SUPREME COURT OF QUEENSLAND

CITATION:	*R v Appleton* [2017] QCA 290
PARTIES:	**R** **v** **APPLETON, Linda Eileen** (applicant)
FILE NO/S:	CA No 302 of 2016 SC No 1219 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 21 October 2016 (Dalton J)
DELIVERED ON:	24 November 2017
DELIVERED AT:	Brisbane
HEARING DATE:	6 November 2017
JUDGES:	Sofronoff P and McMurdo JA and Brown J
ORDER:	**The application for leave to appeal against sentence is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the deceased and two of her friends attended the house of the applicant's de facto husband, her co-offender – where the applicant and her co-offender were in the house – where the applicant and her co-offender physically assaulted the deceased repeatedly over a six hour period – where the deceased's first friend was duct taped and gagged by the applicant and forced to witness the attack – where the applicant also forced the deceased's second friend to witness the attack – where the applicant's co-offender eventually shot the deceased twice in the head with a pistol – where the applicant then placed a plastic bag around the deceased's head to suffocate her – where the applicant and her co-offender forced the deceased's two friends to clean up the area where the attack had taken place and to transport the deceased's body into a car – where the applicant and her co-offender took the two friends of the deceased to their homes – where the applicant and her co-offender then dumped the deceased's body in a shallow grave in Beerburrum Forest – where the applicant and her co-offender were convicted of one count of murder, two counts of deprivation of liberty and one count of interfering with a corpse – where the applicant

and her co-offender were both sentenced to life imprisonment – where the applicant's non-parole period was extended beyond the statutory minimum to 23 years – where the applicant's co-offender's non-parole period was extended beyond the statutory minimum to 27 years – where the applicant and her co-offender had extensive criminal histories but her co-offender's criminal history involved more violent offences, including a manslaughter conviction – whether the sentencing judge erred by extending the applicant's non-parole period beyond the statutory minimum of 20 years due to a failure to distinguish between the cases of the applicant and her co-offender

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – JUDGE ACTED ON WRONG PRINCIPLE – where the applicant was convicted of one count of murder, two counts of deprivation of liberty and one count of interfering with a corpse – where the applicant was sentenced to life imprisonment – where the applicant's non-parole period was extended beyond the statutory minimum to 23 years – where the minimum non-parole period is only extended in cases involving especially egregious offending – whether the sentencing judge erred by extending the applicant's non-parole period because the applicant's offending was not as serious as the offending in other cases where the non-parole period was extended

Corrective Services Act 2006 (Qld), s 181(2), s 181(3)
Criminal Code (Qld), s 305(1), s 305(2), s 305(4)
Penalties and Sentences Act 1992 (Qld), s 9, s 160C, s 160D

R v Abell, unreported, Douglas J, Supreme Court of Queensland, SC No 568 of 2012, 8 October 2013, cited
R v Cowan; R v Cowan; Ex parte Attorney-General (Qld) [2016] 1 Qd R 433; [2015] QCA 87, cited
R v Maygar; ex parte Attorney-General (Qld); R v WT; ex parte Attorney-General (Qld) [2007] QCA 310, followed
R v Sargeant (1974) 60 Cr App R 74, cited
R v Sica [2014] 2 Qd R 168; [2013] QCA 247, cited
R v Taylor, unreported, Burns J, Supreme Court of Queensland, SC No 473 of 2015, 24 May 2016, cited

COUNSEL: E Wilson QC for the applicant
J A Wooldridge for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** The applicant was sentenced on 21 October 2016 on one count of murder, two counts of deprivation of liberty and one count of interfering with a corpse. She was sentenced to the maximum possible penalty of three years in respect of the counts of deprivation of liberty and the maximum of two years on the

count of interfering with a corpse. On the murder count she was sentenced to imprisonment for life with a parole eligibility date set at 23 years.

[2] Section 305(1) of the *Criminal Code* provides that a person who commits the crime of murder is liable to imprisonment for life, which penalty cannot be mitigated or varied. Section 305(2) provides that if a person is being sentenced on more than one conviction of murder, or on one conviction of murder and another offence of murder is taken into account, or is being sentenced on a conviction of murder and the person has previously been sentenced for an offence of murder, then a court must make an order that the offender must not be released until the person has served "a minimum of 30 or more specified years of imprisonment". Section 305(4) makes similar provision in the case of the murder of a police officer. In such a case the court is obliged to make an order that the offender not be released from imprisonment until the offender has served a minimum of "25 or more specified years of imprisonment". The expression "or more" used in s 305(2) and s 305(4) implicitly confers power on the court to increase the non-parole period.

[3] Section 181 of the *Corrective Services Act* 2006 otherwise makes provision for parole of prisoners serving life sentences. In the two cases provided for by s 305(2) and s 305(4) of the *Criminal Code* the section provides that parole eligibility begins on the day after the prisoner has served 30 years or 25 years respectively. In other cases of murder, for which s 305 provides no minimum non-parole term, s 181(2)(c) provides that parole eligibility begins after the prisoner has served 20 years. In cases of life imprisonment for offences other than murder, s 181(2)(d) provides that parole begins after 15 years.

[4] Section 181(3) provides:

> "Despite subsections (2), (2A) and (2B), if a later parole eligibility date is fixed for the period of imprisonment under the *Penalties and Sentences Act 1992*, part 9, division 3, the prisoner's parole eligibility date is the later date fixed under that division."

[5] Part 9 Division 3 of the *Penalties and Sentences Act* 1992 deals with parole. Section 160D concerns offenders sentenced for a sexual offence or for a serious, violent offence as defined. Section 160D(3) provides, relevantly, that the court may fix the date upon which such an offender becomes eligible for parole. Because s 182(2) of the *Corrective Services Act* 2006 requires such a prisoner to serve the lesser of 80 per cent of such a prisoner's term of imprisonment or 15 years, it follows that the power to "fix the date the offender is eligible for parole" under s 160D only empowers the court to fix a date later than 80 per cent of the prisoner's term of imprisonment or later than 15 years as the case may be. The catalogue of serious violent offenders in Schedule 1 of the *Corrective Services Act* does not include murder for the obvious reason that the non-parole period for such offenders is dealt with specifically by s 305 of the *Criminal Code* and s 181(2)(c) of the *Corrective Services Act*. Neither the criterion of 80 per cent of time served nor 15 years can apply to them.

[6] Section 160C of the *Penalties and Sentences Act* makes the same provision for offenders who are neither sexual offenders nor serious violent offenders but who have been sentenced to a period of imprisonment of more than three years. Section 160C(5), relevantly, empowers the court to fix a parole eligibility date for such offenders. Murderers not dealt with by s 305(2) or s 305(4) are in that class.

[7] So, s 305(2) and s 305(4) of the *Criminal Code* themselves confer power on the Court to increase the non-parole period otherwise applicable under those two sub sections. Section 160C(5) and s 160D(3) make similar provision in all other cases, including that of murder in cases to which s 305(2) and s 305(4) do not apply.

[8] At sentence in this matter the Crown had submitted that the applicant's period of imprisonment should be extended beyond 20 years. The learned sentencing judge, Dalton J, ordered that the applicant not be eligible to apply for parole until after serving 23 years imprisonment. The applicant now seeks leave to appeal that part of her Honour's sentence.

[9] The applicant was born on 17 September 1973 and, consequently, she was 40 years old at the date of the offences and 43 years old at trial. She has a history of drug offences and other offences related to her drug addiction. These include offences of violence. In 1992, when she was 18 years old, she was convicted of two counts of assault occasioning bodily harm. In 2001 she was convicted of a further assault charge. She had put her hands around the neck of a nine year old girl and choked her. In the same year, she was convicted of an assault in which she had pulled out a knife. In 2002 she was convicted of carrying a knife in a public place. In 2004 she assaulted another child, whom she again took by the throat, and whose head she jabbed with a fork.

[10] Between June and August 2012 she committed numerous drug offences, the offence of dangerous operation of a vehicle while affected by drugs and assaulting or obstructing a police officer. In August 2013 she was imprisoned for these offences for a period of two years with a parole release date of 18 October 2013. She was accordingly released two months later, but was soon returned to serve her term of imprisonment for reasons that have not been explained.

[11] In June 2014, a few days before her imminent release from that sentence, the applicant had a telephone conversation from prison with one John Harris, with whom she had been in a relationship before her imprisonment and who was later to be her co-accused in the present matters. The applicant had become angry and suspicious that, while she was in prison, Harris had had a sexual relationship with Tia Landers and that Ms Landers had taken some of her property.

[12] On 16 June 2014, six days after her release from prison, the applicant was at Harris's house at Brighton. Ms Landers and two of her acquaintances, Jake McKenzie and Ryan Morgan, arrived there in Ms Landers's car. Morgan remained in the car while McKenzie and Ms Landers entered the house. Within a very short time, Ms Landers asked McKenzie to get her keys from her car. As he left the house he heard the sounds of what proved to be the beginning of a violent attack upon Ms Landers by Harris and the applicant. McKenzie banged on the door to be let in and the applicant opened the door to admit him, brandishing a machete. McKenzie gave evidence that he went inside because "my friend was in there getting attacked". He saw Harris on the floor on top of Ms Landers, choking her with one hand while holding a large knife in the other. Furniture had been smashed.

[13] The applicant used her machete to make McKenzie submit to being duct taped and gagged. Once he had been secured in that way the applicant rushed at Ms Landers. Harris was then sitting immobilising Ms Landers by sitting on her while she was kicking her legs in an attempt to get free. The applicant cut her leg open with the machete. Ms Landers appeared to pass out. McKenzie thought she was dead.

[14] Harris and the applicant then realised that Morgan was still outside in the car and they brought him in. Morgan was terrified. Harris was still holding his knife and the applicant still held her machete. They put Morgan on a lounge suite where the applicant attempted to duct tape his limbs. Morgan screamed that he was claustrophobic and the pair left him unsecured on the sofa.

[15] Some time passed and Ms Landers began to make movements. She regained consciousness and was evidently very frightened. The applicant took up a large knife and smashed it against Ms Landers's skull, laying it open. Harris said words to the effect that it was just a scratch and that she should go and have a cold shower. The applicant used her knife to jab at Ms Landers's body, driving the tip into her repeatedly.

[16] Ms Landers complained that she wasn't feeling well and that she was dying. Harris put her into a cold shower saying that this would "thicken her blood". When Ms Landers emerged wet from the shower, she seized one of Harris's edged weapons that he had hanging on the wall and made a break for the door but Harris and the applicant caught her, bashed her and brought her back. At some point he slashed her Achilles tendons with a sword, crippling her.

[17] Harris and the applicant then took some time each to enjoy a shot of heroin. McKenzie and Morgan were each given methamphetamine to smoke. Ms Landers was carried or dragged into the kitchen and placed in a corner. Yet she had not given up. She made attempts to crawl away. On one such occasion she managed to stand and to get a kitchen knife out of a drawer. But each time she was brought back by Harris and the applicant and violently bashed. Her head was kicked and in this way her teeth and face were fractured.

[18] Finally, Harris emerged from another part of the house with a pistol fitted with a silencer and shot Ms Landers twice in the head. Still she was not dead and she did not die until the applicant put a plastic bag around her head and suffocated her.

[19] By then she had suffered numerous gashes and cuts to her head, face and limbs and fractures to her jaw and had been mutilated and crippled by knives and a sword.

[20] It was McKenzie's impression, as he explained at the trial, that as between Harris and the applicant, it was the applicant who was the dominant one directing events.

[21] The two murderers then forced McKenzie and Morgan to help them clean up the bloody mess they had made. The killers wrapped their victim's body in blankets and forced Morgan and McKenzie to help them in putting the body into the back of Ms Landers's own station wagon. Harris drove the car and the applicant sat in the front seat next to him. Morgan and McKenzie sat in the back. The murderers dropped Morgan and McKenzie, witnesses to murder, to their respective homes. The whole ordeal had lasted almost six hours.

[22] Harris and the applicant then drove on to a service station where they left Ms Landers's corpse in her car and purchased some strawberry flavoured chewing gum and flowers. The applicant also selected and bought a bottle of kerosene. They then travelled to Beerburrum Forest where they tried to bury Ms Landers. A bra was later found near her shallow grave. It carried traces of accelerant consistent with

kerosene. Ms Landers's body was not wearing a bra when it was unearthed and it was probably hers.

[23] Mrs Landers reported her daughter missing a few days later. Harris and the applicant told the police that they knew nothing about her whereabouts. Police later found the body and arrested Harris and the applicant. They searched Harris's house.

[24] Neighbours of Harris had seen him burning things in his barbeque. Police there found traces of burnt female underwear, melted credit cards and remnants of sofa cushion. Inside the house police found a roll of duct tape with smears of blood which contained Ms Landers's DNA. The roll also carried Harris's fingerprint in the bloodstain. The tape itself was consistent with the tape that the applicant had used to secure the plastic bag around Ms Landers's neck to kill her. More of Ms Landers's blood was found in the hallway, on the sofa and on a piece of jewellery that was found in the house. Police also found evidence that bleach had been used to try to clean away the bloody evidence.

[25] An informant was introduced into the applicant's cell after her arrest and recorded a conversation. The attitude that the applicant then displayed in what she said is illuminating. Relevantly, she said:

> "I'm not doing 30 years for that fucking dumb cunt Tia Landers she's a fucking piece of dog shit.
>
> …
>
> Fucking Tia Landers piece of shit scum bitch.
>
> …
>
> We carved her up … We chopped her up … We chopped her up with a machete."

[26] Her perverted moral perspective appears from her judgment about the role of McKenzie and Morgan in informing police about what they had witnessed:

> "Mate we let them live and … then they dogged on us."

[27] Murder is a particularly evil act because its effects are not limited to the extinguishment of a life that might have been longer. It also has an ongoing effect upon the victim's close ones. That effect is not limited to mere bereavement. As in this case, such people must also lament the cruel facts about how their loved one was killed. Mrs Mary Landers, Tia Landers's mother, prepared a long victim impact statement that was read out in full during sentencing. In part she said:

> "In the last two years I have watched as my family has struggled with their pain, anger and grief. I have watched as Tia's [four] children [aged between 6 and 12] attempt to process what it means to have a parent ripped violently from their lives through murder.
>
> …
>
> Since Tia's murder, I've had a front-row seat to the destruction of our family as a result. I have not only watched the deterioration of her children but I have also witnessed my family tear itself apart as

> each of my children attempt to process the gruesome murder of their sister.
>
> …
>
> It was not just me who was so cruelly affected by Tia's death, another person who was so callously traumatized but who is not here to give their statement today is Tia's father my late husband Barry. After the death of his daughter while fighting cancer he lived what he referred to as his own personal nightmare daily. Tia's father was a man of few words but when he did speak he continually stated that "you should never have to bury your child." He would then sit in silence and ponder almost as if his spirit had been broken by the murder of his daughter and the unpredictable future of his grandchildren.
>
> I never know what sight or sound is going to trigger a memory of Tia in my mind she is everywhere."

[28] Ryan Morgan also furnished a victim statement. He said, in part:

> "This has affected me really badly. I remember things they did to me. I thought 100% I was going to die.
>
> …
>
> I have nightmares and flashbacks all the time – especially now there is a trial, it is all coming up again. I now get really bad paranoia.
>
> …
>
> I was a ghost. Covered in blood. I went inside and had a shower and I was so scared they were coming after me. I was shaking."

[29] This was a remarkably strong Crown case. In most murder cases the sole living witness to the crime is the offender. The Crown has to rely upon circumstantial evidence to prove its case, such as the blood stains, the bleach used incompetently to remove them, the bungled attempts to burn evidence and bury the body and the murderers' video-recorded stop at the service station in the victim's car. But in this case there were two eye witnesses to their crimes at the inevitable trial.

[30] The applicant, as well as Harris, each pleaded guilty to the charges of deprivation of liberty and interfering with a corpse, offences that carried what were, in this case, insignificant maximum penalties of only three and two years respectively. But they both pleaded not guilty to the charge which carried a mandatory sentence of life imprisonment.

[31] It is impossible to see, in prospect or even in hindsight, what possible defence they thought they had to the charge of murder. Harris's counsel cross-examined McKenzie and Morgan but did not challenge any material part of their evidence. The applicant's counsel also cross-examined them. That cross-examination was skilful, succinct and pointed. It reflected instructions to attempt to present the applicant's role as Harris's mere factotum. It sought, albeit unsuccessfully, to elicit facts to show that the applicant had momentarily shown kindness to Tia Landers during her ordeal.

[32] Otherwise, it can be inferred that the applicant's counsel conducted the case because he was constrained by his duty to his client to conduct her defence upon the basis of his client's insistence that the Crown prove its case against her.[1]

[33] The Crown set about doing this. It had called 27 witnesses before the applicant and Harris decided that it was time for them to change tack. By then, as well as having compelled McKenzie and Morgan to relive their agonies, Mrs Mary Landers had been obliged to give evidence in the trial of her daughter's killers. The applicant and Harris were re-arraigned and both of them pleaded guilty to murder.

[34] On sentence, the applicant proffered a letter to the judge in which she represented to Mrs Mary Landers that she was "truely [sic] sorry for sentancing [sic] you to life of loss, hurt and pain". She also said that she would "like to sinceriely [sic] apologise to Tia's 4 children". She said that "for the final hr [sic] or so of Tia's life she was showen [sic] compassion. I gave her the blue blanket to rug up and then sat on the floor with her and helped her smoke a couple of cones and gave her a cold drink with a straw and smoked a cigarette or 2 while we talked and I assured her when John got back I would get my medical bag and attend to her injuries". By the time of this offer of alms, the applicant had savagely slashed her victim's leg, had watched her accomplice cripple her by sword cuts to her ankles and she herself had beaten Tia Landers's head causing fractures to the face and teeth that must have been agonising.

[35] The applicant's sentiments in those respects were somewhat diluted by her submission, in the same document, that McKenzie was "not the victim he pretends to be" and by her ludicrous statement, evidently intended to comfort Mrs Landers, that the applicant "needed [Mrs Landers] to know she wasn't hurt the whole time".

[36] The Crown prosecutor rightly submitted that this document should be given little weight. In my opinion it could be given no weight at all. As the prosecutor correctly submitted, it demonstrated not the slightest degree of remorse or contrition. It did not contain an acknowledgement of responsibility for murder. In the applicant's favour, Dalton J acknowledged it while noting its inconsistency with the applicant's conduct.

[37] It is in these circumstances that the applicant now seeks leave to appeal against Dalton J's decision to extend her non-parole period from 20 years to 23 years. Her Honour had extended Harris's non-parole period by seven years. He had a particularly violent criminal history including a previous conviction for manslaughter and this justified differential treatment.

[38] This application raises the question about the purpose of the power to extend a non-parole period for murder. It must be observed that, because the mandatory sentence for murder is life imprisonment, a murderer who is released on parole will nevertheless remain a prisoner for life. Further, because the mandatory non-parole period of 20 years is so long, it would be a rare case in which a judge would be able to predict that no process of rehabilitation would render a prisoner suitable for consideration for parole until after a lengthier period. Nor can the additional period of imprisonment sensibly serve the purpose of deterrence if 20 years imprisonment does not.

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1 *Tuckiar v The King* (1934) 52 CLR 335 at 346 per Gavan Duffy CJ, Dixon, Evatt and McTiernan JJ.

[39] But the purpose of punishment is not just to prevent further criminal acts by deterrence or rehabilitation. After all, many convicted murderers have killed despite having the actual penalty in mind. Most have killed impetuously and are extremely unlikely ever to kill again or, indeed, even to reoffend. Yet the punishment for murder is still mandatory life imprisonment in all cases.

[40] Section 9(1)(d) of the *Penalties and Sentences Act* 1992 provides that one of the purposes for which a sentence may be imposed is:

> "to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved".

[41] In making denunciation one of the purposes of punishment, the Act recognises that an important purpose of punishment may be to satisfy the human need for an authoritative condemnation of a particular crime or of a particular criminal by the imposition of a punishment that is regarded as just because it is proportionate to the moral gravity of the crime. As Lawton LJ said in *R v Sargeant*:[2]

> "The courts do not have to reflect public opinion. On the other hand the courts must not disregard it. Perhaps the main duty of the court is to lead public opinion."

[42] A definitive, authoritative and public condemnation is apt to, and is intended to, assuage people's indignation at the commission of a particularly bad crime and to reinforce their confidence in a system of government that is capable of expressing communal denunciation through just punishment.

[43] In cases of murder, the element of denunciation is usually fully served by the imposition of a mandatory term of imprisonment for life with a minimum parole eligibility date of 20 years. However, cases may arise when more is required and s 160C(5) of the *Penalties and Sentences Act* 1992 can serve that purpose.

[44] This Court has previously acted upon this consideration. In another case of horrific murder, in which an increase in the non-parole period was at issue, Keane JA said:

> "There are, however, other considerations which apply in this case, in addition to the claims of community protection. In this case, the need for condign punishment is as strong as it could ever be bearing in mind considerations of denunciation of Maygar's conduct and the vindication of the victims of his conduct. The horrific nature of these offences, and the unspeakable suffering endured by the victims and their families, makes this aspect of the sentencing function of special importance in this case."[3] (footnote omitted)

[45] In these circumstances Ms Wilson QC, for the applicant, submitted that Dalton J erred. She made two succinct submissions. The first is that the learned sentencing judge erred because she failed to distinguish between the applicant's case and that of Harris. As I have said, her Honour increased Harris's non-parole period by seven years and the applicant's by three years. Her Honour said in respect of Harris:

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2 (1974) 60 Cr App R 74 at 77; see also *R v Llewellyn-Jones* (1967) 561 Cr App R 204 at 212.

3 *R v Maygar*; *ex parte Attorney-General (Qld); R v WT; ex parte Attorney-General (Qld)* [2007] QCA 310 at [64].

> "I think because of the heinous nature of this offending, the lack of remorse, the need for denunciation and protection of the community and the fact that the offending comprised in the murder was accompanied by other serious offending, deprivation of liberty and interference with a body, but also the serious offending on the trafficking matter, that the eligibility for parole here should be set later than the statutory minimum."

[46] In respect of the applicant her Honour said:

> "For the same reasons as I expressed in my sentence of Harris, I think it is right that your eligibility for parole should be set later than the statutory minimum of 20 years."

[47] Accordingly, her Honour increased that minimum by a period of three years. This increase (that was less than Harris's) was due to her Honour's recognition that their respective criminal histories were different.

[48] These sentencing remarks cannot be understood as evidencing a failure to take into account the differences between the case of the applicant and that of Harris. It was not suggested that those differences were not reflected in the longer extension ordered in Harris's case. In my respectful opinion, it was right to rely upon "the same reasons" in each case. The heinous nature of the offending, the lack of remorse, the need for denunciation and protection of the community and the fact that the offending comprised in the murder was accompanied by other serious offending, were common features in each case. The personal circumstances alone of each person were different and that justified a different treatment in each case and these differences were given effect by the substantially different periods that were applied.

[49] This argument must be rejected.

[50] The second submission was that the present case was not as serious as other cases in which a non-parole period was extended. Reference was made to *Maygar*,[4] *Sica*,[5] *Cowan*,[6] *Taylor*[7] and *Abell*.[8]

[51] This is a submission that is often made in the worst kinds of cases. In my view, it is idle to attempt to compare horrific cases, one with another. True it is that the murder of a child is different from the murder of an adult. The murder of a number of people is different from the murder of a single person. In the unique circumstances of each individual case the depth of an offender's moral culpability and the horror of criminal acts will give rise to an exercise of a discretion in their own particular way. Although the circumstances may be different in various cases, they may point to the same conclusion about how to exercise this special discretion. For this reason, an argument that the discretion was wrongly exercised based upon a demonstration merely that this case was dissimilar from other cases in which the discretion was exercised is unpersuasive.

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4 *supra*.
5 [2014] 2 Qd R 168; [2013] QCA 247.
6 [2016] 1 Qd R 433; [2015] QCA 87.
7 unreported, Burns J, Supreme Court of Queensland, SC No 473 of 2015, 24 May 2016.
8 unreported, Douglas J, Supreme Court of Queensland, SC No 568 of 2012, 8 October 2013.

[52] In this case, as in the others that have been cited, the facts speak for themselves. This was manifestly an occasion to consider the exercise of the discretion. It was open to Dalton J to exercise it in the way that she did in this case of a cruel, unrepentant and cold-hearted murderer.

[53] No error in the exercise of discretion having been shown, I would refuse the application for leave to appeal against sentence.

[54] **McMURDO JA:** I agree with Sofronoff P.

[55] **BROWN J:** I have read the reasons of President Sofronoff and agree with the order proposed by His Honour.