present case, each involved detention; serious violence and brutality; and callous disposal of the deceased's remains.⁴

Features of the offender

[42] I now turn to your personal mitigating factors. The Court of Appeal has recognised that the policy behind the legislative provisions for murder mean the discounts for personal mitigating factors have played "a lesser role" in murder

³ *R v Candy* [2023] NZHC 414; *R v Bracken* [2012] NZHC 3158; *R v Davies* [2017] NZHC 729; *R v Frost* [2008] NZCA 406; *R v Winter* [2020] NZHC 1115; *R v Oti* [2021] NZHC 1800; *Carroll v R* [2018] NZCA 320; *R v McCallum* HC Whanganui CRI-2008-083-2794, 12 February 2010; *R v Taoho* HC Rotorua CRI-2009-263-163, 12 December 2011; *R v Pairama* [2017] NZHC 1953; and *R v Cahill* [2022] NZHC 3030.

⁴ I note that *R v Bracken*, above n 3, is also similar in its aggravating features.

sentencing.⁵ This is because Parliament's intention was that the seriousness of the offending is to be a sentencing court's focus when setting an MPI for murder.

Ms Rameka

[43] Ms Rameka, you are 28 years old. I have a pre-sentence report about your circumstances. I am told you have suffered from a methamphetamine addiction following your mother's death in 2017, which was driven by your grief. You report suffering from unresolved emotional trauma and you lack support from positive relationships in your life. These factors in your life led you to socialising with gangs and being surrounded by violence and drugs.

[44] However, you still have not accepted responsibility for your actions and you continue to maintain your innocence.

Mr Grey

[45] Mr Grey, you are 40 years of age. I have a pre-sentence report and s 27 report prepared by Ms Kingi. I will not discuss the pre-sentence report as you did not participate in the interview.

[46] Ms Kingi reports you suffered significant abuse during your upbringing; your early exposure to gangs and your subsequent involvement and emotional trauma. However, as with Ms Rameka, you continue to deny responsibility and you maintain your innocence.

Mr Payne

[47] Mr Payne, you are 35 years old. I have a pre-sentence report and s 27 report prepared by Ms Ridlery. I will focus on the s 27 report as it far more detailed.

[48] Ms Ridlery discussed your challenging upbringing. In particular, you experienced parental neglect and rejection; psychological abuse; difficulties arising from ADHD; State care; substance abuse; and gang affiliation.

⁵ *Frost v R*, above n 2, at [41].

Mr Rite

[49] Mr Rite, you are 27 years old. I have read a pre-sentence report and a s 27 report prepared by Dr Jarrod Gilbert. I will focus on the s 27 report as it is the most detailed.

[50] Dr Gilbert discussed the challenges you have experienced in life, which include socio-economic deprivation; childhood abuse; substance abuse; gang affiliation and influence; and early exposure to violence.

[51] I am told that you now accept some responsibility, in a general way, for your part in the death of Mr Sao Yean.

Assessment

[52] Ms Rameka, Mr Payne, Mr Grey, for the murder sentencing I am going to treat you the same. And I am going to treat the kidnapping of Mr Yean as an aggravating factor of the murder.

[53] Ms Rameka, you played a greater part in organising the kidnapping. Mr Payne, you were the dominant person in what happened. Mr Grey, you played a full part. I do not see that the law of parties means I should draw fine distinctions between your roles.

[54] Your sentence will be life imprisonment. It has to be. Because of s 104 your MPI must be at least 17 years unless that would be manifestly unjust. Having looked at the comparator cases, I find that a 17-year MPI is about right. It could be a bit less, but not to the extent of making 17 years manifestly unjust.

[55] Your s 27 reports make sad reading. They help me understand the journey that brought you to the courtroom today. Over the years I have read far too many such reports which show how our society has failed children by allowing them to be morally broken in abusive homes and then allowing them to drop out of education and go down antisocial paths. But although your backgrounds are generally causative of your offending, they are not directly causative. None of you, in my view, show empathy or

remorse for Mr Yean. You largely deny culpability. And you all have criminal records which are relevant to a greater or lesser extent.

[56] I emphasise that an MPI is not the sentence. It is not to be adjusted up or down in fine gradations like an actual sentence. I think that the best way I can acknowledge your personal characteristics is when I assess the extent to which your MPI should be increased for your other offending.

Ms Rameka

[57] Ms Rameka, turning to your other charges:

- Charge 2: injuring Dean Mihinui with intent to cause him grievous bodily harm. Normally, that would be an end sentence of around three years.
- Charge 3: kidnapping Jesse Whitiora. Normally, that would be an end sentence of about seven years.
- Charge 4: wounding Mr Whitiora with intent to cause him grievous bodily harm. Again, that would normally be an end sentence of around seven years.
- Charge 5: a further charge of wounding Mr Whitiora with intent to cause him grievous bodily harm. That would also attract a sentence of around seven years.

Of course, those sentences would have to be adjusted for totality and so any sentencing on the three charges relating to Mr Whitiora would be considerably less than the sum of the three sentences I have just identified.

- Charge 7: kidnapping Mr Yean. I have already taken this into account in setting the MPI for the murder, and there will be no uplift in respect of it. As a standalone sentence, it also would be around seven years.

[58] Having regard to your s 27 report, and the fact that the effect of an MPI is to put off the time before you can be considered for parole, I will uplift your MPI by one-and-a-half years to 18-and-a-half years. It will be for the Parole Board to assess your risk after that.

Mr Payne

[59] Mr Payne, I turn to your other charges:

- Charge 3: kidnapping Mr Whitiora. A normal sentence of around seven years.
- Charge 5: wounding Mr Whitiora with intent to cause him grievous bodily harm. Again, about seven years.
- Charge 6: kidnapping Mr Whitiora. Again, about seven years.

The same comments about totality, which I just made to Ms Rameka, would apply here also.

- Charge 7: kidnapping Mr Yean. As I have said, I have already factored that into that MPI for the murder charge and there will be no uplift in respect of it. But, on a standalone basis, that would be around seven years.

[60] Taking into account your s 27 report and your criminal record of violence, I will uplift your MPI by one year to 18 years.

Mr Grey

[61] Mr Grey, you have the same charges as Mr Payne. You have similar backgrounds. I will treat you the same. I will uplift your MPI by one year to 18 years.

Mr Rite

[62] Mr Rite, you are in a different position. Your sentence must be life imprisonment. You had a central role in detaining Mr Yean until Mr Payne and

Mr Grey arrived. But there is no evidence you physically attacked him. Your voice was not heard coming from the shed during the fatal beating as were the voices of the other three defendants. There is evidence you left the scene for a time. But the jury found that you were involved as a s 66(2) party sufficiently to be guilty of murder.

[63] There was evidence of you using a police scanner. There was evidence of you being involved in a text message to your partner asking for a speaker. The inference being to create noise to drown out Mr Yean's cries as he was being beaten. And there was evidence of admissions made by you afterwards that meant you considered yourself to be part of the murder.

[64] I will assess your MPI on the basis you were a s 66(2) party – you knowingly supported but did not take part. On the cases, I assess an MPI of 12 years.

[65] I will reduce that by one year to take account of your personal mitigating factors as set out in the s 27 report.

[66] It would be manifestly unjust to impose on you a 17-year MPI. It will be 11 years.

Sentence

Ms Rameka

[67] Ms Rameka, on charge 8, the murder of Sao Yean, I sentence you to life imprisonment with an MPI of 18-and-a-half years.

[68] On charge 2, I sentence you to three years' imprisonment.

[69] On charges 3, 4, 5 and 7, I sentence you to seven years' imprisonment.

[70] All sentences are to be served concurrently.

Mr Payne

[71] Mr Payne, on charge 8, the murder of Sao Yean, I sentence you to life imprisonment with a minimum period of imprisonment of 18 years.

[72] On charges 3, 5, 6 and 7, I sentence you to seven years' imprisonment.

[73] All sentences are to be served concurrently.

Mr Grey

[74] Mr Grey, on charge 8, the murder of Sao Yean, I sentence you to life imprisonment. I direct that you serve a minimum period of imprisonment of 18 years.

[75] On charges 3, 5, 6 and 7, I sentence you to seven years' imprisonment.

[76] All sentences are to be served concurrently.

Mr Rite

[77] Mr Rite, on charge 8, the murder of Sao Yean, I sentence you to life imprisonment. I direct that you serve a minimum period of imprisonment of 11 years.

[78] You may all stand down.

Brewer J

Solicitors/Counsel:
Pollett Legal (Tauranga) for Crown
Jessica Tarrant (Hamilton) for Grey
Scott McColgan (Auckland) for Payne
R A A Weir (Hamilton) for Rameka
Adam J Holland (Auckland) for Rite