

SUPREME COURT OF QUEENSLAND

CITATION: *R v Morant* [2018] QSC 251

PARTIES: **R**
v
GRAHAM ROBERT MORANT
(defendant)

FILE NO/S: Indictment No 1424 of 2018

DIVISION: Trial Division

PROCEEDING: Trial

DELIVERED ON: 2 November 2018 (delivered *ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 17 to 21 September 2018; 24 to 28 September 2018;
2 October 2018; 26 October 2018; 2 November 2018

JUDGE: Davis J

ORDER: **Convictions recorded.**
On count 1, the defendant is sentenced to 10 years imprisonment.
On count 2, the defendant is sentenced to 6 years imprisonment.
The sentences are to be served concurrently.
Pursuant to s 159A of the *Penalties and Sentences Act* 1992, it is declared that 32 days spent in pre-sentence custody between 2 October 2018 and 2 November 2018 be deemed time already served under the sentence

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – MISCELLANEOUS OFFENCES – OTHER MISCELLANEOUS OFFENCES AND MATTERS – where the defendant was charged with one count of counselling suicide and one count of aiding suicide pursuant to s 311 – where the defendant was convicted of both counts after trial – where no comparatives are available for the offence of counselling suicide

CRIMINAL LAW – SENTENCE – SENTENCING PROCEDURE – FACTUAL BASIS FOR SENTENCE – PARTICULAR CASES – where the Crown pressed for sentencing on the basis that the defendant counselled and aided his wife to commit suicide motivated by financial

benefit – where the defence resisted that finding – whether such a finding should be made on sentence

Criminal Code (Qld) s 293, s 301, s 306, s 311

Evidence Act 1977 (Qld) s 93B, s 132C

Penalties and Sentences Act 1992 (Qld) s 9

Attorney-General for the State of South Australia v Tichy (1982) 30 SASR 84, followed

Barbaro v The Queen, Zirilli v The Queen (2014) 88 ALJR 372, followed

Burns v The Queen (2012) 246 CLR 334, cited

Carter v Attorney-General (No 2) [2014] 1 Qd R 111, cited

Hili v The Queen (2010) 242 CLR 520, cited

R v Cheung (2001) 209 CLR 1, followed

R v Goodwin; ex parte Attorney-General [2014] QCA 345, followed

R v Hood (2002) 130 A Crim R 473, considered

R v Maxwell [2003] VSC 278, considered

R v Mott [2012] NZHC 2366, considered

R v Nagy [2004] 1 Qd R 63, cited

R v Nielsen [2012] QSC 029, considered

Walmsley v The Queen (2014) 253 A Crim R 441, considered

COUNSEL: M Lehane for the Crown
M Thomas and D Wells for the defendant

SOLICITORS: Director of Public Prosecutions (Qld) for the Crown
Team Lawyers for the defendant

- [1] **HIS HONOUR:** Graham Robert Morant, you have been convicted by a jury after trial of two counts against section 311 of the *Criminal Code*, namely one count of counselling suicide against section 311(b) and one count of aiding suicide against section 311(c) of the *Code*.
- [2] The person you counselled and then aided to suicide was Jennifer Lee Morant, your wife. At the time of her death on 30 November 2014, you had been married to Mrs Morant for about 14 years. Mrs Morant suicided by gassing herself in her car with the exhaust fumes of a petrol engine generator positioned in the boot.
- [3] There are factual disputes on the question of sentence. The main issue is that the Crown submits that you should be sentenced upon a finding that you were motivated to counsel and aid your wife to suicide by the prospect of receipt of benefits payable upon Mrs Morant's death under three life insurance policies which she held. Your counsel resist such a finding.
- [4] Section 23(3) of the *Code* provides that motive is immaterial to criminal responsibility – that is, guilt of the offence charged – unless the section creating the offence expressly declares motive to be an element. Section 311 does not declare motive an element of either counselling suicide under section 311(b) or aiding suicide under section 311(c). Intention though is an element of both offences. In the course of the trial, I directed the

jury that they could not convict you of either offence under section 311(b) or 311(c) unless satisfied beyond reasonable doubt that you held the relevant intention. As the High Court explained in *De Gruchy v The Queen* (2002) 211 CLR 85, the concepts of motive and intention are quite different. While your motive might not be relevant to your criminal responsibility – that is, your guilt of the offences – it is clearly relevant to sentence.

- [5] In order to understand the significance of this issue, it is necessary to undertake some analysis of the structure and meaning of section 311 of the *Code* under which you were charged and convicted and the facts which the jury must have found proved beyond reasonable doubt.
- [6] Section 311 creates three offences, namely one, procuring suicide, section 311(a). You were not charged with procuring suicide. Two, counselling suicide, section 311(b). Count 1 of which you were convicted, charged an offence against section 311(b). Thirdly, aiding suicide, section 311(c). Count 2 of which you were convicted charged an offence against section 311(c).
- [7] Section 311(b), which creates the offence of counselling suicide, makes it a crime if a person “counsels another to kill himself or herself and thereby induces the other person to do so”.
- [8] In the course of the trial, I ruled that in order to prove the offence of counselling suicide, the Crown was required to prove that you intended that your counselling of Mrs Morant would induce her to kill herself. I further ruled that it was necessary for the Crown to prove that the counselling did induce Mrs Morant to kill herself in that, but for the counselling, she would not have killed herself by carbon monoxide poisoning by use of the generator. The jury were directed accordingly.
- [9] Therefore, the jury’s verdict on count 1 constitutes findings by them that, firstly, you did counsel Mrs Morant to kill herself. Secondly, you intended the counselling to persuade her to kill herself. Thirdly, but for your counselling of her, she would not have killed herself by gassing herself with the use of the generator on 30 November 2014.
- [10] In the course of the trial, I ruled that in order to prove the offence of aiding suicide, the Crown was required to prove that your aiding was intended by you to aid Mrs Morant to kill herself and the aiding did in fact aid her to kill herself. Again, the jury were directed accordingly.
- [11] Therefore, the verdict of the jury on count 2 constitutes findings by them that firstly, you did acts which you intended would aid Mrs Morant to kill herself and secondly, your acts did aid Mrs Morant to kill herself.
- [12] While the jury found that you intended your acts of counselling to persuade Mrs Morant to kill herself and while the jury have found that you intended that your acts of aiding her to commit suicide would in fact aid her to commit suicide, the jury have made no express finding – that is, a finding reflected necessarily in the verdict – as to what motivated you to counsel and aid her to suicide.

- [13] As was observed by the High Court in *R v Cheung* (2001) 209 CLR 1, in approaching the task of fact finding on sentence, I must have regard not only to the elements which the jury found proved, but also to any issues which, by necessary implication from the verdicts, the jury have decided. See in particular *Cheung* at paragraphs [5], [6], [7] and [36]. In a moment, I'll turn to an analysis of the evidence and identify those facts.
- [14] The effect of section 132C of the *Evidence Act* 1977 is that the burden is upon the Crown to establish any fact which aggravates sentence. The Crown must establish any such fact on the balance of probabilities, but "the degree of satisfaction required varies according to the consequences adverse to the person being sentenced of finding the allegation to be true." See section 132C(4).
- [15] The specific finding which the Crown seeks is that you were motivated to counsel Mrs Morant to suicide and to aid her to suicide by the prospect that you would profit from her death by receiving the benefit of a payout of \$1.4 million from insurance policies which insured her life.
- [16] It is obvious that you were, as at 2014, not a wealthy person. You had an interest in some real property and you had a relatively small amount of money in the bank, but you had credit card debts and no superannuation.
- [17] The parties obviously saw a necessity to delve deeper into your financial position. On the sentence hearing, your counsel tendered an affidavit of Wendy Anne Le Noble, your accountant. In her affidavit, she swore that, since 2012, she had acted as the accountant for the building business operated by you and Mrs Morant. She swore that, in effect, the business was financially solid, not only in the period leading up to Mrs Morant's death, but over the entire period during which she had been your accountant. Ms Le Noble was cross-examined by Mr Lehane, the Crown prosecutor, about various aspects of the accounts of the business. Ms Le Noble was obviously a truthful and reliable witness. It is clear from her evidence that while the business produced only a modest income for you, it was solid and stable and you weren't in anything like financial dire straits.
- [18] It is unnecessary to make any detailed findings as to your financial position for present purposes. It is sufficient simply to observe that your general financial position was such that \$1.4 million was to you a very significant sum, as it would be to most people.
- [19] There were three life insurance policies which each insured the life of Mrs Morant. The existence of the policies and many facts concerning them were the subject of admissions during the trial. The Guardian life insurance policy was established on 26 July 2010 and insured Mrs Morant's life to the value of \$500,000. The Real Family Life Cover insurance policy was established on 5 July 2013 and insured Mrs Morant's life to the value of \$400,000. The Aussie Life Plan insurance policy was established on 17 July 2013 and insured Mrs Morant's life to the value of \$500,000.
- [20] Each of the policies contained a condition, the effect of which was to exclude the liability of the insurer where the death of the life insured, namely, Mrs Morant, occurred as a result of suicide within 13 months from the date of the establishment of the policies.

- [21] The Guardian life insurance policy was on foot for over four years before Mrs Morant suicided. The other two policies were each in force for about one year and four months. You paid the premiums on the policies. The terms of the policies were such that upon death, the proceeds did not necessarily fall to the deceased estate of the life insured but a benefit was paid to a person or persons nominated in the policies. It is unnecessary to go into the details of all those changes that Mrs Morant made from time to time to the nominated beneficiaries.
- [22] However, from 2 June 2014, you were the sole beneficiary of the Guardian life insurance policy. From 10 November 2014, you were the sole beneficiary of the Real Family Life Cover insurance policy. And from 29 April 2014, you were the sole beneficiary of the Aussie Life Plan insurance policy.
- [23] In order to prove the element of counselling on count 1, the Crown relied on statements that had been made by Mrs Morant to her sister, Lynette Lucas, and to two friends, Judy Dent and Nellie Winters. I will refer, collectively, but with the greatest respect, to those three witnesses as “the three ladies”.
- [24] That evidence was admitted pursuant to section 93B of the *Evidence Act*. In order for that evidence to be of use to the jury, the jury had to be satisfied, firstly, that the statements were, in fact, made by Mrs Morant to the three ladies, and, secondly, what Mrs Morant said to the three ladies was true. The jury were directed accordingly.
- [25] The Crown prosecutor, Mr Lehane, during the trial, frankly conceded that unless the jury accepted the evidence admitted through section 93B, that is the evidence of the three ladies, the Crown could not succeed on count 1, counselling suicide.
- [26] The verdict of the jury, therefore, necessarily evidences their acceptance of at least some of the evidence of the three ladies and acceptance that what was said to them by Mrs Morant was true. Of course, it is not possible to know or infer whether the jury accepted all or particular parts of that evidence.
- [27] The evidence of the three ladies was very important. The evidence can be summarised as follows. Firstly, I’ll deal with Lynette Lucas’ evidence.
- [28] Lynette Lucas said that during the first lengthy conversation with Mrs Morant that her sister was hysterical and said that her life was in danger. She said, “It’s the insurance policies.” Mrs Morant went on to tell Mrs Lucas the extent of the three policies. Mrs Lucas also said Mrs Morant told her the defendant was the beneficiary. That conversation, it seems, occurred in February of 2014.
- [29] Mrs Lucas went on to say that during that or other subsequent conversations in the period from February 2014 to early May 2014, Mrs Morant told her a number of things. Firstly, Mrs Lucas said that Mrs Morant told her that she had insurance moneys totalling \$1.4 million. Secondly, Mrs Lucas gave evidence that you, Mr Morant, had encouraged her to take out insurance policies by telling her about an incident relating to a customer of your business, for whom you had done work on the Mountain who had suicided. Those customers were people called Brendan and Katie.
- [30] The evidence was that Mrs Morant told Mrs Lucas that you, Mr Morant, said to her, that is to Mrs Morant:

“It’s an amazing and wonderful thing that Brendan has done for Katie to leave her debt-free.”

[31] Next, Mrs Lucas said that Mrs Morant then told her:

“He [which is a reference to you] was trying to encourage me to kill myself.”

[32] She went on to say that the insurance policy values were increased after that conversation.

[33] In re-examination, paragraphs from Mrs Lucas’ police statement on this specific topic were read to her and Mrs Lucas adopted them. Mrs Lucas said that Mrs Morant had told her that you had suggested, in the context of talking about the suicide of the customer you had worked for, that Mrs Morant do the same for you. Mrs Lucas, in her statement, also said that Mrs Morant had told her that additional life insurance policies had been taken out following that conversation about the suicide.

[34] Mrs Lucas went on to say that Mrs Morant explained that there was a waiver period for the insurance moneys to pay out and said that you would not be able to wait the 13 months before the waiver period was up. Mrs Lucas also said that Mrs Morant had told her that you wanted her, Mrs Morant, to kill herself.

[35] Mrs Lucas gave evidence that Mrs Morant said that you had told her you were going to buy a property called Flame Tree with the insurance moneys which was going to be a communal environment so that when the raptures came, there would be a place of safety. Mrs Lucas said that Mrs Morant was horrified.

[36] In re-examination, Mrs Lucas accepted the accuracy of a paragraph in her police statement where she said that Mrs Morant had told her that you had made a lot of plans for what to do with the payout from her life insurance policies when she died and you openly talked with her about what you would do with that money.

[37] Finally, Mrs Lucas also said that Mrs Morant explained that you had told her it would not be a sin in God’s eyes to commit suicide because she would be doing something good for the church and helping you.

[38] Judy Dent gave evidence. She said that she talked to Mrs Morant frequently on the telephone and also had face-to-face visits with her. Mrs Dent gave evidence of various things that Mrs Morant said to her.

[39] Firstly, Mrs Dent said that Mrs Morant called her in August of 2013 and told her that you wanted her to go back to work, that she got a job but was only able to work for one day. Mrs Dent said that in a further call from Mrs Morant in that month Mrs Morant told her that she had taken out life insurance policies and that she was going to “leave”. Mrs Dent said that Mrs Morant told her:

“I’m going to take my life and then Graham will be happy. He’ll have the money. I’ll be out of pain and I’ll be gone.”

[40] Mrs Dent also said that Mrs Morant told her that the life insurance policies would pay out for a suicide if one waited long enough.

- [41] In February of 2014, Mrs Dent spoke with Mrs Morant again. She gave evidence that Mrs Morant told her that she had to leave, that she was looking at rentals near Grafton, and asked Mrs Dent to look at the rental properties for her.
- [42] Mrs Dent said that Mrs Morant told her in later conversations that she wasn't able to move because she didn't have the financial means to do so, having been told that she had no share in the property at Mundoolun, despite putting \$50,000 into the property.
- [43] Mrs Dent said that on 30 October 2014, she called Mrs Morant to tell her that her dog, who had been bred by Mrs Morant, was unwell. Mrs Dent said that in that conversation, she told Mrs Morant that she would call her again to tell her how the dog was and that Mrs Morant said that she would not be available. Mrs Dent said that Mrs Morant said that she would be unavailable because she was going to Peru to suicide. Mrs Dent said that in that conversation, Mrs Morant detailed a plan to her where she, Mrs Morant, would leave on 6 November, fly to Sydney, and then fly with her cousin, Kimberley Walsh, to Paris. Mrs Dent said that Mrs Morant told her that she and Ms Walsh would spend two weeks in Paris and then she would go on to Peru alone. There, she would do some sightseeing and then take 200 millilitres of a particular drug, which is apparently used to euthanise animals. Mrs Dent said that Mrs Morant told her:
- “I'll go back to my motel room and I'll put “don't disturb” on the door, and then I'll take the 200 mils and it'll show that I've had a heart attack. And then Graham will save face and it'll show that I died overseas on holidays of a heart attack and the insurance money will be paid.”
- [44] Mrs Dent said that in the same conversation, she asked Mrs Morant if she had any doubts. She said that Mrs Morant said that she did and that you, Mr Morant, were upset with her because she had put her cousin, Ms Walsh, and her aunt, Jan, on the life insurance policies. She also said that Mrs Morant said that you had said that because of her pain, she would find it difficult to survive the rapture. You didn't want to see her in any pain. Because she wouldn't be able to survive the rapture, it would probably be best that she go through with it, being a reference to her suiciding; and that leaving the insurance money to you would be giving you a blessing.
- [45] Mrs Dent gave evidence that she next had a conversation with Mrs Morant on 2 November 2014. She said in that conversation that Mrs Morant was very upset and said this:
- “I asked Graham to take me for a drive and he took me for a drive but he also stopped at a property that was on his wish list and he said to me, ‘This is what I will buy with the insurance money when you're gone.’”
- [46] Mrs Dent said that the next day, 3 November 2014, she went with her sister, Mrs Nellie Winters, to see Mrs Morant at your home. She said that you were not home when she arrived but that when you arrived home, Mrs Morant was aggressive and surprised that you were home early, and then she became submissive. Mrs Dent said she went to see Mrs Morant again the next day, 4 November 2014.
- [47] Mrs Dent said that on 5 November 2014, she received a text message from Mrs Morant saying that she was sick and too unwell to go, that is, to Paris and then, ultimately, on to Peru. In another conversation about that Peru trip, Mrs Dent said that Mrs Morant told her:

“Graham has asked me or told me not to cancel my flight, just postpone it till I’m better and fly direct to Peru. I’ve looked it up; it’s 36 hours. I said to Graham, ‘I can’t do that, and if you want me to take my life, I will have to do it here and you’ll have to help me.’”

- [48] Mrs Dent said that in that same conversation, Mrs Morant told her that you had said to her:

“I know a way that won’t cause you any pain. I have worked for a widow whose husband had taken his own life and the way he did it, he didn’t feel any pain, and also left his wife some insurance money and it was a blessing.”

- [49] Mrs Dent said that she next received a phone call from Mrs Morant on 7 November 2014. She said that Mrs Morant said she wanted to leave you and move down towards Mrs Dent to live. Mrs Dent said that she received a text message the next day from Mrs Morant saying that she wanted to move down to the Grafton area with her dog.

- [50] Mrs Dent said that on 14 November 2014, she called Mrs Morant to tell her that her dog was unwell and she didn’t think the dog would live much longer, so Mrs Morant came to visit Mrs Dent. She said that it was arranged that you would drive Mrs Morant halfway, so Mrs Dent and her sister, Mrs Winters, drove to Kyogle on 16 November 2014 and picked Mrs Morant up there. Mrs Morant stayed with Mrs Dent from about 16 November to about 23 November 2014.

- [51] Mrs Dent said that while Mrs Morant was staying with her in late November 2014, it was discussed that Mrs Morant was going to leave her some insurance money. Mrs Dent said that she rang Mrs Morant’s solicitor to ask that she be taken off the insurance policies but was unable to speak to him. She said that Mrs Morant asked her about that call and said this:

“You weren’t on the policies. I have given Graham a list of some of the people who were to get money and you were on that list. I gave that to Graham and he was to make sure you got it. And if he didn’t, I told him God would strike him down and so would I.”

- [52] On 23 November 2014, Mrs Dent was expecting you to pick Mrs Morant up. Mrs Dent said that Mrs Winters came over that day and that Mrs Morant seemed quite upset and told them:

“If I hadn’t come down here to see you and Katie [which is a reference to Mrs Dent’s dog] I would’ve already been dead. But now when I go back, I’ll have to do it. I’ll have to kill myself and Graham will be helping me.”

- [53] Mrs Dent said that Mrs Morant said that that was the “deal” with you, Mr Morant, that if she, Mrs Morant, got to visit Mrs Dent, she had to commit suicide upon her return to Mount Tamborine. Mrs Dent said that after Mrs Winters left on that day, she had a long conversation with Mrs Morant who told her that she was not going to feel any pain. She said that Mrs Morant told her once again about knowing of a widow whose husband had committed suicide in a painless way and left money to his wife as a blessing.

- [54] Mrs Dent said that she pressed Mrs Morant for more details and was told:
- “Jude [which is a reference to Mrs Dent] I’ll do it at home. I’ll have everything set up. Graham will go to church. He’ll come home 7, 7.30, and he’ll find me with a note.”
- [55] Mrs Dent said that Mrs Morant said you would help her and then you would go to church.
- [56] Mrs Dent said that Mrs Morant told her that she had doubts and was afraid but that she had made so many promises to everybody that the only way out would be to win the lottery. Mrs Dent also said that after talking to Mrs Morant for a long time on that day, which was 24 November 2014, Mrs Morant was planning to ask you for some money and then return to where Mrs Dent lived. Mrs Dent said that over the next week, she and Mrs Morant exchanged text messages about Mrs Morant’s health and, indeed, your health, and that you were apparently not feeling well.
- [57] Nellie Winters gave evidence. She is Mrs Dent’s sister. Mrs Winters was present when Mrs Dent visited Mrs Morant on 3 November 2014. She said that she noticed that Mrs Morant had left signs on the washing machine, on the dryer, and on the dog bowl, and that Mrs Morant said:
- “I’ve left all these signs and instructions for Graham for when I’m gone.”
- [58] Mrs Winters also said that Mrs Morant told her that you had driven her to a property called Flame Tree and that you were going to purchase that property when the insurance money came through. Mrs Winters said that Mrs Morant said:
- “How could he [obviously a reference to you] do this to me?”
- [59] Mrs Winters said that Mrs Morant also told her that you had told her that a man on the mountain had committed suicide. There had been no pain and that he had left his wife cared for with insurance money.
- [60] Mrs Winters said that she was present on Sunday 23 November 2014 when Mrs Morant was expected to go home to Mount Tamborine but was too unwell. Mrs Winters said that Mrs Morant said:
- “If it wasn’t for Katie [again, a reference to Mrs Dent’s dog] I would already be gone.”
- [61] Mrs Winters accepted, in re-examination, the following passage from her police statement:
- “Jenny also said, ‘Graham’s upset with Emma, Judy’s daughter, who’s a vet nurse, for telling me I would not be able to drink 200 mls of the drug.’ Jenny also told us about her lotto tickets, as it was her only hope so she could pay everyone and be free.”
- [62] That concludes the summary of the evidence of the three ladies.
- [63] Mr Thomas, who appeared with Mr Wells for you submitted that there were logical bases upon which the jury could have been satisfied beyond reasonable doubt that you

counselled Mrs Morant to suicide, motivated by some reason other than the desire to secure the insurance money.

- [64] While that seems unlikely, given the evidence, it is theoretically possible. So I accept Mr Thomas' submission and find that the jury have not, by necessary implication, found that you committed the offences while motivated by the possible insurance payout. It therefore falls to me to decide that question.
- [65] The cross-examination of the three ladies challenged their evidence in the sense that the defence contested whether Mrs Morant had, in fact, said the things to them. Seeing the three ladies give their evidence and be cross-examined, I have no doubt that they were truthful witnesses. No doubt also, though, the three ladies have not recalled the conversations verbatim. There may have been some honest errors made in their recall.
- [66] Some of what the three ladies said they were told was supported, in some respects, by other evidence. The insurance policies were valued at \$1.4 million, there was an incident where a person had previously suicided on Mount Tamborine, and there was a 13-month exclusion period in the policies against suicide. I accept, having regard to the provisions of section 132C of the *Evidence Act* that Mrs Morant made statements to the three ladies to the general effect of the evidence they gave.
- [67] Perhaps the real issue with the evidence of the three ladies was more whether what Mrs Morant told them was true.
- [68] There was evidence of notes left by Mrs Morant which were inconsistent with the disapproval of you, which is evidenced in the conversations with the three ladies. Mrs Morant met with a solicitor, Mr Macallan, on 3 November 2014 and told him, for instance, that she was frightened of Mrs Lucas and spoke highly of you.
- [69] However, there was more evidence of motive than just the statements made to the three ladies and the statement made to the solicitor, to which I've just referred.
- [70] On 23 June 2014, you attended Mr Macallan's offices with Mrs Morant. On that day, Mrs Morant made her will, which left you as sole beneficiary and specifically mentioned the life insurance policies. Also on that day, a document was signed, styled "Deed of Irrevocable Nomination", which purported to irrevocably make you the sole beneficiary under the life insurance policies.
- [71] You went again to Mr Macallan's offices with Mrs Morant on 5 November 2014. In the period leading up to this, Mrs Morant and Mr Macallan had been exchanging emails about the prospect of Mrs Morant changing her will and changing the nomination of beneficiaries under the policies. It seems that you contacted Mr Macallan two days earlier to the meeting, namely, 3 November 2014. Ultimately, it was determined at the meeting with the solicitor on 5 November that there would be no change to the arrangements.
- [72] When interviewed by police, you did not mention the attendances at Mr Macallan's offices on either 23 July 2014 or 5 November. I also take from your answers in the interviews that you were generally attempting to convey to the police that you had little knowledge of or interest in the policies. I find this to be completely inconsistent with

the fact that you paid the premiums on the policies and inconsistent with your involvement with Mr Macallan and Mrs Morant in July 2014 and November 2014.

- [73] I do not find that you counselled Mrs Morant to take out the first policy, that held with Guardian, which was established in 2010.
- [74] It might be open to find that you counselled Mrs Morant to take out the other two policies, the later ones, thinking that there was a chance you could persuade her to suicide at some point more than 13 months later. There is support for such a conclusion in some of the statements made by Mrs Morant to the three ladies.
- [75] Mr Lehane, though, did not press for such a finding. Instead, he submitted that I should find that the plan was hatched in early 2014 when Mrs Morant first told her sister that you were trying to convince her to kill herself and that you had made statements to her, Mrs Morant, related to the insurance policies. I find, having regard to section 132C(4) of the *Evidence Act* that you began counselling Mrs Moran to suicide in about February of 2014.
- [76] It is unnecessary to make detailed findings as to Mrs Morant's emotional state or her mental health. However, she had what appears to be a chronic back condition which was causing her immense pain. She was on medication for that pain and was taking medication for depression. She was freely discussing, with various people, the prospect of her ending her own life. She was obviously a vulnerable person.
- [77] The note she left and the statement she made, which painted you in a good light and criticised others, are explained, in my view, by her state of mind. Here was a lady who suicided. The evidence of what she told the three ladies is, in my view, a more reliable account of what was actually occurring.
- [78] Against that backdrop, I find that you said the things which Mrs Morant told the three ladies you said. Those conversations and other evidence that I have identified show that you had an acute awareness that upon Mrs Morant's death, you would benefit from the payout of the insurance policies. I draw the inference that you were motivated by the money to counsel and to aid her to suicide. In other words, you counselled and aided your wife to kill herself because you wanted to get your hands on the 1.4 million. I make that finding on the balance of probabilities after having directed myself carefully to the provisions of section 132C(4) of the *Evidence Act* and taking all the evidence into account.
- [79] I have, as yet, said little specifically about the aiding, which is count 2. As I have already observed, you initially denied any knowledge of the generator which Mrs Morant used to kill herself.
- [80] Mrs Morant died in her car in a lonely place. The cause of death was carbon monoxide poisoning from the exhaust fumes of the petrol generator which was placed in the boot of the vehicle.
- [81] The evidence shows that you attended with Mrs Morant upon a Bunnings Warehouse the day before she used the generator to kill herself. You stayed in the carpark while she entered the store and purchased the generator. You helped her place it in the boot of the car at Bunnings. After initially denying to police any knowledge of the

generator, you ultimately admitted that when you and Mrs Morant got back to your place of residence, obviously with the generator, you helped her unpack the generator and then helped her position it in the boot of the car.

- [82] You told police, in effect, that Mrs Morant had talked of suicide on many occasions but had not committed suicide. And while you thought that she may one day suicide, you did not believe or intend that her suicide by use of the generator was imminent.
- [83] Mr Morant, you must've known when you were unpacking the generator and placing it back in the boot of the car that it was extremely likely that Mrs Morant would suicide using the generator. She had gone to the trouble of positioning it in the vehicle with your assistance. There was no suggestion of any legitimate reason for placing the generator in the vehicle other than for her to suicide.
- [84] In the course of submissions, Mr Lehane suggested that you had "developed a sense of disdain" for Mrs Morant. Your counsel took issue with that submission. Of course, one might easily draw the inference that disdain is at least one thing that is evidenced by a course of conduct whereby you counselled and then aided Mrs Morant to suicide. However, Mr Lehane submits that you evidenced disdain during your interview with police. I reject that submission. You did appear cold towards Mrs Morant during the interview but I find that more indicative of your manner of expression than as evidencing any adverse attitude towards her during the interview.
- [85] Your adult son, Angus William Morant, swore an affidavit and gave short oral evidence. He was cross-examined. He said that he had inspected the property, Flame Tree, and it was a property which would be difficult to build upon. The effect of his evidence was that the property was an undesirable one. The point of this evidence was to undermine the truth of some of what was told to the three ladies, who of course mentioned the Flame Tree property. The evidence of Mr Angus Morant really goes nowhere on this issue. Whether you did or did not intend to purchase Flame Tree is in the end largely irrelevant. I find that you told Mrs Morant that you did intend to buy it.
- [86] Mr Angus Morant gave evidence that you and he loved Mrs Morant. Your son obviously admires you. He does not accept the jury's verdicts. It is frankly asking too much of him to remain objective in the current circumstances. The jury's verdicts rather speak for themselves and there is no need to further analyse his evidence.
- [87] You were born on 30 December 1948. You were 65 years of age at the time of your wife's death and you are 69 now. You have no prior convictions. You have spent your life in the building trade. You are a registered builder, but in recent times have been working primarily with earthmoving equipment. You have been a productive member of society. There was tendered to me a number of references which speak highly of your character and your work ethic. The character references must, of course, be considered in the light of the serious offending which the jury has found.
- [88] A report by a psychologist, Dr Sam Minge, was tendered on your behalf. It is, Mr Morant, difficult to place much weight on the report as the psychologist's professional opinions are based primarily on your version of the events leading to Mrs Morant's suicide. That version, of course, is inconsistent with the jury's verdicts. However, I take note of and accept that you had a difficult childhood which has led you to having difficulties with adult relationships. I accept the psychologist's view that your

Christian faith is genuine. It is of great significance to you. I also accept that the chances of your reoffending are slight.

[89] In the psychologist's report, this appears at paragraph 57:

“It is likely that Mr Morant experienced considerable psychological stress and emotional turmoil at the time prior to his wife's suicide. His wife's difficulties [and there is no need for me to set those out] would have taxed him emotionally while at the same time his restrained, stoic, moralistic, and emotionally illiterate personality style acted as an obstacle to him providing support, guidance, or simply leaving the situation. He thus perceived himself to be stuck in a distressing situation that he was unable to resolve. Over time, it seems that his stress adversely affected Mr Morant's judgment and similarly lowered his willingness to desist from acting upon the presented solution of his wife's suicide. In this way, the assisted suicide can be seen as an ill-conceived attempt to problem-solve a situation that was experienced by Mr Morant and also the victim as unbearable and immutable.”

[90] I do not accept the psychologist's conclusion to the extent that he opines that the sole or primary motivation for the commission of the two offences was a desire to remove yourself from a distressing situation. I have found that you were motivated by money. However, I do accept that Mrs Morant's illness and symptoms would have placed you under significant stress and that may have contributed in a general way to your offending.

[91] You have not shown any remorse for the offences you have committed. In your interviews with police, you told obvious lies; in particular, your denials of any knowledge of the generator when it was apparent from other evidence that you had aided Mrs Morant to acquire the generator and indeed to position it in the car. You did not plead guilty. You did not cooperate with the administration of justice, except to a very limited extent by making some admissions during the trial. You made very limited admissions to the police, but only when it was apparent that the police could disprove your previous lies. Of course, none of these things aggravate the culpability of your offending or lead to a higher sentence. Rather, they demonstrate that you do not have the benefit of mitigating circumstances or remorse and cooperation.

[92] There are some comparative sentences in relation to count 2, aiding suicide; and I shall return to them shortly. There has been no conviction in Queensland for an offence under section 311(b), namely counselling suicide and research has failed to find any conviction for any similar offence in any other jurisdiction.

[93] I have been referred to comparative sentences that have been imposed on manslaughter convictions and also comparative sentences for offences of attempted murder. Submissions have been made to the effect that I should find some guidance in those cases as to the appropriate sentence on count 2. However, I consider that the manslaughter and attempted murder comparatives are not of any assistance. To explain why I have come to that view, it is necessary to consider the offences of manslaughter and attempted murder and compare them to the offences created by section 311.

- [94] Manslaughter is the unlawful killing of a person in circumstances which do not amount to murder; see sections 293, 301 and 306 of the *Code*. In cases of manslaughter, it is the accused who causes the death of another person. In cases of procuring, counselling or aiding suicide, it is the deceased who, by their involuntary act, causes their own death; See *Burns v The Queen* (2012) 246 CLR 334 and *Carter v Attorney-General (No 2)* [2014] 1 Qd R 111.
- [95] When a person counsels another person to suicide, the offender has not caused the death in the sense that causation is understood by the criminal law. However, section 311(b) requires the counselling to induce the person to suicide. So the counsellor has caused the death in the sense that the result – the death – would not have occurred but for the counselling, albeit that the legal cause of the death is the independent act of the deceased. So while a person who aides or counsels suicide does not unlawfully kill the person, the acts of counselling or aiding suicide lead to the death of the deceased. As counselling must induce the deceased to kill himself or herself, the counselling is an indispensable link in the chain of events leading to the death.
- [96] With manslaughter, there is no specific intention to cause the death of the deceased or to cause the deceased grievous bodily harm. However, intention is an element of both aiding suicide under section 311(c) of the *Code* and counselling suicide under section 311(b). The jury have found that you intended that Mrs Morant would use the generator to kill herself when you assisted her to purchase the generator and position it in the back of the car. When you counselled her to kill herself, you intended that she would accept the counselling and in fact kill herself.
- [97] The offence of attempted murder is created by section 306 of the *Code*. The elements are that the offender attempts by some action to unlawfully cause the death of the victim. Causation in section 306 has the meaning explained in *Burns*. Unlike counselling or aiding suicide, in a case of attempted murder, the victim does not die.
- [98] Even though the maximum penalty for manslaughter and attempted murder is the same as the maximum penalty for aiding suicide or for counselling suicide, namely life imprisonment, it can be seen that the elements of manslaughter, attempted murder, aiding suicide and counselling suicide are all very different. It would, in my view, be an error for me to use as comparative cases where sentences have been imposed not for counselling or aiding suicide, but for offences like manslaughter and attempted murder which have fundamentally different elements.
- [99] The exercise I was invited to embark upon is to consider those cases and then make adjustments to compensate for the different elements of the offences created by section 311 of the *Code*.
- [100] In my view, such an approach is inconsistent with the principles laid down by the High Court in cases such as *Barbaro v The Queen*, *Zirilli v The Queen* (2014) 88 ALJR 372, and *Hili v The Queen* (2010) 242 CLR 520. In *Barbaro*, Chief Justice French and Justices Hayne, Kiefel (as her Honour then was) and Bell said this at paragraph 41:
- “...sentencing judges must have regard to what has been done in other cases. Those other cases may establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion.

The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect.”

[101] It is difficult to see how a yardstick can be established by cases concerning different offences to the one at hand, which involved different elements.

[102] Fortunately, Justice Mullins, sitting in the Court of Appeal in *R v Goodwin; ex parte Attorney-General* [2014] QCA 345, carefully considered the approach which should be taken in the position in which I now find myself where there are no comparative sentences for the offence of counselling suicide. Her Honour said this:

“The lack of comparable sentences may deprive the sentencing judge of the assistance of “the yardstick” for testing the proposed sentence, but it does not preclude the sentencing judge from otherwise finding the relevant facts for the purpose of the sentencing, weighing up the relevant factors relating to the offence and the offender, and applying the principles of sentencing found in the relevant legislation and the common law, in order to reach the appropriate sentence for that offending. The sentencing judge may very well find the exercise of the discretion to be more difficult in the absence of, and without the usual assistance afforded by, comparable sentences, but as a matter of principle the sentencing judge will have available sufficient material from the evidence adduced on the sentence and the relevant law to undertake the well defined process of sentencing.”

[103] I of course adopt that statement by Justice Mullins and I follow that approach.

[104] It is necessary to say a little about the interrelationship between the offences of counselling suicide under section 311(b) and aiding suicide under section 311(c). Both the offence of counselling and the offence of aiding are separate offences created by section 311 of the *Code* and each carry a maximum of life imprisonment. To that end, the Parliament has determined that each of the two offences are equally serious. However, that does not mean that in the context of the facts of a particular case, the acts of counselling and the acts of aiding have equal culpability. Indeed, it may often be the case that more culpability attaches to an act of counselling than it does to an act of aiding. In order to aid suicide, an offender may be merely assisting a person to embark upon and complete a course upon which the person’s mind is already set. On the other hand, to counsel suicide and to thereby induce the person to take their own life is to persuade the person to take the course that ultimately leads to their death.

[105] Here, in my view, count 1, counselling suicide, is clearly more serious than count 2, aiding suicide. In committing count 1, you did over a period of time make statements to Mrs Morant which caused her to take her own life. The actions you took in aiding her to suicide were acts done to complete the broader plan that you had instigated by counselling her to kill herself. As I have already observed, Mrs Morant was a vulnerable person with difficulties with her physical health. She was suffering depression. You took advantage of those vulnerabilities in order to persuade her to kill herself and then assisted her to do so once she had made that decision.

[106] Both the Crown and your counsel submitted that the appropriate approach is to fix a sentence for the more serious of the two offences, which in my view is counselling

suicide, count 1, with that sentence reflecting the totality of the offending and then impose a lesser concurrent sentence on count 2, aiding suicide. Such an approach was approved by the Court of Appeal in *R v Nagy* [2004] 1 Qd R 63. In that case, the Court of Appeal considered the earlier High Court decisions of *Griffiths v The Queen* (1989) 167 CLR 372 and *Pearce v The Queen* (1998) 194 CLR 610.

- [107] A case which predates all those cases, but is consistent with the principles now established and which gives an example as to how those principles apply is *Attorney-General for the State of South Australia v Tichy* (1982) 30 SASR 84. There, the offender was charged with two counts, one of armed robbery and one of attempting to do grievous bodily harm. The offender committed the robbery and during the escape, he fired a shot at a police officer who was near the scene. That was the second count. Justice Wells explained that the two offences could be dealt with separately but the sentences then cumulated. Alternatively, the activity could be regarded as one episode of offending so that a head sentence could be imposed on the robbery, taking into account the fact that in the course of the robbery, a police officer had been shot at. In those circumstances, any sentences would be ordered to be served concurrently but the result would be that the head sentence reflected the overall criminality.
- [108] Here, the counselling occurred over a period of months between February and the end of November 2014. The counselling offence is particularly serious here because, ultimately, you committed count 2 and aided Mrs Morant to kill herself. Similarly, the aiding offence here is particularly serious because it was the end result of an extended period of counselling.
- [109] There are some comparative sentences in relation to count 2, aiding suicide. They are *R v Nielsen* [2012] QSC 029, a sentence imposed by Justice Dalton; *Walmsley v The Queen* (2014) 253 A Crim R 441, a decision of the Court of Appeal of the Supreme Court of the Australian Capital Territory; *R v Mott* [2012] NZHC 2366, obviously a case from New Zealand; and two Victorian cases: *R v Maxwell* [2003] VSC 278 and *R v Hood* (2002) 130 A Crim R 473.
- [110] There was some financial motivation in *Nielsen* in that the offender was to benefit from provisions in the deceased's will. Nielsen befriended the man who ultimately suicided and provided him with a substance which he voluntarily drank that caused his death. Nielsen was sentenced to three years imprisonment with a parole release date set after serving six months.
- [111] After appeal, Walmsley was sentenced to two years and nine months imprisonment with a non-parole period of one year and eight months. The circumstances there were that the offender and the deceased were both drug-dependent. Both of them were very depressed and both of them decided to end their own lives. In that context, Walmsley aided the deceased to suicide.
- [112] In *R v Maxwell*, the offender pleaded guilty to aiding or abetting suicide under the Victorian legislation. Frankly, the facts of that case are such that if they occurred in Queensland, Maxwell may have very well have been guilty of murder. He administered drugs to his wife who was dying of cancer and then gassed her with helium. In sentencing, the judge took into account that the deceased was suffering painful medical conditions and took into account the fact that the deceased wished to suicide. Maxwell was sentenced to 18 months imprisonment wholly suspended.

[113] *R v Mott* was another case of a husband assisting the suicide of his wife. She was suffering from terminal multiple sclerosis. The offender assisted his wife to suicide by inhaling nitrogen. Mott was discharged without conviction. The sentencing judge noted that the circumstances were exceptional.

[114] *Hood* assisted his terminally-ill partner to suicide. He was sentenced to 18 months imprisonment wholly suspended. Justice Coldrey said this in *Hood* at paragraph 32:

“As long ago as 1967, suicide and attempted suicide ceased to be crimes in Victoria. However, Parliament retained an offence of aiding and abetting another person to commit, or attempt to commit, suicide. That offence carries a maximum penalty of five years imprisonment. Accordingly, whilst the law recognises the right of an individual to take his or her own life, it prohibits the assisting or encouraging of a person to pursue such a course of action. This offence remains on the statute books because the importance of human life and its preservation is a fundamental principle of our society. This concept is often encapsulated in the phrase “the sanctity of human life”. This law is also designed to protect a vulnerable person who opts for suicide at a time when extreme depression, from whatever cause, may provoke an irrational and emotional decision by that person to end their life. To this extent, the law may be seen as life-affirming and not life-denying and directed at discouraging suicide as a response to the emotional vicissitudes of life.

The degree of moral blame attributable to a person who assists or encourages an act of suicide may vary greatly from case to case. At one end of the spectrum may be placed a person who assists or encourages a person to commit suicide in order to inherit property or for some other ulterior motive; at the other end, there is the individual who supplies potentially lethal medication to a terminally ill person, perhaps a loved one who is in extreme pain and who wishes to end that suffering at the earliest possible opportunity.”

[115] Before me, there was argument about Justice Coldrey’s comments in *Hood*. Mr Lehane submitted that the present case was at the high, serious end of the spectrum identified by his Honour. Mr Thomas, on your behalf, submitted that this was not the worst type of case and there was argument about what Justice Coldrey meant. Justice Coldrey obviously did not intend to lay down some type of rigid scale of offending. His Honour’s comments merely identify the fact that the offence of aiding suicide encompasses a broad range of culpability.

[116] The assistance to be drawn from these comparatives is limited for a number of reasons. The spectrum that Justice Coldrey identifies demonstrates one such limiting factor: the differences in circumstances surrounding different incidences of offending of this kind. Another particular difficulty with drawing assistance from these comparatives is the variation between the maximum sentences for the offences in different jurisdictions. The offence for which Justice Coldrey was sentencing in *Hood* carries a maximum penalty of five years imprisonment which plainly limits the assistance that I can draw from that decision.

- [117] It is relevant that Mrs Morant was suffering painful health conditions with her back and had apparently been contemplating suicide well before you counselled her. That is a relevant consideration but hardly a weighty one, given that the jury have found that your counselling ultimately induced her to suicide. The facts of the counselling and your financial motivation render the offences as very serious and render the comparatives of little, if any, use.
- [118] Of course, I've already mentioned that there are no comparatives in relation to count 1. I have, of course, directed myself to the provisions of section 9 of the *Penalties and Sentences Act*, in particular, the purposes for which sentences can be imposed, as provided by section 9(1), and I have directed myself to the other matters in the other subsections.
- [119] I do not have to determine whether the offences fall within the provisions of section 9(2A) so as to exclude the operation of section 9(2)(a), as the offences are clearly very serious and a sentence of imprisonment is inevitable.
- [120] As already observed, the maximum penalty is life imprisonment for each of the two offences for which you have been convicted. The offences are not ones which may attract a declaration as a serious violent offence.
- [121] As I've said, the offences are extremely serious examples of offending under section 311 and count 1 was committed over a period of several months. You convinced Mrs Morant that she should kill herself. In doing so, you took advantage of her vulnerability as a sick and depressed woman. You were motivated by the prospect of financial gain and the offending resulted in Mrs Morant's death.
- [122] Victim impact statements have been tendered from Lynette Lucas and Judy Dent. They, understandably, are devastated by Mrs Morant's death.
- [123] General deterrence is a weighty factor. Given that this is the first recorded case of counselling suicide, it is obvious that the offence is not prevalent. However, one can imagine many circumstances arising where people in positions of trust and responsibility could succumb to the temptation to counsel suicide for personal gain.
- [124] In your favour is your prior good character, your work ethic, and lack of criminal convictions. Of course, those antecedents only count for so much where serious offences such as these, which involve a loss of human life, have been committed.
- [125] Personal deterrence is, in my view, not a real consideration. I accept the psychologist's evidence that it is unlikely that you would re-offend. A consideration is your age. You are 69 and facing prison for a considerable period. As already observed, you have shown absolutely no remorse.
- [126] Could you stand up, please, Mr Morant. Convictions are recorded for both offences. In relation to count 1, counselling suicide, I sentence you to a term of imprisonment of 10 years. In relation to count 2, aiding suicide, I sentence you to a term of imprisonment of six years. I order that both sentences be served concurrently.
- [127] I do not intend to set a date for eligibility for parole so by force of the legislation, you will be eligible for parole on 2 October 2023.

[128] I declare pre-sentence custody of 32 days, being the period between 2 October 2018 and 2 November 2018, as time served on the sentences I have imposed.