SUPREME COURT OF QUEENSLAND

CITATION:	*R v Cullen & Hutchins; ex parte A-G (Qld)* [2012] QCA 222
PARTIES:	**R** **v** **CULLEN, Jake Andrew** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant) **R** **v** **HUTCHINS, Samuel** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 94 of 2012 CA No 110 of 2012 DC No 379 of 2011 DC No 380 of 2011 DC No 384 of 2011 DC No 156 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	24 August 2012
DELIVERED AT:	Brisbane
HEARING DATE:	24 July 2012
JUDGES:	Margaret McMurdo P and Muir and Gotterson JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Each appeal against sentence is dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the respondents were jointly charged with numerous offences including two counts of robbery in company with personal violence and one count of doing grievous bodily harm – where the grievous bodily harm was inflicted by a single punch – where the

complainant suffered grave injuries – where the respondents were also charged individually for other offences – where respondents pleaded guilty – where respondents were sentenced to a head sentence of five years imprisonment with an early parole eligibility – where submissions in the Attorney-General's appeal were inconsistent with those made by the Prosecutor at sentence – whether the sentences were manifestly inadequate

Penalties and Sentences Act 1992 (Qld), Pt 9A

Muldrock v The Queen (2011) 244 CLR 120; [2011] HCA 39, cited
R v Dietz [2009] QCA 392, distinguished
R v Ford [2011] QCA 208, distinguished
R v Price [2006] QCA 180, considered
R v Thomason; ex parte A-G (Qld) [2011] QCA 9, distinguished

COUNSEL: A W Moynihan SC for the appellant
R E East for the respondent, Cullen
J J Allen for the respondent, Hutchins

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

[1] **MARGARET McMURDO P:** The respondents, Jake Cullen and Samuel Hutchins, were jointly charged with two counts of robbery in company with personal violence (counts 1 and 2), one count of doing grievous bodily harm (count 3) and one count of stealing (count 4), all on 16 January 2011 (indictment 379/11).

[2] Cullen was charged alone with further offences: assault occasioning bodily harm (count 1) and assault (count 2), both on 23 January 2011 (indictment 380/11). Cullen pleaded guilty to all these offences on 13 April 2012 when he was sentenced to five years imprisonment for the offence of doing grievous bodily harm and to lesser concurrent terms of imprisonment on the remaining counts. Presentence custody of 438 days was declared as time served under his sentence and parole eligibility was set at 30 June 2012, that is, after serving 17 months.

[3] Hutchins was also jointly charged with Manuariki Taua with robbery in company with personal violence (count 1) and with two counts of assault occasioning bodily harm in company (counts 2 and 3), all on 23 January 2011 (indictment 384/11). Hutchins pleaded guilty to all these offences on 30 January 2012. He was sentenced on 19 April 2012 when he also pleaded guilty to the summary offences of common assault, breach of bail, possession of property suspected of being stolen and stealing, all committed in January 2011. Like Cullen, he was also sentenced to five years imprisonment for the offence of grievous bodily harm and to lesser concurrent terms of imprisonment on the other indictable offences. Presentence custody of 445 days was declared as time served under his sentence and parole eligibility was also set at 30 June 2012, that is, after serving 17 months. He was convicted but not further punished on the summary offences.

[4] The appellant, the Attorney-General of Queensland, has appealed against those sentences contending that they are manifestly inadequate.

Cullen's antecedents

[5] Cullen was 17½ at the time of his offending and 18 at sentence. His criminal history was as follows. On 26 July 2010 in the Southport Magistrates Court he was ordered to perform 100 hours community service without a conviction for unlawful use of motor vehicles on 11 July 2010. The following day, he was ordered to perform a further 50 hours community service without conviction for six offences of committing a public nuisance on 17 July 2010. On 9 August 2010, he was fined $800 without conviction for breaching bail on 25 July 2010 and trespass on 7 August 2010. On 14 July 2011, he was found to be in breach of the two community service orders. A conviction was recorded and he was fined $300. He was resentenced for the original offences by way of fines with convictions recorded.

[6] It follows that he had no prior convictions for violence and, although he had not taken advantage of the lenient sentence requiring him to perform community service without a conviction, he was not subject to any community based orders when he committed the present offences.

Hutchins's antecedents

[7] Hutchins was 17 years and two months at the time of his offending. His criminal history was as follows. On 14 January 2011, he was sentenced to 12 months probation without conviction for six counts of public nuisance; assaulting or obstructing a police officer; common assault; and some traffic matters. All the criminal offences were committed on 28 December 2010. He was not further punished and no conviction was recorded for a breach of bail. On 27 January 2011, he was fined $150 with a conviction recorded for a further breach of bail committed on 26 January 2011. On 1 February 2011, he was fined $500 with convictions recorded for further breaches of bail. On 29 September 2011, he was found in breach of the probation order which was revoked. He was resentenced for his original offending by way of a $1,000 fine with convictions recorded for the traffic offences and to a $700 fine with convictions recorded for the remaining offences.

[8] In summary, he had committed prior offences, including assaults, apparently of a minor kind. He had not taken advantage of the lenient sentence placing him on probation without a conviction but, like Cullen, he was not subject to any community based orders when he committed the present offences.

The joint offending

[9] The facts of their joint offending (indictment 379/11) were as follows. The respondents, in company with another young man, Williams, confronted a couple sitting on Surfers Paradise beach at 2.15 am on Sunday 16 January 2011. Williams asked for money. Cullen elbowed the male complainant in the mouth, knocking him down. He stole his mobile phone, wallet and keys (count 1). Hutchins snatched the female complainant's mobile phone when she threatened to call police (count 2). The male complainant was taken to hospital and treated for a small cut to his chin and bruising to his face and mouth. It seems the respondents had been drinking "goon" prior to the offence.

[10] Less than an hour later, the respondents confronted an intoxicated man walking alone at Surfers Paradise. Cullen asked him how his night had been. The complainant grabbed Cullen by his shoulders and shook him, saying, "Don't join the army, don't join the army." His conduct was "more weird than threatening". The complainant released Cullen and walked in the other direction. Cullen called out, "I just asked how your night was." The complainant turned around and walked towards the respondents, kicking his legs straight out in front of him. Cullen described the motion as "a little kick … not threatening". Cullen punched him to the jaw, knocking him backwards. As he fell, Hutchins punched him to the head. The complainant's head hit the ground and he was rendered unconscious (count 3). Hutchins stole his mobile phone before they ran off, leaving the complainant lying unconscious in the street.

[11] Fortunately, passers-by assisted him and he was taken by ambulance to hospital. He was unable to maintain his airway due to his low Glasgow Coma Scale of 3/15 which improved to 7/15. He was vomiting and was intubated and ventilated before undergoing a CT scan. This revealed a 5 mm acute left subdural haematoma; left temporal contusion; traumatic subarachnoid haemorrhage in the basal cisterns; a small contusion in the pons; right occipital parietal skull fracture extending to right lambdoid suture with a small underlying pneumocephalus; and a 2–4 mm midline shift with small effacement of the occipital horn. He underwent emergency surgery to insert a right ICP monitor in his head. He was admitted to intensive care for ongoing monitoring of intracranial pressure and vital signs. After a few spikes, an induced coma settled his intracranial pressure. His recovery was complicated by infections. After 10 days in intensive care, he was transferred to the neurosurgical ward. He suffered from post-traumatic amnesia and failed cognitive functions tests. He required extensive brain injury rehabilitation.

[12] He was reviewed by a neurosurgery registrar on 24 August 2011, by which time he had "recovered very well". His main weaknesses were an expressive language deficit and a verbal memory deficit. His most recent MRI showed microhaemorrhages in the temporal and frontal region of the brain consistent with a severe head injury and diffuse axonal injury. He required speech pathology and ongoing psychiatry review for his pre-existing post-traumatic stress disorder. He was able to drive a vehicle provided he passed his occupational therapy driving assessment.

[13] The complainant's victim impact statement referred to the grossly detrimental consequences of the offending on his life, physically, psychologically, emotionally, and financially. The offending has also impacted detrimentally on the lives of his parents and girlfriend.

[14] Cullen made full admissions when interviewed by police on 1 February 2011. Hutchins denied his involvement until pleading guilty on 30 January 2012.

Cullen's additional offending

[15] Cullen's offending charged in indictment 380/11 occurred in this way. One week later, Cullen asked a man in a Nerang park for a cigarette. When the man explained good-naturedly that he did not have any and wished him well, Cullen punched him in the face causing bodily harm (count 1). The complainant said, "What the bloody hell was that for, I was just being nice to ya." Cullen replied, "You want some, you want some?" and took a fighting stance with his fists clenched and raised. The

complainant faced Cullen who came at him swinging his fists, saying, "I'm going to fuck you up." The complainant defensively elbowed Cullen to the mouth, knocking out one of his teeth. As Cullen walked off, he spat blood at the complainant (count 2). The complainant sustained grazes, cuts and scratches, and soreness around his nose, jaw, back and torso. He reported the matter to police but declined to go to hospital. No victim impact statements from these complainants were tendered.

Hutchins's additional offending

[16] Hutchins's offending in indictment 384/11 occurred in this way. Hutchins was in company with the 19 year old Taua who had a minor criminal history, and a juvenile, R, at 3.20 am on Sunday, 23 January 2011. They asked three 22 year old Italian male tourists in Surfers Paradise for money. The tourists gave them each $2 and walked on their way. Hutchins king-hit one man in the face, knocking him unconscious. He suffered a very small fracture to his cheek, facial bruising and grazes to his hand. Hutchins then stole his mobile phone (count 1). Hutchins then elbowed the second complainant in the mouth causing bruising and swelling to his left eye and check (count 2). R assaulted the third complainant causing him cuts to his mouth and chin and bruising and swelling to his left side (count 3). The first complainant was assisted by others and taken to hospital where he was discharged later that day. He found it difficult to eat and was in a lot of pain for some time.

[17] No victim impact statements from these complainants were handed up at sentence, but it can be inferred that, at the very least, the offending was an unwelcome and unpleasant intrusion into their holiday.

[18] Taua pleaded guilty on the basis that he encouraged Hutchins and R by his presence. He was sentenced to five months imprisonment followed by two years probation and 150 hours community service.

[19] Hutchins's summary offences occurred in this way. On 3 January 2011, the complainant, a neighbour of Hutchins's step-mother, came to the back door of Ms Hutchins's unit where Hutchins was sitting. He tapped her on her stomach, took her glasses from her face and refused to return them. She made a complaint to police. Hutchins told police he had been drinking alcohol and was not on good terms with the complainant. He admitted committing the offences which constituted a breach of his bail.

[20] On 21 January 2011, police found an Apple iPod in Hutchins's shoulder bag. He said he had purchased it the previous week for $50 from two male friends who needed money to buy petrol. He had not known them long and had no way of contacting them.

[21] On 24 January 2011, he was recorded on CCTV stealing a vaporiser from a Southport shop. When police found it in his shoulder bag, he gave them a false account of how he came by it.

[22] On 29 January 2011, police found a mobile phone in the possession of Hutchins's cousin. He told police Hutchins gave it to him. Hutchins later told police that he found the phone on the floor of a unit at Nerang when visiting friends. He thought it was stolen, took it and gave it to his cousin.

The prosecutor's submissions at sentence

[23] The prosecutor at sentence rightly submitted that the grievous bodily harm offence (count 3 on indictment 379/11) was the most serious. He contended that it was appropriate for the judge to take a "global approach" in sentencing each respondent by imposing a sentence on that offence to reflect all the criminality of each offender. Relying on *R v Thomason; ex parte A-G (Qld)*,[1] *R v Dietz*,[2] *R v Price*,[3] *R v Tupou; ex parte A-G (Qld)*[4] and *R v Ford*,[5] he initially submitted that the appropriate global sentencing range for both offenders in light of their youth and criminal history was a head sentence of between five and six years imprisonment.

[24] He stated that a parole eligibility date should be given rather than a suspension of the sentence as the respondents' backgrounds suggested they needed supervision when released into the community. He did not make submissions as to the appropriate parole eligibility date. He then submitted that a slightly heavier penalty should be imposed on Hutchins as he had a prior criminal history for offences including assault, and incorrectly stated that Hutchins was on probation at the time of some of his offending.

The submissions on behalf of Cullen at sentence

[25] Cullen's counsel at sentence made the following submissions. *Ford* was distinguishable because the injuries suffered by the complainant there were much more catastrophic than in this case. The present offence of doing grievous bodily harm, unlike that in *Thomason*, did not involve the use of a knife; nor did it involve the use of iron rods as in *Price*. It was in that category of unfortunate cases where one punch caused significant injuries.

[26] She emphasised Cullen's youth and pleas of guilty. His offending occurred over a period of about one week. He had been in prison for 14½ months and had used his time there well, completing courses in information technology and fitness. She tendered letters from him to the judge and the complainant in the grievous bodily harm count in which he apologised and acknowledged his wrongdoing. The letters suggested that he was remorseful and had some insight into the seriousness of his offending and its effect on the victims. He also demonstrated remorse when police spoke to him at the time of his arrest in February 2011. Cullen pleaded guilty at an early stage. He committed the offences at a time when he was abusing alcohol. His father and step-mother were at court to support him. He would reside with them when released and an older brother would help him find employment.

[27] In light of the many mitigating circumstances, a global head sentence of four to five years imprisonment was appropriate with an early, perhaps immediate, release on parole or suspension.

The submissions on behalf of Hutchins at sentence

[28] Counsel for Hutchins made the following oral and written submissions at sentence. Hutchins's mental health issues meant that consideration of general deterrence were not apposite.

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1 [2011] QCA 9.
2 [2009] QCA 392.
3 [2006] QCA 180.
4 [2005] QCA 179
5 [2011] QCA 208.

[29] In support of that contention, he tendered a psychological report from Mr Nick Smith which included the following information. Hutchins's father was a very violent man with an extensive criminal history and was often violent to Hutchins. His mother died when he was three years old. His early upbringing was characterised by severe physical abuse from his father and extreme levels of instability. He spent much of his childhood in the care of his mother's sister whom he now calls "Mum" and refers to as his step-mother. He has not seen his father since he was 12 years old. He and his step-mother moved to Australia when he was 13. She has tried to provide him with a stable, positive and loving upbringing. More recently, he was the driver in a serious motor vehicle accident in which his step-mother was injured.

[30] Alcohol has been a significant factor in his offending. Whilst he claimed to be managing life in adult prison, he also reported that he struggled with being surrounded by so many other prisoners. He claimed to have assaulted prisoners so that he could be isolated. He planned to abstain from substances in the future.

[31] He presented with severe symptoms of post-traumatic stress disorder (PTSD) manifested in nightmares about his father and others trying to hurt his mother. Sometimes when he woke he was unable to distinguish dreams from reality. He had intrusive memories of his father's early domestic violence and flashbacks of the recent car accident. Once when a police officer grabbed him by the back of his neck as his father used regularly to do, he reacted automatically by lashing out violently. He experienced aggressive impulses when he saw anyone who resembled his father. He did not show significant evidence of psychopathy although he showed some lack of remorse and poor behavioural controls. His risk of future violence was currently at least moderate. This would increase with any deterioration in his mental state and decrease with treatment. Intoxication and active trauma symptoms (for example, "flashbacks") provided the most likely context for re-offending.

[32] His risk factors would reduce over time if he received treatment for his PTSD and substance abuse, engaged in educational programs and was supported to strengthen and expand his pro-social support networks. Upon his return to the community, he should undertake drug and alcohol counselling or be released directly into a rehabilitation facility, continue mental health treatment and receive counselling, and obtain assistance in gaining employment or in completing secondary and vocational training studies.

[33] A report from psychiatrist, Dr Andrew Aboud, stated that he had treated Hutchins since 22 March 2012. He diagnosed him as suffering severe and complex PTSD, depressed mood, substance abuse disorder (cannabis, amphetamines, alcohol) and possibly alcohol abuse disorder.

[34] Hutchins's counsel emphasised his early pleas of guilty; his psychiatric illness; his genuine attempts to improve himself; his sound prospects of rehabilitation with appropriate support; his youth; his remorse; and the substantial period he had spent in prison. His offending occurred after he had abused either drugs or alcohol. He wished to remain substance-free upon his release from custody. The offences were linked to his mental health issues and his substance abuse. They were spur of the moment and unplanned. The appropriate global sentence was a head sentence of up to four years imprisonment with parole eligibility after serving a further 45 days, that is, on 21 May 2012.

The sentencing judge's reasons

[35] In sentencing the respondents, the judge summarised their serious spate of offending. Her Honour listed the mitigating features in each case. Both respondents had involved themselves in serious episodes of violence which required punishment to reflect community denunciation and general and personal deterrence. Community protection was also a relevant factor.

[36] Her Honour concluded that Cullen should be sentenced to a head sentence of five years imprisonment to reflect the serious nature of his offending. An early parole eligibility date was appropriate to reflect his "extreme" youth and co-operation.

[37] In Hutchins's case, a significant head sentence was also required. Her Honour noted that Hutchins had a more significant criminal history and incorrectly observed that he was on probation at the time of his offending. He did not have Cullen's early co-operation with the authorities and lack of prior history for offences of violence. His psychiatric problems were mitigating features not present in Cullen's case. Balancing all these factors, he, too, should be sentenced to five years imprisonment and given an early parole eligibility date at about the same time as Cullen.

The appellant's contentions

[38] The appellant contends that this Court's decisions in *Dietz* and *Ford* demonstrate that the penalty imposed on the respondents for the offence of doing grievous bodily harm was manifestly inadequate had it been imposed for that offence alone. It was certainly an inadequate penalty to reflect the seriousness of the entire criminality of each respondent's gratuitous violent offending. In each case the judge gave too much weight to mitigating features and insufficient weight to the need for adequate punishment.

[39] Even after making allowance for the application of the totality principle, the appropriate global head sentence was, in Cullen's case, in the order of six to seven years imprisonment. In Hutchins's case, his mental health issues suggest that he remains at least a moderate risk of re-offending. His PTSD may have reduced his moral culpability and the relevance of deterrence but community protection was an important sentencing consideration. In his case, making due allowance for the totality principle, the appropriate head sentence was in the order of seven to eight years imprisonment.

[40] The features identified by this Court in *Thomason* at [6] and [22] justify a declaration under Pt 9A *Penalties and Sentences Act* 1992 (Qld). Each respondent's criminal history provided a sound reason to defer eligibility for parole beyond the statutory eligibility date: *R v Assurson*.[6]

Conclusion

[41] Despite the fact that the respondents were only 17 and pleaded guilty, the global sentence each received was certainly lenient for such serious repeated offending in circumstance where they have previously been offered the benefit of community based orders for prior offending. The offence of grievous bodily harm was punishable by up to 14 years imprisonment. Cullen's subsequent two counts of robbery in company with personal violence and Hutchins's subsequent three counts

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6 (2007) 174 A Crim R 78, 82 [22], 83 [27].

of robbery in company with personal violence were each punishable by up to life imprisonment and could independently have resulted in a significant term of imprisonment. Cullen's further offence of assault occasioning bodily harm and Hutchins's further two counts of assault occasioning bodily harm were each on their own capable of resulting in a term of imprisonment.

[42] I do not accept, however, the appellant's contention that the sentences imposed would have been manifestly inadequate had they been imposed for the offence of grievous bodily harm alone. *Ford*, *Dietz* and *Thomason*, upon which the appellant relied to support that contention, can each be distinguished from the present case. Whilst they involved offending by young men, they did not concern offending by 17 year olds who, in every other Australian jurisdiction, are dealt with in the youth justice system.[7] The respondents, for most legal purposes, were minors when they offended. As the primary judge appreciated, immaturity was a highly relevant mitigating feature. Further, the injuries to the complainant in *Ford* were even more serious than in this case. It should also be noted that Dietz did not have the important mitigating features in the present cases of co-operation with the authorities (especially pertinent in Cullen's case) and pleas of guilty. *Thomason* involved the use of a knife whereas none of the offending in the present cases involved weapons.

[43] By contrast, *R v Price*[8] concerned a 17 year old who pleaded guilty to unlawful wounding in April 2004 and doing grievous bodily harm in May 2004. He was 19 at sentence with a minor criminal history and had not re-offended since. He was sentenced to an effective term of five years imprisonment with parole eligibility at the statutory half way point. He contended his sentence was manifestly excessive. The unlawful wounding involved the slashing of the complainant's arm after a party. The offence had a serious effect on the victim's elite athletics career and personal life. He required 19 stitches and suffered diminished strength in his right hand and fingers. He was courageously attempting to regain his pre-injury form but his coaches considered it unlikely. Price was charged and released on bail.

A month later, during a fracas between two groups of youths, the complainant threw a shopping trolley bar at him. It missed him but he threw it back. The bar hit the complainant on the side of the head causing him to fall to the ground. Price ran to his car and fled. The complainant suffered a depressed compound skull fracture and required numerous operative interventions. He contracted pneumonia whilst in intensive care and had post-traumatic amnesia for 45 days. His functional level gradually improved so that he could walk with supervision and care for himself with minimal assistance. He suffered cognitive language deficits. A piece of titanium mesh was screwed into his cranium to protect his exposed brain. Victim impact statements stated that he had no use of his right arm; only limited use of his right leg; difficulty communicating with new people; seizures; difficulty controlling his aggression and emotions; and a deterioration of vision. The offence had also impacted on his family, especially his mother. Price attempted to persuade a co-offender not to implicate him and minimised his actions to police. He pleaded guilty on the basis of criminal negligence.

This Court noted that whilst rehabilitation of youthful offenders was important, Price was being sentenced for two distinct and serious acts of street violence

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7 See *R v Loveridge* [2011] QCA 32, [5]–[7].

8 [2006] QCA 180.

separated only by one month with devastating effects for the victim in the grievous bodily harm offence. Whilst an early recommendation or suspension could have been made, the sentence imposed was not manifestly excessive.

[44] I am unpersuaded that either *Ford*, *Dietz*, *Thomason* or *Price* establish that the sentences imposed in the present cases would have been manifestly inadequate had they concerned only one offence of grievous bodily harm.

[45] The appellant's alternative contention, that the sentences imposed on the respondents were inadequate as global penalties taking into account all the offending, has more substance. But one very great difficulty in that submission is that the global head sentence imposed on each respondent was within the range asked for by the prosecutor at sentence. Further, the prosecutor did not ask for a declaration that any of the offences were serious violent offences under Pt 9A or take issue with the early parole date sought by the respondents' counsel. As this Court has often noted, it is only in exceptional cases that it will allow an Attorney-General's appeal against sentence which contradicts the submission made by the prosecutor to the sentencing judge.[9] This Court's decision in *Price*[10] is also capable of providing some support for the sentences imposed.

[46] Counsel for the respondents have pointed out that their clients have suffered prejudice as a result of these appeals which, despite this Court's best efforts, were not heard until almost one month after the parole eligibility date. The respondents will be unable to apply for parole until their respective appeals are finalised: s 180(2)(b) *Corrective Services Act* 2006 (Qld). It will then be a matter for the Parole Board as to if and when each is released on parole. In practical terms, regardless of the outcome of these appeals, the appellant has succeeded in postponing each respondent's parole eligibility date by at least some months.

[47] The community is increasingly dismayed at the level of alcohol and drug induced street violence; at its dreadful consequences for victims and their families and at its huge financial cost to the community. It may be doubtful whether sentencing young men who commit offences like these to lengthy terms of imprisonment is the complete solution to this vexing community problem. Complex problems do not have one dimensional simple solutions. It is true that in each case there were considerable mitigating features. Nevertheless, a substantial global head sentence had to be imposed in Cullen's case, as the primary judge appreciated, to show community denunciation of his conduct and as a personal and general deterrence. These factors were less significant in Hutchins's case because of his PTSD: see *Muldrock v The Queen*.[11] But unlike Cullen he had a prior history of assault and, according to his psychologist's report, he was at moderate risk of re-offending, at least without appropriate treatment and support. Community protection was therefore a highly relevant factor requiring a significant global head sentence in his case.

[48] In the case of each respondent, a global head sentence in the range of five to seven years was warranted to reflect the aggravating features of each respondent's serious, repeated offending. The respondents' youth, pleas of guilty, prospects of

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9 *Everett v The Queen* (1994) 181 CLR 295, 299; *Dinsdale v The Queen* (2000) 202 CLR 321, 341 [62]; *R v KU; ex parte Attorney-General (No 2)* [2011] 1 Qd R 439, 463–464 [95]; *R v Riseley; ex parte A-G (Qld)* [2009] QCA 285, [37] and *R v Price; ex parte A-G (Qld)* [2011] QCA 87, [47].

10 [2006] QCA 180.

11 (2011) 244 CLR 120.

rehabilitation, co-operation with the authorities (particularly Cullen), absence of the use of weapons, and the fact that the offending occurred over one month rather than over an extended period meant that a declaration under Pt 9A was not warranted. The various mitigating features in each case allowed for an early recommendation for parole, at least at the one-third point.

[49] The sentence imposed with parole eligibility after only 17 months was unquestionably lenient. As I have noted, in practical terms it is highly unlikely either respondent will be released before 20 or 21 months (after serving slightly more than one-third of the sentence). The answer to the question whether the parole eligibility date after 17 months in custody makes the global sentence in each case manifestly inadequate is finely balanced. But ultimately I remain unpersuaded that the sentences, though at the very bottom end of the range, were outside the range or that the primary judge otherwise erred in determining them. In reaching that decision, I note that my doubts as to whether to allow the appeal on the basis of manifest inadequacy have been assuaged by the fact that these appeals are not in that category of exceptional cases where the Court should act upon a submission made by the appellant as to the appropriate sentence which is inconsistent with that made by the prosecutor below.

ORDER:

Each appeal against sentence is dismissed.

[50] **MUIR JA:** I agree that each appeal should be dismissed for the reasons of McMurdo P.

[51] **GOTTERSON JA**: I agree with the order proposed by McMurdo P and with the reasons given by her Honour.