SUPREME COURT OF QUEENSLAND

CITATION:	*R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116
PARTIES:	**R** **v** **SPROTT, James Stuart** **(respondent)** **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 284 of 2018 SC No 11 of 2018 SC No 49 of 2018 SC No 77 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by Attorney-General (Qld)
ORIGINATING COURT:	Supreme Court at Mackay – Date of Sentence: 8 October 2018 (Crow J)
DELIVERED ON:	14 June 2019
DELIVERED AT:	Brisbane
HEARING DATE:	5 June 2019
JUDGES:	Sofronoff P and Gotterson JA and Henry J
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the respondent pleaded guilty to two counts of attempted murder – where the respondent was sentenced to two concurrent sentences of nine and a half years imprisonment – where the complainants were the respondent's mother and her partner – where the learned sentencing judge considered aggravating circumstances of the offence, including that the respondent was subject to a Domestic Violence Order concerning the complainants and that the attack was premeditated – where the learned sentencing judge considered the "most relevant circumstance" of the offence to be that the respondent's son was killed by a dog kept by the complainants whilst in their care – where the appropriate range for the offence of attempted murder is generally from 10 to 17 years imprisonment – where the learned sentencing judge considered the respondent's case was not a "general case" – whether the learned sentencing judge gave appropriate weight to the mitigating and aggravating

factors of the offence and respondent's personal circumstances – whether a sentence below 10 years imprisonment for two counts of attempted murder is manifestly inadequate

Criminal Code (Qld), s 669A

Everett v The Queen (1994) 181 CLR 295; [1994] HCA 49, cited
House v The King (1936) 55 CLR 499; [1936] HCA 40, cited
Lacey v Attorney-General (2011) 242 CLR 573; [2011] HCA 10, cited
Lovell v Lovell (1950) 81 CLR 513; [1950] HCA 52, cited
R v Ali [2018] QCA 212, applied
Whittaker v The King (1928) 41 CLR 230; [1928] HCA 28, cited
Wong v The Queen (2001) 207 CLR 584; [2001] HCA 64, cited

COUNSEL: N Rees for the appellant
F D Richards, with M A Benn, for the respondent

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

[1] **SOFRONOFF P:** On 11 April 2017 the respondent came home from the pub where he had been drinking. He lived with his partner, Chantelle Ranby. The respondent drank another three or four beers at home. An argument started. The respondent grabbed two stubbies of beer and left the house. He went to a nearby takeaway food store and sat and drank. He thought that Ms Ranby might have called the police. Some time later he went home. Ms Ranby was in the upstairs bathroom. She could hear the respondent downstairs "smashing things". When she tried to leave the bathroom, the respondent was on the other side of the door, pushing to keep her within. Ms Ranby locked the bathroom door and phoned the respondent's grandmother for help. The respondent used a knife to open the bathroom door. He snatched Ms Ranby's phone away and yelled at her. He then left the house.

[2] The respondent's mother, Sonia Strachan, and her partner lived nearby. The respondent walked to their house. Ms Strachan was preparing for bed. Her partner, Mark Edward Gallagher, was asleep in a bedroom upstairs. She saw the respondent at the closed screen door at the front entrance. He was holding an empty stubby in one hand and a half empty stubby in the other. She told him to leave. He opened the screen door, came into the house and hit his mother in the face with one of the stubbies. She fell backwards. He grabbed her head from behind. It seemed to her that he was trying to break her neck.

[3] Mr Gallagher appeared and the respondent turned his attention to him. He began to punch Mr Gallagher in the face until he fell, face down, on the floor. The respondent then stamped on Mr Gallagher's head repeatedly. Ms Strachan thought he was dead. She shouted, "No!" The respondent turned his violence back to her. He repeatedly lifted her by the throat and threw her onto the floor. He flung her into the television cabinet. She tried to crawl away on her back. The respondent picked up a pot plant and raised it above his head. As Ms Strachan pleaded with him not to hit her, he slammed the pot plant onto her face.

[4] He continued these violent assaults upon both Ms Strachan and Mr Gallagher. Ms Strachan managed to get out of the house and the respondent followed her out.

[5] Mitchell Thompson lived nearby. He had heard the sound of these attacks and had hurried over. Before he could take action he saw the respondent punch Ms Strachan hard in the face about five times. Ms Strachan called out to him, "Help me, he's going to kill me." Mr Thompson punched the respondent in the chin and knocked him unconscious.

[6] Police arrived. The respondent regained consciousness and, while police were trying to subdue him and arrest him, he spat blood and saliva at them.

[7] Ms Strachan suffered a fracture to her eye socket, which required surgery. She also suffered a laceration that needed stitches and numbness to the inferior orbital nerve, as well as other injuries from the beating her son had given her. Mr Gallagher suffered a fracture to his cheekbone and nose, as well as another fracture to his ulna styloid. Two of his ribs were broken and his liver was injured.

[8] This was a brutal attack carried out with the intention of killing the two victims. It has been said that the appropriate range for the crime of attempted murder is generally between 10 and 17 years[1] and this was common ground between the parties at sentence. The Crown advocated for a sentence "in the order of 15 years". The defence submitted that a sentence of 13 years imprisonment should be imposed. Crow J imposed concurrent sentences of nine and a half years on each of the counts of attempted murder.[2] The Attorney-General now appeals against these two sentences on the single ground that the sentences were manifestly inadequate.

[9] Section 669A of the *Criminal Code* (Qld) confers jurisdiction upon the Court of Appeal to decide an appeal by the Attorney-General against any sentence imposed by the court of trial. The section also confers the powers to be used by the Court of Appeal in the exercise of that jurisdiction.[3] The jurisdiction has been conferred so that the Court of Appeal can ensure that there will be consistency in sentencing[4] because inadequate sentences are likely to undermine public confidence in the ability of courts to play their part in deterring the commission of crimes.[5] However, consistency is not to be sought or secured by the Court of Appeal's substitution, in any case brought by the Attorney-General, of its own view of the appropriate sentence irrespective of the presence or absence of error on the part of the trial judge.[6] The jurisdiction so conferred requires that error on the part of the sentencing judge be demonstrated before the Court's discretion to vary the sentence is enlivened.[7] That is a principle that must be applied as a safeguard against

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1 *R v Ali* [2018] QCA 212 at [27] per Burns J.

2 As well as the two counts of attempted murder, the respondent pleaded guilty to one count of burglary with circumstances of aggravation, two counts of serious assault on police and one count of contravening a domestic violence order. The sentences imposed for these offences were for lesser periods of imprisonment than those imposed for the attempted murder offences and they are not in question on this appeal.

3 *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573 at [48] per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ.

4 *Everett v The Queen* (1994) 181 CLR 295 at 306 per McHugh J.

5 *Ibid.*

6 *Griffiths v The Queen* (1977) 137 CLR 293 at 310 per Barwick CJ.

7 *Ibid*., at [62].

injustice in the particular case.[8] An injustice may arise from a failure to adhere to that principle for two reasons.

[10] First, a person has a strong vested interest in his or her freedom subject only to the sentence of the primary tribunal and that interest ought not be taken away without proper recognised cause.[9] This is another way of stating the proposition that the jurisdiction cuts across a time-honoured concept of criminal justice by putting in jeopardy for the second time the freedom beyond the sentence imposed.[10] Second, the just sentence to be passed on an offender after a trial, and even on a plea of guilty, depends, or may depend, on many considerations that are not apparent to the Court of Appeal.[11] The appearance of a complainant, the demeanour of witnesses, the offender's appearance and conduct in court, the impression produced by words, the "atmosphere" of the proceeding, are or may be of great worth in estimating the appropriate penalty for the crime.[12] Moreover, due respect must be paid to the skills and experience of sentencing judges, whose almost daily task is to consider how to exercise the discretion in multifarious circumstances.

[11] It is for these reasons that it has often been said that the jurisdiction should be exercised only in rare and exceptional cases.[13] That is not to say that rarity or exceptionalism are themselves preconditions to be established by the Attorney-General. Rarity is merely a prediction about the likelihood of such cases arising because the Court of Appeal must, for the reasons I have given, give careful and distinct consideration to the question whether the Attorney-General has discharged the onus of persuading it that the circumstances are such as to bring the particular case within the category in which interference with a sentence is justified.[14]

[12] In order to ensure that the jurisdiction is exercised only in appropriate cases, it is useful to remember that the question for the Court of Appeal in such cases is not whether a sentencing judge had a sufficient reason for the sentence. It is whether the sentence involved error of a kind warranting interference with a discretionary judgment. The finding of error is a necessary condition for the exercising of the discretion. Unless some material error of fact or law can be seen in the sentencing judge's reasoning, then the question is whether, by reason of the extreme leniency of the sentence, an error of principle can be inferred.[15]

[13] In the latter class of case, the ground relied upon is that the sentence was "manifestly inadequate". This is really an argument from a conclusion. The ground invites the Court to conclude that the sentence is so disproportionate to the offending that the inference is inescapable that the sentencing discretion has miscarried for some invisible reason.

[14] Commonly, such lack of proportion is sought to be demonstrated by reference to comparable cases which are said to support a sentencing range. The submission then continues that the sentence under appeal is outside the range and, consequently, is "manifestly" inadequate, and implies error. It is only when the Court of Appeal is convinced that the sentence is definitely outside the appropriate range that it is ever

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8 *Whittaker v The King* (1928) 41 CLR 230 at 248 per Isaacs J.
9 *Ibid*.
10 *Everett v The Queen*, *supra*, at 299 per Brennan, Deane, Dawson and Gaudron JJ.
11 *Whittaker v The King*, *supra*, at 248-249 per Isaacs J.
12 *Ibid*.
13 See eg, *Everett v The Queen*, *supra*, at 299, 306.
14 *Everett v The Queen*, *supra*, at 299-300 per Brennan, Deane, Dawson and Gaudron JJ.
15 *House v The King* (1936) 55 CLR 499.

justified in exercising the discretion to resentence. Disagreement about the adequacy of the sentence is insufficient because sentencing is too inexact a process to make mere disagreement a sufficient criterion.[16] Intervention is only warranted when the difference is such that, in all the circumstances, the appellate court concludes that there must have been some misapplication of principle.[17]

[15] For this reason appellate intervention is not justified simply because the result arrived at below is markedly different from other sentences that have been imposed in other cases. It must not be overlooked that what is called "the range" is no more than information about sentences that have been imposed in comparable (but not identical) cases. This information is expressed in terms of the order of the sentence that, subject to discretionary considerations that are idiosyncratic to the case at hand, might be expected to be imposed on a certain type of offender who commits a certain type of crime.[18] What is called the range of sentencing, therefore, is the historical fact that there has been a general pattern of sentencing over a particular period.[19] What is more, a judicial statement about what ought to be the range of sentences for an offence contains an assumption about the kind of case that will justify a sentence within a specified range. It is those assumptions, and not the numerical result, that reflect or embody the relevant principles.[20] Consequently, a submission about the range of sentences without an articulation of the unifying principles which support those sentences is of no use. Rather, in order to make good a submission that a sentence is manifestly inadequate because it is outside the range, it is necessary to identify the particular factors represented by cases within the range as well as by the instant case and then to articulate how particular principles make those factors material and render the instant sentence erroneous. To draw attention only to the numerical result of a sentence and then to compare that result to other numerical results achieves nothing. Consistency of sentencing, which is the aim of the jurisdiction to entertain an appeal against sentence by the Attorney-General, will be achieved by ensuring that there is a comparable outcome in cases that are relevantly comparable. The corollary is that there must be different outcomes in cases that are relevantly different. A study of numbers alone is irrelevant to the task of achieving consistency except as a starting point.

[16] It is for these reasons, a sentence gives rise to no binding precedent except to the extent that it involves a statement about the application of a principle.[21]

[17] This Court has said a number of times that the appropriate range for the offence of attempted murder is generally from 10 to 17 years imprisonment.[22] In *R v Ali*,[23] in which Burns J wrote the leading judgment,[24] his Honour pointed out the importance of paying attention to the particular circumstances of the case at hand.[25] His Honour referred to the many different factors that can determine the objective seriousness of the offence, such as the nature of the attack, its duration, the degree of any planning, whether the offender voluntarily desisted, whether a weapon was

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16 *Everett v The Queen*, *supra*, at 307 per McHugh J.
17 *Wong v The Queen* (2001) 207 CLR 584 at [58] per Gaudron, Gummow and Hayne JJ.
18 *Ibid*., at 592 per Gleeson CJ.
19 *R v Lawson* (1997) 98 A Crim R 463 at 465 per Hunt CJ at CL.
20 *Wong v The Queen*, *supra*, at [58]-[59].
21 *Ibid*., at [57] per Gaudron, Gummow and Hayne JJ.
22 *R v Reeves* [2001] QCA 91; *R v Rochester* [2003] QCA 326; *R v Kerwin* [2005] QCA 259.
23 [2018] QCA 212.
24 with whom Fraser and Gotterson JJA agreed.
25 at [27]-[28].

used, the injuries suffered by the victim and other such matters. To these can be added the infinite factors personal to the offender and which may affect subjective culpability or which may influence personal deterrence, denunciation or rehabilitation as factors in sentencing.

[18] Burns J also referred to the importance of keeping in mind that any sentence of 10 years or more will carry with it a serious violent offender declaration requiring the offender to serve at least 80 per cent of the sentence. The only way in which mitigatory factors can be given effect under such a regime in order to arrive at a just sentence is by reducing the sentence. To a prisoner the difference between parole eligibility after four and a half years and parole eligibility after eight years is of vital significance. From the community's point of view the difference is also significant. The continued incarceration of a prisoner, rather than the release of that prisoner for the purpose of reintegration as a useful and welcome member of society in the face of an offender's cooperation with authorities or other powerful mitigating factors, may be contrary to the public interest.

[19] It follows, as Burns J pointed out, that not only have sentences for this offence varied greatly from case to case but sentences above and below the *general* range may be called for in appropriate cases.

[20] In this case, as I have said, the sole ground of appeal is that the sentences were manifestly inadequate. Regarded in isolation from any other matters, the objective circumstances of the offences are on an equal footing with numerous other cases involving horrific attempts to murder and which have drawn sentences within the sentence range. The Attorney-General's submissions concentrate upon these objective factors. Mr Rees, who appeared for the Attorney-General, submitted that the attacks were premeditated and that the respondent lacks remorse. His pleas of guilty were late. Mr Rees submitted that this was an attempt to kill *two* people, when the offender was subject to the constraints of a Domestic Violence Order. The respondent had previously assaulted one of the victims, his mother. His attack was sustained and brutal and he only stopped because a heroic neighbour, Mr Thompson, at risk to himself, intervened to prevent what would have been a killing. The Attorney-General also points to the severe physical and emotional injury that the respondent inflicted upon his victims as an exercise in revenge.

[21] Finally, Mr Rees pointed to the fact that even the respondent's experienced counsel had submitted to the sentencing judge that the appropriate sentence was one of 13 years.

[22] The Attorney-General rightly did not submit that the learned sentencing judge had overlooked any of these matters. Rather, it was submitted that the sentencing judge did not give them appropriate weight. When an appeal court is invited to consider questions of weight involved in the exercise of the sentencing discretion it should not regard itself as being in the same position as the sentencing judge. The appeal court should not set aside a sentence on such a ground unless the failure to give adequate weight to relevant considerations really amounts to a failure to exercise at all the discretion entrusted to the court.[26] That is because reasonable minds can differ about the weight to be accorded to the factors relevant to the exercise of discretion and it is not the function of the Court of Appeal to substitute its own view

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26 *Lovell v Lovell* (1950) 81 CLR 513 at 519 per Latham CJ, 533-534 per Kitto J; see also *Gronow v Gronow* (1979) 144 CLR at 519, 525, 534 and 537.

about such matters, or about the ultimate decision, for the view of the sentencing judge.

[23] In this case there were substantial mitigating factors that were personal to the respondent and it was these that, according to the sentencing remarks, moved Crow J to impose a lenient sentence.

[24] The respondent's mother, who was his intended primary victim, had given birth to the respondent when she was only 16 years old. When he was three years old, the respondent and his one year old sister were taken from their mother's care and placed into the care of their grandmother in Newcastle. The respondent's mother was then using drugs and neglecting her children. The respondent saw his mother rarely after that until he managed to complete year 10 of his schooling. He then moved from Newcastle to live with his mother and her partner in Mackay. He was 16 years old and began an apprenticeship to be a panel beater. When he was 17 he moved into his own home. He became a heavy drinker. He completed his four year apprenticeship and began steady work as a panel beater and sand blaster. From his commencement of work in his trade until his arrest, he was always employed and has only had three different employers. The respondent married when he was only 19 years old. His wife was a few years older. Together they had two children but the marriage ended in 2011 after about three years.

[25] According to a fellow panel beater, Gordon Sweeney, the respondent is a responsible young man and has been a good father to his children even after he separated from their mother. His current partner, with whom he does not have children, described him as a devoted and loving father and a reliable and mature young man. She says that he has integrity and takes his responsibilities seriously. Other character evidence presented a consistent picture of a decent, hard-working and responsible man, father, husband and member of society.

[26] For most of his life the respondent has felt depressed and sad. After his divorce he tried to hang himself. He has had trouble concentrating. He has felt agitated and angry and has had difficulty keeping his temper. These problems have been moderate to severe. His intellectual capacity is at the "borderline level". His reading and writing skills are extremely low. He has been tested and shown to suffer from a "severely elevated" level of depression and moderately elevated level of anxiety. He has a diagnosis of Persistent Depressive Disorder and Generalised Anxiety Disorder.

[27] After the collapse of his marriage, the respondent's children lived with his ex-wife while he lived with his mother. His mother and her partner kept a German Shepherd dog. The respondent's ex-wife and his mother had a good relationship. The respondent and his mother had a very bad relationship. His mother disapproved of his new partner who lived in the same house. The respondent and his mother were not speaking.

[28] The respondent's ex-wife used to leave their children in the care of the respondent's mother. He asked her not to do this. On one occasion, when the respondent's son was two years old, Ms Strachan's German Shepherd attacked the boy, biting his foot while he was being carried. The respondent asked his mother to have the dog put down but she refused. The relationship then became even more ugly. In 2012 the respondent pleaded guilty to assaulting his mother. No conviction was recorded and

he was placed on probation for 12 months. He paid his mother $700 by way of compensation and the respondent and his partner were "kicked out" of his mother's house. Evidently his ex-wife no longer gave him his usual access to his children, three weekends out of four, and he did not see his children again for three months. There were some proceedings in the Family Court that year.

[29] In 2013, when the respondent's son was three years old, Ms Strachan's dog seized him by the neck and dragged him away. The injured child entered a coma from which he never emerged and he died three days later. At the time nobody informed the respondent of the killing of his son. He learned of it some time later in a phone call from an auntie living in the United Kingdom. Incredibly, neither his mother nor her partner apologised to the respondent for the death of his son or even acknowledged any responsibility for it. At the child's funeral, which they attended, they sat behind the respondent and taunted him. His mother said, "I'm going to sit here, you cunts". She called him a "dog and a useless cunt".

[30] Of course the dog was destroyed. But the respondent's mother and her partner soon acquired a replacement, another German Shepherd, whom they named "Hunter". This was the name of the respondent's dead son's half-brother.

[31] The respondent's mental condition deteriorated. His job as a sand blaster in a panel beating business meant that he spent his long working hours isolated behind a mask, alone and free to ruminate and fester alone with his nightmares. He experienced painful memories and flashbacks of dogs attacking his son every 45 minutes. Despite what was said to be his low intellectual level, the respondent had insight enough to know that he should seek medical treatment. About two weeks before he committed these offences the respondent consulted a general practitioner and was prescribed some anti-depressant tablets.

[32] I have already described the offences. Having drunk enough beer to reduce his normal inhibitions, the respondent had a severe argument with his partner. Fearing the arrival of police, he reached the mad conclusion that since he may as well be hung for a sheep as a lamb he should go and "finish off" his mother. At this time he had committed no offence. In a manner that the Crown characterised as "premeditated", he strolled the few hundred yards to his mother's house carrying his two stubbies of beer with him and began his attack. It may have been premeditated but it was certainly unplanned.

[33] After the respondent was arrested, he was admitted to hospital for treatment of the injuries that he had received as a result of his resisting arrest. Police interviewed him in hospital. He told them that he had reasoned that, as police were coming anyway, he "might as well go for the whole fucking deed and go for it". He said that he would have killed them if he had not been stopped. "They killed my son, so why not blood for blood". He was charged with two counts of attempted murder and remained in custody until his sentence. Later that day he was interviewed again. This time, he made further admissions. He was asked his intentions when he attacked his mother and her partner. He said, "Oh, to kill them." He was asked whether he just wanted to harm them or whether he actually wanted to kill them. He replied, "No, I wanted to kill them". He said he wanted to kill his mother "any way I could".

[34] The psychologist who interviewed the respondent in order to prepare a report for sentencing, Dr Alan Keen, said that the respondent's mental condition was the

primary and significant contributing factor in his forming the intent to kill his mother and her partner. The respondent told Dr Keen that as soon as police placed handcuffs on his wrists he "felt free". He says that he believes that he can "go to a pub and sit beside my Mum and nothing would happen." Dr Keen is of the opinion that the respondent presents a "not very high" risk of reoffending and that the risk would increase by being in proximity to his mother and her partner.

[35] It was in these singular circumstances that Crow J expressed the view, in the course of his making his sentencing remarks, that he viewed the respondent's case as "far from general." The motive for his offending was "most unusual", namely the death of his infant son "in a most violent fashion." His Honour noted that the respondent's mental state was directly related to his formation of an intention to kill. Crow J observed that, by his admissions, the respondent had convicted himself. It is, of course, well appreciated that charges of attempted murder are difficult to prove because of the need to prove an actual intention to kill. For that reason, cases of attempted murder are often resolved by the Crown's acceptance of a plea of guilty to causing grievous bodily harm with intent. Crow J correctly recognised the respondent's cooperation as a factor in mitigation. His Honour found that the respondent's mental state was born of "not only neglect [and] abandonment" by his mother, but also by the loss of his son. His Honour found that these matters "explain why an otherwise placid person would become violent." This interpretation of events was also at the centre of the opinion of the character witnesses.

[36] Crow J found that the respondent's case "is very different to most of the cases, which makes it very difficult." His Honour found that the respondent posed no threat to the community at large and that, having had time to reflect, he did "not pose much of a risk to your mother or stepfather." His Honour found that the offending was "opportunistic" and although the respondent had formed an intention to kill and he had access to a knife, he took no weapon with him.

[37] Crow J found that the "most relevant circumstance" was the killing of the respondent's son. This was a death that occurred after an earlier attack had been ignored by his mother. The respondent could not live with these facts.

[38] His Honour took account of the respondent's early pleas of guilty. On this appeal the Attorney-General submitted that the pleas were neither early nor timely. That is not the position that the Crown took before Crow J when it asserted in written submissions that "[i]n his favour are his timely pleas of guilty and his frank admissions about his intention at the time."

[39] None of his Honour's findings have been challenged - with the exception of his Honour's characterisation of the pleas as "early and timely" and that challenge should be rejected. Otherwise, the Crown has been unable to point to anything that the learned sentencing judge has overlooked.

[40] This was a case in which it was open for his Honour to give substantial weight to the factors in mitigation if he thought that that was right. In particular, the respondent's state of health was caused in part by his mother's lifelong neglect of him, and was greatly contributed to by both of his victims' irresponsibility that had led to the little boy's death, and by their almost incredible callousness afterwards. His Honour was aware of, and took account of, the objective seriousness of the offending. However, as a matter of principle that is but one aspect of the matter, albeit a crucial matter. It is the factor that calls for a long term of actual incarceration to

serve the requirements of general deterrence and denunciation. His Honour gave it the weight he thought it deserved.

[41] But for the distorting effect of the *Penalties and Sentences (Serious Violent Offences) Amendment Act* 1997 (Qld), which introduced the regime under which prisoners sentenced to 10 years or more must serve at least 80 per cent of the sentence before becoming eligible for parole, this was a case which might have been dealt with by the imposition of a sentence of 10 to 12 years accompanied by a parole eligibility date after about four years. But that option was unavailable. Crow J was keenly aware that this placed obstacles in the way of imposing a just sentence, something that it was nevertheless his Honour's duty to achieve, whatever might lie in the way. Consequently, as I understand his Honour's sentencing remarks, his Honour determined upon a course that would give effect to principles of general deterrence and denunciation but which would also give appropriate weight to the mitigating factors which, in this case, his Honour considered to lay at the heart of the matter.

[42] It is not for the Court of Appeal to substitute its own views about such matters and, by that pathway, to substitute a sentence of its own.[27] Rather, it is for the Attorney-General to demonstrate actual error in the sentencing judge's reasoning and, in my respectful opinion, and despite the helpful and illuminating arguments of Mr Rees, no error has been shown. This is simply a case in which the learned judge accorded the weight he thought appropriate to the various matters put in front of him. It is a case in which he judged that the mitigating facts were, in the unusual circumstances of this case, very weighty. For that reason he imposed a lenient sentence. For the reasons that I have given, this is not a case in which this Court is permitted to substitute its own opinions about these matters. Further, while the sentences are outside the general range, so too are the facts of this case outside the usual run of cases. For that reason this very sentence raises no implications of error.

[43] For these reasons, I would dismiss the appeal.

[44] **GOTTERSON JA:** I agree with the order proposed by Sofronoff P and with the reasons given by his Honour.

[45] **HENRY J:** I have read the reasons of Sofronoff P. I agree with those reasons and the order proposed.

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27 *Lovell v Lovell*, *supra*.