SUPREME COURT OF QUEENSLAND

CITATION:	*R v Armitage, Armitage and Dean* [2020] QSC 41
PARTIES:	**THE QUEEN** **v** **STEPHEN JOHN ARMITAGE** (First Defendant) **MATTHEW LESLIE ARMITAGE** (Second Defendant) **WILLIAM FRANCIS DEAN** (Third Defendant)
FILE NO/S:	Indictment No 973 of 2016
DIVISION:	Trial Division
PROCEEDING:	Sentence
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Delivered Ex Tempore on 19 February 2020
DELIVERED AT:	Brisbane
HEARING DATE:	18 and 19 February 2020
JUDGE:	Jackson J
ORDER:	**The order of the Court is that:**

Stephen John Armitage

1. **Order that the defendant be imprisoned for a period of 10 years;**
2. **Pursuant to s 159A of the *Penalties and Sentences Act* 1992 (Qld), it is declared that 1237 days spent in pre-sentence custody between 4 October 2014 and 21 February 2018 be deemed time already served under the sentence;**
3. **Declare that the offence is a serious violent offence under s 161A(a) of the *Penalties and Sentences Act.***

Matthew Leslie Armitage

1. **Order that the defendant be imprisoned for a period of 8 years;**
2. **Pursuant to s 159A of the *Penalties and Sentences Act*, it is declared that 1237 days spent in pre-sentence custody between 4 October 2014 and 21 February 2018 be deemed time already served under the sentence;**

3. Declare that the offence is a serious violent offence under s 161B(3) of the *Penalties and Sentences Act*.

William Francis Dean

1. Order that the defendant be imprisoned for a period of 10 years;

2. Pursuant to s 159A of the *Penalties and Sentences Act*, it is declared that 370 days spent in pre-sentence custody between 4 October 2014 and 9 October 2015 be deemed time already served under the sentence;

3. Declare that the offence is a serious violent offence under s 161A(a) of the *Penalties and Sentences Act*.

CATCHWORDS: CRIMINAL LAW– PROCEDURE– JURISDICTION– SUPREME COURTS– GENERALLY– where the sentence proceeding arose out of the convictions substituted by the Court of Appeal for the original convictions of murder– where the orders for remittal did not identify the basis of the jurisdiction to be exercised by the trial division– whether the power to be exercised is that under section 668F(2) of the *Criminal Code* or whether the remitter re-engages the trial division's original jurisdiction– where the Court found that in either case section 154 of the *Penalties and Sentences Act* is engaged.

CRIMINAL LAW– SENTENCE– SENTENCING PROCEDURE– SENTENCING FOLLOWING RETRIAL OR REMITTAL–where the defendants were to be sentenced each on one count of manslaughter– where the findings of fact from the Court of Appeal decisions on which the substituted convictions were based were considered as binding– where apart from the antecedents, age and character and personal circumstances of each defendant there were no mitigating or reducing factors relevant– whether the notional sentences should be reduced to reflect the overall offending and the period of the declaration of pre-sentence custody made in respect of the current offence.

CRIMINAL LAW– SENTENCE – SENTENCING ORDERS– ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS– whether a declaration should be made against the second defendant that the offence is a serious violent offence– where the Court declared that the offence was a serious violent offence for each defendant.

Criminal Code Act 1899 (Qld), s 8, s 617B (1), s 668 (1), s 668F (2)
Evidence Act 1977 (Qld), s 132C

Juvenile Justice Act 1992 (Qld)
Penalties and Sentences Act 1992 (Qld), s 9 (1)(e), s 9(3)(b), s 154, s 159A, s 161A, s 161B(3)
Supreme Court of Queensland Act 1991 (Qld), s 61(2), s 61(3)
Uniform Civil Procedure Rules 1999 (Qld), r 770

Betts v R [2016] 258 CLR 420, cited
Mill v R [1988] 166 CLR 59, applied
R v Bargenquast, *Davis and Holmes* [2005] QCA 476, distinguished
R v Carlisle [2017] QCA 258, applied
R v Crawford, Patea, & Patea [2018] QSC 122, distinguished
R v Duong, *Nguyen, Bui,* & *Quoc* [2002] QCA 151, distinguished
R v Geissler, [2019] QCA 63, distinguished
R v Huebner [2006] QCA 406, distinguished
R v Lincoln; R v Kister; and R v Renwick [2017] QCA 37, distinguished
R v McDougall; R v Collas [2007] Qd R 87, cited
R v NQ [2013] QCA 402, distinguished
R v Richards [2017] QCA 299, applied
R v Richardson [2010] QCA 216, cited
R v T [1995] 2 Qd R 192, distinguished
R v Taylor and Hicks [2011] QCA 207, distinguished
R v WAW [2013] QCA 22, distinguished
R v Wellham and Martin [2012] QCA 103, distinguished *R v Wong* [1995] 16 WAR 219, cited *Thompson v R* [2000] WASCA 186, cited

COUNSEL: D Boyle & J Ball for the Crown
J Fenton for the first defendant
J Robson for the second defendant
A Hoare for the third defendant

SOLICITORS: Director of Public Prosecutions for the Crown
Owens and Associates for the first defendant
Legal Aid Queensland for the second defendant
Guest Lawyers for the third defendant

Jackson J: These three sentence hearings, which were heard for a full day yesterday and for some time this afternoon, involve some complexities.

On 21 March 2017, the defendant, William Dean, was convicted of the offences of torture, murder and interfering with remains of Shaun Barker. On the same day, the defendants, Stephen Armitage and Matthew Armitage, were convicted of the offences of torture and interfering with Shaun Barker's remains. However, the jury were unable to reach a verdict against the defendants, Stephen Armitage and Matthew Armitage, on the offence of murder.

On 26 September 2017, after a retrial, each of Stephen Armitage and Matthew Armitage was convicted of the offence of murder.

On 21 February 2018, I sentenced each of the defendants in respect of all offences. Some of those sentences are no longer relevant. However, in particular, for the offences of interfering with human remains, I sentenced each of the defendants to a term of imprisonment of two years. I also declared the pre-sentence custody time that was taken to be served already under each of the sentences as follows: for William Dean, 607 days between 4 October 2014 and 2 June 2016; for Stephen Armitage, 1237 days between 4 October 2014 and 21 February 2018; and for Matthew Armitage, 1237 days between 4 October 2014 and 21 February 2018.

On 2 August 2019, the Court of Appeal allowed Stephen Armitage and Matthew Armitage's appeals against conviction upon the offences of murder and torture. The convictions were set aside.

On 6 September 2019, the Court of Appeal allowed William Dean's appeals against conviction on the offences of murder and torture. The convictions were set aside.

A retrial of the torture charges was ordered in each appeal, but a conviction of the offence of manslaughter was substituted in respect of each of the appellants under section 668F(2) of the *Criminal Code*.

As well, in each of the relevant appeals, it was ordered that the matter be remitted to the trial division for the appellant to be sentenced for that offence.

As matters transpired, the Prosecutors elected not to proceed on the ordered retrials of the torture offences, so I am not concerned with those offences.

In the result, the proceeding has been listed before me to sentence each of the defendants for the offence of manslaughter arising out of the convictions substituted by the Court of Appeal for the original convictions of murder.

The orders for remitter made by the Court of Appeal do not identify the basis of the jurisdiction to be exercised by the trial division. None of the parties initially was clear as to what it was. The Prosecutor submitted that these sentencing proceedings may be an exercise of the sentencing power under section 668F(2) of *the Criminal Code.*

However, the power under that subsection is conferred on the "Court". That is a term defined in section 668(1) of the *Criminal Code* to mean the Court of Appeal. Unless, therefore, the order of remitter conferred on the trial division is of the jurisdiction of the Court of Appeal, that submission is difficult to accept.

There is a possible pathway to the conclusion of remitter. Section 61(2) of the *Supreme Court of Queensland Act* 1991 provides as follows:

> *(2) If a proceeding is started in the Court of Appeal, but is a proceeding that the Court of Appeal considers could be more conveniently heard and determined in another Court -*
>
> *(a) the proceeding is taken to have been duly started when it was started in the Court of Appeal; and*
>
> *(b) the Court of Appeal may, on application by a party or of its own motion, order that the proceeding be remitted to the other court; and*
>
> *(c) an order for remission being made under paragraph (b), the proceeding must be continued and disposed of in the other court; and*
>
> *(d) subject to any order under paragraph (b), the proceeding may be continued and disposed of in the Court of Appeal.*

Subsection (3) provides:

> *(3) If a proceeding is pending before the Court of Appeal, the Court of Appeal may, on application by a party or of its own motion, order that the whole or a part of the proceeding be remitted to another court for the determination (by trial or otherwise) of the proceeding or any question of fact or law arising in the proceeding.*

As well, the term "proceeding" is defined in the dictionary to that Act to include an appeal.

It is possible that the orders of remitter were made under sections 61(2) or (3), but there is another possibility.

In *R v T* [1995] 2 Qd R 192, the Court of Appeal considered its power, under the provisions then in force, to remit a sentence to the District Court, having decided to set aside a sentence in a matter regulated by the *Juvenile Justice Act* 1992. Unlike the present form of section 61(2) and (3), the equivalent provisions of the *Supreme Court of Queensland Act* 1991 then did not empower the Court of Appeal to remit an appeal to the District Court. Pincus J postulated that there was power to do so by the application of the power under section 617B(1) of the *Criminal Code*:

> *...to exercise ... any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters –*

which had the effect of calling up the equivalent powers to make any order the nature of the case required and to order a new trial in a civil appeal, as now found in UCPR, rule 770.

Pincus J's view was not, however, accepted by the other two members of the Court of Appeal, who sourced the power to remit in that case to an order in the nature of a prerogative writ.

Since then, it appears that Pincus J's views have been accepted by the Court of Appeal of Western Australia. See *R v Wong* [1995] 16 WAR 219 and *Thompson v R* [2000] WASCA 186.

But in 2016, the High Court described the subject as "controversial" in relation to the analogous powers in New South Wales. See *Betts v R* [2016] 258 CLR 420, 428, at paragraph 17 and footnote 35.

Returning to the potential operation of section 61 (2) or (3) of the *Supreme Court of Queensland Act* 1991, the question remains as to the effect of the orders for remitter in the present case. Again, two possibilities compete for acceptance. One is that the power to be exercised is that under section 668F(2); that has been remitted to the trial division, as, in substance, submitted by the Prosecutors. The other is that the remitter re-engages the trial division's original jurisdiction as a sentencing court under the relevant statutes.

None of the defendants or appellants positively submitted to the contrary. In one respect, their submissions seemed impliedly to accept the Prosecutors' submissions. That is because they submitted that the sentences I am to impose will operate retrospectively as sentences from the date of the original convictions, namely, 21 February 2018, as they submitted they would do had the sentences been passed in substitution for the offence of murder under section 668F(2) by the Court of Appeal. However, none of the parties made submissions as to the operation of the relevant statutory provisions under orders of a remitter beyond that.

I am unable to accept that I can impose a sentence that will start other than on the day that imprisonment is imposed by me on any of the offenders. That is because I am not, for example, exercising the power of the Court of Appeal which reduces or increases the sentence for an existing conviction. In such a case, the alteration of the sentence may not be a fresh imposition of imprisonment, but, in my view, these sentences are either a fresh imposition of imprisonment under the power to pass sentence under section 668F(2) of the *Criminal Code*, as part of an appeal remitted to the trial division, or the re-engagement of a Judge's power in the original jurisdiction of the trial division to sentence the offenders. In either case, in my view, section 154 of the *Penalties and Sentences Act* 1992 is engaged.

Three things follow: first, the sentences must be imposed as and from today; second, the Court must make a declaration under section 159A of the *Penalties and Sentences Act* 1992; third, it is necessary to consider the possible operation of the principles in *Mill v R* [1988] 166 CLR 59, at page 66, in arriving at appropriate sentences.

Because of the doubts I have as to the basis of jurisdiction I am exercising, I sought specific submissions as to a number of potential procedural matters. The parties were in broad agreement as to the approach to be followed.

First, I will treat the findings of the Court of Appeal as to the facts on which the substituted convictions were based as binding. That conclusion follows, in my view, from the nature of a substituted verdict under section 668F(2), as discussed by the Court of Appeal in *R v Richards* [2017] QCA 299, at pages 17 to 30, and in particular at paragraphs 98 and 125.

Second, to the extent that they are not inconsistent with the Court of Appeal's findings, I may take into account the findings of fact I made on the sentencing hearing on 21 February 2018.

Third, I may make additional findings of fact that are sought where appropriate, having regard to the terms of section 132C of the *Evidence Act* 1977 and receive additional evidence to do so.

In that regard, although the evidence at the two trials of the defendants differed to some degree, for the purposes of these sentences, I propose to have regard to all of the evidence unless a particular point arises as to the different effect of the evidence in one trial or the other. No such point has emerged, as I understand it.

The findings of the Court of Appeal relating to the defendants included the following passages. As to William Dean, the Court of Appeal found in paragraph 5 that:

> *...on 10 December 2013, Scott Murphy, Scott Healy and Mr Dean took Shaun Barker to Murphy's house where Mr Dean and Healy punched him and hit him with a golf club. Some carpet was then wrapped around his face and his hands were duct-taped to his head. He was put in the boot of Healy's car and driven to a park. There Mr Dean and Murphy assaulted Barker. He was then taken back to Murphy's house, tied with rope and put into the passenger side of the appellant's LandCruiser.*
>
> - that means Mr Dean's LandCruiser -
>
> *The next day, Mr Dean drove his LandCruiser north from the Gold Coast to Cooloola Cove.*

Second, the Court of Appeal found in paragraph 85 that it did not accept:

> *...the submission that the jury's verdict meant that Mr Dean was found guilty on the basis he did the acts himself, that is, under section 7, subsection (1), paragraph (a) of the Criminal Code.*

Third, the Court of Appeal made findings in paragraphs 94 and 95 that the evidence of Mr Dean's involvement consisted of the following which I will quote. The references that follow to "the appellant" are to Mr Dean:

(a) By Healy: that the appellant was involved in the assault of Barker on 10 December at Murphy's house and in the park;

(b) Healy gave evidence that Barker got into the appellant's car when they left Murphy's house; he (and inferentially, Barker) then drove on the morning of 11 December;

(c) Ballard said that the appellant was present when he saw the man on the ground near the esky; Ballard identified the appellant as that person, correctly selecting his image in a photo line-up;

(d) Ostwald said the appellant drove him and Ballard out into the forest where an esky was on its side on the ground and a person lying in a twisted state; despite the multitude of criticisms as to the quality of Ostwald's evidence, it is the fact that he subsequently correctly identified the person on the ground as Barker by reference to a photo line-up;

(e) Matthew Dean said it was the appellant who asked him whether he wanted to babysit a person tied up out in the forest; and the appellant was present when Stephen Armitage said that the person had been tied up out in the forestry as they needed him to talk and they were going to put him in an esky, and the man had been severely assaulted including having "smashed his kneecaps in and smashed every bone in his hands and cut off a finger";

(f) Mitchell said that Stephen Armitage's explanation that they were keeping a man in the forest was prompted by the fact that the appellant had been speaking to or at an esky, saying words to the effect of "I'm sorry, mate";

(g) Mitchell also said that it was the appellant who gave him a lump hammer and asked him to burn it, and then when Mitchell did not do so, attempted to burn it himself;

Schultz – [an erroneous reference in the Court of Appeal's reasons to Schutz] – *said that he saw a man on the ground near where Stephen Armitage was operating a forklift which had an esky on its side on the forklift tines; Schultz said that the appellant was present at that time and the appellant pushed the person; and*

(h) Schultz also saw the appellant sitting at an incinerator, stoking the fire over a period of two days while Matthew Armitage fed shoes and clothes into it.

In paragraph 95:

To that list must be added that it was the appellant who burned Barker's body by putting it in a fire pit.

The Court of Appeal in William Dean's appeal continued in paragraphs 100 to 109 and 112 as follows:

Close contact between the appellant and Stephen Armitage is also demonstrated by the evidence of the phone calls between 10 December and 13 December, as well as the evidence of what physically occurred at the Armitage property. Plainly, on that evidence, the appellant was aware that Barker was being held in an esky. He was there on the occasion Ballard witnessed, when Barker fell out of an esky in the presence of Stephen Armitage and the appellant. The only available inference from Mitchell's evidence as to the appellant apologising to someone in the esky is that it was Barker in the esky and the appellant was apologising for his mistreatment.

The appellant's direct involvement in the assaults on Barker while held at the Armitage property could be inferred from his attempt to destroy the two-pound lump hammer. The circumstances were sufficient to cause Mitchell to avoid involvement, even to the point of avoiding touching the hammer beyond using his foot to move it out of the shed. The appellant's subsequent attempt to destroy the hammer himself raises an inference that the hammer was used in the mistreatment of Barker. And Matthew Dean's evidence was that the appellant was present when some of the assaults on Barker were described, including smashing his kneecaps and bones in his hands and cutting off a finger.

The appellant's direct involvement in taking Barker out into the forest where he was tied to a tree is able to be inferred from Mitchell's evidence of what the appellant said to him. It was that "the guy that they had in the esky", who was Barker, had defecated in the back of the appellant's LandCruiser when he was taken out into the forest. The appellant sought to have Mitchell clean it up, and soon after changed from driving that LandCruiser to an alternate vehicle.

The appellant's direct involvement with the imprisonment of Barker in the forest is also to be inferred from the evidence of Matthew Dean and what the appellant said to him. He was asked if he wanted to "babysit someone tied up in the forestry". That was an evident reference to Barker. Though Matthew Dean declined to babysit, the appellant asked him to clean the back seats of his vehicle because of what had been left by Barker.

The appellant's direct involvement is also to be inferred from the evidence of Schultz as to the occasion when he saw a human being on the ground in front of an esky which was then being held on a forklift. The appellant pushed that person over. The only available inference is that it was Barker.

Although there was evidence that there was a relationship between the appellant and Barker, the acts which are referred above, and to which reference will now be made, belie that. Schultz's evidence was that the appellant returned with Matthew Armitage, put a container of honey down and laughed about the fact that they had just put honey on someone's testicles and watched ants eat it off. The only inference available is that that was Barker.

Schultz's evidence also supported that of Mitchell in that Schultz saw the appellant trying to hide a small mallet sized hammer. Schultz also saw the

appellant stoking the fire in the incinerator over a couple of days, during which time clothing and shoes were fed into the fire.

Finally, the evidence of Ostwald directly links the appellant to the death of Barker. It was the appellant who drove Ostwald (and Ballard) out to the middle of the forest, stopping with his headlights revealing an esky lying on its side in the vicinity of the purple LandCruiser ute owned by Stephen Armitage. The esky was on its side with a hose running back to the car. The appellant walked over to Stephen Armitage, who was standing at his LandCruiser utility, in close proximity to the esky. Ostwald saw a man, twisted and mangled, who he was later to correctly identify as Barker. There is no question about his correct identification as he not only picked Barker out in the photo line-up but the DNA evidence proved that the bones retrieved from that site were those of Barker.

In the appellant's presence, Ostwald attempted CPR on Barker, who was lying twisted up with his legs crossed. The appellant and the others abandoned Ostwald, though someone obviously retrieved him later.

That evidence, taken in combination, justified acceptance on the appeal before the Court of Appeal that the appellant was directly involved in the kidnapping and imprisonment of Barker and his subjection to violence and other mistreatment culminating in his death.

In paragraph 112 in the Court of Appeal, it was said:

In my respectful view, equally open on the state of the evidence is the hypothesis that Barker died because of a reckless indifference to his welfare. Also open is the possibility that Barker succumbed to his mistreatment because of neglect, even if it was not reckless indifference.

As to Stephen Armitage, the Court of Appeal in his appeal made the following findings at paragraphs 60 to 67:

As is common ground, the Prosecution case was wholly circumstantial, so that the circumstances had to bear no other reasonable explanation than that the defendants were guilty.

Clearly the Prosecution proved that Mr Barker died at some time during the relevant period, namely, between when he was last seen at the Gold Coast on 10 December 2013 and when his remains were found in April 2014. It was also established by the condition in which his remains were found and the place at which they were found that he had died in circumstances which others had gone to great lengths to conceal. There was no hypothesis which was open other than that he had been killed by someone.

The jury had the evidence from the witnesses of Mr Mitchell, Mr Ballard and Mr Schutz that there was a man being kept at the Armitage property in an esky. There were grounds for challenging the credibility, or at least the reliability, of this evidence. Nevertheless, especially when considered in combination, the

evidence provided a sufficient basis for the jury to conclude that there was a man being detained there against his will and who was being subjected to violence and other mistreatment.

It was then necessary for the Prosecution to prove that this man was Mr Barker. No witness was able to identify the man at the Armitage property as Mr Barker; in this respect also, the Prosecution case was circumstantial. The jury heard the evidence of the circumstances of Mr Barker's departure from the Gold Coast. Mr Barker had stolen drugs said to have belonged to Mr Murphy which were worth around $80,000. By the evening of 10 December 2013, when he was at the service station, Mr Barker was described as "frantic" and saying that there were people after him. Three people then arrived in a car, two of whom walked into the shop, spoke to Mr Barker and left with him. At about this time, there was a telephone conversation between Mr Murphy and Mr Barker. Stephen Armitage and William Dean were then at the Gold Coast, where they had met Mr Murphy and they had gone to Mr Murphy's house at 2 Montrose Court, Benowa Waters. Late on 10 December, or early on 11 December 2013, Mr Barker left that address with William Dean in his LandCruiser and the car was recorded as passing a toll point at Murarrie, travelling north on the morning of 11 December.

On that evidence, there was an association between (at least) Stephen Armitage, William Dean and Mr Murphy from which it was open to the jury to conclude that Stephen Armitage, as well as Mr Dean, had been instrumental in abducting Mr Barker and taking him from the Gold Coast, where he was never seen again.

The timing of those events coincided with when witnesses said that they saw the man being held in the esky. Mr Mitchell saw William Dean apparently talking to someone in the esky, saying "sorry, mate", he thought, on 12 or 13 December 2013. Stephen Armitage then told Mr Mitchell that "they were trying to get information out of" what he described as "a bloke in the esky". According to Mr Mitchell, Stephen Armitage told him that this was about "something that he stole from down the Gold Coast. Either some frank or some ephedrine or something". If the jury accepted that evidence, it was a strong indication that the man was Mr Barker. There was also the evidence of Mr Mitchell that Stephen Armitage had said that the man had stolen drugs at the Gold Coast, and there was the evidence of Mr Schultz that Matthew Armitage had said that the man had been caught in a "fucked-up drug deal" assault.

There was then the evidence which linked the man who had been held at the Armitage property with the remains found in the forest. There was the evidence of Matthew Dean that Stephen Armitage referred to a "flogging" which had been given to a man in the forest, and there was the evidence of Mr Ostwald of seeing a man lying in the forest, whom he was unable to revive by CPR, after being driven there by William Dean and with Stephen Armitage and (he said at one stage) Matthew Armitage then present. The weight to be given to his evidence was affected by the concessions which Mr Ostwald made in cross-

examination. Nevertheless, Mr Ostwald did identify Mr Barker on a photo board as the man he had seen. It was open for the jury to accept that there was an incident as Mr Ostwald described. If so, there was no real possibility that Mr Barker was not the man who had been kept in the esky.

All of this evidence, in combination, sufficiently supported the case that the man who had been kept in the esky at the Armitage property was Mr Barker. Consequently, it was open to the jury to find that Mr Barker had been killed, either at the Armitage house or in the forest, whilst a captive of more than one person.

The Court of Appeal continued at paragraph 71 as follows:

The evidence strongly supported a finding that William Dean and Stephen Armitage had a common intention of that kind. There was evidence of their involvement in bringing Mr Barker from the Gold Coast to the Armitage property, where Mr Barker was then detained in inhumane conditions and subjected to serious violence. The evidence which I have summarised, if accepted, proved that Stephen Armitage was causing Mr Barker to be detained and treated in that way. The reason why that was being done to Mr Barker was explained by Stephen Armitage to Mr Mitchell, namely, that Mr Barker had stolen something from the Gold Coast, and other evidence supported a finding to that effect. The evidence supported Mr Dean's participation in this plan, in combination with Stephen Armitage.

As to the defendant, Matthew Armitage, the Court of Appeal found in paragraph 72 as follows:

The case that Matthew Armitage was a party to this plan, if not as strong as that against his father, had a sufficient evidentiary basis. Matthew Armitage worked with his father in his father's fishing business and lived with his father in his father's house. Mr Mitchell testified that Matthew Armitage said that he was wanting to find "the big black zip ties" in order to tie somebody down, or to a tree, or to handcuff him. If the jury accepted that this was said by Matthew Armitage, then in the context of the evidence of the reasons for and the circumstances of Mr Barker's detention at the property, it was compelling proof of Matthew Armitage's participation in the common plan. There was the evidence of Mr Schutz of the presence of Matthew Armitage when the incident with the forklift occurred.

There was evidence from the same witness that Matthew Armitage was seen burning clothes and shoes at the property and that he or William Dean, in the presence of the other, said something about honey having been put on a man's testicles. The witness, Matthew Dean, recalled that when both appellants came to the house where he was staying, he was told by Stephen Armitage, in the presence of Matthew Armitage, "don't worry about it, that bloke's still alive". Mr Dean gave evidence of his observation of the mood of the Armitages on that occasion. And there was Mr Ostwald's evidence that Matthew Armitage was present at the scene in the forest and also on the occasion on the following morning.

I will repeat most of the findings I made on 21 February 2018. On the evening of 10 December 2013, Shaun Barker was picked up by two or three men at a service station at Pacific Fair at the Gold Coast; one of them was William Dean, and that was the last time he was at liberty. Later that night, William Dean was involved in the assaults of Shaun Barker both at Scott Murphy's house and at a park at the Gold Coast.

On 11 December 2013, Shaun Barker and William Dean left Scott Murphy's house at the Gold Coast in William Dean's car. They drove north and stopped at places during the day, ending up at or near the residence of the defendants, Stephen Armitage and Matthew Armitage, at 94 Investigator Avenue, Cooloola Cove in the early hours of the following morning. The defendant, Stephen Armitage, was a commercial fisherman and had a number of large fishing eskies at the house intended for use to store fish. The defendants kept Shaun Barker in one or more of those eskies.

Three different witnesses said they saw a man near an esky at different times. One witness said that Stephen Armitage told him about having flogged a bloke terribly but who still was not talking, of smashing his kneecaps, breaking his fingers and smashing his face in. Another witness heard a man call out from inside an esky that he needed food and water. Some of the witnesses said they were told that there was a bloke who was tied up in the forest. William Dean said to one witness that the man had been tied to a tree with honey on his genitals to attract ants. One witness said that he went to an area in the state forest and described seeing a man on the ground who was cold and stiff to touch. He was later shown a photograph of Shaun Barker and said the man he saw in the bush that evening was the deceased man, Shaun Barker.

Shaun Barker was being tortured to provide some kind of information probably about drugs that the defendants or others thought that he had taken. There were no witnesses who testified that they actually saw Shaun Barker being killed. No one said they saw William Dean or Stephen Armitage do this or saw Matthew Armitage do that and, as a result, Shaun Barker died.

That left the exact circumstances in which his death was caused as a matter which was not established by direct evidence. There was no eyewitness, no video and no audio. There was no medical or other scientific evidence as to the circumstances of his death beyond that about the bones that constituted his remains and where they were found.

There are some difficulties with the precise facts. In my view, it should be accepted that before he was taken to Cooloola Cove by William Dean, Shaun Barker was seriously assaulted by William Dean and others at the Gold Coast. Second, after he was taken to Cooloola Cove, Shaun Barker was held in one or more eskies at the back of the Armitage residence over a period of days. Third, at some point, Shaun Barker was taken into the state forest and tied to a tree. Fourth, Shaun Barker died as a result of those circumstances and any other assaults or deprivations he may have suffered. Beyond that, however, it is difficult to be more specific.

Whether he was subjected to breaking bones whilst he was being kept as stated depends on whether the evidence Stephen Armitage said that happened is accepted. I do not know whether the jury accepted that evidence. Whether Shaun Barker was subjected to a kind of water torture depends on whether the evidence of Kane Ostwald and possibly Ian Schutz, that they may have heard or seen evidence of an episode of that kind, is accepted. I do not know whether the jury accepted that evidence.

I am not prepared to find them as specific facts that did occur. The Prosecution submits that while the precise circumstances of Shaun Barker's death are unknown, the manner in which his body was disposed of suggests an effort to conceal the nature of his injuries. That is one possibility, but it is also a likely possibility that the manner in which Shaun Barker's body was disposed of was intended to conceal the fact of his death from whatever caused it.

To the extent those findings conflict with the findings of the Court of Appeal, I propose to act on the findings of the Court of Appeal.

The Prosecutors orally submitted that I should impose sentences based on the findings of the circumstances of the offences made in the Court of Appeal. But in written submissions the Prosecutors also identified specific passages in the evidence at the trials as relevant to the sentences. However, none of the passages referred to fell outside the scope of the findings made in the Court of Appeal as previously set out by me or at least not significantly so. And no particular findings of fact based on the evidence were identified as being sought under section 132C of the *Evidence Act* 1977.

William Dean's counsel sought some different findings as set out in his carefully drawn written submissions. I mention the matters of potential significance. By reference to the evidence, he seeks a finding that Mr Dean did not assault Shaun Barker on 10 December 2013, contrary to the Court of Appeal's finding. For myself, I consider that submission, by looking at the evidence, to have some arguable basis but I do not ignore the Court of Appeal's finding.

Second, he submits that Stephen Armitage said to William Dean that he, William Dean, would not believe the punishment that the person had taken which included smashed kneecaps, every bone in his hand being broken and a finger being cut off. But I find that was said by Stephen Armitage to Matthew Dean, not William Dean, the defendant.

Third, he submits that it should be found that William Dean was informed of Shaun Barker's death in a call that was made to Stephen Armitage in which the speaker, identified as Mattie, said words to the effect that the crab has boiled over in the pot. I am prepared to accept that fact, but I do not find it necessary to find whether or not the conversation was on 13 December 2013.

I do not consider it necessary to consider any other findings of fact in relation to the circumstances of William Dean's offending.

Stephen Armitage's counsel did not challenge the facts as summarised by the

Prosecutors' submissions with the qualifications in oral submissions that I should not accept as facts the findings as to the effect of Kane Ostwald's evidence set out in paragraphs 41 and 42 of the Court of Appeal's reasons in the Armitage appeals and paragraph 17(j) of the Prosecutors' submissions.

Within the confines created by the Court of Appeal's reasons that I have described above, I accept that I have significant reservations as to Kane Ostwald's evidence which I had the advantage of seeing given in both trials. I will deal with some other points about that presently. Otherwise, Stephen Armitage's counsel did not request further factual findings as to the circumstances of the offences.

Matthew Armitage's counsel did not seek any additional findings as to the circumstances of the offences with two qualifications. First, he opposed any finding as to his client being present at the episode in the forest described by Kane Ostwald when Mr Ostwald, in a drug-affected state, says that he attempted to resuscitate Shaun Barker's body. Second, he seeks a general finding that his client was at the periphery of the offending conduct.

As to the first point, he relied on the fact that Kane Ostwald's evidence as to that episode placed both Corey Ballard and Ray Mitchell in the car with him going to the forest and at the scene when they both denied any such episode. Second, he relies on the absence of any evidence from Ian Schutz on the same point when Mr Ostwald put Schutz at the scene, too. I repeat that I have significant reservations as to Kane Ostwald's evidence.

As to the second point, I think it is going too far to find that Matthew Armitage was at the periphery of the plan. However, two steps along that pathway may be accepted, in my view. First, the Court of Appeal recognised in its reasons that Matthew Armitage might be considered to have been acting under the influence of his father. I consider that he probably was, although a stronger finding of fact to that effect might have been available if there had been a psychologist's report supporting the conclusion. Second, the evidence of Matthew Armitage's involvement was less extensive. That is recognised by paragraphs 72 and 73 of the Court of Appeal's reasons, by the lesser collection of evidentiary references relied on by the Prosecutors in paragraph 18 of their submissions and by the acknowledgement of the Prosecutor at the sentencing hearing on 21 February 2018 that Matthew Armitage was present but not really doing very much at some points.

Against that, the conclusion of the Court of Appeal at paragraph 108 of the reasons that it should substitute a verdict of manslaughter based on the reasoning at paragraphs 72 and 73, necessarily involves finding that Matthew Armitage was a party to the offence of manslaughter because he was a party to the plan to assault and detain Shaun Barker for the purpose of getting information about stolen drugs. That is the basis of his liability under section 8 of the *Criminal Code* and it repels the finding sought that Matthew Armitage was at the periphery of the offending.

Apart from the antecedents, age and character and personal circumstances of each of the defendants, there are no procedural, other mitigating or reducing factors relating to the proceeding that might operate. There was no cooperation with police. There was no plea of guilty. Some admissions were made at trial but nothing that

significantly saved the costs of the trial or inconvenience to the witnesses or the cost to the State of the proceedings. There is no expression of regret or remorse.

As to William Dean's antecedents, he is 43 years of age and was 36 at the time of the offences. He has a criminal history including prior drug offences. The Prosecutor relies particularly on a series of offences committed by William Dean on 24 March 2014, that is, a few months after the offence I am dealing with, including an extortion, robbery in company, deprivation of liberty, unlawful assault occasioning bodily harm whilst in company and assaults occasioning bodily harm, all in relation to a man named Luke Romhegyi. The head sentence of six years imprisonment imposed by the District Court for the extortion offence on 16 September 2016 was reduced by the Court of Appeal to five years on 13 November 2017 in the circumstances described in the reasons of the Court of Appeal and I need not say more about them.

I interpolate that in respect of the present offending, the Prosecutors placed particular reliance upon the Romhegyi convictions as an aggravating circumstance in William Dean's case and as going to the risk that he will present to the community on release. I do accept that William Dean's criminal history, including those offences, is relevant, although I keep clearly in view that it was offending after the present offending. I also accept that the protection of the Queensland community is an important sentencing consideration under section 9(1)(e) and section 9(3)(b) of the *Penalties and Sentences Act* 1992.

However, I do not consider that offending as such to be a significant factor which would increase the sentence that I would otherwise arrive at by the required process of instinctive synthesis. I am concerned that to reason in the way the Prosecutors urge would be tantamount to punishing William Dean for the Romhegyi convictions twice, which is impermissible. However, the existence of those offences and the sentences for them is a factor that must be considered in reaching the appropriate sentence, having regard, among other things, to the partially concurrent operation of the sentences I am to impose for the present offence which I will consider later.

William Dean was educated to year 12 at Southport and embarked on a career in the professional fishing and commercial marine environment where he has worked fairly continuously. He has both masters and marine engineering qualifications. I accept that when released he is likely to be able to find employment in that industry. I also accept he has reasonable intelligence and ongoing family support. I accept that his involvement in the offending in the present case grew from his involvement in the operations of the drug dealer or dealers that traces back to his personal drug habit. He says that habit stemmed from becoming overweight. Whilst in prison since his remand for this and the Romhegyi offences and following the Romhegyi convictions, he has worked with some success in a number of prison occupations. He says he is now drug free. There is no evidence to the contrary.

Stephen Armitage is 50 years of age now and was 44 years at the time of the offending. He has a minor criminal history but it is of no particular significance in the present context. He completed grade 8 of high school and worked successfully as a commercial fisherman thereafter, in later years, at least, selling his catch to one of the larger commercial fishing organisations in Southeast Queensland from whom he

has a positive reference. He had or has a master fisherman's licence, a marine engineering ticket and other fishing vessel occupational licences. I accept he has good prospects of employment in the fishing industry on release.

He has three daughters and a son who is Matthew Armitage. He has other family including his parents and the support of his brother. In or by mid-2013, he had a back injury resulting in back surgery in the form of a microdiscectomy in the months before the offence. He says that he self-medicated his back pain using methylamphetamine and did not have a drug problem prior to the back injury. Whilst in prison, since being on remand for this offence and serving a term of imprisonment for the interfering with a corpse conviction, he has completed a number of courses. He, too, says he is now drug free. There is no evidence to the contrary.

Matthew Armitage is 27 years of age and was 21 at the time of this offence and the offence of interfering with a corpse. He has no other criminal history. After leaving school, he went to work with or for his father in commercial fishing. He was subject to his father's directions. He lived at home until after these offences were committed.

He has a nine year old son from a relationship he formed at or after high school which lasted for about four years.

At some time after this offence, he went to live in South West Rocks in New South Wales for work and, there, he formed a relationship with a young woman who he has known since his teens and that has continued since 14 October 2014 when he was remanded in custody and through his continuing period of custody since then. According to a letter from her, they hope to strengthen their relationship upon his release from prison and she proposes to support him on his return to the community.

He also has the support of his family, in particular, references from two of his sisters as to his suitability for return to the community. Since he has been in prison on remand for this offence or serving the term of imprisonment for the interfering with a corpse conviction, he has completed more than 25 different courses and certificates. He says that he is now drug free and has been tested with no positive results whilst in prison.

The Prosecutors submit that the basis for the sentence to be imposed on William Dean emerges from paragraph 96 of the Court of Appeal's reasons in his appeal as I have recited, and for Stephen and Matthew Armitage, from paragraphs 99 and 100 of the Court of Appeal's reasons in their appeals.

The latter passage identifies the liability of Stephen and Matthew Armitage as under section 8 of the *Criminal Code*. The passage I earlier identified in paragraph 85 of the Court of Appeal's reasons in William Dean's case means that he, too, is not to be sentenced as the principal offender.

The Prosecutor submits that the degree of criminal culpability among the defendants is highest for William Dean, lower for Stephen Armitage and least for Matthew Armitage. I accept that the criminal culpability of Matthew Armitage, though very

serious, is lesser and that the involvement of William Dean in the activities that resulted in the circumstances that caused Shaun Barker's death was greater than Stephen Armitage because Stephen Armitage was not shown by the evidence to have been significantly involved in what took place at the Gold Coast on 10 December 2013 prior to William Dean driving to Cooloola Cove with Shaun Barker in his car.

The Prosecutors submit that the offence was not an act of impulsive physical violence but the result of protracted mistreatment. I accept that it was. The Prosecutors submit that it was committed in an attempt to secure information in the furtherance of a drug enterprise and that Shaun Barker was detained in inhumane conditions and subjected to serious violence. For the reasons I have previously set out, I accept those matters, too.

The Prosecutors submit that there are no closely comparable cases and no established range can be submitted. In my view, none of the cases on which the parties relied gainsaid those submissions. With that qualification, however, the Prosecutors relied on *R v Bargenquast, Davis and Holmes* [2005] QCA 476, *R v Huebner* [2006] QCA 406 and *R v Wellham and Martin* [2012] QCA 103. Although I paid close attention to both the written and oral submissions of the Prosecutors about them and the submissions of counsel for the defendants about them, I do not consider that any useful purpose is served by setting out details of those cases in these sentencing remarks.

The Prosecutors ultimately submitted, on the assumption that sentences were to be imposed in a way that would run from 21 February 2018, that the sentence for William Dean should be 14 or 15 years, that for Stephen Armitage should be lower and that for Matthew Armitage lower again, but that all should be either 10 years or more or, if not, a declaration of conviction of a serious violent offence should be made under section 161B(3) of the *Penalties and Sentences Act* 1992.

Counsel for William Dean submitted that comparable sentences support a sentencing range of between nine and 12 years imprisonment before adjustment for other factors. The cases he relied upon are *R v Lincoln; R v Kister; and R v Renwick* [2017] QCA 37, *R v Taylor and Hicks* [2011] QCA 207, *R v WAW* [2013] QCA 22, *R v NQ* [2013] QCA 402 and *R v Duong*, *Nguyen, Bui, & Quoc* [2002] QCA 151. Although I have read and paid attention to those cases, I do not accept that they support a range of between nine and 12 years for the defendant, William Dean.

It is a somewhat curious feature of the present case that the Prosecutors submit that the offending of the defendants is more culpable because it was not an impulsive act and involved a protracted mistreatment, while the defendants focused on the absence of violence inflicted by weapons as the cause of death as making the defendants less culpable. I confess that given the underlying circumstances of this case, as I have set them out, I do not find either direction of the approach to the assessment of comparable cases as particularly useful.

Taking into account the circumstances overall, in my view, notionally looking at the manslaughter offence alone before adjustment for other factors, the offending of William Dean would warrant a term of imprisonment of 12 years. It will be necessary to return to the factors that require adjustment.

Turning to Stephen Armitage, in accordance with the Prosecutors submissions, I accept that I would arrive at a lower notional starting sentence than in William Dean's case.

Stephen Armitage's counsel relied on *R v Lincoln, R v Kister and R v Renwick* [2017] QCA 37, *R v Hicks & Taylor* [2011] QCA 207 and two other cases being *R v Geissler,* [2019] QCA 63 and *R v Crawford, Patea, & Patea* [2018] QSC 122. He submits, again on the assumption that sentences to be imposed would run from 21 February 2018, a sentence of nine years with a parole eligibility date fixed at six years would be appropriate. I do not agree, essentially, for three reasons.

First, it seems to me that submission must be based on an unadjusted range for the offence of manslaughter of nine years or less. His counsel submitted that the question of whether there might be a higher term of imprisonment is in some way met by imposing a non-parole period of more than 50 per cent. In my view, although that is possible, it is not the better way to approach the effect of or operation of section 161A of the *Penalties and Sentences Act* 1992 in this case. Although the sentencing Court should sentence being cognisant of the operation of that section for a sentence of 10 years or more in comparison to one of less than 10 years, assuming no declaration is made under section 161B(3), that does not justify a simple reduction of what would otherwise be a sentence of 10 years or more by the expedient of increasing the non-parole period from 50 per cent. I have taken into account *R v Carlisle* [2017] QCA 258.

Second, although I accept there is some difference in the appropriate notional starting point of the sentence in the case of Stephen Armitage when compared to William Dean, I do not consider that it would justify a reduction from 12 years to 10 years or below. In my view, a reduction to 11 years would be more appropriate.

Third, even if it had been possible to fashion the sentence of manslaughter as starting as at 21 February 2018, that would have given Stephen Armitage the full benefit of a concurrent term of imprisonment for the sentence of the offence of interfering with a corpse without either an accumulation of the sentences in part or treating the manslaughter as a head sentence for the concurrent sentences and increasing it. It will be necessary to return to the question of adjustment from the notional starting point of 11 years.

Turning to Matthew Armitage, in accordance with the Prosecutors' submissions, I accept that I would arrive at a lower notional starting sentence than in the other cases. His counsel relies on the same cases, however, he deployed them in a slightly different or additional way. He submitted that, given that the liability of Matthew Armitage is under section 8 of the *Criminal Code*, the cases may be seen as illustrating that a lower range can be discerned for offenders who are parties under that section in comparison with those who were a principal offender. In at least some cases that may be so, although the degree of distinction may be difficult to compare on a case by case basis.

But this is not a case where, in terms of sentencing and parity of sentencing, a distinction can be drawn between one or two of the defendants and the other because

one of them is the principal offender. The findings of the Court of Appeal in both cases negate treating any of the defendants as the principal offender in relation to the others. It is a feature of the facts that it cannot be said with any precision what acts or omissions among the acts or omissions that did take place caused Shaun Barker's death in a way that would distinguish among the defendants.

In the circumstances of this case, accordingly, it does not seem persuasive to me to distinguish Matthew Armitage's degree of culpability based on the nature of his criminal responsibility under section 8 of the *Criminal Code*, per se. However, for the reasons I have previously identified, I do regard his involvement as lesser and being the product of a father's influence upon his son who was then a young man when they were living and working at close quarters. I also consider that Matthew Armitage has relatively good prospects of rehabilitation. The question that has concerned me is to what degree that should reduce the sentence I should arrive at because of the circumstances of the offence and the considerations of parity that otherwise apply. In the result, I concluded that a notional sentence of nine years is an appropriate starting point before adjustment in Matthew Armitage's case.

Having regard to my conclusion that the sentences that I pass today must start from today, and that the full time period of the interfering with a corpse sentences has expired, in effect, long ago - it appears, when they were pronounced - the question whether the notional sentences should be increased to reflect a head sentence for any concurrent operation of the sentences for interfering with a corpse is a question that does not arise.

Instead, one question that arises is whether the notional sentences should be reduced to reflect the overall offending in accordance with the principle in *Mill v R* and similar cases.

This question is also indirectly linked to the period of the declaration of pre-sentence custody to be made in respect of the current offence under section 159A of the *Penalties and Sentences Act* 1992. Because the defendants have been held in custody on the sentences for interfering with a corpse followed by a period in remand until today, which also had a period where they were held in custody on the sentences which have now been set aside and, in William Dean's case, under the sentences imposed for the Romhegyi offences, it is accepted that no further time is declarable under section 159A(1) since 21 February 2018.

Taking the simpler cases of Stephen Armitage and Matthew Armitage, in my view it is appropriate to consider these questions in the following way: had the sentences been passed at the same time and as at today's date, with the interfering with a corpse sentence so as to run concurrently I would have either increased the manslaughter sentences as a head sentence in each case by a year to reflect the overall criminality, or accumulated the sentences in part but reduced them to achieve a similar, just, overall result.

If that had been done by the first method I described, the defendants would have received the benefit of the time in prison since 21 February 2018 as time served under the sentences to date. Accordingly, in my view, it is appropriate to reduce the sentence I would otherwise have imposed in the cases of Stephen Armitage and

Matthew Armitage by a period of two years to reflect the consequence of the accumulation of those offences as they have been served, or will be served, and it would have been potentially appropriate to do the same for any non-parole period, subject to the operation of sections 161A and 161B.

So, taking that approach, an adjusted notional sentence for Stephen Armitage would've been 10 years and that for Matthews Armitage would have been eight years subject also to adjustment for any non-parole period.

As to William Dean, if similar reasoning were applied in the first place, the sentence he would have received would have been increased to 13 years but reduced by the two years to 11 years to take account of accumulation and the non-declarable time. But there are further complications associated with his remand and imprisonment upon his conviction for the Romhegyi offences.

During the period from 8 April 2014 to 7 July 2014, when he received a grant of bail, he was on remand for the Romhegyi offences. From 4 October 2014 to 8 October 2015 he was on remand for, inter alia, the present offence and the interfering with a corpse offence, as well as the torture offence that is not proceeding. On 9 October 2015 his bail on the Romhegyi offences was revoked. From then, he was on remand for both sets of offences until 15 September 2016. On 16 September 2016 he was convicted on the Romhegyi offences and sentenced to six years that was reduced on appeal to five years. From 16 September 2016 to 28 February 2018 he was on remand for the current offence and the interfering with a corpse offence, as well as the torture offence now not proceeding, and imprisoned under the *Penalties and Sentences Act* 1992 under the sentences for the Romhegyi offences. From 21 February 2018 to today, 19 February 2020, he has been imprisoned under the interfering with a corpse offence sentence subject to the operation of the declaration as to pre-sentence custody and the Romhegyi offences. I have not particularly calculated the relative times.

As at today's date, it is submitted by the Prosecutors and accepted by William Dean's counsel that the declarable time under section 159A of the *Penalties and Sentences Act* 1992 in his case is 370 days between 4 October 2014 and 9 October 2015.

What follows is that William Dean was on remand for an additional period, between 9 October 2015 to 21 January 2018 - a little over two years - which is not declarable time, under section 159A.

That reduces his eligibility for parole date and extends his full-time release date in respect of the sentence. The Prosecutors submit that some reduction could be made because of William Dean's sentence to take account of those facts, recognising at the same time that he has had the benefit as if there were partially concurrent sentences for the Romhegyi offences that were also discounted to reflect the time that he had served on remand and otherwise until then.

William Dean's counsel submits that the period of his present sentence should be further reduced for the loss of the benefit of the declarable time and parole he might or would have enjoyed in respect of the Romhegyi offences. The period of time in question was 829 days. However, having regard to the operation of sections 161A

and 161B it could be grossed up so as to recognise the effect in relation to his non-parole period to a period of 1036 days by dividing 829 by 80 per cent.

The result would be that two years and six months approximately should be reduced from the notional 11 years I had previously arrived at to a period of nine years and six months. As to any additional period of reduction, in applying the principle of totality and the factors raised in *Mill v R*, I know that the full-time release date in William Dean's case for the extortion offences is 1 June, 2021. It wouldn't, I think, be crushing to impose an additional seven years three months of sentence so as to operate in a cumulative way.

The remaining question is whether, in Matthew Armitage's case, having arrived notionally at a sentence that is less than 10 years, a declaration that it is a serious violent offence should be made. I consider that question having regard to the considerations discussed in *R v McDougall; R v Collas* [2007] Qd R 87, and other cases to which I was referred, including *R v Richards*on [2010] QCA 216.

Matthew Armitage's counsel submits that the offence was not a serious violent offence by reference to the facts previously described and by distinguishing between the facts as found by the Court of Appeal and as set out above, and what would constitute an offence of manslaughter that is a serious violent offence, focussing on the aspects of the defendant's conduct that could be characterised as reckless indifference or neglect rather than acts of violence directly or indirectly causing death. But I do not consider the distinction sought to be made holds good in a case like the present.

In my view the circumstances speak for themselves. The findings I've already set out that relate to Matthew Armitage's offence constitute a serious violent offence for the purposes of a declaration under section 161B(3) of the *Penalties and Sentences Act* 1992, in my view.

Mr Dean, would you stand please. For the offence of manslaughter I order that you be imprisoned for 10 years. Pursuant to section 159A of the *Penalties and Sentences Act* 1992 I declare that 370 days spent in pre-sentence custody between 4 October 2014 and 9 October 2015 is time that is to be taken to be imprisonment that is already served under the sentence.

Mr Stephen Armitage, would you stand please. For the offence of manslaughter I order that you be imprisoned for 10 years. Pursuant to section 159A of the *Penalties and Sentences Act* 1992 I declare that the period of 1237 days spent in pre-sentence custody from 4 October 2014 to 21 February 2018 is time to be taken to be imprisonment already served under the sentence.

Mr Matthew Armitage, would you stand please. For the offence of manslaughter I order that you be imprisoned for eight years. Pursuant to section 159A of the *Penalties and Sentences Act* 1992 I declare that 1237 spent in pre-sentence custody between 4 October 2014 and 21 February 2018 is time to be taken to be imprisonment that is already served under the sentence. I declare that the offence is a serious violent offence under section 161B(3) of the *Penalties and Sentences Act*

1992.

Mr Armitage – Mr Boyle, is there anything else?

MR BOYLE: Your Honour, in respect of the sentences imposed on Mr Dean and Mr Stephen Armitage, I think your Honour should also declare that it be a conviction of a serious violent offence under 161B(1).

HIS HONOUR: Is it B or A?

MR BOYLE: One – 161, capital B - - -

HIS HONOUR: Sub (1) is it?

MR BOYLE: Sub (1).

HIS HONOUR: Yes. Sorry. The declaration's required even though the period is arrived at?

MR BOYLE: Yes, your Honour.

HIS HONOUR: Yes, all right. Mr Fenton, you agree with that?

MR FENTON: Yes, your Honour.

HIS HONOUR: Mr Hoare?

MR HOARE: I've nothing, thank you, your Honour.

HIS HONOUR: All right.

MR HOARE: Or, sorry, I agree with that.

HIS HONOUR: Just let me look at the section again.

Yes, in relation to each of Mr Dean and Mr Stephen Armitage, I also declare that the offence is a serious violent offence under section 161A(a) as part of the sentence.

Thanks, Mr Boyle, anything else, gentlemen?

MR FENTON: If I can just – wait a second? No.

HIS HONOUR: All right. Mr Hoare.

MR HOARE: No, thank you, your Honour.

HIS HONOUR: Adjourn the court please.
