SUPREME COURT OF QUEENSLAND

CITATION:	*R v Pringle; ex parte A-G (Qld)* [2012] QCA 223
PARTIES:	**R** **v** **PRINGLE, Mark Stephen** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 6 of 2012 SC No 548 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	24 August 2012
DELIVERED AT:	Brisbane
HEARING DATE:	13 June 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:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where respondent pleaded guilty to unlawfully killing his partner – where he removed children from the scene mid offence – where he was of diminished responsibility at the time of the killing – where he was sentenced to nine years imprisonment – whether the sentence is manifestly inadequate – whether pursuant to s 161B *Penalties and Sentences Act* 1992 (Qld) a serious violent offender declaration should have been made *Penalties and Sentences Act* 1992 (Qld), s 9, s 161B *Muldrock v The Queen* (2011) 244 CLR 120; [2011] HCA 39, cited *R v Goodfellow* Unreported, Supreme Court of Queensland, Fryberg J, No 219 of 2004, 15 October 2004, considered *R v Miguel* [1994] QCA 512, considered *R v Palmer* Unreported, Supreme Court of Queensland, Peter Lyons J, No 1039 of 2010, 11 August 2011, considered

R v Potter; Ex parte Attorney-General (Qld) (2008) 183 A Crim R 497; [2008] QCA 91, considered
Re Pringle [2011] QHMC, Unreported, Ann Lyons J, No 0289 of 2009, 4 April 2011, related
R v Ward Unreported, Supreme Court of Queensland, Mullins J, No 74 of 1999, 8 December 2000, considered
R v Yarwood [2011] QCA 367, cited

COUNSEL: A W Moynihan SC for the appellant
J J Allen for the respondent

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

[1] **MARGARET McMURDO P:** The respondent pleaded guilty on 13 December 2011 to unlawfully killing his partner on 26 October 2008. He was sentenced on 14 December 2011 to nine years imprisonment. A declaration was made that 1,144 days of pre-sentence custody was time already served under the sentence. The appellant, the Attorney-General of Queensland, has appealed contending the sentence is manifestly inadequate and that the judge erred in failing to declare the respondent to be convicted of a serious violent offence under s 161B *Penalties and Sentences Act* 1992 (Qld).

Antecedents

[2] He was 40 years old at the time of the killing. He had some relatively minor criminal history but none for violence. In 1987, he was placed on three years probation and ordered to perform 240 hours community service and pay $710 restitution for three property offences. In 1996, he was fined $600 without conviction for possession of a dangerous drug and a pipe used in connection with smoking a dangerous drug.

The facts of the offence

[3] The respondent had been in a relationship with the deceased since about 2002. They lived on a farm with their three young children. The respondent was a heavy cannabis user. Before their first child was born, the deceased complained to her sister that he kept her in the house against her will with the doors and windows boarded. She had left him previously, but always returned when he promised to get help for his controlling ways. The deceased told her sister that the respondent had threatened to kill her if she ever tried to leave. The relationship between the deceased's sister and the respondent was strained at the time of the killing because the sister and her husband owed him $15,000.

[4] The respondent had been employed as a turf labourer. His employers described him as a good worker but for occasions when he became volatile whilst under the influence of drugs. He left his job after the birth of their second child to become the principal care giver whilst the deceased worked as a chef.

[5] In the weeks preceding the killing, the deceased confided to others about problems in their relationship. They were sleeping in separate rooms. They argued about his marijuana use. He wanted her to cut back her work hours so that he could return to

work. She told a friend that she wished he would leave. He told neighbours that he believed she was planning to leave him and take the children.

[6] On Friday, 24 October he confided to his sister during a telephone call that he was concerned about the relationship and thought the deceased was having an affair. He was upset that the deceased's sister still owed him $15,000. At the end of the conversation he seemed to have accepted that the deceased was simply acting normally.

[7] At about 8.30 am on the day of the killing, he spoke on the phone to his mother. The deceased had suggested he see a psychiatrist and his mother agreed this was sensible. She heard the deceased and the respondent having a civil conversation about this.

[8] At 10.00 am the respondent rang his father. He could hear the deceased's voice and the children screaming and being loud. The respondent told his father that the deceased was going to take the children and leave him and that she was "messing with [his] head" again. His father provided phone numbers for telephone counselling and stressed that the respondent needed help. He heard the respondent tell the deceased that he had two phone numbers to ring for help but she indicated she was not going to seek help. The phone call was becoming a three way conversation between the father, the respondent and the deceased. The father was concerned as the respondent was becoming confused, frustrated and angry. He encouraged the respondent to go for a walk or a bike ride to cool down. The respondent hung up.

[9] It seems that shortly after, believing the deceased had poisoned him and intended to leave with the children, he manually strangled her until she was unconscious. When he noticed the three children were present, he put them in another room. He then killed the unconscious deceased by twice stabbing her in the left chest.

[10] At 10.20 am, he rang the emergency 000 number and sought help for his children, stating that their mother and their father had just been killed. He then said that he was their father and he had just killed their mother and was about to kill himself. He said the deceased was "a manipulating fucking bitch and all she wanted to do was take my kids off me". Police and ambulance arrived at the farm shortly afterwards. He had stabbed himself but his wounds were not life-threatening.

[11] The respondent phoned his sister. He told her the deceased was dead and there was plenty of blood. He asked her to collect the children.

[12] The post-mortem examination revealed two stab wounds to the chest. One perforated the heart and penetrated into the aorta. The other passed through the left lung and exited the back of the chest. The force used was at least moderate as costal cartilages were incised. There were numerous bruises and abrasions on the front of the neck consistent with being caused by fingers and thumb. There were additional bruises to the strap muscles and fractures to the greater thyroid horns. These injuries and the presence of petechial haemorrhages on the face were consistent with attempted manual strangulation. The deceased was alive when the stab wounds were inflicted. Either wound would have been fatal. It was highly likely that the injuries to the neck were inflicted before the stab wounds. The cause of death was stab wounds to the chest.

[13] The deceased had no alcohol or illicit drugs in her system. The respondent had cannabis and opiates in his system and a very low blood alcohol level.

[14] The respondent was treated in hospital for his stab wounds. He asked to see "a psychologist doctor … someone that deals with mental stuff" but when warned of his rights, he declined to do so.

[15] Psychiatrist Dr Peter Fama interviewed the respondent over several hours on 18 and 27 March 2009 for the purposes of a forensic assessment. He described the appellant's psychiatric disorder as "… chronic and may turn out to be treatment-resistant. However, gradual improvement may be expected once he receives regular and full antipsychotic medication. The long-term outlook is fair."

[16] The respondent's treating psychiatrist, Dr Russ Scott from the Prison Mental Health Service, in his report of 10 March 2011 stated that the respondent continued to maintain that prior to the killing the deceased was preparing to leave him and take his children and that she and her family had conspired to distress and torment him; ("they were messing with my head"). He still held those paranoid beliefs but much less intensely than when first assessed in 2008. His symptoms appeared to have responded at least partially to supervised medication and he reports being much less (and much less frequently) distressed by depressive ruminations. He has had work at the prison and is "well regarded by correctional and nursing staff because of his bucolic demeanour and his diligence and reliability".

The Mental Health Court's findings

[17] The matter was ultimately referred to the Mental Health Court[1] which found that the respondent was not suffering from unsoundness of mind, was fit for trial, and was of diminished responsibility at the time of the killing.

[18] The Mental Health Court determined that a delusional disorder was operating on the respondent's mind at the time of the killing so that he would have seen his attack upon the deceased as a desperate measure of self-defence. But once the deceased was rendered unconscious through strangulation and was lying defenceless, the court did not accept that his delusional belief system continued to operate to such a degree that it deprived him of the capacity to understand what he was doing or of the capacity of control.[2] This conclusion was consistent with the respondent noticing the children were standing by and removing them from the scene. He clearly had some capacity for self-control, organisation and planning. He probably removed them because he knew what he was about to do was wrong. He then returned to his unconscious partner with a knife and forcefully stabbed her twice straight through the chest. After the killing, he rang the police, admitted the killing and had the presence of mind to call his sister to ensure there was someone to take care of the children. He was not totally deprived of the capacity to know that he ought not to kill the deceased.[3]

[19] The Mental Health Court was satisfied, however, that he was suffering from a delusional disorder which amounted to an abnormality of mind for the purposes of s 304A *Criminal Code* 1899 (Qld).[4] This would have impaired his capacity to

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1 *Re Pringle* [2011] QHMC, Unreported, Ann Lyons J, No 0289 of 2009, 4 April 2011.
2 Above, [69].
3 Above, [70]–[72].
4 Above, [74].

control his actions and impaired his capacity to know he ought not to have killed the deceased.[5] He was fit for trial.[6]

[20] The murder charge was reduced to manslaughter and the respondent pleaded guilty. It was common ground that he should be sentenced on the basis of the Mental Health Court's findings.

Counsel's submissions at sentence

[21] The prosecutor tendered a victim impact statement from the deceased's sister on behalf of her family and friends. She wrote eloquently of the dreadful impact of the crime on them all, especially the children of the deceased and the respondent, aged four, two and a half and 17 months at the time of the killing. The deceased's mother and brother have had mental breakdowns. The deceased's sister and her husband are caring for the children and this has detrimentally affected their own children.

[22] The prosecutor submitted that 14 years imprisonment was appropriate, relying on *R v Ogborne*;[7] *R v Harold*[8] and *R v Miguel*.[9]

[23] Defence counsel made the following submissions. The respondent had a troubled upbringing. His younger brother was killed during the 1974 floods when he was about two years old and the respondent six. His parents had a physically abusive relationship and divorced. He had an unhappy time at school, leaving at the end of Grade 9. He had had a variety of jobs, the last at the turf farm. He began using cannabis at about 17. By the time he was 25 he smoked it daily. He cut his cannabis use back during 2000. He began using amphetamines in the early part of 2000 but stopped before his first child was born. He has abused alcohol in the past but his alcohol use decreased prior to the commission of this offence.

[24] In 2003 he was hospitalised because of his paranoia. He had no relevant criminal history.

[25] The wounds he self-inflicted after the killing were not serious. He was extremely remorseful and dreaded explaining his position to his children in the future. He has had no contact with them since committing the offence. He appreciated that they were completely blameless and that he had forced them and the deceased's sister and husband into a dreadful situation. He now accepted that the deceased was entirely innocent and undeserving of the violence he perpetrated on her. Whilst in custody he had worked consistently in various positions and now supervised others in the kitchen. He had successfully completed a number of courses and continued to receive psychiatric treatment.

[26] The respondent was acting with a criminal culpability far short of murder. He had no clarity of mind and the delusion extended not just to a belief that his partner was taking his children and his money but to a belief that she was scheming with her relatives to send him crazy and to poison him. Relying on *R v Schubring; ex parte Attorney-General*[10] and *R v de Voss*[11] and distinguishing the cases relied on by the

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5 Above, [76].
6 Above, [78].
7 [2006] QCA 236.
8 [2011] QCA 99.
9 [1994] QCA 512.
10 [2005] 1 Qd R 515; [2006] QCA 418.
11 [1995] QCA 518.

prosecution, the respondent's counsel submitted that the appropriate sentence was eight to nine years imprisonment. Although it was open to the judge to make a declaration that the offence was a serious violent offence, no declaration was warranted. The respondent would need his mental health issues monitored, probably for the rest of his life, perhaps by way of an involuntary treatment order under the *Mental Health Act* 2000 (Qld).

The judge's reasons for sentence

[27] In sentencing the respondent, the judge gave sensitive and carefully considered reasons for her sentence. Her Honour recited the dreadful circumstances of the offence and the respondent's conduct which followed. The judge next referred to the reports from psychiatrists in the Mental Health Court and that court's findings, noting the respondent's guilty plea to manslaughter. He was to be sentenced on the basis that he intended to kill the deceased but, because of his abnormality of mind under s 304A, the charge was reduced to manslaughter. As stated in *R v Potter; Ex parte Attorney-General (Qld)*,[12] that was a very serious basis on which to sentence. The respondent had expressed remorse at sentence and from the beginning had expressed concern for his children. He had been in prison for a substantial period receiving psychiatric treatment including psychotropic drugs. On release from prison, he must continue for the rest of his life to seek psychiatric treatment, even when he felt well. His relationship with the deceased had been turbulent. His mother-in-law regarded him as a loving husband to her daughter and a good father to their three children.

[28] *Potter* was helpful, not as a comparable case but in discerning statements of principle when sentencing a person who had killed their spouse by way of manslaughter because of diminished responsibility. It established that the range was ordinarily eight to 10 years imprisonment. A sentence as low as seven and a half years imprisonment with a serious violent offence declaration was imposed in *R v Goodfellow*.[13] *Miguel* was a worse example than the present in that he killed his wife in front of the children and he was convicted after a trial. At least here, the respondent removed the children before the killing. Even so, the killing will have had a massive negative life-long effect on them. It had also had a terrible effect on the lives of all members of the deceased's family as evinced in the victim impact statement.

[29] After referring to *R v Miller*[14] as to the effect of the respondent's mental state on the sentence to be imposed and taking into account the mitigating factors, the judge determined that a sentence of nine years imprisonment was appropriate with no statement as to parole eligibility. The judge was reflecting the mitigating features in a lesser head sentence, an approach consistent with that discussed in *Potter*.[15] Psychiatrist Dr Reddan considered the respondent suffered from a personality disorder with paranoid traits. This, his life-long drug abuse and the viciousness of the killing suggested his condition, resulting in the finding of diminished responsibility, was likely to endure after his release from custody. His release on parole will turn on the course of his illness and his rehabilitation in jail.

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12 (2008) 183 A Crim R 497.

13 Unreported, Supreme Court of Queensland, Fryberg J, No 219 of 2004, 15 October 2004.

14 (2011) 211 A Crim R 214, 224 [58]; [2011] QCA 160, [58].

15 (2008) 183 A Crim R 497, 509 [46].

The appellant's contentions

[30] Senior counsel for the appellant emphasised that the maximum penalty was life imprisonment. Under s 9(1)(e), (3) and (4) *Penalties and Sentences Act* 1992 (Qld) the protection and safety of the Queensland community is a relevant sentencing purpose. The sentence, however, could not be increased to protect the community beyond what would otherwise be an appropriate proportionate sentence: *Veen v The Queen [No 2]*.[16]

[31] The moderated head sentence of nine years imprisonment with parole eligibility after four and a half years was manifestly inadequate and failed to properly reflect the objectively serious nature of the offence. It failed to adequately punish the respondent. It failed to give primary weight to protecting the community, especially given the respondent's long standing drug use and enduring mental illness with paranoid traits. This conclusion was supported by this Court's decision in *R v Perini; ex parte A-G (Qld*)[17] and *R v Perini; ex parte A-G (Qld) (No 2)*.[18]

[32] Counsel did not take up the prosecutor's submissions below that a 14 year sentence should be imposed. In his oral submissions, he took issue only with the absence of a declaration under s 161B *Penalties and Sentences Act*. The respondent's intense delusional disorder which resulted in the killing lessened his moral culpability. But the offence he committed was objectively very serious. Parole eligibility after four and a half years made the sentence manifestly inadequate. *Miguel* demonstrated a starting point of 12 years imprisonment. As *Miguel* was more serious, the nine year head sentence was within range. But the strangling of the deceased in front of the children was a factor warranting the declaration. Its omission makes the sentence plainly unjust, especially as the judge gave no reasons for not making a declaration. A nine year sentence with parole eligibility after four and a half years is plainly unreasonable and does not properly reflect the seriousness of the offence: *Dinsdale v The Queen*;[19] *Hili v The Queen*[20] and *Perini (No 2)*.[21]

Conclusion

[33] The most relevant purposes of sentencing under s 9(1) *Penalties and Sentences Act* in the circumstances of this case were the protection of the Queensland community from the offender[22] and punishment.[23] That was because the respondent's mental illness which resulted in his diminished responsibility for the killing made purposes of deterrence[24] and denunciation[25] of lesser significance than otherwise because of his limited moral culpability: *Muldrock v The Queen*[26] and *R v Yarwood*.[27] As this was an offence of violence, the sentencing court was required to have regard primarily to the risk of physical harm to any members of the community;[28] the need

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16 (1987) 164 CLR 465, 475, 477 (Mason CJ, Brennan, Dawson and Toohey JJ).
17 [2011] QCA 30.
18 [2011] QCA 384.
19 (2000) 202 CLR 321, 325.
20 (2010) 242 CLR 520, 538–539.
21 [2011] QCA 384, [58].
22 *Penalties and Sentences Act* 1992 (Qld), s 9(1)(e).
23 Above, s 9(1)(a).
24 Above, s 9(1)(c).
25 Above, s 9(1)(d).
26 (2011) 244 CLR 120, 139 [54].
27 [2011] QCA 367, [22]–[26].
28 *Penalties and Sentences Act* 1992 (Qld), s 9(4)(a).

to protect any members of the community from that risk;[29] the circumstances of the offence;[30] the nature or extent of the violence used;[31] the past record of the respondent, including any attempted rehabilitation;[32] his antecedents, age and character;[33] any remorse;[34] any relevant psychiatric report;[35] and anything else about the safety of members of the community that the court considers relevant.[36]

[34] As the appellant's counsel rightly conceded, *Miguel*, a 1994 decision of this Court which predated Part 9A *Penalties and Sentences Act*, was a much more serious case than the present and supports the nine year head sentence imposed here. It involved a careful plan to attack the deceased. Miguel stalked her in a cold blooded and calculated way to ensure she could not summon assistance. He then killed her in front of her children. He had a psychiatric condition which was aggravated by an underlying narcissistic personality which deteriorated into a depressive illness. He was convicted after trial so that it seems he showed no remorse. This Court found the 12 year sentence with parole eligibility after six years was not manifestly excessive.

[35] The judge in the present case, having determined that a nine year head sentence should be imposed, had a discretion under s 161B(3) *Penalties and Sentences Act* as to whether to declare the respondent to be convicted of a serious violent offence. Such a declaration has the result that he would be ineligible for parole until serving 80 per cent of the sentence. This Court made clear in *R v Assurson*[37] that, in exercising this discretion, the court must first have regard to whether the circumstances of the offence warrant the making of a declaration; if a declaration is made, the court must give reasons for it. It is not a sufficient reason to make a declaration under s 161B(3) that a head sentence of 10 years or more could have been imposed resulting in a mandatory declaration under s 161A(a) and s 161B(1).[38] It follows from the well established principles in *House v The King*[39] that the appellant can succeed in this appeal only if the sentence of nine years imprisonment with no declaration was made in error or was so outside the sentencing range as to be manifestly inadequate.

[36] In *Potter* Mackenzie AJA (with whom Keane JA agreed) reviewed four first instance decisions involving spousal killings and diminished responsibility.[40] In *R v Goodfellow*,[41] the offender was sentenced to seven and a half years imprisonment with a declaration. In *R v Lock*,[42] the offender was sentenced to eight years imprisonment with no recommendation for early release on parole. He had served over four years presentence custody by the time of his sentence. In *R v Ward*,[43] the sentencing judge commented on the degree of deliberation apparent

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29 Above, s 9(4)(b).
30 Above, s 9(4)(d).
31 Above, s 9(4)(e).
32 Above, s 9(4)(g).
33 Above, s 9(4)(h).
34 Above, s 9(4)(i).
35 Above, s 9(4)(j).
36 Above, s 9(4)(k).
37 (2011) 174 A Crim R 78; [2007] QCA 273.
38 Above, [13]–[18].
39 (1936) 55 CLR 499, 504–505.
40 (2008) 183 A Crim R 497, 506–507 [37]–[40].
41 Unreported, Supreme Court of Queensland, Fryberg J, No 219 of 2004, 15 October 2004.
42 Unreported, Supreme Court of Queensland, Mullins J, No 479 of 1997, 10 September 2001.
43 Unreported, Supreme Court of Queensland, Mullins J, No 74 of 1999, 8 December 2000.

in letters written prior to the offence and imposed a sentence of nine years imprisonment with no recommendation for early release. In *R v Hill*,[44] the offender was convicted of manslaughter after a trial in which she pleaded not guilty to murder. There were elements of revenge and financial advantage in the killing. She was sentenced to eight years imprisonment without any early recommendation for parole.

[37] Mackenzie AJA also noted that in cases where a mental condition that led to a finding of diminished responsibility is likely to be ongoing, a prisoner's release from custody will depend on the course of the illness and of rehabilitation whilst in custody. As a result, sentencing judges often make allowances for mitigating factors in fixing the head sentence rather than in fixing an early date for release on parole. Judges are cognisant that a recommendation for release on parole at a particular date does not mean that the offender is necessarily released at that time. In cases of this kind, the progress of the prisoner's illness and rehabilitation will be major factors in the decision whether and when to grant release on parole.[45] The sentencing judge referred to this passage from *Potter* in her reasons.

[38] The respondent's counsel referred the Court to a more recent single judge decision, *R v Palmer*.[46] The applicant killed her husband by stabbing him 16 times. She suffered from a depressive illness, a dependent personality and low self-esteem. There was some evidence of deliberation as she had written letters to her children and prepared a "to do list" for them to follow afterwards. She had been married to the deceased for 26 years. She was devastated to learn that he was having an affair. One of her sons was concerned about her abnormal emotional state. The deceased returned from a legitimate business trip and they discussed their future. He told her he was leaving and she perceived she was confronted with the destruction of her life. She then stabbed and killed him. She intended to take her own life but this was thwarted. Later, well after the deceased was dead, she rang 000 and showed some remorse. With the passage of time, she became extremely remorseful. She pleaded guilty to manslaughter and not guilty to murder. The judge found that the jury acquitted her of murder on either provocation or diminished responsibility. After reviewing cases including those cited above, his Honour sentenced her to eight years imprisonment with no order as to parole eligibility. He declined to make a declaration under s 161B(3) because of her previous good conduct and the highly unusual circumstances of the offence and as there was no evident need to protect the community from her violence. Further, this was not a case where considerations of deterrence weighed heavily in the exercise of the sentencing discretion.

[39] These cases suggest that the nine years sentence imposed with no early parole eligibility date and no declaration under s 161B(3), was within the established range for a spousal manslaughter based on diminished responsibility where there was a plea of guilty and no clear evidence of continuing danger to the community. *Goodfellow* was the only case where a declaration was made and there the head sentence was but seven and a half years imprisonment. It is true that the sentencing judge here did not give discrete reasons as to why she determined not to impose a declaration under s 161B(3). But the unequivocal inference from her Honour's reasons is that it was not warranted because of the mitigating features, namely, the timely plea of guilty, remorse, the nature of his diminished responsibility and,

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44 Unreported, Supreme Court of Queensland, Atkinson J, 5 September 2001.

45 Above, [46].

46 Unreported, Supreme Court of Queensland, Peter Lyons J, No 1039 of 2010, 11 August 2011.

although a recovery was by no means certain, his slow but steady positive response to medication and treatment.

[40] I cannot accept the appellant's contention that this case differs from those first instance cases I have discussed because the respondent involved the children in his crime and the enormous life-long impact on them of his offending. It is inevitable that the young children of any relationship where one parent has killed the other will suffer dreadful life-long consequences. The sentencing judge's reasons make clear that she was acutely conscious of the fact that an aggravating feature in *Miguel* was that the killing took place in the presence of the children and that in the present case the respondent rendered the deceased unconscious by choking her in the presence of the children before removing them and returning to stab and kill the unconscious deceased. The judge detailed the dreadful trauma the children were exposed to and to the eloquent victim impact statement as to its consequences. It is true that the respondent's throttling of the deceased in front of their young children was an aggravating feature which was not present in *Palmer* or in the cases discussed in *Potter*. But that morally reprehensible act must be considered in the light of his diminished responsibility which reduced his moral culpability for the crime. When he sufficiently came to his senses to realise the children were present, he removed them from the immediate crime scene before carrying out his intention to kill. The Mental Health Court found that this factor was critical in determining that he was not insane at the time of the killing under s 27 *Criminal Code* but rather acting under diminished responsibility. On the other hand, some of the cases I have discussed had aggravating features not present in this case. *Ward* and *Palmer* involved much greater deliberation than in the present and *Hill* involved elements of revenge and possible financial advantage which were not present here.

[41] The appellant has not demonstrated that the sentence of nine years imprisonment with no early parole eligibility and no declaration under s 161B(3) is manifestly inadequate or that it was otherwise imposed in error. It follows that the appeal must be dismissed.

ORDER:

Appeal is dismissed

[42] **MUIR JA**: I agree that the appeal should be dismissed for the reasons given by McMurdo P.

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