IN THE COURT OF APPEAL OF NEW ZEALAND

CA107/03

THE QUEEN

v

RENEE KARA O'BRIEN

Hearing: 23 June 2003

Coram: Anderson J
Panckhurst J
Paterson J

Appearances: P J Mooney and J C Hannam-Williams for Appellant
J C Pike and C B Wilkinson-Smith for Crown

Judgment: 16 October 2003

JUDGMENT OF THE COURT DELIVERED BY ANDERSON J

Nature of the appeal

[1] This is an appeal against conviction for murder and against a sentence of life imprisonment imposed for that crime.

[2] On 10 March 2002 the appellant, then aged almost 14 years 9 months, was wandering the streets of Waitara township in the company of friends of similar age. Most, including the appellant, were more or less affected by liquor supplied to them by a relative acting with criminal irresponsibility. The group came across a middle-

aged man, Mr Kenneth Gerald Pigott, who was in the driver's seat of his vehicle, sleeping off the effects of liquor he had consumed at an adjacent hotel. The appellant and another 14 year old girl, Puti Maxwell, approached the vehicle and stole the vehicle's keys, which were in the ignition, and Mr Pigott's money card. They, and another girl, Kararaina Te Rauna, decided to steal the vehicle. They formed a plan to trick Mr Pigott into leaving the vehicle so they could get into it and drive away.

[3] When Mr Pigott could not be persuaded to get out of the vehicle the three girls decided to use force. Puti Maxwell had seen a hammer in the vehicle and after some discussion the appellant decided to get the hammer and hit Mr Pigott on the head. In the course of discussion the appellant raised the possibility of Mr Pigott being killed. According to the evidence, she said "What happens if I kill him?" and Puti Maxwell said "You will just knock him out".

[4] The girls returned to the vehicle where, concerned about his missing money card, Mr Pigott got out. The appellant, standing behind him, carried out some practice blows by executing a downward motion with the hammer. She then struck Mr Pigott on the head. Pathology evidence showed that Mr Pigott suffered seven or eight heavy blows to the head. The nature of the injuries was lethal with Mr Pigott lapsing into deep unconsciousness from a sub-arachnoid haemorrhage. He would certainly have died from these injuries but the girls, thinking him already dead, rolled his body out of sight from the road, down a bank of the Waitara River. Although the pathologist who gave evidence could not be certain, it is most likely that death was caused by drowning.

[5] The facts of this case might have been examined, juridically, in terms of *Thabo Meli v The Queen* [1954] 1 WLR 228 but, as Mr Mooney remarked in his submissions before us, the case was not about causation but intent. Counsel acknowledged that blows by the appellant caused deep unconsciousness which was a substantial and operative cause of death. In terms of *R v McKinnon* [1980] 2 NZLR 31 and *R v McKeown* [1984] 1 NZLR 630, the appellant's blows, being a substantial and operative cause of death, were sufficient to fix the appellant with criminal liability for causing Mr Pigott's death. But the appellant's case was that she was

guilty of manslaughter, not murder, because her causative acts were not done with murderous intent.

Application by appellant to call evidence on appeal

[6] The appellant's trial began in the High Court at New Plymouth on 28 August 2002 and ended with her conviction on 10 September. In preparation for trial her solicitors had arranged an assessment of her by a psychologist, Mrs Olive Webb, who reported her view that the appellant was fit to plead and must be considered responsible for her actions. For the purpose of sentencing, the appellant's solicitors arranged for a more comprehensive examination by a clinical psychologist of impressive qualifications, including experience with intellectual disability. On 1 October 2002 this psychologist, Ms Breen, prepared a report which was submitted to the Court for sentencing purposes. This concluded that the appellant's academic functioning and comprehension were low, having age equivalent scores at the nine year level. This suggested to Ms Breen mild intellectual disability but the results were not typical of many people born with an intellectual disability. This led Ms Breen to consider that further investigation into a head injury, suffered by the appellant at the age of nine, was warranted.

[7] Ms Breen's report led the Judge to direct further examination which was carried out by Dr D G Chaplow whose pre-eminence in general and forensic psychiatry has long been recognised by the Courts. Dr Chaplow considered that the appellant was of low-normal intelligence.

[8] The Court then ordered a neuro-psychological examination and report which took account of a CAT scan and an EEG test, the results of each of which were normal. Mr Elliot Bell, the senior clinical psychologist who conducted the neuro-psychological examination, noted that the appellant's general level of intellectual functioning appears to fall within the mildly intellectually disabled range but he expressed the opinion that it was most likely that her offending and behavioural problems reside within the diagnoses of Conduct Disorder and substance misuse. He remarked that Conduct Disorder involves a pattern of behaviour that violates the basic rights of others, or societal rules or norms.

[9] Dr Chaplow then prepared another report which expressed the opinion that the appellant has no evidence of mental illness but does have a low intellectual capacity which probably does not reach the criteria of Intellectual Disability. He agreed with the probability of a Conduct Disorder.

[10] The appellant sought leave to introduce Ms Breen's report prepared for sentencing purposes. Her counsel submitted that the evidence had the relevant quality of freshness, counsel having relied in preparation for trial on the opinion of Ms Webb. The Crown did not seriously contest the issue of freshness.

[11] Mr Mooney submitted that the proposed evidence also had the necessary cogency to be admitted in that it bore on the issue of the appellant's intent at the time she struck Mr Pigott. The Crown had relied on both limbs of s167 of the Crimes Act 1961 in respect of murderous intent and the appellant's intellectual level, being in certain respects equivalent to a nine year old, was a matter relevant for the jury's assessment.

[12] The Court received the proposed new evidence on a provisional basis to enable its cogency to be examined with the benefit of counsels' submissions on the factual and legal questions in issue.

Appellants arguments on appeal

[13] Mr Mooney submitted that because the crucial issue in the case was intent, there has been a miscarriage of justice because the jury did not have before it the evidence of Ms Breen, which could bear on that issue. Because of the appellant's limited intellectual capacity, there was the reasonable possibility that she did not really appreciate the likelihood that death might ensue from her conduct.

[14] It was also submitted that the trial Judge misdirected the jury with respect to the evidence relating to the blows to the head and associated intent. Mr Mooney said that although the Crown's case was that the blows were of themselves sufficiently strong to be fatal, the defence was that it was not clear how strong the blows were, who applied them and whether they caused death. In summing up the Judge had

failed adequately to put that defence by emphasising the evidence that the blows would have been fatal and by failing to emphasise that it would be necessary for the jury to determine the number of blows that were struck, who struck them and whether those struck by the appellant were necessarily fatal or not. Counsel submitted that the jury could not attribute murderous intent to the appellant from the force and effect of certain blows unless they were satisfied that it was the appellant who had inflicted such blows; although the appellant's blows could be considered a substantial and operating cause of death this does not mean they were necessarily of fatal force so as to raise the inference of murderous intent.

[15] Eye-witness evidence of the hammer incident was given by a girl, 12 at the time and a boy 13 at the time, as well as by Ms Te Rauna whose plea of guilty to manslaughter had been accepted before the trial began. The 12 year old girl described hearing blows to Mr Pigott's head and when she looked up she saw the appellant hit Mr Pigott twice with the hammer while he lay on the ground. The young boy described how the appellant hit Mr Pigott three times before he fell to the ground and then Ms Te Rauna kicked Mr Pigott two or three times in the head while he lay on the ground. Ms Te Rauna said the appellant hit Mr Pigott twice on the head and then twice more after he dropped to the ground. She admitted that she had herself moved Mr Pigott's shoulder with her foot in "more of a kick". This provided some evidential basis for a submission that Ms Te Rauna may have caused the severest injuries including the sub-aracthnoid haemorrhage.

[16] In the course of his summing up the trial Judge said:

> Regardless of whether or not Mr Pigott drowned, the uncontested evidence of Dr Innes and Dr Thomson is that the injuries to Mr Pigott's brain would have been fatal.
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> …
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> Here the evidence is that Mr Pigott sustained fatal injuries to his brain as the result of the unlawful act of someone administering a blow or blows to his head. (Whether by way of hammer blows or by way of kicks to the jaw is an issue you will have to consider). Although those blows caused fatal injuries on the evidence of Dr Innes and Dr Thomson, there is also the possibility that you will have to weigh that Mr Pigott was not dead when he was rolled over the stop-bank and that he may have drowned as a result of his unconscious body being in the Waitara river.

…

> If the Crown has made you sure that the fatal blow or blows to Mr Pigott were struck by the accused Renee O'Brien then that would be sufficient for you to either bring back a guilty verdict for murder *if* you are sure that she also had a murderous intention, or a guilty verdict on manslaughter if you are not sure that she had a murderous intention.
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> …
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> If on the other hand you are in a position where you are not sure whether the accused Renee O'Brien inflicted the fatal blows on Mr Pigott and you are not sure that her assault (an unlawful act) was the cause of his death, then you should turn to whether, by disposing of Mr Pigott'' unconscious body in the river, she committed an unlawful act which you are sure resulted in his death by drowning.
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> …
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> But if the Crown has made you sure that Renee O'Brien inflicted the fatal blows on Mr Pigott either with a murderous intent or unlawfully then, because you know from two of the pathologists that the brain injuries would have been fatal in any event, you do not need to consider the drowning possibility.

[17] Mr Mooney submitted that the Judge put the matter too high in describing the evidence of Dr Innes and Dr Thomson that the injuries to Mr Pigott's brain would have been fatal as "uncontested". He also submitted that the frequent references to "fatal blows" were in effect a pre-emption of the defence case that the appellant's intent was inferable only from blows attributable to her. When a member of the Court mentioned to Mr Mooney that the Judge had made it plain on more than one occasion that Mr Pigott might have drowned and the jury could not therefore have taken the Judge's reference to "fatal" as necessarily indicating that blows struck by the appellant had actually killed, Mr Mooney's response was that he accepted that the Judge had covered every point but it was a matter of emphasis and of terms implying a single factual matrix in relation to the blows.

[18] Mr Mooney also submitted that the Judge had misdirected the jury in relation to the issue of drunkenness. There was evidence from a number of witnesses about a bottle of bourbon being purchased by a relative, how several of them had drunk from the bottle including the appellant who had drunk more than anyone, and how all had been affected. In the course of summing up, the Judge referred to drunkenness in these terms:

> You have heard the evidence of drinking over a weekend and on Sunday. … You may well conclude that Renee O'Brien was intoxicated to some extent but we have had no direct evidence about how drunk the accused was. So you must not speculate. This may well have affected her judgment, but it does not excuse any criminal conduct. Drunkenness is not a defence. Its only relevance would be if you felt that the accused was so drunk that she did not have the relevant murderous intent at the time of the assault.
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> … Mr Brewer reminded you that a drunken intention is still an intention and in that regard he is correct.

[19] In Mr Mooney's submission the directions were inadequate because they were not sufficiently linked to the necessity for the Crown to prove, beyond reasonable doubt, a murderous intent in terms of s167 of the Crimes Act. Further, the Judge should also have emphasised that if the jury were unsure on the issue of intent, the appellant could still be convicted of manslaughter.

Crown submissions on appeal against conviction

[20] In relation to the evidence of Ms Breen, the Crown submitted that it lacked requisite cogency because it was insufficiently relevant to the issue of murderous intent. It could not reasonably be inferred that the features of the appellant's intellectual impairment affected her ability to form an intent particularly when, on the evidence, she had specifically contemplated the possibility of causing death.

[21] As to the general submission that the Judge misdirected the jury and failed adequately to put the defence in relation to inferred intent relative to blows causing injury, Mr Pike submitted that if anything the Judge set a higher bar for the Crown than the circumstances might warrant. This is because the circumstances were relatively similar to *Thabo Meli v The Queen*, as applied in New Zealand. Whether the ultimate cause of death was head injury or drowning, the appellant was a party to both and if death was by drowning then that was not so overwhelming as to make the original injury merely part of the history.

[22] In any event there was substantial evidence that eight or nine hammer blows were inflicted and at least five of them would have been fatal but for drowning. The Judge emphasised the necessity for the jury to be sure that what he referred to as "fatal blows" were struck by the appellant, and if they were not sure that the

appellant inflicted the fatal blows, and not sure that her assault on Mr Pigott was the cause of death then they would have to consider an unlawful act in terms of drowning.

[23] Concerning drunkenness, Mr Pike submitted that there was no misdirection and that it must be questioned whether drunkenness could possibly be an issue, given the clear evidence of planning, discussion, subterfuge and further discussion about the use of the hammer and the likelihood of death. The Judge correctly related the issue of drunkenness to intent. And at the conclusion of the summing up, when counsel were asked whether there were any matters of omission or misdirection, Mr Brewer for the Crown and Mr Mooney for the defence had answered "no".

Discussion of appeal against conviction

[24] We agree with the Crown submission that Ms Breen's proposed evidence lacks cogency. Although the Crown relied on both s167(a) and (b) of the Crimes Act in respect of murderous intent, the latter was more apt. Section 167(b) is concerned with actual knowledge of likely consequences coupled with recklessness. Of itself the quality of the appellant's intellect, as indicated in Ms Breen's report, does not raise the inference of an inability to know that death is likely if a person is struck several times on the head with a hammer. On the other hand, there was uncontradicted evidence that the appellant actually envisaged the possibility of killing. The jury was entitled to infer that with knowledge of such likelihood she was reckless as to whether death ensued or not. Nor can the assessment of cogency realistically be made without examining Ms Breen's evidence in the light of the other expert evidence before the Judge at the time of sentencing, such forming part of the case on appeal. This indicates that the relevant psychological context of the appellant's offending was not impaired prognostication but Conduct Disorder.

[25] We do not accept the argument on behalf of the appellant that the Judge misdirected the jury, whether in terms of emphasis or otherwise, in connection with the defence. As far as the appellant's semantic argument is concerned, we think the Judge used the epithet "fatal" when "lethal" may have been more strictly correct. But the context in which he used the expression both at specific points and generally,

plainly shows and this would be perfectly clear to the jury, that he was using it in a particular sense. This was to indicate and to focus attention on blows which were fatal if the immediate cause of death was brain injury, or would have been fatal if the immediate cause of death was supervening drowning.

[26] The Judge summarised the defence case in the following terms:

> [73] Mr Mooney referred to the conflicting evidence which you have heard. He accepts the accused hit the deceased from behind but it is not clear whether he was hit by the accused when he was on the ground. He referred you to conflicting evidence. He referred you to Raymond's evidence of Hubba kicking Mr Pigott on the ground in the head. He says that Nadia's evidence was different from what she gave at depositions and suggests that is a result of her talking to the police and to her Aunty Bina about her evidence on a number of occasions and asks you to consider very carefully whether this is Nadia's true memory. He suggested to you that Hubba when she gave evidence was trying to minimise her role. Mr Mooney submits that she was making up the evidence about Mr Pigott being hit by the accused when he was on the ground otherwise Hubba would have actually seen this happen. He reminds you that not all of Hubba's evidence was reliable and reminded you of her changing her story somewhat about what it was she saw in the water in the dark. He calls into question whether Hubba was wearing jandals and refers you to the evidence of black shoes.
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> [74] Mr Mooney says there is a doubt whether Renee inflicted more hammer blows on Mr Pigott when he was on the ground. He refers to Dr Rodriguez's evidence about the brain haemorrhage and says that Dr Rodriguez gave evidence that this could be caused by a number of things, by the hammer, by kicks, or by dragging across the road, or by a fall on to the rocks at the banks of the Waitara river.
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> [75] Mr Mooney says that the accused had no intention to kill, that the idea or plan was to knock him out. On the issue of whether the accused was reckless, Mr Mooney refers to five or more factors. Were the hammer blows likely to cause death? Because we don't know the severity of the brain injury we don't know that the brain injuries were fatal. Can you assume the severity of the blows on the evidence you have heard. If the blows were survivable he asks you to consider Mr Pigott might have drowned, so Renee by disposing of the body had no intention to kill him. This was a manslaughter scenario.
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> [76] He asks you to consider alcohol consumption when you try to assess what was going on in Renee's mind. Mr Mooney says that this was a drunken mind. He refers to the accused's reaction and suggests that Mr Brewer's description of the accused's reaction once the blows had been struck was not a fair description and that she was instead shocked or panicking.
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> [77] Mr Mooney submits to you that the plan was not to kill Mr Pigott or to recklessly inflict bodily injury on him, but instead to knock him out; that the accused did not go beyond the plan to knock Mr Pigott out, the plan to knock

> him out and joy-ride in this car. On that basis you should bring back a verdict of not guilty of murder but guilty of manslaughter.

[27] In our view, there was no such misdirection as Mr Mooney submitted on behalf of the appellant.

[28] We are of the same view in relation to the ground of appeal based on the directions as to the relevance of intoxication. It is the case that there was some evidential basis for the jury to conclude that the appellant and her accomplices were affected by alcohol, including that it was not a novel state for them. But there was no direct evidence of intent, because the defence elected not to adduce evidence at all. On the other hand, the jury could not reasonably have contemplated a reasonable possibility of the appellant not having a murderous intent having regard to the effects of alcohol. This is because of the clear evidence, as the Crown puts it, of planning, discussion, subterfuge and further discussion about the use of the hammer. There is also the appellant's articulated appreciation that she might kill.

[29] We think, with respect to the Judge, that it would have been better if he had emphasised that it was for the Crown to satisfy the jury beyond reasonable doubt that there was the requisite intent and that in considering that issue the jury ought have regard to all relevant matters including age and the taking of alcohol. But in reality there was nothing in the conduct of the appellant, before or after the homicidal conduct, which could have left the jury in any reasonable doubt by reason of intoxication.

[30] We are not persuaded that for any reason there has been a miscarriage of justice and accordingly the appeal against conviction fails.

Appellant's arguments on appeal against sentence

[31] The argument for the appellant both in the High Court and in this Court was that given the appellant's young age and intellectual impairment, the imposition of a sentence of life imprisonment is, in the words of s102 of the Crimes Act, manifestly unjust.

[32] The Judge found there was nothing really exceptional about either the appellant or the murder. He considered authorities then available to him such as the decision of the High Court *R v Rawiri*, the appeal in respect of which is referred to later in this judgment, as well as Article 37 of the United Nations Convention on the Rights of the Child. He noted that the appellant was 15, having been "14 years and 10 months" (sic) at the time of the offence, but found that a mitigating factor in terms of s9 does not bring s102(1) into play. He held that her young age would normally be a mitigating factor but, for murder, age is not a differentiating factor. Nor in his judgment were low intelligence or mild intellectual impairment justifications for triggering the discretion under s102. He concluded as follows:

> Ms O'Brien, you killed a man. You killed him needlessly, senselessly and recklessly. Your conduct that night was a catastrophic consequence of the anti-social behaviour and bad conduct which you had displayed over the previous year or two. You were rightly convicted of murder. The sole remaining issue for me is whether having regard to your age and the psychological assessments which suggest a low IQ and a mild intellectual disability, it would be manifestly unjust to sentence you to life imprisonment.
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> [26] I do not consider it would be manifestly unjust. Indeed it would be a travesty of Parliament's clear policy if I were to uphold your counsel's submission. For murder Parliament has provided a mandatory penalty. There is absolutely nothing to suggest that Parliament intended teenage murderers be treated more leniently than murderers at large. Sentencing someone of your age and your limited intellectual ability to life imprisonment does not, in the context of your crime, strike me as being manifestly unjust.
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> [27] Accordingly I sentence you to imprisonment for life.

[33] Mr Mooney submitted the Judge was wrong to conclude there was nothing really exceptional about either the appellant or the murder. The specialist reports disclosed mild intellectual disability in relation to significant elements of the appellant's thought processes and that this, coupled with her young age, were sufficient to overcome the presumption of life imprisonment.

Crown submissions on sentence

[34] The Crown submitted that the threshold for departing from life imprisonment is high as indicated in *R v Rawiri*. In the particular case the aggravating features

were grave. This was a criminally motivated and brutal attack with a weapon on a victim in no position effectively to resist. The attack was needlessly sustained and followed by callous indifference in the disposal of Mr Pigott into a river. The Judge erred neither in law nor principle and he was not plainly wrong.

Discussion

[35] This Court recently considered s102 in relation to young people in *R v Rapira & Ors* CA318/02, CA328/02, CA334/02, CA340/02, CA341/02, CA358/02, CA93/03, 5 September 2003. The judgment in this series of cases is known as *R v Rawiri*. Alexander Peihopa and Whatarangi Rawiri had been found guilty of murdering Mr Michael Choy, a food delivery courier, so that they could steal food and money from him. A number of their accomplices were convicted of manslaughter. Mr Choy died of head injuries inflicted in the course of the aggravated robbery. At the time of the offence, Alexander Peihopa was 15 years old and Whatarangi Rawiri was 17. In the case of Peihopa, his young age was advanced as the argument in support of the manifest injustice of a life sentence. In the case of Rawiri, the argument was founded on youth and remorse. In the High Court Fisher J had held that the expression "manifestly unjust" imposes a high threshold for departing from the norm of life imprisonment. In dismissing the appeals this Court accepted the correctness of Fisher J's approach. It held:

> [121] We are of the view that the Judge was correct to conclude that the presumption of life imprisonment for murder was not displaced for Peihopa or Rawiri in the circumstances of the case. The test is that the sentence of life imprisonment is manifestly unjust. That conclusion has to be made on the basis of the circumstances of the offence and the offender. It is an overall assessment. The injustice must be clear, as the use of "manifestly" requires. The assessment of manifest injustice falls to be undertaken against the register of sentencing purposes and principles identified in the Sentencing Act 2002 and in particular in the light of ss7, 8 and 9. It is a conclusion likely to be reached in exceptional cases only, as the legislative history of s102 suggests was the expectation. Thus, on introduction of the Sentencing and Parole Reform Bill, the Minister of Justice (at 594 NZPD 10910) referred to its retention of "a strong presumption in favour of life imprisonment for murder":
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> > However, in a small number of cases, such as those involving mercy killing, or where there is evidence of prolonged and severe abuse, a mandatory life sentence is not appropriate.

> Under this legislation, the court will be able to consider a lesser sentence.
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> [122] While youth is a factor properly to be taken into account in sentencing, it is part only of a wider public interest (*R v* Fatu [1989] 3 NZLR 419, 431; *R v Mahoni* (1998) 15 CRNZ 428, 436). Where the offending is grave, the scope to take account of youth may be greatly circumscribed. Article 37 of the United Nation Convention on the Rights of the Child, referred to by counsel for the accused and Crown, prohibits capital punishment and life imprisonment without possibility of parole for those under 18. In New Zealand, eligibility for parole for those sentenced to imprisonment for life arises after 10 years.
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> [123] The Sentencing Act contains no restriction on a sentence of life imprisonment on a young person who is criminally responsible. The presumption expressed by s102 is legislative identification of the public interest in maintaining life imprisonment as the standard response for murder unless such response is manifestly unjust. Youth of itself could not be a sufficient reason to make life imprisonment manifestly unjust if the offender had the necessary intent (under s167) or knowledge of consequences (under s168) to be guilty of murder, in the absence of a statutory direction to that effect.
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> [124] In the case of a finite term of imprisonment, the reduction in the period until eligibility for parole which was part of the reforms introduced in 2002 relieves the sentencing Judge of some of the former anxiety in predicting the prospects of rehabilitation for a young offender. The response of a young offender to a sentence of imprisonment and the changes brought about by his or her developing maturity can be considered at an earlier stage by the Parole Board. In the case of a young offender sentenced to life imprisonment, use of the power under s25 for early consideration of parole may be appropriate where, through developing maturity and positive response to correction, the 10 year non-parole period ought to be reconsidered in the interests of justice.

[36] Youth is not necessarily immune to wickedness and, regrettably, that is demonstrated in this case. In our view, low intellectual capacity unrelated to the mental elements of criminal responsibility, is seldom likely to justify a departure from the statutory presumption. It is to be remembered that the fact of conviction for murder will have excluded mitigating features such as provocation, and disease of the mind amounting in law to insanity. There may be cases where the circumstances of a murder may not be so warranting denunciation and the mental or intellectual impairment of the offender may be so mitigating of moral culpability that, absent issues of future risk to public safety, it would be manifestly unjust to impose a sentence of life imprisonment. This is not such a case, particularly when the circumstances of the offence, which must be considered along with the circumstances of the offender, demonstrate premeditated brutality. The offenders

decided to steal Mr Pigott's car simply so they could go for a joyride in it. They conceived a plan to steal his keys and money card and by some trick to lure him from his vehicle so they could take it. Upon learning of the hammer, the appellant obtained it, practised striking, and then repeatedly struck Mr Pigott's head with it. What was believed to be his dead body was callously disposed of and then the car was taken for the joyride originally anticipated. The only relevance of youth and intellectual state, in this case, is that they may have caused a reduced sense of responsibility for planning and carrying out a brutally murderous attack in order to steal a car for a joyride. There is nothing about the circumstances of the offence or the offender which would make a sentence of imprisonment for life unjust.

Result

[37] For the above reasons the appeal against conviction and the appeal against sentence are each dismissed.

Solicitors:
Gordon & Mooney, Solicitors, Stratford for Appellant
Crown Law Office, Wellington for Crown