SUPREME COURT OF QUEENSLAND

CITATION:	*R v Liddy; Ex parte Attorney-General (Qld)* [2018] QCA 254
PARTIES:	**R** **v** **LIDDY, Patrick Michael John** **(respondent)** **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 321 of 2017 SC No 26 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by Attorney-General (Qld)
ORIGINATING COURT:	Supreme Court at Townsville – Date of Sentence: 14 December 2017 (North J)
DELIVERED ON:	8 October 2018
DELIVERED AT:	Brisbane
HEARING DATE:	31 May 2018
JUDGES:	Morrison and Philippides JJA and Henry J
ORDER:	**The appellant's appeal against sentence is dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEALS BY CROWN – PRINCIPLES APPLIED BY APPELLATE COURTS TO CROWN APPEALS – where the respondent was convicted of manslaughter (having been acquitted of the charge of murder) – where the respondent was sentenced to nine and a half years imprisonment, with a declaration as to 756 days of presentence custody being time already served under the sentence – where no order was made as to parole eligibility so that the respondent was required to serve 50 per cent of the sentence before eligibility for parole – where the respondent was engaged in a fistfight which he left to get a knife – where three stab wounds were inflicted – where the fatal blow was inflicted with force – where there was no intention to kill or cause grievous bodily harm – where the respondent was 26 years of age at the date of offending, had surrendered to police one day after the incident, and had a minor criminal history of no relevance – where the Attorney-General (Qld) appeals against the sentence imposed and submitted that the sentence should be increased to 10 years or more and a Serious Violent Offence declaration should be made –

whether the sentencing judge erred in failing to declare the offence to be a Serious Violent Offence – whether the sentence imposed was manifestly inadequate and whether there was any misapplication of principle or fact to warrant this Court re-exercising the sentencing task

Penalties and Sentences Act 1992 (Qld), s 161B

Pickering v The Queen (2017) 260 CLR 151; [2017] HCA 17, considered
R v Arnoutovic [2001] QCA 89, considered
R v Civic [2014] QCA 322, considered
R v DeSalvo (2002) 127 A Crim R 228; [2002] QCA 63, distinguished
R v Hedlefs [2017] QCA 199, distinguished
R v Lyon [2006] QCA 146, considered
R v Marshall [1995] 1 Qd R 673; [1994] QCA 161, considered
R v McDougall & Collas [2007] 2 Qd R 87; [2006] QCA 365, applied
R v Mooka [2007] QCA 36, distinguished
R v Murray [2012] QCA 68, considered
R v Pham (2015) 256 CLR 550; [2015] HCA 39, considered
R v Schubring; Ex parte Attorney-General (Qld) [2005] 1 Qd R 515; [2004] QCA 418, distinguished
R v Sebo; Ex parte Attorney-General (Qld) (2007) 179 A Crim R 24; [2007] QCA 426, distinguished
R v West [2011] QCA 76, distinguished
R v Wiggins [2003] QCA 367, considered

COUNSEL: M Byrne QC for the appellant
J A Greggery QC for the respondent

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

[1] **MORRISON JA**: I agree with the reasons of Philippides JA and the order her Honour proposes.

PHILIPPIDES JA:

[2] On 11 December 2017, after a three day trial, the respondent was convicted of manslaughter (having been acquitted of the charge of murder). He was sentenced on 14 December 2017 to nine and a half years imprisonment with a declaration as to 756 days of presentence custody being time already served under the sentence. As no order was made as to parole eligibility, the usual parole provisions apply with the result that the respondent is eligible for parole after half of the sentence is served. With the time declared, the respondent will be eligible for parole after four years and nine months of the sentence is served. The Attorney-General (Qld) appeals against the sentence imposed on two grounds:

(a) firstly, that the sentencing judge erred in failing to declare the offence to be a Serious Violent Offence (SVO);[1] and

(b) secondly, on the basis that the sentence imposed was manifestly inadequate.

Circumstances of the offending

[3] On the day before the death of the deceased, which occurred in the early hours of 19 November 2015, the respondent and the deceased had been part of a group of men, who were known or related to one another, that had gathered at the residence of Ms Edwards. Principally, four persons, including the respondent and the deceased, had been drinking since about midday on 18 November 2015. At various times, the drinking party played darts and music. The group started to break up late in the evening. At a time when the drinking had continued over a period of about 12 hours or more, an altercation occurred, probably a little after midnight. Some words were exchanged between the respondent and the deceased about a mobile phone and music being played from it. The respondent went to take his mobile phone and announced his intention to leave and take the phone with him. The deceased tapped him on the shoulder and the respondent reacted by turning around and striking him. Thereafter, a fight ensued between the respondent and the deceased, who attempted to exchange punches, grappling with one another and falling to the ground. The respondent was injured in that exchange and was bleeding.

[4] The sentencing judge referred to the conflicting evidence given at trial. The prosecution witness maintained that the respondent went and retrieved a knife and then returned to resume the fight. The respondent's account was that the deceased had got the better of him and was astride him, punching him and that he was bleeding and injured and in fear of suffering serious injury. His evidence was that he reached around, found an object which turned out to be a knife and struck the deceased with it and defences of an unwilled act and self-defence were run. The sentencing judge made the following findings:[2]

> "In the view I take, the jury must have accepted the thrust of the prosecution case and the thrust of the [prosecution evidence] … that you had left the scene of the fight at some stage, gone inside, found a knife in the kitchen and come out and resumed fighting armed with the knife. The evidence of the blood trail supports the conclusion that you left the scene of the fight after the fight had started because you were bleeding because of injury sustained in the fight. The [prosecution] evidence … contradicts your claim that you didn't leave the scene until after the fight was over. The way in which the varying accounts, affected as they may have been by consumption of alcohol, can be … understood and the jury's verdict be understood, is the jury was not persuaded beyond reasonable doubt that you held a necessary intent because they had a reasonable doubt, because of your intoxication, [that] you did not form the intent to cause death or grievous bodily harm."

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1 *Penalties and Sentences Act* 1992 (Qld), s 161B.

2 AB at 36.

[5] The respondent inflicted three stab wounds with the knife, and, while two of the wounds were not life threatening, the fatal wound was of sufficient force for the knife blade, separated from the handle, to be embedded into a vertebrae after having severed the aorta. The respondent appreciated the seriousness of his conduct and uttered the words "Hope you die cunt". The respondent left the scene and did not seek any assistance for the deceased. Later that morning, he said words to the effect that he variously thought he had killed or murdered the deceased. He later surrendered to police, encouraged by his mother.

Submissions at first instance

[6] Before the sentencing judge, the prosecutor urged that a sentence above 10 years and in the order of 12 years be imposed. That submission was premised upon the sentencing judge accepting the prosecution contentions, including that the respondent's use of a weapon amounted to a frenzied attack,[3] that the injuries were inflicted with anger and rage,[4] and that the respondent demonstrated no remorse.[5]

[7] On the respondent's behalf, particular reliance was placed on the respondent's offer to plead to manslaughter, the admissions made during the course of the trial and the factor of remorse. It was submitted that the comparatives pointed to a sentence of nine years imprisonment as appropriate. As mentioned, no order was sought as to eligibility for parole before that imposed by legislation.

[8] In submissions in reply, the prosecutor argued that, if a sentence lower than 10 years was imposed, the offence should be declared to be an SVO with the consequence that 80 per cent of the sentence would be required to be served in custody.

Sentencing judge's remarks

[9] In sentencing the respondent, the sentencing judge found that the offending was a serious example of offending with a knife, but rejected the contention that it was a sustained or frenzied attack.[6] His Honour also found that the part of the fight that involved the knife was of limited duration. On the sentencing judge's findings and assessment of the likely approach of the jury, the respondent started the fight in circumstances where there was no evidence of provocative conduct by the deceased. The respondent left what his Honour described as a fistfight and returned with a knife.[7] The respondent was sentenced on the basis that the jury had a reasonable doubt that the respondent acted with the requisite intent to kill or cause grievous bodily harm due to his intoxication.

[10] The sentencing judge had regard to admissions made by the respondent, observing that while they would have been readily provable by the prosecution, their proof may have lengthened the trial. His Honour noted that other "red herrings" were explored at trial.[8] His Honour considered that the evidence of remorse pointed both ways. His Honour referred to the evidence that the respondent handed himself in, which he regarded as significant, and that he made an offer to plead to manslaughter as supporting "the recognition by [the respondent] of the seriousness of [his]

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3 AB at 18.4-5.
4 AB at 18.6.
5 AB at 25.1.
6 AB at 38.22-23.
7 AB at 39.19.
8 AB at 37.18-21.

behaviour".[9] His Honour, however, also observed that the offer to plead guilty to manslaughter once rejected was not repeated in front of the jury and that defences relating to unwilled act and self-defence were maintained that must have been excluded by the jury.[10] His Honour also noted that the respondent attempted to blame the fight on the deceased[11] and referred to his conduct in the words uttered to the deceased and his leaving the deceased to his fate.[12] The sentencing judge found in those circumstances that the respondent's remorse was limited.[13]

[11] The sentencing judge had regard to the respondent's antecedents. The respondent was educated to year 9. His parents separated when he was young. The respondent left employment in the mines in Queensland to care for his father who was in the Northern Territory. His father's illness lasted some years. After he died, the respondent returned to Queensland and lived with his mother for a while, but was unable to obtain work. His Honour considered that there was evidence that the respondent had a capacity to work and that he could make a useful citizen of himself.

[12] He was aged 26 years at the date of offending and 29 years at the time of sentence. The respondent had prior convictions in Queensland and the Northern Territory, which included a prior conviction for assault or obstruct police in 2009 and a conviction from 2011 for unlawful use of a motor vehicle which resulted in a period of imprisonment. The sentencing judge described the history as largely irrelevant for present purposes. There was no suggestion in the criminal histories of significant violence, but some of the offending suggested the respondent had a problem with alcohol.[14]

Manifest inadequacy

The appellant's submissions

[13] The two grounds of appeal although strictly separate, substantially overlap. The appellant submitted that it was convenient to consider the more general complaint of manifest inadequacy first, because if the appellant was successful on that ground, so that the sentencing discretion was re-exercised and the sentence was increased to a level of 10 years or more, a SVO declaration would follow and the second ground fell away.

[14] Of the authorities put before the sentencing judge, the appellant referred to *R v West*;[15] *R v Schubring; Ex parte Attorney-General (Qld)*[16] and *R v DeSalvo*[17] as providing the greatest assistance as they were each matters where the Court of Appeal resentenced, and so provided greater guidance than cases where the decision of the Court was that the sentence under consideration was not manifestly excessive or manifestly inadequate.

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9 AB at 38.10-14.
10 AB at 37.5-11.
11 AB at 38.14-15.
12 AB at 38.15-19.
13 AB at 39.22.
14 AB at 37.
15 [2011] QCA 76.
16 [2005] 1 Qd R 515.
17 (2002) 127 A Crim R 229.

[15] It was submitted that those authorities supported a sentence of 11 or 12 years imprisonment in the present matter, particularly given that the respondent returned to what had been a fistfight armed with a weapon inherently capable of killing. Whilst no issue was taken with the findings made by the sentencing judge that the part of the fight that involved the knife was of limited duration, it was argued that the overall interaction itself was sustained rather than momentary and the respondent acted with deliberation, although without murderous intent. The fatal wound was delivered with significant force in circumstances where the deceased had not offered provocation and the respondent was not acting in self-defence.

[16] The appellant accepted that the respondent was entitled to some little, but not much, mitigation in penalty for the offer to plead guilty, which was not maintained in front of the jury. It was also accepted that some mitigation was properly apportioned for the overall efficiency in the conduct of the trial and the fact that the respondent did surrender to police. However, the appellant submitted that when all relevant considerations were taken into account and regard was had to the proper understanding of the comparable authorities placed before the sentencing judge, the sentence imposed was manifestly inadequate such as to require intervention by this Court.

The respondent's submissions

[17] The respondent submitted that the appellant had not demonstrated that the sentence was manifestly inadequate, nor was there any discernible misapplication of principle or fact. The respondent emphasised that the sentence imposed by the sentencing judge proceeded upon a different factual basis to the facts as asserted by the prosecutor in support of a sentence of 10 to 12 years. The appellant did not submit that the sentencing judge erred in finding as he did in sentencing the respondent. The sentence imposed was within the broad range of sentences which courts have imposed for offences of manslaughter resulting from a fight involving a weapon.

[18] The sentence reflected the matters in mitigation of sentence in addition to properly account for the absence of any need to protect the community from the respondent, or other features which took the offence out of the norm; and involved no error of fact or principle. The then 28 year old respondent's prior history was of limited relevance and did not demonstrate any propensity for violence from which the community needed protection. Despite his disrupted upbringing, he obtained employment in various capacities and had found an opportunity for a traineeship in the mining sector. He surrendered himself to police a day after the offence was committed.

[19] It was submitted that the respondent's offer to plead was relevant and his prospects of an acquittal based on accident was not so remote as to render his decision to proceed to trial unreasonable. It did not equate with an unwillingness to facilitate the course of justice or demonstrate some callousness about his conduct which is often present in serious violent offences. It was submitted that factual findings of the sentencing judge were made in the context of an admitted ambiguity in the evidence about the mechanism of the fatal stab wound. The prosecutor described that ambiguity to the sentencing judge in the course of his submissions:[18]

> "In my submission, the jury accepted that the final blow was delivered by the [respondent] and, therefore, with some force. And

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18 AB at 16.11-16.

> of course it's difficult to say when that might have been, your Honour. It could have been when he was standing up; it could have been as the [respondent] fell upon the deceased as they fell to the ground; it could have been whilst they were rolling around on the ground. It simply can't be known."

[20] The respondent made the trial more efficient by making eight admissions of facts. Those admissions avoided the need for the prosecution to call expert witnesses regarding fingerprints and DNA. It also avoided the need to call telecommunications witnesses, to produce records, and ambulance officers.

[21] The respondent's statements to the deceased followed a protracted physical altercation during which the deceased caused him injuries. He was intoxicated and those statements do not carry with them the significance that might be attached to statements made by sober persons after premeditated conduct. The following day the respondent surrendered to police.

Consideration

[22] As the appellant acknowledged, given the many different ways in which the offence of manslaughter can be committed, it is an offence susceptible to a wide "range" of sentences, a proposition recently repeated in *Pickering v The Queen*.[19] As stated in *R v Pham*:[20]

> "Appellate intervention on the ground of manifest excessiveness or inadequacy is not warranted unless, having regard to all of the relevant sentencing factors, including the degree to which the impugned sentence differs from sentences that have been imposed in comparable cases, the appellate court is driven to conclude that there must have been some misapplication of principle."

[23] The decision on which the appellant placed greatest reliance was that of *DeSalvo*. In that case, a sentence of eight years imprisonment with a SVO declaration was set aside on appeal and a sentence of nine and half years without a SVO declaration was imposed. The sentencing judge made specific reference to *DeSalvo*, quoting the following passage from the judgment of McPherson JA, with whom Williams JA agreed:[21]

> "For a homicide resulting from a deliberate act like the stabbing in this case, the appropriate head sentence falls properly within the range of 10 to 12 years imprisonment. Some discounting must, however, be carried out to reflect the applicant's remorse and his offer before trial to plead guilty to the offence of manslaughter of which he was ultimately convicted at trial. All matters considered, I would impose a sentence of imprisonment for nine years."

[24] In respect of the nine year sentence without a SVO declaration imposed on appeal, McPherson JA observed that there was nothing to distinguish the offence from the many others of the same kind involving the use of weapons and violence.[22] The appellant argued that the moderation of the sentence to one of nine years without

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19 (2017) 260 CLR 151 at [2].
20 (2015) 256 CLR 550 at [28].
21 (2002) 127 A Crim R 229 at [11].
22 (2002) 127 A Crim R 229 at [9].

a SVO declaration was to be understood in the context that the offer to plead guilty was one which was in fact carried out at trial (albeit not accepted by the prosecution in discharge of the indictment), although that fact may not be readily apparent in the judgment.[23] The appellant argued that once that was understood, there was no discernible reason in the present matter to have diverted from the range stated by McPherson JA of 10 to 12 years. A further distinguishing matter was said to be that *DeSalvo* exhibited a greater level of remorse than the respondent.

[25] As to the matter of the offer to plead, the respondent referred to *R v Lyon*[24] as confirming the statement of principle from earlier decisions that the offer to plead guilty is a relevant factor in the exercise of the sentencing discretion. There, Jerrard JA, with whom Douglas J agreed, referred to *R v Wiggins*,[25] where this Court agreed with the following observation in *R v Marshall*:[26]

> "… [An offender's] offer to plead guilty to the only offence of which he was [subsequently] convicted was a relevant matter to be brought to account in the exercise of the sentencing discretion. Such a conclusion is clearly consistent with the policy enunciated in s 13 of the *Penalties and Sentences Act 1992*."

[26] Accepting that proposition as both sensible and authoritative, Jerrard JA observed in *Lyon* that the benefit from such offers in any particular case depends upon the extent to which the person convicted cooperates with the administration of justice during the trial, or offers to, or demonstrates remorse.[27] In the matter there before the Court, Jerrard JA held that, notwithstanding there was no suggestion of any admissions of fact having been made which would have narrowed the issues in dispute at the trial, nor a plea of guilty made in the jury's presence:[28]

> "… [the offender] can gain this benefit from his earlier written offers to plead guilty, that he had thereby been prepared to co-operate with the administration of justice, and he was justified in his plea of not guilty to attempted murder. He was entitled to some reduction in his sentence for that reason, a matter which the learned judge, in an otherwise careful sentencing exercise, did not take into consideration, not having been told of it."

[27] The respondent also referred to *R v Arnoutovic*,[29] where in imposing a sentence of nine years imprisonment for manslaughter, the trial judge regarded the occurrence of a trial after the offer to plead guilty to manslaughter as not being a matter which could be taken into account adversely to the defendant. The sentence was not interfered with on an application for leave to appeal against sentence. Byrne J, in concurring with the dismissal of the application, expressed some disquiet as to whether greater allowance ought to have been made for the resource savings associated with the offer to plead.

[28] Clearly, the weight to be afforded to an offer to plead where it is not acted upon at trial will vary according to the circumstances of the case. Given the sentencing

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23 Affidavit evidence tendered confirmed that the plea was entered at trial.
24 [2006] QCA 146.
25 [2003] QCA 367.
26 [1995] 1 Qd R 673.
27 [2006] QCA 146 at [28].
28 [2006] QCA 146 at [28].
29 [2001] QCA 89.

remarks,[30] to which reference has already been made, it is apparent that his Honour did not consider the offer to plead warranted significant moderation and proceeded on the basis that the respondent's remorse was limited. Even so, *DeSalvo* does not compel the conclusion that the sentence imposed was manifestly inadequate bearing in mind the range of 10 to 12 years referred to in that case and that some moderation was required, as the appellant accepted, to reflect matters of mitigation including that an offer to plead to manslaughter was made although not maintained at trial, the admissions made and that the respondent voluntarily surrendered to the authorities.

[29] Furthermore, the decisions of *R v Mooka*[31] and *R v Hedlefs*,[32] where pleas of guilty to manslaughter were maintained before the jury, do not suggest that a sentence of at least 10 years must be imposed unless the offer to plead is put into effect before the jury. *Mooka* (as the appellant accepted) involved arguably a greater degree of violence committed by a person with a notably worse criminal history than the present respondent.

[30] The decisions of *West*, *Schubring* and *R v Sebo; Ex parte Attorney-General (Qld)*[33] relied upon by the appellant, do not compel the conclusion that a sentence of nine and a half years imposed on the respondent was manifestly inadequate. *West* was rightly distinguished by the sentencing judge on the basis that it involved greater and more sustained violence. Those factors and the complete lack of remorse reflected the sentence of 13 years imposed on appeal in that case. In distinguishing *West*, his Honour specifically mentioned his rejection of the prosecution's submission that there was a sustained or frenzied attack as occurred in that case. *Schubring* was an Attorney-General's appeal against sentence. The offender, who pleaded to manslaughter at the commencement of his murder trial, was sentenced on the basis of provocation. That offender's conduct in bashing his wife before garrotting her with a dog leash showed deliberate violence suggestive of an intention to kill and so the presence there of a murderous intent and his lack of any remorse makes it a more serious case, as does the greater degree of violence. In *Sebo*, also an Attorney-General's appeal, a 10 year sentence was not disturbed in a provocation case, where the offender, who had no prior convictions, rendered immediate assistance to the victim, but then initially lied about his involvement. He had made an early offer to plead guilty to manslaughter, but did not enter that plea at trial. The case involved the offender repeatedly striking his 16 year old girlfriend with a steering wheel lock, including whilst she was on the ground, after being taunted by her.

[31] *R v Civic*[34] and *R v Murray*,[35] to which the sentencing judge was referred, support the proposition that the sentence imposed was within the sentencing discretion.

[32] *Civic* concerned an older offender who initiated an altercation in the course of which he brandished a knife and inflicted five wounds to the deceased, only one of which was fatal. He was sentenced to 10 years imprisonment with the consequent SVO declaration, after trial. The appellant submitted that it can be deduced that a longer period of imprisonment may have been warranted but for the fact that the

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30 AB at 37.
31 [2007] QCA 36.
32 [2017] QCA 199.
33 (2007) 179 A Crim R 24.
34 [2014] QCA 322.
35 [2012] QCA 68.

offender's age and health meant that imprisonment would be a greater burden on him than would otherwise be the case. The decision was rightly distinguished by the sentencing judge, who contrasted the premeditation of that offender who, after angry exchanges on the phone, armed himself with a knife and drove to the victim's residence, with the respondent's brief use of the knife. In those more serious circumstances, the finding that a sentence of 10 years was not excessive does not establish that a sentence of nine and half years imposed here was manifestly inadequate.

[33] *Murray* concerned a conviction for manslaughter after trial, the verdict being based on an acceptance of the partial defence of provocation. Leave to appeal against a sentence of nine years imprisonment with a declaration was refused. The offender intended to kill the deceased, inflicting a number of blows with a hammer, and did so after the deceased was unable to offer any resistance. The murderous intent, not present in this case, and greater degree of violence was reflected in that offender being required to serve a longer custodial sentence before being eligible for parole. In referring to the decision, his Honour noted the observations of Applegarth J that, in a case falling within a category of manslaughter where there is an intention to kill, in response to provocation, a head sentence of 10 years or more, carrying a requirement that 80 per cent of the sentence be served, would be appropriate.

[34] The authorities relied on by the appellant do not support the submission that a sentence of 11 or 12 years imprisonment was required to be imposed in the present matter. Importantly, as already mentioned, the prosecution submissions urging a sentence of 10 to 12 years were premised on a factual basis that was not accepted by the sentencing judge, in particular, that the respondent engaged in a sustained, frenzied attack with a knife. It has not been demonstrated that the sentence of nine and a half years was so discordant with comparable authorities as to indicate error in the application of principle. The ground alleging that the sentence was outside the sentencing discretion being manifestly inadequate fails.

The failure to make a SVO declaration

[35] The appellant argued that there was specific error by the sentencing judge in failing to consider the issue of the making of a discretionary SVO declaration raised by the prosecutor in his brief sentencing submission made in reply. When invited to make submissions on that matter, the respondent's counsel merely submitted that he did not seek a parole date earlier than that which would follow in the normal course of events.

[36] The appellant argued that the issue of a SVO declaration was a relevant feature of the sentence to be considered and was, at the very least, an issue raised by the authority of *Murray*, already before the sentencing judge. Failure to take, or properly take, the issue into account in the determination of sentence is a relevant error in the sense discussed in *House v The King*.[36]

[37] While the sentencing judge did not expressly state that he declined to exercise the discretion to make an SVO declaration, his Honour was clearly appraised of the relevance of the issue. It was his Honour, who upon the matter being raised, referred to the decision of *DeSalvo* which focussed upon the discretionary

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36 (1936) 55 CLR 499, 505.

considerations relevant to the declaration of a SVO in respect of a sentence under 10 years and the decision in *Murray*.

[38] The relevant considerations concerning the discretionary exercise of the power to declare an offence to be an SVO are usefully listed in *R v McDougall & Collas*.[37] An important consideration is whether the offence is "out of the norm" for that offence type. As the respondent pointed out, the prosecution's submission in support of the imposition of a SVO declaration if a sentence below 10 years was imposed was that the offence was a "frenzied attack involving force with a dangerous weapon".[38]

[39] Given the specific rejection by the sentencing judge of the sole basis put forward for the making of a declaration and that his Honour gave express consideration to the issue of parole eligibility, by setting the parole eligibility date as 50 per cent of the sentence, which was the approach put forward by the respondent's counsel, it is tolerably clear that his Honour had regard to the issue of the making of a SVO declaration in respect of the nine and a half year sentence imposed. As the respondent submitted, an extensive analysis of the discretionary considerations which sometimes apply to the exercise of the discretion to make the declaration was not required on the confined factual issues before the Court. The sentencing judge was alive to the principles and the relevant factual considerations and it is apparent from his sentencing remarks that he did not fail to take them into account. No specific error is established such as to enliven this Court's power to intervene.

Order

[40] I would order that the appellant's appeal against sentence be dismissed.

[41] **HENRY J:** I have read the reasons of Philippides JA. I agree with those reasons and the order proposed.

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37 [2007] 2 Qd R 87 at [19] and [21].

38 AB at 32.40-43.