SUPREME COURT OF QUEENSLAND

CITATION:	*R v Van der Vegt; ex parte A-G (Qld)* [2002] QCA 535
PARTIES:	**R** **v** **VAN DER VEGT, Jodie Martin Stephen** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 343 of 2002 SC No 8 of 2002 SC No 8A of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence appeal by A-G (Qld)
ORIGINATING COURT:	Supreme Court at Bundaberg
DELIVERED EXTEMPORE ON:	5 December 2002
DELIVERED AT:	Brisbane
HEARING DATE:	5 December 2002
JUDGES:	de Jersey CJ, Helman and Philippides JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**Allow the appeal and vary the sentence imposed on 23 September 2002 by setting aside the recommendation in relation to post-prison community based release. The sentence should otherwise remain in its present form.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – MISCELLANEOUS MATTERS – where respondent pleaded guilty to being an accessory after the fact of murder and sentenced to eight years imprisonment, with a recommendation that he be considered for post-prison community based release after two years eight months – where the Attorney-General appeals on the ground that the recommendation for early consideration of parole rendered the penalty manifestly inadequate – where absent such a recommendation, eligibility for consideration for parole would not arise until the respondent had served four years. *R v Hawken* (1986) 27 ACrim R 32, followed *R v Houghton* [2002] QCA 159; CA No 347 of 2002, 10 May 2002, considered *R v Lister* (1996) 86 ACrim R 527, considered *R v Winston* (1994) 74 ACrim R 312, considered

COUNSEL:	R Martin for the applicant B G Devereaux for the respondent
SOLICITORS:	Director of Public Prosecutions (Queensland) for the appellant Legal Aid Queensland for the respondent

THE CHIEF JUSTICE: The respondent pleaded guilty to being an accessory after the fact of murder. He was sentenced on 23rd September 2002 to eight years' imprisonment with a recommendation that he be considered for post prison community based release after two years eight months.

The Honourable the Attorney-General appeals essentially on the ground that the recommendation for early consideration of parole rendered the penalty manifestly inadequate. Absent such a recommendation, eligibility for consideration for parole would not arise until the respondent had served four years of the term.

The deceased was a 15 year old schoolgirl. At a troubled and vulnerable stage of her life she turned to the respondent for help. It was while she was with him that she was murdered. The respondent assisted the murderer by disposing of the body, giving false information to the deceased's friends and lying to the police for more than two and a half years, including giving the police information suggesting that the deceased was still alive.

The respondent's wife initially protected him but she later made a statement disclosing admissions by the respondent. The respondent had told his wife that he witnessed the deceased's

murder and that he had buried the body at the local dump. The respondent thereafter refused to be interviewed further by the police.

After intimation of the plea of guilty the Crown requested the respondent to assist by identifying the murderer and revealing the location of the body. He did not do so or do so effectively.

Defence counsel, before the learned Judge, submitted a range of six to seven years' imprisonment with parole recommended after two years. The Crown Prosecutor submitted a range of eight to 10 years with no mention of any early parole recommendation.

In recommending parole consideration after two years eight months the Judge was adopting what he termed, "the usual discount for a plea of guilty at an early stage", that is, after serving one third of the sentence. I do not, with respect, accept that there is a "usual" level of moderation for a plea of guilty. Each case must be dealt with for its own particular features.

His Honour made this statement as to the recommendation:

> "Having regard to the fact that you pleaded guilty, as I consider, in a timely fashion and that despite a certain lack of direct cooperation on your part, the relevant information appears to have become known, I propose to recommend that you be considered for post prison community based release after the expiration of a term of two years and eight months".

It appears from that that the learned Judge was influenced to recommend early parole consideration in part because the respondent's wife revealed the location of the body or, at least, not to take account of the respondent's failure to cooperate in other respects as a ground for reducing the extent to which he would otherwise have lessened the period within which parole might be sought, because of the plea of guilty.

The revelation of the location of the body by the respondent's wife frankly had nothing to do with the respondent and, in no sense, should the respondent have received any credit for that in view, especially of his own persistent refusal to cooperate except by pleading guilty. The question is whether excluding that consideration the sentence imposed is sustainable or, as the appellant would contend, manifestly inadequate.

There is no doubt, as submitted to the appellant, that this was a serious example of this offence. The murder involved the death of an innocent 15 year old child. The respondent's actions in efficiently disposing of the body rendered it impossible for the police to recover the remains for her family. It was considered futile to seek to recover any remains when the general location became known two and half years after the event.

The respondent persisted in protecting the murderer and the respondent carries the burden of a substantial record of anti-social and criminal misconduct committed both before and after

this offence. This offence, I should say, was committed on or about the 28th of November 1998.

I turn to other cases: in Houghton [2002] Queensland Court of Appeal 159, the seven years' imprisonment following appeal is not susceptible of translation to this case because of a totality consideration in Houghton. Lister (1996) 86 Australian Criminal Reports 527, where the prisoner helped bury and subsequently exhumed and burned the bodies of her two children was more serious, explaining the 13 year term with parole after five years following a trial.

Hawken (1986) 27 Australian Criminal Reports 32 is factually comparable. Hawken was 41 years old. This respondent was 26 at the time of offending. Hawken pleading guilty received an effective nine year eight month sentence. It should be noted that, unlike this respondent, Hawken made admissions and cooperated with the police. The sentence imposed in Hawken would suggest that this penalty was extremely lenient.

Winston (1994) 74 Australian Criminal Reports 312 received eight years after appeal but the totality consideration also arose there and as was observed in the Court of Appeal, "his part in what happened was almost entirely passive".

On 31st January this year Justice Byrne sentenced Walter, a youthful offender, who cleaned the house after a murder and directed another person to help, to an effective eight and a half year term following a plea of guilty with no added

recommendation for early consideration of parole. There has apparently been no application for leave to appeal against that sentence.

This case is, in my view, distinctive for the respondent's persistent and callous refusal himself to disclose the location of the body and properly identify the murderer and provide a true account of the circumstances of the crime. Hawken and Walter, in particular, would suggest that a sentence contemplating even the possibility of this respondent's release after only two years eight months is, for that reason, inappropriately indulgent.

In my opinion, the relevant range, after allowing for the plea of guilty, should, in this case, have been eight years to 11 years' imprisonment so that the respondent was sentenced at its lowest level. The ultimate significance of this particular plea of guilty was not substantial when seen in context of the respondent's obduracy in refusing otherwise to cooperate with the authorities and assist in alleviating the plight of the deceased child's family.

While his plea facilitated the administration of justice, in light of his general approach it is repugnant to think the plea should lead to any substantial moderation of the penalty. In that respect, this case is very unusual. Ordinarily a timely plea will lead to real reduction.

In determining whether the inclusion of a recommendation like

this renders the sentence vulnerable on appeal, one must, of course, acknowledge that it is only a recommendation and not self fulfilling but, nevertheless, in this case, even the prospect of release as early as after two years eight months for offending of this gravity should not be countenanced.

I would allow the appeal and vary the sentence imposed on the 23rd of September 2002 by setting aside the recommendation in relation to post prison community based release. The sentence should otherwise remain in its present form.

HELMAN J: I agree.

PHILIPPIDES J: I also agree.

THE CHIEF JUSTICE: The order is as I have indicated.
