

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**ORDER FOR NON-PUBLICATION OF:
1. NAME AND ANY IDENTIFYING DETAILS OF VICTIM.
2. HOME DETENTION ADDRESS.**

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2021-044-002917
[2023] NZDC 14868**

THE KING

v

MATU REID

Hearing: 28 March 2023
Appearances: R Zhang for the Crown
G Harvey for the Defendant
Judgment: 28 March 2023

NOTES OF JUDGE S BONNAR KC ON SENTENCING

[1] Mr Reid, you are a young man, you are only 23 years of age, but you have pleaded guilty to some serious charges. You are for sentence today on charges of strangulation, injuring with intent to injure, wilful damage and, being a male, assaulting a female. Those offences all arise out of an incident on [date 1] 2021 and involve the same complainant, [name deleted – the victim].

[2] The most serious of those charges is the strangulation. It carries a maximum penalty of seven years in prison. So, that should give you some idea of the potential jeopardy that you face as a result of this offending.

[3] The facts on which you are to be sentenced are that you were living at an address in [suburb A], along with [details deleted]. [The victim] also resided at the address [part-time]. I understand from the other material I have seen that you and [the victim] had had an intimate relationship at the time.

[4] From around the late afternoon or early evening of [date 1], you and [the victim] were drinking outside the [suburb A] address. At around 9 pm, you went to the downstairs bedroom where you continued to drink. At around 11.30 pm, [the victim] used some words to you which triggered you and caused you to become angry. An argument then took place between the two of you. [The victim] was sitting on an office chair. You pushed [the victim] on her left shoulder causing her to fall off the chair and collide with the dressing table and the wall of the bedroom, before falling to the floor.

[5] When she tried to speak to you, you verbally abused her and then threw something at her head, hitting her in the right eye. You threatened her and suggested that you would “take out” her partner and the rest of her family. At that time, you apparently attempted to throw some punches at [the victim] but did not make contact with her. However, when she got up off the ground and tried to tell you to stop what you were doing, you kicked her in the stomach and sent her flying backwards on to the bed. That act gives rise to the charge of being a male and assaulting a female. While she was on the bed, you stood over her and using both of your hands, you gripped and squeezed her throat for about 10 seconds. [The victim] was not able to breathe at all during that period. Obviously, that gives rise to the strangulation charge.

[6] The summary tells me that, fearing for her life, [the victim] then relaxed, rather than resisted you. As a result of that, you let go of her throat but then punched her on the right side of her face with a closed fist. [The victim] was crying and attempted to get you to calm down but you continued to verbally abuse her and slap and punch her on the left side of her face. When you stopped that, she sat back down on the floor and you sat back down on a chair. You then said words to her to the effect of “you don’t know what I’m capable of”.

[7] You then approached her holding a pair of scissors but with the blade point of the scissors concealed in your palm. You pushed the handle of the scissors into the side of her torso. [The victim] challenged you and you picked up a wine bottle nearby and swung it at her but missed her. You said that "I've had enough, it's time, I'm going to take you all", and stormed out of the room. [The victim] took that opportunity to leave the address and she went to a local petrol station where she phoned the police.

[8] When she returned to the address with police and went into her bedroom, [the victim] noticed that her wicker washing basket had been burned, paperwork which was on the bookshelf was in ashes and the bookshelf was still smouldering with glowing embers. She put the embers out and noticed that the back of the mirror was also burnt. That gives rise to the wilful damage charge.

[9] As a result of this incident, she sustained a swollen and black right eye, bruising to the right and left side of her jaw, scratches on her face, throat and left arm and a fracture of the hyoid bone, which is a bone in the structure of the neck, as a result of the strangulation. When you were spoken to by the police, you denied any criminality in regards to the injuries suffered by her, stating that she had received them as a result of consensual rough sex.

[10] I have had a victim impact statement prepared by [the victim] which I have read. She speaks about her relationship with you. She tells me about her physical injuries and refers to the fracture in her neck and makes clear that she was hospitalised at the time. She speaks to some financial costs but you are not charged with anything relating to the phone to which she refers and she also describes significant ongoing emotional harm as a result of your offending.

[11] However, somewhat generously, Mr Reid, she tells me that she forgives you for what you did. She thinks that you have what she describes as generational anger within you and she opines that you need help and supervision because she does not think that you can fix those issues on your own. She says that you have been doing well recently because you were working and she also expresses her view that she does not want you to end up in prison for what you have done but she does want you to get

help. That, of course, is a matter for me, not for her, but it is a generous expression of goodwill towards you in what she says, Mr Reid.

[12] You have one previous conviction for an offence of common assault committed by you in October 2020. Of concern, these present offences were committed while you were still subject to a sentence of supervision imposed on 17 June 2021 for that offence of common assault. So, these offences were committed within three months of that sentence being passed on you.

[13] I have also had a probation officer's report about you, dated 6 December 2022. You told the probation officer that you had been living with [the victim] and [details deleted] for just over a year. You felt that you were never treated with respect and you were demoralised on a daily basis. You say that was the build-up to the incident. Nevertheless, you did admit and accept that you should not have acted the way you did and you should have walked away from the relationship before this happened as you say this is not the person you are.

[14] The probation officer tells me that they have assessed your risk of re-offending as being at a low level. That is because you have a very limited history of offending, but your risk of causing harm to other people is considered to be at a high level and that is because of the violent nature of the present offending. The recommendation of the probation officer is for a sentence of home detention for you.

[15] Both the probation officer and, also, Dr Edwards, who prepared a s 27 cultural assessment report about you, provide me with some more detail of your background and your personal history. Dr Edwards' report is dated 11 December 2022. It follows an interview with you and, of course, is reliant on your self-reported information. Nevertheless, it does give me more detail of your background, as does the probation report. I am not going to go into the fine details of that report, Mr Reid, I have read it and I take it into account but, in summary, Dr Edwards talks about systemic deprivation in your background, a disconnect with your culture, a history of family instability and hardship, including being exposed to domestic violence and physical abuse as a young person. You reported that you had run away from home at an early age because of those things.

[16] She tells me that there may be some mental health issues. You have previously been required to undertake anger management, but I note that you consider that you have been previously misdiagnosed with a borderline personality disorder. She also tells me you had a disrupted education. You have had limited employment opportunities. You have been exposed to alcohol and drugs at an early age and exposed to gangs and gang culture from an early age.

[17] All of that makes depressingly familiar reading to me, Mr Reid. You are one of a large number of young men who come before this Court with those sort of background circumstances. Nevertheless, I do accept that your offending cannot be completely disconnected from your background. Those background features are what make you the person you are. That is not to excuse your behaviour. There is no excuse for what you did, but I can take into account those background features when I come to decide what the appropriate sentence is for you.

[18] I also take into account that you have written an apology letter which I have read. You have expressed remorse in that letter and you indicated a willingness to engage in restorative justice although that was not able to take place.

[19] The Crown and Mr Harvey on your behalf have referred me to some cases. I am not going to bore you with the details, but what I can tell you is that there is a leading Court of Appeal case which now deals with this offence of strangulation. It is *Shramka v R*.¹

[20] What I am doing when I decide on the final sentence for you, Mr Reid, is I am going to set a starting point for the strangulation charge. I am then going to consider what I do to take account of the other charges, and then I am going to consider what credits I can apply because of the things that are in your favour.

[21] In relation to the strangulation charge, I consider that there are some aggravating features here. There was a fairly significant level of violence involved; what the Court of Appeal has described as aggravated violence. You strangled [the victim] for some 10 seconds. That is not a short period of time when someone is being

¹ *Shramka v R* [2022] NZCA 299.

strangled, Mr Reid. She was not able to breathe for that length of time. It would have been a terrifying event for her. And I take into account that you caused a fracture to the hyoid structure in her throat.

[22] The parties are not necessarily in agreement as to whether [the victim] is to be considered a particularly vulnerable victim, but I think there is some degree of vulnerability. It may not be a high degree of vulnerability, but her vulnerability is an aggravating feature which is present to a moderate level. There was clearly an age disparity between the two of you and, inherently, there must have been a physical disparity between the two of you. You are a young man in the prime of your life. You are a physically powerful young man, it appears. She would not have been as powerful as you. When I talk about vulnerability, I also factor in that this offence took place in her home where she was entitled to feel safe.

[23] Then, of course, there is the actual harm caused. I have already mentioned the fracture and the fact that she was hospitalised and has suffered ongoing psychological harm. I consider that this offence falls at the borderline area between the low to moderate levels of offending which the Court of Appeal identified in the *Shramka v R* case.

[24] Having regard to those factors, I agree with the Crown submission that an appropriate starting point for the strangulation offence is one of two years and three months' imprisonment.

[25] I also agree with the Crown that the appropriate uplift for the remaining charges would be one of eight months on a totality basis. That is because those offences, of themselves, are not insignificant. This was not a short episode of violence. There was a passage of time at which you continued to act violently towards [the victim]. The violence was accompanied by threats and the use of weapons namely the scissors and the wine bottle and the object that was thrown at her head. That is why I accept the Crown's submission that an appropriate uplift for the remaining charges is one of eight months. In coming to that uplift, I also take into account the lighting of a fire in the bedroom of [the victim].

[26] I do not consider that the mere fact that you have a previous conviction for common assault would give rise to an uplift, of itself. That offence must have been at a relatively low level. It did not result in a custodial sentence. But I do accept that the fact you were still on supervision for that offence is an aggravating feature which is deserving of an uplift and the appropriate uplift for that, I agree with both counsel, is one of one month's imprisonment. That takes me to three years in jail, Mr Reid.

[27] But then I have to look at the things that make it better for you, that reduce your culpability. There is, of course, your guilty plea and both parties accept that you should be given full credit for that of about 25 per cent. That would be a nine month discount from the starting point. There are other factors that I take into account. I have addressed the background factors set out in the s 27 report. For those factors, which I am satisfied have some connection to your offending, for your youth and for your expressions of remorse, for those matters combined, I am going to apply a further discount of seven months' imprisonment.

[28] That takes me down to an end sentence of 20 months' imprisonment. That means I can think about sentences other than prison, in particular, a sentence of home detention. I am satisfied that you do need help to address any issues you have and that it is appropriate that I sentence you to home detention. I do not want to send a young man like you, with a limited history, to prison. I think that could be counterproductive and actually set you down the wrong path. But you need to realise, Mr Reid, you need to turn your life around from here because if you commit further offences of violence in the future, things are just going to get worse for you and you could well end up going to jail.

[29] A 20 month sentence of imprisonment would, ordinarily, although there is no set rule about this, equate to a 10 month sentence of home detention. However, I also take into account the time that you spent remanded in custody on these charges. A little over, on my calculation, five and a half months or so. I am going to give you credit for that time in custody because, otherwise, it would not get taken into account on a home detention sentence. Therefore, I am going to apply a further five-month credit on the home detention sentence for the five and a half months or so you have

spent in custody and for your time on EM bail. That reduces the total sentence, Mr Reid, to one of five months' home detention.

[30] The home detention address will be at [address deleted], Auckland. The special conditions of that home detention sentence will be as set out at page 5 of the probation officer's report dated 6 December 2022. I am going to run through those conditions for you now. They are:

- (a) You are not to possess, that is to own or to have in your possession, consume or use, that is to eat or drink, any alcohol or drugs that are not prescribed to you.
- (b) You are to attend and complete an appropriate non-violence programme to the satisfaction of your probation officer and the specific details of the appropriate programme will be determined by your probation officer.
- (c) You are to attend and complete an appropriate alcohol and drug programme to the satisfaction of your probation officer. The specific details of that programme will be determined by your probation officer.
- (d) You are not to associate with or contact [the victim] without the prior written approval of your probation officer.

[31] When you are released from court, you are to return directly to [address deleted], Auckland without any unnecessary stops or deviations.

[32] Thank you, Mr Reid. Take this as an opportunity, take whatever help and programmes Probation can give you while you are on your home detention sentence, and I hope we do not see you back before the Court on anything like this again.