SUPREME COURT OF QUEENSLAND

CITATION:	*R v Perini; ex parte A-G (Qld) (No 2)* [2011] QCA 384
PARTIES:	**R** **v** **PERINI, Maurizio** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 206 of 2010 SC No 325 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	23 December 2011
DELIVERED AT:	Brisbane
HEARING DATE:	26 October 2011
JUDGES:	Margaret McMurdo P and Fraser and Chesterman JJA Separate reasons for judgment of each member of the Court, Fraser and Chesterman JJA concurring as to the orders made, Margaret McMurdo P dissenting
ORDERS:	**1. Appeal against sentence allowed.** **2. Set aside the sentence of 13 years imprisonment for manslaughter and substitute instead a sentence of 18 years imprisonment.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the respondent pleaded guilty to manslaughter, two counts of burglary and two counts of interference with a corpse – where the respondent was sentenced to 13 years imprisonment for manslaughter and lesser concurrent terms of imprisonment on the remaining offences – where appellant's original appeal to the Court of Appeal pre-dated the High Court's decision in *Lacey v Attorney General of Queensland* (2011) 85 ALJR 508 – where the High Court remitted the matter to the Court of appeal for further consideration – where the appellant argues the sentence was manifestly inadequate and failed to adequately reflect the seriousness of the offences, properly

punish and denounce the offences and failed to give sufficient weight to community protection – where the appellant further argued the sentence gave too much weight to matters of mitigation – whether the sentence was manifestly inadequate

Corrective Services Act 2006 (Qld), s 182
Criminal Code 1899 (Qld), s 304A, s 669A
Penalties and Sentences Act 1992 (Qld), Pt 9A, s 9

Dinsdale v The Queen (2000) 202 CLR 321; [2000] HCA 54, cited
Griffiths v The Queen (1989) 167 CLR 372; [1989] HCA 39, cited
Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, cited
House v The King (1936) 55 CLR 499, [1936] HCA 40, cited
Lacey v Attorney-General of Queensland (2011) 85 ALJR 508; [2011] HCA 10, applied
Lowndes v The Queen (1999) 195 CLR 665; [1999] HCA 29, cited
Markarian v The Queen (2005) 228 CLR 357; [2005] HCA 25, cited
Muldrock v The Queen (2011) 85 ALJR 1154; [2011] HCA 39, considered
Re Perini [2009] QMHC 27, considered
R v Aeon-Masterson, Unreported, Court of Criminal Appeal, Qld, CA No 112 of 1990, 12 June 1990, considered
R v Lacey; ex parte A-G (Qld) (2009) 197 A Crim R 399; [2009] QCA 274, distinguished
R v Manson [1974] Qd R 191, cited
R v Miguel [1994] QCA 512, considered
R v Nagy [2004] 1 Qd R 63; [2003] QCA 175, cited
R v Neumann; ex parte Attorney-General [2007] 1 Qd R 53; [2005] QCA 362, considered
R v Pedder, unreported, 29 May 1964, Queensland Court of Criminal Appeal, cited
R v Perini; ex parte A-G (Qld) (No 1) [2011] QCA 30, considered
R v Potter; ex parte Attorney-General (Qld) (2008) 183 A Crim R 497; [2008] QCA 91, considered
R v Robinson [2007] QCA 99, cited
R v Schubring; ex parte A-G (Qld) [2005] 1 Qd R 515; [2004] QCA 418, cited
R v Tonkin and Montgomery [1975] Qd R 1, considered
Veen v The Queen [No 1] (1979) 143 CLR 458; [1979] HCA 7, cited
Veen v The Queen [No 2] (1988) 164 CLR 465; [1988] HCA 14, considered
Wong v The Queen (2001) 207 CLR 584; [2001] HCA 64, cited

COUNSEL: A W Moynihan SC, with A D Anderson, for the appellant
J Allen, with J Briggs, for the respondent

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

[1] **MARGARET McMURDO P:** This case highlights the profound difficulties faced by sentencing courts when offenders straddle both the criminal justice and mental health systems. The respondent, Maurizio Perini, was charged with murdering the deceased on 29 March 2008 at a Southport assisted accommodation centre where the 36 year old respondent and the 76 year old deceased both resided. On 24 August 2009, the Mental Health Court determined the following. The respondent was not suffering from unsoundness of mind at the time of the killing. He was acting under diminished responsibility at the time of the killing. He was fit for trial.[1] On 19 August 2010, he pleaded guilty to two counts of entering a dwelling with intent with circumstances of aggravation (counts 1 and 4); manslaughter (count 2); two counts of misconduct with a corpse by interfering (counts 3 and 5) and one count of burglary and stealing (count 6). He was sentenced to 13 years imprisonment on count 2, which was declared to be a serious violent offence, and to lesser concurrent terms of imprisonment on the remaining counts. The effect of Part 9A *Penalties and Sentences Act* 1992 (Qld) and s 182 *Corrective Services Act* 2006 (Qld) is that he must serve almost 10 and a half years before becoming eligible for parole.

[2] The Attorney-General successfully appealed under s 669A *Criminal Code* 1899 (Qld) against that sentence to this Court (differently constituted) and the respondent's sentence for manslaughter was increased to 18 years imprisonment.[2] That appeal pre-dated the High Court's decision in *Lacey v Attorney-General of Queensland*.[3] This Court determined the appeal on the basis that it was not necessary to identify any error by the sentencing judge before deciding that the respondent should be re-sentenced, in accordance with the principles stated in *R v Lacey; ex parte A-G (Qld)*.[4] The respondent successfully appealed to the High Court of Australia contending that the High Court's decision in *Lacey* set out the correct approach to Attorney-General's appeals under s 669A; the section conferred jurisdiction on the Court of Appeal to re-sentence only where there had been some error on the part of the primary judge. As this Court in *Perini (No 1)* had not considered the appeal according to law, the High Court was not "satisfied that the actual order made by the Court of Appeal [was] necessarily right",[5] set aside the order and remitted the matter "to the Court of Appeal for its further consideration".[6]

[3] This Court's task, consistent with the High Court's decision in *Lacey*, is not to review the Court of Appeal's decision in *Perini (No 1)* but to determine whether the primary judge erred in sentencing the respondent in any of the ways contended for by the appellant, and if so, to re-exercise the sentencing discretion according to law.

[4] The appellant's amended grounds of appeal are as follows:

> "1. The sentence is manifestly inadequate.
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> 2. The learned sentencing judge erred because
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> (i) the sentence fails to adequately reflect the serious nature of the offences;

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1 *Re Perini* [2009] QMHC 27.
2 *R v Perini; ex parte A-G (Qld) (No 1)* [2011] QCA 30.
3 (2011) 85 ALJR 508; [2011] HCA 10.
4 (2009) 197 A Crim R 399; [2009] QCA 274.
5 *Perini v The Queen & Anor* [2011] HCATrans 201, 6.
6 Above.

(ii) the sentence fails to properly punish and denounce the offences;
(iii) the judge failed to give primary weight to protecting the community; and
(iv) the judge gave to (sic) much weight to matters of mitigation."

The respondent's antecedents

[5] The respondent was 36 at the time he committed the offences and 38 at sentence. He was raised in Sydney, the child of Italian immigrants. He had a long history of mental and behavioural problems which were documented in the Mental Health Court's reasons:

> "[6] Dr Neillie, who has been the [respondent's] treating psychiatrist, was able to provide a longitudinal history for the [respondent], having also had the opportunity of interviewing the [respondent's] mother. It seems that the [respondent] experienced motor and cognitive difficulties which became evident prior to his schooling. These difficulties appear to have been a consequence of Rhesus Isoimmunization. Dr Neillie's evidence was that [respondent's] mother described a history of delayed developmental milestones in terms of language and motor development. There was a picture at school, and particularly in the latter years of secondary school, of intellectual problems.
>
> [7] From his late teenage years the [respondent] began to gamble and engage in a pattern of binge drinking. After leaving high school following year 10, the [respondent] worked for a time as an apprentice hairdresser in his mother's salon in Sydney. After his mother forced him to leave home, the [respondent] lived in a hotel cellar, before moving to the Gold Coast around about Easter 1993. His mother and father followed very soon after. His parents divorced in 1988 but continued to reside together until his father's death in 2002. The [respondent] lived with his parents during that time, working in a number of unskilled roles and collecting Centrelink benefits when unemployed.
>
> [8] In 2006 the [respondent's] mother returned to Italy to live, where she remarried. This move appears to have affected the [respondent] profoundly and there is mention in Dr Neillie's report of the [respondent] ringing his mother several times a day and asking her to return to Australia. The [respondent's] mother reported to Dr Neillie that when she did return, in February 2007, she noticed a marked deterioration in the [respondent's] mental health, describing him as 'agitated, upset and shaking'. She eventually returned to Italy later in 2007 but arranged for the [respondent] to move in with an elderly lady who was a friend. The arrangement did not continue.

> [9] The [respondent] reported that in the early 1990's his general practitioner had suggested that he suffered from schizophrenia. However, he had no admissions to hospital, nor consulted a psychiatrist until mid 2007, when he was referred to the Homeless Help Outreach Team. Throughout 2007 there is a recorded decline in his mental state. During that time he began exhibiting self harm behaviours and was hospitalised on a number of occasions. Following discharge from hospital, the [respondent] experienced the breakdown of his accommodation situation a number of times, being asked to leave several hostels. He eventually became involved with a Homeless Persons Assistance Team on the Gold Coast.
>
> [10] Summarising the situation during that period, Dr Neillie gave the following evidence:
> 'Looking at the hospital records during this time, there's a fairly consistent picture of anxiety symptoms, distress, low tolerance for frustration and what is described as poor impulse control, poor problem solving, self-harm, suicidal thoughts. There are also, at times, some description of possible psychotic symptoms, possible perceptual disturbance, that was made at the Gold Coast and it was referenced in relation to an assessment [the respondent] had at the Royal Brisbane Hospital, although on none of those occasions was it considered that he had a psychotic illness. At the time he received follow-up again from the homeless team on the Gold Coast, the notes indicate an ongoing picture of those anxiety symptoms, of distress and despite some, what would appear to be, initial improvement when he was first placed at the retirement village. Thereafter the notes do record difficulties, they record behavioural difficulties, they record anxiety such that he was at one point commenced on an antidepressant medication, and I believe those difficulties persisted and in fact worsened from that initial period of stability at the retirement village up until the time of the current charges.'
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> [11] The [respondent] had been told to leave [the centre]. There had been numerous incidents and difficulties with the [respondent], and on a number of occasions the police became involved in these. The [respondent] had applied to reside at a caravan park, but on 28 March 2008, he had become aware that the caravan park had not accepted his application and the Department of Housing was going to be many months in arranging alternative accommodation."[7]

The circumstance of the offences

[6] The dreadful circumstances of the respondent's offences were also summarised in the reasons of the Mental Health Court:

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7 *Re Perini* [2009] QMHC 27, [6]-[11].

"[2] At the time of the offences the [respondent] and [the deceased], an elderly lady, were living in separate units at … an assisted accommodation centre on the Gold Coast. The [respondent] had been residing there since late December 2007.

[3] The [respondent] told police that on the afternoon in question, he had looked through the window of [the deceased's] unit and observed that she was lying in bed reading. It appears that the [respondent] decided at this time that he would kill [the deceased]. Later that evening the [respondent] gained access to [the deceased's] unit through an unlocked sliding glass door. He was armed at the time with a knife and a man's tie. Upon entering the unit, the [respondent] approached [the deceased] and placed the tie around her throat in an attempt to strangle her. She began to scream and he stuffed a pair of socks in her mouth. The [respondent] viciously attacked [the deceased], and then stabbed her in the neck with the knife he was carrying, leaving it embedded there.

[4] The [respondent] told police that after he had killed [the deceased], he attempted to rape her, but was unable to obtain an erection. He said that he left her unit and returned to his own unit and showered. He had a cigarette and described feeling 'relieved' because voices he had been hearing had disappeared. He returned to the deceased's unit taking with him a number of adult magazines in an attempt to gain an erection. He eventually digitally penetrated the victim and ejaculated, after masturbating. After leaving the unit the [respondent] returned a further time in search of money, eventually taking coffee and milk.

…

[12] From the police record of interview, it seems that the [respondent's] indicated motivation for the killing was that being in gaol would provide him with a permanent place to live. He stated to the interviewing officers, 'I couldn't handle thinking I was gonna be homeless because a few of the places I had tried ... just didn't come about so I thought ... I'd rather have a bed somewhere'. After further questioning he said, 'I didn't want to experience being homeless and I thought gaol seems to be a good idea to have a bed and… that's why I kinda did it'."[8]

Relevant aspects of the Mental Health Court proceedings

[7] The Mental Health Court proceedings continued over three days. The appellant places emphasis on the following exchange between Mr S P Vasta for the Director of Public Prosecutions and psychiatrist, Dr Fama:

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[8] Above, [2]-[4], [12].

> "*Doctor, would you agree, though, that this man is dangerous?*-- Yes.
> And so -----?-- *Dangerous – dangerous if not satisfactorily treated*. I think he's not dangerous at this very moment at all.
> No, that's because he's in imprisonment -----?-- Because he's in care and being treated properly, yes.
> But as far as we're looking at two ends of a – well, maybe a sword and you've got one edge of the sword that says, 'Yes, because of what you've said, that his responsibility is somewhat diminished', but on the other edge of the sword is, *'Because of that same illness, he's always going to be a danger to society'?-- I agree with that, yes*." (my emphasis)

[8] Dr Varghese was one of two psychiatrists assisting Philippides J in the Mental Health Court. On the third day of proceedings, he stated his advice to the court. The respondent places emphasis on the following extract from that advice:

> "Thus my advice on the clinical evidence is that the [respondent] was in a state of abnormality of mind such as to substantially impair his capacity to know the wrongfulness of the act at the time of the killing. This of course only applies to the charge of murder. The only other matter I will comment on which arises from the clinical evidence is that it's a question of dangerousness. *The personality disorder is of a profound type and it is likely to be persistent for a long time if not throughout [the respondent's] lifetime. It's most unlikely that the [respondent] would function outside of an institutional or supervised environment, and if put in such an environment it may well result in dangerous behaviour.*" (my emphasis)

[9] In determining whether the primary judge erred in being unpersuaded that the respondent was likely to pose a risk of committing further such offences when released after a lengthy term of imprisonment, it is necessary to consider relevant aspects of Dr Schramm's evidence in some detail as the parties dispute its effect. In his report dated 4 December 2008, he noted that the respondent's prognosis as to:

> "any significant improvement in functioning and being able to live without the highest degree of supervision is extremely poor.
>
> …
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> [His] management will need to be highly detailed and will pose enormous challenges once it comes time for him to progress from any high secure environment. …
>
> It is likely that for the rest of his life he is going to need to live in a highly supportive and structured environment to meet his intense needs and tolerate his behaviour without eviction. I do not believe that standard supervised accommodation such as hostels would be sufficient here and it may be that, once he is ready for release to the community, consideration be given to having him admitted to one of Queensland Health's Extended Treatment and Rehabilitation facilities (I would guess that the issue of absconding would not be great given his dependence and like of hospital, but any such plan will likely require gradual introduction and trial from secure

> facilities). I appreciate that there may be difficulties here given that he may not obviously fulfil criteria for those usually placed in these scarce beds, but I fear that there may be no other placements providing such intense and professional support available in the community. This is probably a matter that is better commented on by social workers from Queensland Health and Disability Services Queensland. …
>
> I will not comment in detail on medication regimes, but offer that medication will only ever play a minor role in improving his function.
>
> He requires a skilled and multidisciplinary team approach, ideally with input from those with experience in the management of adults with autistic spectrum and intellectual impairment.
>
> If he was to be transferred to custody, he will be a man of extreme vulnerability given his naivety and intrusive behaviours. I am aware that his current treating team and the Prison and Mental Health Service are aware of this."

[10] Dr Schramm did not deal with the issue of future potential dangerousness in his report of 21 May 2009 but in his report of 12 June 2010, which assumed that those reading it were familiar with his previous reports, Dr Schramm noted the following. The respondent seemed to be coping reasonably well and was relatively stable. The respondent felt he was helped by increased medication (Olanzapine). He was "not infrequently coming to some conflict (relatively minor) with fellow prisoners" as he seemed to find it difficult to read social situations and his behaviour was irritating to others. He had not been involved in any serious incidents of violence and aggression in the past six months. Dr Schramm added:

> "This settling in behaviour and apparent learning to comply with limits of living on the unit without deteriorating into gross anxiety and other behavioural disturbance seemed to be occurring despite any regular input from prison counsellors or psychology services. …
>
> **MY INTERVIEW WITH [THE RESPONDENT] ON 12/5/10**
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> … **With regards the offences**, he stated that he was 'regretful and remorseful' but, when asked to expand, did not seem to express feelings that I would class as true remorse. …
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> **OPINION**
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> …
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> **ISSUES OF RISK**
> I begin by making the comment that, *in general, making predictions of likelihood of future violence are extremely difficult to make, especially in regards those events of violence of such low frequency as homicide*. That being said, I present below what I feel are the pertinent issues:
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> Whilst one could view that this particular killing took place amidst a 'perfect storm' of factors including imminent eviction, inappropriate housing (although he was there after failing at a number of more

suitable places), relative lack of support and having alienated himself from those with whom he was living (and probably to some extent those who had been trying provide him care), I must point out that, in the microcosm of the prison, the same dynamics seem to have still been playing out, at least initially. As such, even though he is now apparently showing some ability to limit his behaviour in the harsh and unforgiving environment of a prison unit, one could envision circumstances where, in the community, he could easily again become alienated, develop a sense that he was receiving 'no help' and again deteriorate to the point where he may well resort to dramatic behaviours to enlist rescue. These 'dramatic behaviours' in the past were almost exclusively threats of self harm (some aggression to others) and serious violence was, until these index offences, unheard of. Those persons most at risk would be those more vulnerable even than himself, quite possibly the very persons with whom he may be forced to live if he was managed in supported accommodation. *I am at pains to indicate that it would be extremely unlikely that he would act again with the same degree (of seriously assaulting a person) to achieve his aims, but one cannot rule that out*.

… the [Mental Health] Court should be aware that you are dealing here with a man with significant deficiencies, both cognitive and personality-based, that are most unlikely to improve to any great degree in time (certainly his intelligence is unlikely to improve). It may be that he could respond to some social skills training, but I am sorry to say that it is most unlikely that he would receive such training in prison, where via the PMHS[9] or prison counselling services.

You ask whether his plea of guilty to all those charges… at his committal may reflect a declining risk level. I do not believe that this is necessarily the case. As noted above, he continues to have difficulty in accepting much responsibility for his actions and his use of the terms 'regret' and 'remorse' seem to reflect his regret at facing the repercussions of custody and loss of supports and freedom rather than any true empathy with the victim. As noted, I believe that *this inability to empathise and to take responsibility is not a matter of choice for [the respondent] but a function of his impaired cognition and personality dysfunction*.

His lack of criminal history and serious violence in the past provides some reassurance that he is not a man that we would classically consider as having a psychopathic or antisocial personality disorder, which certainly are markers of risk of violence in the future. However I would say that he does have those features of markedly impaired empathy (and preparedness to resort to aggression) which mean that he is more likely than others to have less regret over harming persons to achieve his ends.

In short, I believe that the risk of him repeating such serious violence upon others is likely to be very low, but the chance of him becoming

[9] Prison Mental Health Service.

involved in more minor level aggression and conflict is probably almost inevitable.

Management of Risk

I am not certain whether the passage of time would necessarily reduce the chances of significant violence in such circumstances, but would consider it a reasonable hypothesis to consider that in 10 years time, with continued living in an environment where he is forced to place limits on himself, that he may develop some skills so that he could transfer to the community upon release and manage his stressors more robustly.

As indicated in my previous reports, his placement at the end of his prison sentence will provide an extreme challenge to those whose responsibility this falls to. I can inform you that he remains a patient under an Involuntary Treatment Order of the Mental Health Act. Whilst I personally find this somewhat surprising (I've not discussed the details and reasoning with his treating team specifically), this may provide some mandate for Queensland Health based mental health services to provide some support to him on his departure. However, I caution that many services, maybe even his current treating team, would be tempted to argue that he does not fulfil the remit of a person with a serious mental illness requiring mental health care. That is, there is no guarantee that he will be leaving prison on a Mental Health Act order.

Further, he seems in the past to have been rejected by that other source of funding and responsibility, Disability Services Queensland (when they were approached in the period before the offences), given that, although he may be intellectually impaired (you will note from your involvement with his matter at the Mental Health Court that even this was not without controversy), he probably is not so impaired so as to attract their funding.

These issues of who is responsible would be arguments and battles for those looking after him in prison towards the end of his prison stay and I am loath to predict the outcome of them.

No matter who looks after him, he will require intense support. The framework would include supported accommodation from a service prepared to put up with and be able to manage potential disruptive behaviour. As the experience in the year or so leading to the offences attests, many privately run hostels and boarding houses are likely to have their limits and welcome tested, if he was to return to that same demanding and disturbed behaviour. Accommodation in such environments would also pose problems given that it is most likely that he would be living with other persons with vulnerabilities of their own, such that they may be potential victims of violence. More importantly though, his personality and mental health issues themselves mean that such persons (often with mental illness or intellectual disability themselves) would be less tolerant of [the respondent's] behaviour such that accommodation here would be fertile ground for a repeat of alienation and conflict for [the respondent].

> I am not familiar enough with what services and accommodations are available in the community to recommend any particular ones. My impression is that gone are the days of 'institutions' providing intense care, other than some scarce long-term psychiatric beds and even then he would most likely be considered not a candidate for these (at least without a case being made of exceptional circumstances). I apologise for my lack of knowledge in the area – it may be that others may be more helpful in identifying more suitable placements.
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> There may be something to say for [the respondent's] subjective impression that he is on 'the right medication' as going some considerable way to reducing his risk of deteriorating to that state where violence may occur. I would not go so far as to say that he should be given every sedating medication that he asks for, but I do note that, at the time of the offence he was prescribed only an antidepressant which in itself was not particularly calming. *He is now on three separate medications (Olanzapine, Diazepam and Valproate) which will all go some way to being somewhat calming for him such that one would hope that this would reduce his risk of offending. I think there is very little chance that he would become non-compliant with these medications in the future* (as other persons prescribed psychotropics often are) and, if anything, he is likely, especially at times of stress and change and deterioration, to demand more.
>
> *Given his complex risks, and the risk of his 'upping the ante' when he does not receive the support he feels he needs, it would be prudent to engage an experienced behavioural psychologist to prepare a management plan for any service and accommodation where he would live at discharge*. This may fall under the responsibility of the Department of Corrections.
> …" (my emphasis)

[11] The Mental Health Court rejected Dr Fama's view that the appellant was suffering from schizophrenia[10] but accepted he was suffering from a personality disorder with schizoid or autistic traits, with dependent and dissocial features,[11] combined with functional impairment[12] and a severe adjustment disorder with anxiety symptoms arising from his mother's departure for Italy.[13] As a result, he was suffering from an abnormality of mind at the time of the killing[14] which substantially impaired his capacity to know he ought not kill the deceased.[15] The Mental Health Court found "particularly persuasive" the analysis of Drs Neillie's, Schramm's and Fama's evidence as to the severity of this impairment of capacity:

> "[I]n the context of anxiety, a sense of hopelessness, lack of empathy, and impaired ability to make judgments and rigidity in thinking, occurring against a background of the [respondent's]

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10 *Re Perini* [2009] QMHC 27, [45]-[47].
11 Above, [48].
12 Above, [52].
13 Above, [53]-[55].
14 Above, [56].
15 Above, [57]-[58].

> concern about the threat of eviction, and also a belief that he was being deliberately tormented."[16]

[12] The Mental Health Court was not required to and did not make any finding about the likelihood of the respondent being a future danger to the community by committing further serious violence.

The prosecutor's submissions at sentence

[13] The prosecutor at sentence made the following submissions. A week before the killing, the respondent told another resident of the centre: "If I hear [the deceased's] walker again, I'm going to shove it up her arse." It is not therefore surprising that the respondent was unpopular with the other residents at the centre who were all elderly. He was noisy and they found his behaviour disturbing, irregular and intimidatory; they did not want him living there. The week before the offences, the respondent had thrown butter knives into some of their rooms, including the deceased's. When police investigated this incident, the respondent told them he put knives under the doors to intimidate the residents. The police took no further action as they considered he did not appear violent, seemed remorseful, and noted that his mental health issues were known to Queensland Health. The other residents were successful in having the respondent evicted, effective from 31 March 2008. The social workers handling his case were not able to find alternative accommodation. On 29 March 2008, they told him that they were unsure where he would live after his eviction. On the evening of 29 March, he told a fellow customer in a video store that he was being evicted the next day, adding, "Doesn't matter, I'll be in gaol tomorrow. I'm going to kill someone tonight."

[14] Following the Mental Health Court determination, the case proceeded against the respondent by way of a full hand up committal at which he pleaded guilty. He was committed to the Trial Division of this Court for sentence.

[15] The prosecutor submitted that, despite that cooperation with the administration of justice, the circumstances of this manslaughter warranted the maximum penalty, life imprisonment. The principles discussed in *Veen v The Queen [No 2]*[17] were modified in Queensland by s 9(1)(e) and (4) *Penalties and Sentences Act*. The psychiatric reports before the Mental Health Court did not hold out much hope for rehabilitation. Community protection was an important consideration and it outweighed the few mitigating features. The respondent planned his attack and clearly intended to kill the frail, elderly deceased. His attack was vicious, violent and prolonged. He returned later intending to have intercourse with the corpse. His offending was depraved and heinous, in the worst category of unlawful killings, and deserving of the maximum penalty, life imprisonment.

Defence counsel's submissions at sentence

[16] Defence counsel referred to *Veen [No 2]* and *R v Potter; ex parte Attorney-General* (Qld)[18] to support his submission that the respondent's mental abnormality was a mitigating feature, not an aggravating one. A sentence of 13 years imprisonment for manslaughter appropriately balanced the competing considerations. He

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16 Above, [57].

17 (1988) 164 CLR 465; [1988] HCA 14.

18 (2008) 183 A Crim R 497; [2008] QCA 91.

emphasised the respondent's absence of criminal history and parts of Dr Schramm's most recent report to the Mental Health Court[19] to submit that the respondent's slide into committing these offences occurred over time and was distinguishable from *Veen [No 2]*. As the respondent's multiple difficulties were now understood and documented by those who will support him in the community upon his release, he is unlikely to be a serious danger to the community.

The sentencing judge's reasons

[17] The learned sentencing judge considered the matter overnight before delivering his reasons for sentencing the respondent to 13 years imprisonment for manslaughter and declaring the offence a serious violent offence. The judge set out the gruesome facts of the offending, the Mental Health Court's findings, and the respondent's cognitive disabilities and intellectual and mental health problems.

[18] His Honour noted the prosecutor's submissions and his reliance on *R v Manson*,[20] *R v Tonkin and Montgomery*,[21] and *R v Neumann; ex parte Attorney-General*.[22] The judge referred to his submission that Dr Fama's cross-examination and Dr Varghese's comments in the Mental Health Court proceedings[23] meant that protection of the community was a highly relevant sentencing principle. His Honour also noted defence counsel's submission that the evidence did not establish the respondent would pose a future risk to the community, emphasising Dr Schramm's most recent report.[24] That report was not challenged by the prosecution. The prospect of the respondent behaving similarly again was likely to be dependent on similar circumstances recurring. The respondent had no previous criminal history. The combination of problems as to the level of support and accommodation offered to the respondent would be likely to be addressed more effectively in the future.

[19] The judge acknowledged that the problems surrounding the respondent's support and accommodation could potentially recur. There was the current evidence of the risk he was likely to pose of committing further such offences when released after a lengthy term of imprisonment. But that evidence did not amount to a "foundation of substance" (as discussed by Fryberg J in *Neumann*) sufficient to warrant a life sentence as a precautionary approach. The respondent's circumstances differed from those whose mental state alone posed a direct risk of serious violence. The cases relied upon by the respondent's counsel, *R v Miguel*[25] and *R v Aeon-Masterson*,[26] supported a sentence of 13 years for the offence of manslaughter.

The appellant's submissions

[20] Mr Moynihan SC, who appeared with Mr Anderson for the appellant, made the following submissions.[27] The primary judge was required to exercise the sentencing discretion to reflect the respondent's entire criminality in the context of the

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19 Relevant parts are set out at [10] of these reasons.
20 [1974] Qd R 191.
21 [1975] Qd R 1.
22 [2007] 1 Qd R 53, [27]-[30], [2]; [2005] QCA 362.
23 Set out at [7] and [8] of these reasons.
24 Set out at [10] of these reasons.
25 [1994] QCA 512.
26 Unreported, Court of Criminal Appeal, Qld, CA No 112 of 1990, 12 June 1990.
27 The grounds of appeal are set out at [4] of these reasons.

maximum penalty of life imprisonment: *Griffiths v The Queen*[28] and *R v Nagy*.[29] The maximum penalty was not reserved for the worst cases but where the nature and circumstances of the crime warrant it: *R v Manson*.[30] The premeditated, deliberate, cruel and degrading acts of the respondent here would ordinarily warrant the maximum. There was a high likelihood he would re-offend violently unless strictly controlled in a jail.

[21] The relevant sentencing principles were set out in s 9(1)(a) and (e), (3) and (4) *Penalties and Sentences Act*. In cases of manslaughter on the ground of diminished responsibility, a sentencing judge cannot increase the otherwise appropriate proportionate sentence to protect the community: *Veen [No 2]*;[31] *Neumann*,[32] and *Potter*.[33] Aspects of Dr Fama's cross-examination[34] and Dr Varghese's comments in the Mental Health Court[35] demonstrated the need to protect the community from the respondent.

[22] Mr Moynihan referred to the respondent's reliance on Dr Schramm's most recent report. He emphasised that Dr Schramm considered the respondent had an extremely poor prognosis both of any significantly improved functioning and of being able to live without the highest degree of supervision. Dr Schramm considered the respondent would require a highly structured environment for the rest of his life. It was in that context, and qualified by other limitations, that Dr Schramm considered the respondent at a very low risk of serious violent offending, and even in that environment, it was almost inevitable that he would become involved in more minor aggression and conflict. Dr Schramm was concerned that the respondent might "up the ante" when he felt he was not receiving sufficient support. Dr Schramm's reports to the Mental Health Court also showed that the respondent had a poor prognosis for rehabilitation.[36]

[23] The respondent's cooperation with the authorities and his plea of guilty which facilitated the administration of justice was, Mr Moynihan conceded, ordinarily a mitigating feature. But in this case it was diminished by the overwhelming prosecution case and by the fact that the respondent offended so that he could confess, be imprisoned and receive secure accommodation in jail.

[24] The sentence of 13 years imprisonment was manifestly inadequate and failed to properly reflect the respondent's entire criminality. It did not give sufficient weight to principles of denunciation and community protection and gave too much weight to the mitigating features. The primary judge relied on *Miguel* and *Aeon-Masterson* which were imposed prior to the enactment of Pt 9A *Penalties and Sentences Act*, a legislative signal that judicial responses to serious violent crime had to be hardened.[37] Further, Aeon-Masterson was aged 78 when sentenced; had he been younger, a lengthier term of imprisonment would have been imposed. A sentence of life imprisonment for an offence of this kind was supported by *Tonkin*.

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28 (1989) 167 CLR 372; [1989] HCA 39.
29 [2004] 1 Qd R 63; [2003] QCA 175.
30 [1974] Qd R 191.
31 (1988) 164 CLR 465, Mason CJ, Brennan, Dawson and Toohey JJ, 475 and 477; [1988] HCA 14.
32 [2007] 1 Qd R 53, Jerrard JA, 55, [8], [9]; Fryberg J, 60-62, [27]-[30]; [2005] QCA 362.
33 [2008] QCA 91, [47].
34 Set out at [7] of these reasons.
35 Set out at [8] of these reasons.
36 Relevant aspects of Dr Schramm's reports are set out at [9] and [10] of these reasons.
37 *R v Schubring; ex parte A-G (Qld)* [2005] 1 Qd R 515, de Jersey CJ, 524, [37]; [2004] QCA 418.

[25] Mr Moynihan nevertheless conceded that a lengthy, finite period of imprisonment best reflected a proper synthesising of the relevant considerations, including the respondent's plea of guilty and diminished responsibility.[38] In light of the enormity of the respondent's offending, a 13 year sentence was unreasonable and plainly unjust.[39] The appropriate sentence was between 18 and 20 years imprisonment.

The respondent's contentions

[26] Mr Allen, who appeared with Mr Briggs for the respondent, emphasised that his abnormality of mind and diminished responsibility was caused not only from inherent characteristics but in combination with a severe adjustment disorder arising from his mother's permanent departure for Italy. This distinguished his case from *Tonkin*. The Mental Health Court's finding of diminished responsibility reduced his criminal liability from murder to manslaughter and also reduced his moral culpability for the offence of manslaughter. Consistent with the principles stated in *Veen [No 2]*, it was a mitigating feature. As Dr Schramm explained, it is extremely difficult to make predictions of likelihood of future violence. This is especially so when determining whether that likelihood will exist at the end of a lengthy determinate sentence.[40] Dr Schramm's earlier reports were qualified by his final report which stated it was unlikely the respondent would re-offend in a seriously violent way.

[27] In *Potter*,[41] this Court stated that the range for offences of this kind was between eight and 12 years imprisonment.[42] *Miguel* and *Aeon-Masterson* supported the 13 year sentence imposed at first instance. The sentences imposed in those two cases were not subject to serious violent offence declarations so that those offenders were eligible for parole after serving 50 per cent. *Tonkin* is an isolated, out-dated instance of a sentence outside the more recently established range and it pre-dated *Veen [No 2]*.

[28] The exercise of the sentencing discretion is of vital importance in the administration of criminal justice and is not lightly interfered with by an appellate court.[43] In terms of s 669A(1) *Criminal Code*, the appellant has not identified any error warranting this Court's interference with that exercise of discretion. The respondent's substantial impairment of his capacity to know that he ought not to have killed the deceased defined his criminal responsibility for manslaughter and mitigated his sentence. The two stage approach taken to sentencing in *Perini (No 1)* was apt to give rise to error and was inconsistent with "the instinctive synthesis" approach required in sentencing as discussed in *Wong v The Queen*[44] and *Markarian v The Queen*.[45] The primary judge correctly adopted an instinctive synthesis approach in arriving at the 13 year sentence.

The relevant legal principles

[29] The sentencing judge was bound by the following relevant sentencing guidelines in the *Penalties and Sentences Act*:

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38 *Perini (No 1)* [2011] QCA 30, [20], [22], [29], [30].
39 *Dinsdale v The Queen* (2000) 202 CLR 321, Gleeson CJ and Hayne J 325, [5]-[6]; [2000] HCA 54.
40 *Neumann* [2007] 1 Qd R 53, Fryberg J, 62, [30].
41 (2008) 183 A Crim R 497; [2008] QCA 91.
42 Above, [77]-[93].
43 *Lowndes v The Queen* (1999) 195 CLR 665, 672, [15]; [1999] HCA 29.
44 (2001) 207 CLR 584, 611, [74]; [2001] HCA 64.
45 (2005) 228 CLR 357, 373-375, [35]-[39], 377-380, [51]-[56]; [2005] HCA 25.

"**9 Sentencing guidelines**

(1) The only purposes for which sentences may be imposed on an offender are—

(a) to punish the offender to any extent or in a way that is just in all the circumstances; or

…

(c) to deter the offender or other persons from committing the same or a similar offence; or

(d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or

(e) to protect the Queensland community from the offender; or

(f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e)."

[30] As the respondent's unlawful killing of the deceased was an offence of violence, s 9(3) and (4) required the court to:

"have regard primarily to the following –

(a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;

(b) the need to protect any members of the community from that risk;

(c) the personal circumstances of any victim of the offence;

(d) the circumstances of the offence, including the death of or any injury to a member of the public …

(e) the nature of extent of the violence used … in the commission of the offence;

(f) any disregard by the offender for the interests of public safety;

(g) the past record of the offender …

(h) the antecedents, age and character of the offender;

(i) any remorse of lack of remorse of the offender;

(j) any medical, psychiatric, prison or other relevant report in relation to the offender;

(k) anything else about the safety of members of the community that the sentencing court considers relevant."[46]

[31] As I noted at the commencement of these reasons, the respondent's heinous criminal acts were done in a state of diminished responsibility so that this case intersects with both the criminal justice and mental health systems, as did *Veen [No 2]* and *Neumann*.

[32] Veen, like the respondent, pleaded guilty to manslaughter on the ground of diminished responsibility. But unlike the respondent, who had no criminal history, eight years earlier Veen was convicted of another count of manslaughter on the ground of diminished responsibility and sentenced to imprisonment for 12 years. He was sentenced to life imprisonment for this second killing which was committed nine months after his release on licence for the first. The primary judge noted that he was of continuing danger to society and likely to kill again upon his release because of the brain damage he had suffered; he was therefore unable to mitigate

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46 *Penalties and Sentences Act*, s 9(4).

the sentence. In the High Court, the plurality (Mason CJ, Brennan, Dawson and Toohey JJ) found that the judge had made no error of principle in arriving at that sentence. The plurality cited Mason J's statement in *Veen [No 1]*,[47] where he referred with approval to Gibbs J's observations in *R v Pedder*[48] that in some cases in which the mental condition of the convicted person made him a danger if at large in the community, life imprisonment may have to be imposed to ensure community protection. Mason J continued:

> "… [H]is Honour's observations express the principle which is to be applied to cases of this kind. They demonstrate that in such a case there is no opposition between the imposition of a sentence of life imprisonment with the object of protecting the community and the proportionality principle. The court imposes a sentence of life imprisonment on taking account of the offender's record, his propensity to commit violent crime, the need to protect the community and the very serious offence of which he stands convicted, imprisonment for life being a penalty appropriate to very serious manslaughter when it is attended by the additional factors to which I have referred."[49]

[33] The plurality in *Veen [No 2]* noted that this remained an accurate statement of the law,[50] adding that:

> "Prima facie, a mental abnormality which exonerates an offender from liability to conviction for a more serious offence is regarded as a mitigating circumstance affecting the appropriate level of punishment.[51]
>
> …
>
> However, sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. And so a mental abnormality which makes an offender a danger to society when he is at large but which diminishes his moral culpability for a particular crime is a factor which has two countervailing effects: one which tends towards a longer custodial sentence, the other towards a shorter. These effects may balance out, but consideration of the danger to society cannot lead to the imposition of a more severe penalty than would have been imposed if the offender had not been suffering from a mental abnormality. … [The sentencing judge] was entitled to attach great weight to the protection of society as a factor in that determination.

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47 (1979) 143 CLR 458, 469; [1979] HCA 7.

48 Unreported, 29 May 1964, Queensland Court of Criminal Appeal.

49 *Veen (No 1)* (1979) 143 CLR 458, 469; [1979] HCA 7.

50 (1988) 164 CLR 465, 475; [1988] HCA 14.

51 Above, 476.

> …
>
> The antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law."[52]

[34] The High Court in *Muldrock v The Queen*[53] recently re-affirmed these principles, adding that in that context the objective seriousness of an offence is to be assessed without reference to matters personal to a particular offender or class of offenders but by reference wholly to the nature of the offending.[54] The court also noted that general deterrence will often be given very little weight in the case of an offender suffering from a mental disorder or abnormality because such a person is not an appropriate medium for making an example to others. In those circumstances, retribution and denunciation, while appropriate "to a person of ordinary capacity will often be inappropriate [when sentencing] a mentally retarded offender and to the needs of the community".[55]

[35] In *Neumann*,[56] Fryberg J (McPherson and Jerrard JJA agreeing), consistent with *Veen [No 2]*, held that mental abnormality falling short of insanity may be a significant mitigating factor diminishing the moral culpability of the offender, making it difficult for the court to apply the sentencing principle of general deterrence.[57] On the other hand, mental abnormality may be an aggravating factor in sentencing where it makes reform improbable and where the offender is likely to re-offend, requiring his removal from society for a lengthy period.[58] Protection of the community is undoubtedly a relevant sentencing consideration but there must be evidence from which a threat to the community can be inferred and "[s]uch an inference is not to be drawn without a foundation of substance" particularly when the question is whether the threat will exist at the end of a lengthy determinate sentence.[59]

Conclusion

[36] It is impossible to predict and largely irrelevant to the exercise of the sentencing discretion whether the respondent will be subject to the *Mental Health Act* 2000 (Qld) as a regulated patient or to the *Dangerous Prisoners (Sexual Offences) Act* 2003 (Qld) when he is released on parole or finishes serving his sentence many years hence.

[37] The appellant no longer submits that a life sentence is warranted. That is not surprising given that the imposition of a sentence of life imprisonment for an offence other than murder is exceptional.[60] One such exceptional case was *Tonkin* where, 37 years ago, the Court of Criminal Appeal allowed her appeal against conviction for murder, quashed the verdict of guilty, substituted a verdict of guilty

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52 Above, 476-477.
53 (2011) 85 ALJR 1154; [2011] HCA 39.
54 Above, [27].
55 Above, [53]-[54].
56 [2007] 1 Qd R 53; [2005] QCA 362.
57 Above, [27].
58 Above, [28].
59 Above, [30].
60 *R v Robinson* [2007] QCA 99, Keane JA, [38] (Williams JA and Muir J (as his Honour then was) agreeing).

of manslaughter and exercised its power to "pass such sentence in substitution for the sentence passed at the trial as may be warranted in law" under s 668F(2) *Criminal Code*. Tonkin's epilepsy made her prone to episodes of uncontrollable and unpredictable violence which she was then unable to recall. She killed the completely innocent deceased woman during such an episode. That was a very different scenario from the present case where a combination of the respondent's personality disorder, functional impairment and severe adjustment disorder with anxiety symptoms caused his abnormal state of mind and grossly disturbed reasoning which led to the killing. He was clearly not receiving the support from community agencies which he required at this predictably stressful time in his life. The primary judge was right to consider that the evidence of the respondent's mental state was distinguishable from that of Tonkin and Veen; their mental state had the consequence that they posed such a direct risk of serious violence that life imprisonment was required to protect the community.

[38] *Tonkin* differed from this case in more ways than factually. This Court, unlike the Court of Criminal Appeal in *Tonkin*, does not come to re-sentence the respondent unless the appellant has first demonstrated error on the part of the primary judge.[61]

[39] The prosecutor at sentence accepted the findings of the Mental Health Court and the respondent's plea of guilty to manslaughter by way of diminished responsibility under s 304A *Criminal Code*. This meant that the respondent fell to be sentenced for unlawfully killing the deceased without an element of intention because of his substantially impaired capacity to know that he ought not kill the deceased. That impairment must inform the respondent's moral culpability for his shocking criminal conduct.

[40] In determining whether the respondent was a likely future danger to the community of committing serious violence when he is released after serving a lengthy sentence, the sentencing judge reviewed the relevant portions of Dr Schramm's reports, Dr Fama's cross-examination and Dr Varghese's comment in the Mental Health Court proceedings.[62] His Honour considered counsel's competing submissions and preferred Dr Schramm's opinion.

[41] I note that although the Mental Health Court made no findings as to the respondent's likely future potential to be a serious danger to the community, it accepted Dr Schramm's evidence on matters relevant to the issues before it. Dr Schramm certainly did not guarantee the respondent would be of no future risk of serious violence. But that guarantee can never be given on anyone's behalf. It is notoriously impossible to accurately predict future dangerousness. It is true that Dr Schramm agreed it was very likely the respondent would become involved in more minor aggression and conflict in the future. But Dr Schramm also made clear in his last report, in a way which was not undermined by his earlier reports, that, in his considered opinion, the respondent, with treatment, medication, support and supervision, was at a very low risk of repeating such a serious violent offence. This conclusion was not inconsistent with the portions of Dr Fama's evidence and Dr Varghese's advice relied upon by the respondent: the matter was simply not further explored with them in the Mental Health Court proceedings where it was not an issue. The primary judge found that he was unable to be satisfied that the

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61 *Lacey v Attorney-General of Queensland* (2011) 85 ALJR 508; [2011] HCA 10.

62 Set out at [7] to [10] of these reasons.

respondent was a likely risk to the community of committing further serious violent offences after serving a lengthy term of imprisonment. Dr Schramm's most recent report, coupled with the respondent's absence both of any prior criminal history when he committed these offences at 36 and of any subsequent offending was persuasive evidence from which the sentencing judge could properly reach that conclusion. The judge appreciated, consistent with that finding and the principles well established in *Veen [No 2]* (recently affirmed in *Muldrock*) and in *Neumann*, that it would have been wrong in this case to impose an indeterminate life sentence on the respondent as a precautionary approach for the protection of the community. The appellant now accepts as much. The judge was also right to conclude that the respondent's counsel that the respondent's diminished responsibility was a mitigating rather than an exacerbating factor.

[42] As I have previously noted, this Court's task is to determine whether the primary judge erred in any of the ways contended for by the appellant. I have concluded that the primary judge did not err in remaining unpersuaded that the respondent was a likely risk to the community of committing further serious violent offences upon his release from custody after serving a lengthy term of imprisonment. I acknowledge that this conclusion may be seen as inconsistent with *Perini (No 1)*.[63] But that Court was approaching its task by way of sentencing the respondent afresh without first determining whether the primary judge had erred. For that reason the High Court set aside the orders in *Perini (No 1)* so that it has no binding authority on this Court. But in any case the fact that other judges may have reached a different conclusion on this question of fact does not mean the primary judge erred if the conclusion he reached was open on the evidence as I consider it plainly was.

[43] The next issue is whether the appellant's contention, that the sentence of 13 years imprisonment for manslaughter was manifestly inadequate, is correct. There are no closely comparable cases to the bizarre combination of circumstances in this case. This is unsurprising in light of the respondent's grossly disturbed reasoning processes which caused him to kill the deceased and the heinous nature of his combined offending. The primary judge was influenced in arriving at the 13 year term of imprisonment by the somewhat comparable cases of *Miguel* and *Aeon-Masterson*. In *Miguel*, a 12 year sentence was imposed for an equally dreadful but quite different manslaughter committed under diminished responsibility. Miguel carefully planned and killed his former partner in front of their two young children with a sharpened hunting knife, stabbing her five times. He cut the telephone wires to the house and the offence was in breach of a domestic violence order. In *Aeon-Masterson*, the offender had a lengthy criminal history including offences of personal violence and a conviction for which he was sentenced to five years imprisonment for doing grievous bodily harm with intent. He killed a man living in the same block of flats by shooting him through the heart after loading and cocking his rifle so that it was at the ready a day or two beforehand. The pre-sentence report considered that, despite his 78 years, he was "a real threat to society" and "that if the learning of socially accepted behaviours is to occur, it must commence in a secured environment". The Court of Criminal Appeal considered the 14 year sentence imposed at first instance was not manifestly excessive. It is true that those sentences were imposed prior to the introduction of Pt 9A *Penalties and Sentences Act* when the legislature fulfilled its intention to raise the penalties for serious violent offences. But, unlike the respondent, those offenders became eligible for

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63 [2011] QCA 30, [17], [25], [30] and [31].

parole after serving half their sentences whereas he will be required to serve 80 per cent before parole eligibility. The enactment of Part 9A does not diminish the relevance of these cases. *Miguel* and *Aeon-Masterson* support the 13 year sentence imposed on the respondent.

[44] In *Potter*, Chesterman J (as his Honour then was) reviewed a considerable number of diminished responsibility manslaughter cases and demonstrated that the range appropriate in *Potter* was between eight and 12 years imprisonment.[64] It must be accepted that the objective offending in the present case was generally more serious than in the cases discussed in *Potter* because of the additional offences of degrading the deceased's body. The respondent's actions in and surrounding the killing of the deceased were horrific and revolting but as Chesterman J observed in *Potter*:[65]

> "It has been noted in many cases (*R v Dunn* [1994] QCA 147; *The Queen v Kiltie* (1974) 9 SASR 453; *R v Elliott* [2000] QCA 267 at para [11] ; *R v Neumann; ex parte A-G (Qld)* [2007] 1 Qd R 53; [2005] QCA 362) that abnormality of mind and/or diminished responsibility operate on sentences as substantial mitigating factors because the mental impairment diminishes the moral culpability of the offender, and because it is not generally appropriate to impose a sentence on such offenders to reflect the need for general deterrence, they being inappropriate 'mediums for making an example of to others'."

[45] Those principles are equally apposite in the present case. The sentencing purpose of deterrence is of less relevance because of the respondent's diminished responsibility. But the grave nature of his criminal acts still required the sentencing purposes of community denunciation and punishment to be met, although in the context of his diminished responsibility for those acts.

[46] There were mitigating features apart from the respondent's diminished responsibility. As the prosecutor recognised at sentence and the appellant conceded in this appeal, he pleaded guilty and cooperated with the authorities. Although he did so in order to fulfil his plan to kill so that he would obtain secure accommodation in jail, this irrational thinking was inherently linked to his particular form of diminished responsibility. Without a conclusion that he was a likely future danger to the community it was not an exacerbating feature in sentencing. It did not diminish the utilitarian advantage to the community in his cooperation and guilty plea. Similarly, the respondent's undoubted lack of real remorse and limited insight and empathy was also linked to his particular form of diminished responsibility and was not an exacerbating feature in sentencing.

[47] After reviewing the relevant statutory and common law sentencing principles, and such cases as may be somewhat comparable, I am unpersuaded that the sentence imposed is manifestly inadequate. Nor am I persuaded that the primary judge erred in imposing a sentence which failed to adequately reflect the serious nature of the offences; or to properly punish and denounce the offending; or to give primary weight to protecting the community. And nor am I persuaded that his Honour gave too much weight to matters of mitigation. In my opinion, the sentence of 13 years imprisonment adequately balanced the exacerbating and mitigating features in this disturbing and difficult case. It was within the appropriate sentencing range of 12 to 16 years imprisonment.

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64 [2008] QCA 91, [93].

65 Above, [73].

[48] It follows that I would refuse the appeal against sentence.

[49] **FRASER JA:** For the reasons given by Chesterman JA, I would allow the appeal, set aside the sentence of 13 years' imprisonment for manslaughter and substitute instead a sentence of 18 years' imprisonment.

[50] **CHESTERMAN JA:** On 19 August 2010 the respondent pleaded guilty to one count of manslaughter, two counts of burglary with a circumstance of aggravation, two counts of interfering with a corpse and one count of burglary and stealing. He was sentenced to 13 years' imprisonment for the manslaughter, 12 and 10 years' imprisonment respectively for the aggravated burglaries and two years for each of the other offences. All sentences were to be served concurrently. A period of 874 days in which the respondent had been held in custody was declared to be time already served under the sentences. The sentence imposed for manslaughter carried with it an automatic declaration that the respondent had been convicted of a serious violent offence.

[51] The Attorney-General successfully appealed against the sentence of 13 years. The Court of Appeal in *R v Perini; ex parte A-G (Qld)* [2011] QCA 30 ("*Perini (No 1)*") on 1 March 2011 increased the sentence to 18 years' imprisonment. On 12 August 2011 the High Court allowed an appeal to it, set aside the orders of the Court of Appeal and remitted the matter to this Court for further consideration. The High Court took that course because the Court of Appeal had proceeded in accordance with the law as explained in *R v Lacey; ex parte Attorney-General* [2009] 197 A Crim R 399 and had not found it necessary to identify an error in the sentencing process before substituting another penalty. The High Court subsequently determined in *Lacey v Attorney-General of Queensland* (2011) 85 ALJR 508 that an error on the part of the sentencing judge must be found before the Court of Appeal may exercise its unfettered discretion to vary the sentence.

[52] The Attorney-General consequently prosecuted the appeal on an amended Notice which advanced two grounds:

1. The sentence was manifestly inadequate;
2. The sentencing judge erred because:
    (i) the sentence fails to adequately reflect the serious nature of the offences,
    (ii) the sentence fails to properly punish and denounce the offences,
    (iii) the judge failed to give primary weight to protecting the community,
    (iv) the judge gave too much weight to matters of mitigation.

[53] I understand the Notice of Appeal to allege an error of the second kind described in *House v The King* (1936) 55 CLR 499, that on its face the judgment is unreasonable or unjust and although there is no discernible error an appellate court may infer that the discretion had not been properly exercised. The "particulars" in ground 2 do not identify errors of the first kind described in *House*, errors of legal principle, mistake of fact, disregard of relevant facts or attention to irrelevant ones. They seem to be no more than possible explanations for the manifest unreasonableness which is advanced as the first (and therefore only) ground of appeal.

[54] As the High Court pointed out in *Hili v The Queen* (2010) 242 CLR 520 at 538-539 manifest inadequacy of sentence "is a conclusion, which does not admit of lengthy

exposition." Manifest inadequacy is revealed by a "consideration of all of the matters that are relevant to fixing the sentence." The "chief considerations" are the "nature of the offending" and the sentences imposed in the "most closely comparable" cases. The same point was made by Gleeson CJ and Hayne J in *Dinsdale v The Queen* (2000) 202 CLR 321 at 325:

> "Manifest inadequacy of sentence … is a conclusion. A sentence is, or is not, unreasonable or plainly unjust; inadequacy or excess is, or is not, plainly apparent. It is a conclusion which does not depend upon attribution of identified specific error in the reasoning of the sentencing judge and which frequently does not admit of amplification except by stating the respect in which the sentence is inadequate … ."

[55] As the President points out the order of the High Court is that we must reconsider the appeal, and do so afresh. Accepting that command the approach in *Perini (No 1)* remains relevant in determining whether the sentence of 13 years' imprisonment was manifestly inadequate. The discrepancy between that sentence and the sentence of 18 years which the Court thought appropriate in all the circumstances is a strong indication that the earlier penalty was inadequate.

[56] The matter was summarised by the Chief Justice (with whom Muir and White JJA agreed):

> "[22] I consider that the sentence of 13 years imprisonment for manslaughter did not adequately reflect the gravity of this heinous crime and the need for community protection, and made too substantial an allowance for mitigating circumstances (essentially the diminished responsibility, and the plea of guilty), and that the respondent should have been sentenced to 18 years imprisonment. Reducing a life term to 18 years imprisonment sufficiently reflects the respondent's cooperation in the administration of justice by pleading guilty. The court should now substitute that term of 18 years imprisonment (*R v Lacey; ex parte Attorney-General* [2009] QCA 274 paras 114ff), because it is the penalty which should have been imposed in the sentencing court."

[57] The reference to *Lacey* does not affect the point now being made. That decision did not require the identification of error, directly or inferentially before a sentence could be increased, but the magnitude of the increase in sentence clearly indicated inadequacy which gives rise to the inference of error.

[58] The first consideration to address is the nature of the offending. An examination of the facts shows that the sentence was manifestly inadequate, and did not do justice to the case.

[59] The trial judge described the offences. His Honour said:

> "You killed Carmel Wuth, a 76-year-old lady, on 29 March 2008 after entering the rooms in which she lived which were in the same building where you lived. She had never married and was a well liked resident of Trinity Gardens, an assisted accommodation centre on the Gold Coast. You and she were then living at separate units at Trinity Gardens. After having killed her, you returned on two occasions during the same evening. You committed the crimes of

interfering with her body on two occasions and also took some of her property which laid the foundation for the final charge in count 6.

There had been a previous incident at Trinity Gardens on 20 March 2008 when you left butter knives in some other residents' rooms including Miss Wuth's room. Police were called on that occasion and you said to a Constable Wiblen that you wanted to intimidate other people at the establishment so they would feel as intimidated as you felt. He understood you to suffer from a mental illness but said that you did not appear violent and were very remorseful at making others feeling intimidated.

After that event you were told you were to be evicted on 31 March 2008. You had problems organising alternative accommodation and were told on 29 March 2008 that your latest accommodation requests had fallen through. On the night of 29 March 2008 a Mr Ng overheard you saying at a video store near where you lived that you would be in gaol the next day because you were going to kill someone. That was not long before the time you actually did kill Miss Wuth. It is one source of evidence suggesting that you intended and premeditated the killing over some hours - on your own admission, from about 3 p.m. that day.

You decided to kill Miss Wuth partly, at least, because you feared becoming homeless again and felt that you would be accommodated in gaol. You also took the view that people at Trinity Gardens, including Miss Wuth, were getting to you or irritating you.

It is clear that Miss Wuth's death must have been a terrible one. There was evidence of a struggle, of you punching her and "stomping" on her, of her being asphyxiated and of a number of wounds to her head and other limbs. The autopsy reported that death was a result of asphyxia, which developed from a combination of suffocation as a consequence of your gagging her with a sock and tie, and from strangulation with stab wounds to the neck inflicted by you also likely to have contributed to her death.

On the afternoon in question you looked through the window of Miss Wuth's unit from outside and observed that she was lying in bed reading. You decided around this time to kill her and later that evening gained access to her unit through an unlocked sliding glass door that you had made sure was unlocked earlier in the evening. You were then armed with a blunt kitchen eating knife, a tie and some socks. You used the tie to attempt to strangle her. She began to scream and you stuffed the socks in her mouth securing them there with the tie and then attacked her viciously by assaulting and strangling her and then stabbing her in the neck with the knife you were carrying, leaving it deeply embedded there to a depth of 12 centimetres.

You later attempted to penetrate her sexually but were unable to obtain an erection, returned to your own unit and showered and then returned to her unit, taking with you a number of pornographic magazines in an attempt to gain an erection. You eventually digitally

> penetrated the victim and ejaculated over her after masturbating. You later then returned a further time in search of money and eventually took some coffee and milk from her premises."

[60] The respondent gave further detail of the killing in his police interview. He said:

> "I went into [the deceased's] room – tippee toed – I make sure that the … place was dark … I decided to grab a tie …, a pair of socks … and I … carried a knife … in me pocket … for the fly screen door … . … when I was doing the strangulation to her … she was about to scream so … I put … the socks … inside her mouth … picked up … her head … slammed it to the ground quite a few times and … used … both my hands to punch her and … I used my feet to kick her. Then I got the knife out. That's when I decided that I'd do the job of finishing it off and I stabbed her once, but that didn't help. … She was still wiggling so I did it on another side. And that's the final thing, that's how she was killed … . And then … I tried to see if I could perform a sexual act but I couldn't get it up so I came back … a couple of hours later …".

[61] He explained the motive for his attempted intercourse as being that he had not "had a fuck … in a long time and I just wanted to … enjoy my last bit of freedom …". He denied that obtaining accommodation was his only motive for the homicide. There was, as well, an element of vindictiveness towards the victim. He said:

> "[Getting a bed] wasn't just the motivation it was just that one of those guys had it coming and she was the stupidest and dumbest woman that would leave her o-door open …".

The deceased had never threatened him or insulted him but he "didn't want to hear the stroller anymore". His intention when he went to the deceased's room was not just to kill her but to "[s]trangle her and sexually penetrate her".

[62] The reasons for judgment of the President set out the history of proceedings in the Mental Health Court ("MH Court") and much of the evidence relevant to its determination that because of diminished responsibility, the respondent was guilty of manslaughter and not of murder. The determination does not mean, of course, that the homicide was not intentional. It clearly was. The determination means only that the usual consequence of an intentional killing, life imprisonment, was not mandatory though it was an available sentence. The respondent's capacity to appreciate that his actions were wrong was diminished but it was not destroyed. He knew that it was wrong to kill and that he had a moral choice whether to kill or not. He acted as he did because of his diminished empathy for other human beings and pathological self regard.

[63] Not only were the respondent's acts intentional they were premeditated and wantonly cruel. He did not kill his victim quickly and humanely. He strangled and suffocated the old woman and stabbed her repeatedly. A quick and painless murder should have been enough for his purpose of ensuring he had accommodation and sustenance for a long time. He committed acts, wholly unnecessary for his avowed purpose in killing, of degradation and violation of the corpse. Being unsuccessful in the first attempt at necrophilia he returned with materials to provide erotic stimulation to enable him to complete his disgusting attack. He returned a third time to steal what he could from his victim. These additional acts showed a desire on the respondent's part to inflict suffering on his victim when she was alive and humiliation on her body when she was dead.

[64] The nature of the offending called for the maximum penalty, or one close to the maximum.

[65] The next consideration is the range of sentences imposed in comparable cases. None of the cases to which we were referred are, in my opinion, truly comparable. None has the combination of motives for killing which the respondent confessed to and none involved the sort of acts the respondent committed after the killing. Although there are many instances of convictions for manslaughter as a consequence of diminished responsibility there are, happily, few cases to compare with the present for its callous and casual brutality and disgusting motivation.

[66] Manslaughter is an offence of almost infinite variety and the penalties reflect the variation. Manslaughter as a consequence of diminished responsibility is not a distinct class calling for a particular range of penalty the top of which is substantially below the statutory maximum. The review of penalties I undertook in *R v Potter; ex parte A-G (Qld)* [2008] QCA 91 was not exhaustive and did not include any case resembling the present. McPherson JA who gave the judgment of the Court in *R v Miguel* [1994] QCA 512, a case relied upon by the primary judge and the respondent's counsel, said:

> "sentences in cases of diminished responsibility … vary greatly from terms of imprisonment as high as 20 years down to terms of only one year or even less."

[67] The 14 years' imprisonment imposed in *R v Aeon-Masterton* CA 112/1990 was, in the circumstances, tantamount to a sentence of life imprisonment. That was the basis of his unsuccessful application for leave to appeal.

[68] There is support for a sentence of life imprisonment in a broadly similar case, *R v Tonkin & Montgomery* [1975] Qd R 1 which is analysed in the President's reasons for judgment. The age of the case does not make it inapposite as authority nor does the fact that sentences for manslaughter in recent times have rarely gone beyond 13 years. The maximum penalty has not altered; nor have the principles which apply to sentencing for heinous crimes. When confronted with a crime that calls for condign punishment the courts must not lack the resolve to impose it. The Court cannot alter the maximum punishment which Parliament had enacted for a particular offence, or decree that the maximum can never be appropriate. If cases come before the courts in which it is appropriate to impose the maximum penalty the Court must not shrink from imposing that penalty. The contention that the passage of time has made *Tonkin* irrelevant is answered by the insertion of Part 9A in the *Penalties and Sentences Act* 1992 in 1997 which was "a clear signal that [Parliament] … intended judicial responses to serious violent offending be strengthened" per de Jersey CJ in *R v Schubring; ex parte Attorney-General* [2005] 1 Qd R 515 at 524.

[69] The cases to which the Court was referred and which are discussed by the President show that in some cases of manslaughter where an intentional killing is reduced to manslaughter because of diminished responsibility the psychological processes which cause the diminution also afford a factor ameliorating the sentence. That is not true in all cases. Also, in some cases the lack of moral compunction which provides the basis for diminished responsibility shows the need for community protection which is to be reflected in the sentence.

[70] This is not a case where mental illness falling short of insanity operates to lessen the respondent's moral culpability for his criminal acts. The respondent does not suffer

from a mental illness or "psychiatric abnormality". Nor is he mentally retarded. His intelligence is normal, though at the low average level. What prompted him to act, and what continues to make him a danger to the community, is his profoundly disturbed personality which makes him incapable of understanding or respecting the needs and rights of others to live unmolested and unharmed.

[71] The cardinal rule is that a sentence must be proportionate to the seriousness of the crime and may not be increased "merely to protect society". In *Veen v The Queen [No 2]* (1987-1988) 164 CLR 465 Mason CJ, Brennan, Dawson and Toohey JJ said (473):

> "It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate for the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventative detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible."

[72] Their Honours also said (474) with reference to *Veen v The Queen [No 1]* (1979) 143 CLR 458:

> "But all justices other than Murphy J accepted that, in a case where a verdict of manslaughter is returned on the ground of diminished responsibility, the risk that the offender's mental abnormality may lead him to kill again is a material factor in determining the sentence to be imposed. Thus Jacobs J said:
>
> > '… I do not say that there are not … many cases, of manslaughter which warrant such a sentence. In particular there are no doubt very many cases where the success of a defence of diminished responsibility will lead to a sentence of life imprisonment, even though that is the same sentence as in the case of a verdict for murder'." (footnotes omitted)

[73] Their Honours then approved what had been said by Mason J in *Veen [No 1]* at 469 that:

> "…They demonstrate that in such a case there is no opposition between the imposition of a sentence of life imprisonment with the object of protecting the community and the proportionality principle. The court imposes a sentence of life imprisonment on taking account of the offender's record, his propensity to commit violent crime, the need to protect the community and the very serious offence of which he stands convicted, imprisonment for life being a penalty appropriate to very serious manslaughter when it is attended by the additional factors to which I have referred."

[74] The principle that community protection is a legitimate function of criminal sentencing was reaffirmed in *Muldrock v The Queen* (2011) 85 ALJR 1154 in which the High Court (1168) noted the difficulty of distinguishing between extending a sentence to protect society and taking into account society's protection when determining an appropriate sentence, and said (1168-9):

> "It is the function of the court sentencing an offender … to take into account the purposes of criminal punishment in determining the

> appropriate sentence. A purpose of punishment is the protection of the community from the offender. A court may not refrain from imposing a sentence that, within the limits of proportionality, serves to protect the community in a case that calls for it because at some future time the offender may be made the subject of an order under the Sex Offenders Act."

[75] The psychiatric evidence before the MH Court establishes that the respondent will remain a danger to others, particularly to the elderly, the weak or the debilitated while he is at large.

[76] The abnormality of mind was best described by Dr Varghese's evidence to the MH Court. The doctor said:

> "Three of the psychiatrists considered that there was a disorder of personality while one psychiatrist Dr Fama considered that [the respondent] had simple schizophrenia which … is … very rare … . The evidence … does suggest the possibility of simple schizophrenia, … callous indifference to others, lack of empathy, hypochondriacal concerns, inability to function in almost all domains of life while having intellectual capacity to do so. … However, the overall evidence does not support simple schizophrenia.
>
> …
>
> With respect to the question of personality disorder … there is general agreement. … In the absence of simple schizophrenia there is no alternate way of understanding the clinical picture … . It's not possible to identify any particular category of personality disorder. [It] is best categorised as being of a mixed diagnosis … with paranoid, schizoid and schizotypal features. The psychiatric evidence also suggests there are some antisocial features and narcissistic features and marked dependency. The dependency … is focused on meeting personal needs of a basic type. In other words, he is unable to function without the assistance of others and he needs the assistance of others to function, even though he has no feelings or care for them.
>
> …
>
> The personality disorder, profound as it is, cannot constitute abnormality of mind on its own. … whether [the respondent] was suffering from any other condition, which combined with personality disorder would constitute abnormality of mind Drs Neillie and Shramm have suggested … intellectual impairment. However, this is not supported by the evidence.
>
> The more important question is whether there was any other psychiatric disorder. Both Dr Neillie and Shramm have suggested … adjustment disorder, the adjustment arising out of the circumstances that [the respondent] found himself in when his mother went overseas.
>
> …
> Ordinarily adjustment disorder could not of its own be abnormality of mind. … Adjustment disorder is, essentially, the reaction of

> a normal person to extraordinary stress or of an abnormal person to normal stress, which is the case here. … The reaction or adjustment in this case does arise out of … the personality."

[77] It was the combination of the personality disorder and adjustment disorder which lead to the killing. The attributes which made the respondent intolerable to others in shared accommodation and his inability to live independently mean that homelessness will be an ever present threat for him. His fear of that condition may lead him to behave in the future as he has in the past.

[78] The respondent's disabilities are untreatable. He does not have a mental illness which may respond to medication. His deficits are permanent. The adjustment disorder may have occurred in response to his mother's departure overseas but she will not come back and the stimulus for the disorder will remain. He is unable to cope with life on his own and his capacity cannot be improved. There is, in other words, substantial ground for thinking that on his release the respondent will again find himself facing homelessness with the risk, which must be substantial, that he will react as he did before.

[79] The psychiatric evidence before the Mental Health Tribunal was to that effect.

[80] In his report of 4 December 2008 Dr Schramm, psychiatrist, said:

> "… [the respondent's] prognosis with regards any significant improvement in functioning and being able to live without the highest degree of supervision is extremely poor. … [His] management will need to be highly detailed and will pose enormous challenges once it comes time for him to progress from any high secure environment. … It is likely that for the rest of his life he is going to need to live in a highly supportive and structured environment to meet his intense needs and tolerate his behaviour without eviction. I do not believe that standard supervised accommodation such as hostels would be sufficient … . … medication will only ever play a minor role in improving his function."

[81] In his later report of 12 June 2010 Dr Schramm said:

> "Whilst one could view that the particular killing took place amidst a 'perfect storm' of factors including imminent eviction, inappropriate housing (although he was there after failing at a number of more suitable places), relative lack of support and having alienated himself from those with whom he was living (and probably to some extent those who had been trying (to) provide him care), I must point out that, in the microcosm of the prison, the same dynamics seem to have still been playing out … . … even though he is now apparently showing some ability to limit his behaviour in the harsh and unforgiving environment of a prison unit, one can envision circumstances where, in the community, he could easily again become alienated, develop a sense that he was receiving 'no help' and again deteriorate to the point where he may well resort to dramatic behaviours to enlist rescue. These 'dramatic behaviours' in the past were almost exclusively threats of self harm (some aggression to others) and serious violence was, until these index offences, unheard of. Those persons most at risk would be those

> more vulnerable … than himself, quite possibly the very persons with whom he may be forced to live if he was managed in supported accommodation. I am at pains to indicate that it would be extremely unlikely that he would act again with the same degree (of seriously assaulting a person) to achieve his aims, but one cannot rule that out. … you are dealing … with a man with significant deficiencies, both cognitive and personality-based, that are most unlikely to improve to any great degree in time … .
>
> …
>
> However I would say that he does have those features of markedly impaired empathy (and preparedness to resort to aggression) which mean that he is more likely than others to have less regret over harming persons to achieve his ends.
>
> …
>
> I am not certain whether the passage of time would necessarily reduce the chances of significant violence in such circumstances, but would consider it a reasonable hypothesis … that in 10 years time with continued living in an environment where he is forced to place limits on himself … he may develop some skills … that he could transfer to the community upon release … ."

[82] In relation to the manner in which the respondent should be managed on his release from prison Dr Schramm said:

> "… His placement at the end of his prison sentence will provide an extreme challenge to those whose responsibility this falls to.
>
> …
>
> No matter who looks after him, he will require intense support. The framework would include supported accommodation from a service prepared to put up with and be able to manage potential disruptive behaviour. As the experience in the year or so leading to the offences attests, many privately run hostels and boarding houses are likely to have their limits and welcome tested … . Accommodation such environments would also pose problems given that it is most likely that he will be living with other persons with vulnerabilities of their own, such that they may be potential victims of violence. More importantly … his personality and mental health issues … mean that such persons (often with mental illness or intellectual disability themselves) would be less tolerant of [the respondent's] behaviour such that accommodation here would be fertile ground for a repeat alienation and conflict for [the respondent]."

[83] This is a bleak assessment. It provides no confidence, despite Dr Schramm's attempt to find a silver lining to the dark cloud of his prognosis, that on release from prison the respondent will not find himself in the same circumstances that led to the offending and for the same reason he will not react in the same way.

[84] Dr Varghese expressed the same concern in his opinion to the Tribunal. He said:

> "The … other matter I will comment on … is that … of dangerousness. The personality disorder is of a profound type and it

> is likely to be persistent for a long time if not throughout [the respondent's] lifetime. It's most unlikely that [the respondent] would function outside of an institutional or supervised environment, and if put in such an environment it may well result in dangerous behaviour."

[85] The Court in *Perini (No 1)* was of the same opinion. The Chief Justice said:

> "[17] One struggles to find any reasonable basis for a view that the respondent would be unlikely to re-offend violently upon release after even many years of incarceration: there is a high likelihood that he would, unless strictly controlled."

[86] It is apparent, therefore, that the protection of the community is a significant factor in the sentence to be imposed on the respondent. That factor may not produce a sentence which is disproportionate to the offence and the circumstances of the offending. But in this case those circumstances are so dreadful and call for such condign punishment that a very long sentence will not offend the admonition in *Veen [No 2]*.

[87] The respondent's plea of guilty was not indicative of any remorse, or desire for rehabilitation, or even cooperation with the administration of justice. His primary motivation for the homicide was to be apprehended as a means of obtaining accommodation and sustenance. He intended and desired to be convicted and imprisoned. His confession and plea were a means of achieving his criminal intent. To mitigate the sentence for his plea of guilty in these circumstances would be a perversion of justice.

[88] The maximum punishment for manslaughter is life imprisonment. The maximum is not to be imposed only in the "worst cases" but is applicable in cases where the nature and the circumstances of the crime warrant its imposition. So much was established by *R v Manson* [1974] Qd R 191. The appellant rightly describes the homicide as premeditated, deliberate, cruel and involving acts of degradation upon the deceased in her own room over an extended period. The respondent intended not just to kill but to cause protracted suffering before death and revolting mistreatment afterwards. The need for protection of the community given the likelihood that the respondent will re-offend in a similar manner if at large in the community reinforces the need for a lengthy penalty.

[89] I would respectfully adopt the words of White JA in her Honour's concurring judgment in *Perini (No 1)*:

> "[29] There can be no doubt that the cruelty and ferocity of the attack upon the victim, following premeditation and planning, in what should have been the safety of her supported accommodation, followed by the degradation of her person, makes this a very serious crime. It would, in my view, have called for a life sentence even though the respondent's moral culpability was substantially impaired. And it may well be the case that the heinousness of the crime together with a real likelihood of continuing dangerousness when released, even after a lengthy sentence, would justify not recognising a plea of guilty by imposing a finite sentence. The protection of the public and the seriousness of the crime may well override the usual obligation to recognise the plea in some meaningful way.

> However, the *Dangerous Prisoners (Sexual Offenders) Act* 2003 allows the Attorney-General at the most appropriate time, that is, prior to release, to apply for a continuing detention order if the respondent is then deemed a danger to the community. This was the basis, it seems, for the Attorney-General seeking a finite term." (footnote omitted)

[90] The appellant did not seek the imposition of the maximum of life imprisonment but contended for a term of between 18 and 20 years' imprisonment. This was said to reflect "a proper synthesising of the … plea of guilty and diminished responsibility". The offending was so serious as to call for the maximum penalty of life imprisonment. That however is not appropriate given the attitude of the appellant. A sentence of between 18 and 20 years should be imposed instead. In my opinion the sentence should not exceed that which was first imposed on appeal, i.e. a sentence of 18 years.

[91] I would allow the appeal, set aside the sentence of 13 years' imprisonment for manslaughter and substitute instead a sentence of 18 years' imprisonment.