SUPREME COURT OF QUEENSLAND

CITATION:	*R v Craigie* [2014] QCA 1
PARTIES:	**R** **v** **CRAIGIE, Michael Jack** (applicant)
FILE NO/S:	CA No 204 of 2013 DC No 313 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	Order delivered ex tempore on 31 October 2013 Reasons delivered 7 February 2014
DELIVERED AT:	Brisbane
HEARING DATE:	31 October 2013
JUDGES:	Fraser JA and McMeekin and Peter Lyons JJ Separate reasons for judgment of each member of the Court, Fraser JA and McMeekin J concurring as to the order made, Peter Lyons J dissenting
ORDER:	**Delivered ex tempore on 31 October 2013:** **Application dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted on his pleas of guilty to one count of assault occasioning bodily harm, in company (count 2), one count of grievous bodily harm (count 3), one count of assault occasioning bodily harm (count 5) and one count of common assault (count 6) – where the applicant was sentenced to a total period of four years imprisonment with parole eligibility fixed at 6 December 2013, four months after the date of sentence – where both parties submitted that the four year term of imprisonment was within range, albeit at the high end of the range – where the applicant contended that manifest excess resulted from the fixing of a parole eligibility date four months after the date of sentence – where the applicant relied on *Bugmy v The Queen* to argue that the sentencing judge did not give sufficient weight to the applicant's mitigating circumstances in fixing a parole eligibility date – where the applicant had a prior criminal history and issues with drug abuse and alcoholism –

where, as a result of the applicant's construction of the relevant provisions of the *Corrective Services Act* 2006 (Qld), the applicant argued that the sentence imposed did not reflect the sentencing judge's intention and rendered the sentence manifestly excessive – whether the sentence was manifestly excessive

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR CLASSES OF ACT – PENAL ACTS – GENERALLY – where s 180(2)(c) of the *Corrective Services Act* 2006 (Qld) ("the Act") precludes a prisoner from applying for a parole order more than 180 days before the parole eligibility date – where the applicant argued that the general provisions in ss 179(2)(b) and 180(1) of the Act operated so as to prevent the applicant from applying for parole prior to his parole eligibility date – where a consequence of the applicant's construction is that a prisoner would rarely be released on parole on the prisoner's parole eligibility date – whether the applicant's construction reflects the legislative purpose of the provisions – whether the sentence was manifestly excessive

Corrective Services Act 2006 (Qld), s 179(2)(b), 180(1), s 180(2), s 193(3)(b)

Bugmy v The Queen (2013) 87 ALJR 1022; [2013] HCA 37, cited
Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297; [1981] HCA 26, cited
R v Arthy & Anor [2012] QCA 67, applied
R v Fares [2012] QCA 13, considered
R v Lloyd [2011] QCA 12, considered
R v Omar [2012] QCA 23, considered
R v Waszkiewicz [2012] QCA 22, considered

COUNSEL: D C Shepherd for the applicant
D A Holliday for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** On 7 August 2013 the applicant was convicted on his pleas of guilty and sentenced for the following offences committed on 2 July 2012:

Count	Nature of offences	Sentence
2	Assault occasioning bodily harm, in company	2 years, 8 months imprisonment.
3	Grievous bodily harm	4 years imprisonment.
5	Assault occasioning bodily harm	2 years, 8 months imprisonment.
6	Common assault	6 months imprisonment.

[2] The sentencing judge fixed 6 December 2013 as the parole eligibility date which, taking into account 402 days presentence custody which was declared to be time served under the sentences, provided a minimum non-parole period of about 17 months of the total period of imprisonment of four years.

[3] The applicant applied for leave to appeal against sentence on the ground that it "was manifestly excessive in the circumstances as such that the Honourable Judge did not give sufficient weight to Mr Craigie's age, background and antecedents, rehabilitation, remorse, limited relevant history and injuries to victims." The applicant disclaimed any contention that the sentences of imprisonment were manifestly excessive but argued that manifest excess in the sentence was created by the fixing of a parole eligibility date four months after the date of sentence. This was submitted to result from insufficient weight being attributed to the circumstances that the applicant is a young indigenous man from a seriously disadvantaged background with no custodial history who had made progress towards his own rehabilitation during presentence custody. The applicant also submitted that the sentencing judge's intention in fixing the parole eligibility date was defeated by, and manifest excess in the sentence resulted from, provisions of the *Corrective Services Act* 2006 (Qld) which, on the applicant's construction, necessarily deferred any grant of parole until well after the parole eligibility date fixed by the sentencing judge.

[4] After hearing argument on 31 October 2013 the Court ordered that the application for leave to appeal be dismissed, with the Court's reasons for that order to be published in due course. These are my reasons for joining in that order.

Circumstances of the offence and the applicant's personal circumstances

[5] The applicant was 19 years old at the time he committed the offences and 20 years old when sentenced. He is an Aboriginal man from a disadvantaged family background with limited literacy and numeracy skills. He and a co-offender, Hunter, together with eight others, were participants in a pre-vocational and life skills camp for Aboriginal youths which ran from 15 June 2012 for a month. The complainants, Mr Simpson (aged 57) and Mr Coghlan (aged 37), were two of the four mentors in the program. On the morning of 2 July 2012 Hunter, who was intoxicated (the camp was meant to be alcohol-free) behaved aggressively and began threatening one of the mentors. The applicant attempted to assist in calming Hunter down. Shortly afterwards Hunter provoked a fight with another participant. It was broken up by the complainants, another mentor and some other participants, after which Hunter returned to the room he shared with the applicant. At lunchtime Hunter misbehaved again, becoming involved in another struggle and threatening various participants. Subsequently Hunter assaulted Simpson, punching him several times in the head and causing his nose to bleed. After Hunter later started to yell abuse to the complainants and make unjustified complaints about them, the applicant returned with Hunter to the dining hall and yelled abuse. Hunter threw punches at the complainants and the applicant kicked and punched them. The applicant and Hunter took turns in striking each complainant, with another mentor managing to evade blows. After Coghlan was struck from behind, causing his head to bleed, the applicant kicked him, jumped on him, and kicked and punched him (count 2). When Hunter attacked Simpson face on the applicant attacked him from behind, both of them throwing punches at Simpson in the head and body. Whilst people were pulling the applicant away from Simpson, Hunter came behind him and

gave him a "massive" hit to the head, knocking him to the ground and, when people tried to restrain Hunter, the applicant stepped in and kicked Simpson in the nose with force; Simpson's nose started bleeding profusely (count 3). At some point Coghlan held the applicant in a head lock and the applicant bit into the left side of Coghlan's chest, continuing to bite down for several seconds (count 5). The applicant went into the dining hall and retrieved a cutlery knife (the applicant's counsel described it as a bread and butter knife), which he stabbed towards Coghlan briefly, causing Coghlan real fear (count 6). The applicant threatened others with the knife and, when walking away, threw it with great force at one of the mentors, hitting the wall behind him. Whilst people were assisting the injured complainants, the applicant, Hunter, and another participant, retrieved their bags and climbed over one of the fences. They were apprehended a short time later by police. The applicant declined to participate in a police interview.

[6] Coghlan suffered a 1.5 centimetre partial thickness laceration to his scalp which was treated with skin glue. He had clicking in his jaw but no dislocation was noted. He also had an abrasion to his chest where he was bitten and required a tetanus booster and a course of antibiotics. He required a blood test and follow-up care and results at three, six and twelve month intervals. Mr Coghlan also suffered severe psychological impacts from the assault, he believed they impacted adversely on his capacity to work and he received counselling from a psychologist. He had distressing thoughts and feelings, suffered a panic attack, had distressing dreams and flashbacks, and suffered avoidance symptoms and other adverse sequelae.

[7] Simpson presented to the emergency department of a hospital with a large amount of facial bruising, and nose bleeding. He suffered multiple fractures of his facial bones including comminuted fractures of the nasal bones with deviation to the left, a fracture between the nose and eye, comminuted fractures of the right orbital floor which extended through the infraorbital canal, displaced fracture of the posterior inferior wall of the left orbit, and a depressed fracture of the anterior wall of the left maxillary antrum. There was also marked associated subcutaneous emphysema. Simpson underwent surgery for closed reduction and external fixation of the nasal fractures which, without treatment, would have left him with an obvious nasal deformity and diminished ability to breathe through his nose. Simpson had not been employed since the assault and suffered from stress and anxiety.

[8] The applicant had a criminal history, mostly comprising drug offences, wilful damage, driving offences, and some offences of dishonesty. For those offences he was mostly fined but he was given probation on four occasions. In April 2010 he was convicted of assaulting a police officer in March 2010 (when he also committed public nuisance offences). No conviction was recorded on those charges and he entered into a recognisance to be of good behaviour for six months. In August 2010 he was convicted of common assault in May 2010 for which a conviction was recorded and he was fined. He committed the present offences during a period of 18 months probation imposed on 6 March 2012 for numerous offences of dishonesty and property and drug offences.

[9] The applicant was given various certificates for courses he had completed in prison. He wrote letters of apology to the complainants. His counsel told the sentencing judge that he was remorseful about his actions and that alcohol played a large part in his conduct. The applicant had a very disruptive childhood, at times being looked after by an alcoholic grandmother and living with foster carers, his mother, and his

grandmother. He completed schooling until grade 9 and left as a result of difficulties. He had worked quite consistently since leaving school, largely in labouring but also in other occupations. After he moved in with his father at age 16 his father introduced him to drugs. The applicant thereafter lived on the streets, with various families, and in different homes. Subsequently he lived with an uncle and attended the course with the encouragement of his grandfather, but the grandfather suffered a heart attack. The applicant admitted to being an alcoholic and also to having drug problems. About a year before committing the subject offences the applicant, then 18 years old, witnessed his older brother attempt suicide by hanging. The applicant saved his brother's life. The applicant helped out elderly relatives. He had cooperated with the authorities by seeking to have the indictment against him presented as soon as possible and entered the earliest possible plea of guilty.

Consideration

[10] The applicant and respondent joined in submitting that the four year term of imprisonment was within the range, albeit at the high end of the range, of the sentencing discretion. The issue concerns the appropriateness of a parole eligibility date after the applicant will have served a total of seventeen months of that term in custody.

[11] There is no indication in the sentencing remarks that the sentencing judge did not take into account the applicant's youthful age, background and antecedents, rehabilitation, remorse, limited relevant criminal history and injuries to the complainants. The applicant cited *Bugmy v The Queen* [2013] HCA 37 and submitted that the sentencing judge dealt with the mitigating circumstances, including the applicant's disadvantaged background, in a way which did not give them sufficient weight. The sentencing judge's reference to the applicant having "limited literacy and numeracy skills" and "immediate family problems" was said to reveal that his Honour failed to take into account the full extent of the applicant's disadvantageous background.

[12] Very shortly before the sentence was imposed, the applicant's counsel described the applicant's background in detail. The prosecutor did not challenge any aspect of that description. In accordance with the usual sentencing practice in the District Court, that description of the applicant's background was therefore appropriately regarded as "material" which established the applicant's deprived background which was required to be taken into account in mitigation of sentence in the way explained in *Bugmy v The Queen* at [37] – [45]. There is no basis for finding that the sentencing judge did not appropriately take that material into account by way of mitigation. I note also that the sentencing judge asked questions of the applicant's counsel about an aspect of that material. It is stretching the obligation of sentencing judges to give reasons too far to infer from the sentencing judge's shorthand references to the relevant material that it was not properly or sufficiently taken into account. The sentencing judge also expressly took into account by way of mitigation the certificates that were tendered in evidence at the sentence hearing and the letters of apology which the applicant wrote to the complainants, together with the applicant's youthful age, remorse, assistance in the administration of justice, and attempts at rehabilitation. But there were serious aggravating circumstances which the sentencing judge was also obliged to take into account; as the sentencing judge observed, the applicant engaged in "brutish and mindless assaults" upon older

persons who were acting as mentors; the offences involved a "sustained and serious assault on two men who had done [the applicant] no wrong whatsoever, and serious injuries were caused to each of the complainants, more so to Mr Simpson". Furthermore, the applicant committed the offences when he was subject to a probation order.

[13] It was necessary for the sentencing judge to take all of the circumstances into account. Particularly having regard to the applicant's prior criminal history, alcoholism, and issues with drug abuse, there was no error justifying appellate interference in the sentencing judge's discretionary decision to fix a parole eligibility date rather than to suspend the sentence after a period in custody. And there is also no sufficient ground for holding that the minimum custodial period of a month or so longer than one-third of the total period of imprisonment is too long in all of the circumstances, such as to justify a conclusion that the sentence as a whole is manifestly excessive.

[14] It was submitted that the applicable legislation impacted on the "reality" of the "release date". Section 180(1) of the *Corrective Services Act* 2006 (Qld) confers an entitlement upon a prisoner to apply for a parole order once the prisoner "has reached the prisoner's parole eligibility date". That provision is qualified by s 180(2):

> "(2) However, a prisoner can not apply for a parole order—
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> (a) if a previous application for a parole order made in relation to the period of imprisonment was refused—
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> (i) until the end of the period decided by the parole board that refused the previous application; or
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> (ii) unless a parole board consents; or
>
> (b) if an appeal has been made to a court against the conviction or sentence to which the period of imprisonment relates—until the appeal is decided; or
>
> (c) otherwise—more than 180 days before the prisoner's parole eligibility date."

[15] The word "appeal" in s 180(2)(b) has been held to comprehend an application for leave to appeal: *R v Omar* [2012] QCA 23 at [38]. In *R v Fares* [2012] QCA 13 at [54] the court referred to that provision, noted that the volume of applications before the Parole Board may be such as to require an early application to "secure a place in the queue" in order to obtain a realistic prospect of it being dealt with on or soon after the eligibility date in the sentence considered in that case, and observed that "[a]gainst that legislative background, the appellant chose to appeal. In the circumstances the operation of the legislation cannot be said to make [the applicant's] sentence manifestly excessive." Similarly, in *R v Omar* at [38] the court referred to the prisoner making "a deliberate choice to make this application for leave to appeal against sentence in the context of a legislative scheme which prevents him from making an application while an appeal against sentence … is undecided. In the circumstances, the operation of the legislation cannot be said to make [the appellant's] sentence manifestly excessive." In *R v Waszkiewicz* [2012] QCA 22, White JA referred to the prisoner's exercise of his right to seek leave to appeal and the consequential inability to apply for parole and stated that the Court "ought not to accede to the application merely because of those consequences unless there is a good reason for doing so. What has happened is as a result of the

legislative scheme and choices made by the applicant. It has not led to an unjust result ...". The applicant submitted that "good reason" for acceding to the application for leave to appeal was to be found in a constellation of circumstances: the applicant's youth, his plea of guilty, his remorse, and his rehabilitative efforts. However, those matters were properly taken into account in the sentence imposed upon the applicant.

[16] In reliance upon a statement by Chesterman JA in *R v Lloyd* [2011] QCA 12 at [20], the applicant also argued that the prospect that, by application of s 180(2)(b), the applicant will not be released on the parole eligibility date fixed by the sentencing judge would be unjust and contrary to the sentencing judge's intention and would fail to reflect the applicant's plea of guilty. *R v Lloyd* was a very different case. The practical inability of that prisoner to undertake a course which was necessary to permit him to qualify for release on parole at the time contemplated by the sentencing court rendered the parole eligibility date fixed by the sentencing judge "illusory" and "known to have that character when the sentences were imposed": *R v Lloyd* at [3]. There were no similar circumstances here. There is no reason to think that the sentencing judge's intention miscarried and no ground for holding that the mere possibility of a decision by the Parole Board refusing parole renders the sentence manifestly excessive.

[17] The applicant also argued that s 180(2)(c) of the *Corrective Services Act* 2006 (Qld), (which precluded a prisoner from applying for a parole order more than 180 days before the parole eligibility date), conflicted with the provision in s 180(1) (which entitled a prisoner to apply for a parole order only when the prisoner has reached the parole eligibility date) and was in any event rendered inapplicable by the provision in s 179(2)(b) that the relevant subdivision of the *Corrective Services Act* "does not apply to … a prisoner who has not reached the prisoner's parole eligibility date …". The applicant argued that s 179(2)(b) in particular should prevail in this conflict, because it was a general statement by the legislature that the whole subdivision, including s 180(2)(c), was inapplicable before the parole eligibility date arose; it followed that the applicant could not lawfully apply for parole before his parole eligibility date. Upon that premise, the applicant argued that the prospect of parole being granted on the parole eligibility date was remote and unrealistic in light of the complexity of the procedure for decisions upon parole applications evidenced by section 5 of a Queensland Government document entitled "Procedure – Parole Orders and Resettlement Leave Program". Since the sentencing judge presumably acted upon the contrary premise that an application for parole could be made up to 180 days before the parole eligibility date in anticipation of a decision by the Parole Board on that date, it followed, in the applicant's submission, that the sentence did not reflect the sentencing judge's intention that the applicant might be released on parole on the parole eligibility date and was manifestly excessive.

[18] The premise of the applicant's argument should not be accepted. Section 180(2)(c) plainly conveys that it is open to a prisoner to apply for a parole order at any time within 180 days before the parole eligibility date, in anticipation of a decision by the Parole Board on that date. That provision was given that construction in *R v Arthy* [2012] QCA 67 at [43]. The general provisions in ss 179(2)(b) and 180(1) must be read as being qualified by the more specific provision in s 180(2)(c). That is consistent also with the provision in s 180(4) that "[a] parole order for a prisoner may start on or after the prisoner's parole eligibility date", the definition of "parole

eligibility date" in s 160 of the *Penalties and Sentences Act* 1992 (Qld) as "the date fixed under [specified provisions] as the date the offender is eligible for parole", and the ordinary meaning of the defined term and that definition. Furthermore, a consequence of the contrary construction propounded by the applicant is that a prisoner would rarely, if ever, be released on parole on the prisoner's parole eligibility date; that would be so regardless of the length of time between the date of sentence and the parole eligibility date. That consequence is so surprising as to suggest that it could not have reflected the legislative purpose: see *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 320-1.

[19] The better construction is that s 180(2)(c) of the *Corrective Services Act* 2006 (Qld) empowers a prisoner to apply for a parole order at any time within 180 days before the prisoner's parole eligibility date, in anticipation of a decision by the Parole Board on that date. Putting aside any effect of the applicant's application for leave to appeal under s 180(2)(b) of that Act, it was open to the applicant to apply for parole at or at any time after the commencement of the four month period between the date of his sentence and his parole eligibility date. The period of six months allowed by s 193(3)(b) of the same Act for a Parole Board to decide an application for parole is a maximum period. There is no evidence that, at the time of the sentence, it was unreasonable to expect that an application for parole by the applicant would be decided by the Parole Board within less than four months in anticipation of parole, if granted, being granted on the parole eligibility date fixed by the sentencing judge. The speculative possibility that, if the applicant had not sought to appeal his sentence, he would not have had his application for parole decided on or about the parole eligibility date fixed by the sentencing judge does not justify a conclusion that the sentence is manifestly excessive.

[20] **McMEEKIN J:** I have had the advantage of reading the reasons of Fraser JA and P Lyons J in draft. I agree with Fraser JA.

[21] I wish to make two additional observations. First, I am far from persuaded that the common ground from which both counsel argued, namely that the sentence was at the high end of the range, if taken in the sense that a lesser sentence was arguably appropriate, is justified.

[22] On any view the various offences were serious. But a vicious attack on two mentors, persons in a particularly exposed position to such violence because of their willingness to take on the responsibilities of trying to bring the lives of these young people back on track, and with consequent serious physical and mental harm, deserves particular condemnation.

[23] If there is a range appropriate to such attacks then in my view a sentence "at the high end of the range" was mandated.

[24] When added to that are the circumstances that the applicant resorted to the use of a knife at one point and had a prior criminal history that included offences of violence then the head sentence imposed was fully justified.

[25] My second observation is this. The argument then reduces to whether the sentence was manifestly excessive because the non parole period was about a month longer than the customary one-third mark. While I accept that even one day's loss of liberty is a serious matter it is difficult to avoid the characterisation of an interference at that level to little more than tinkering with the discretion that properly lies with the sentencing judge.

[26] The one-third non parole period often adopted by sentencing judges is not of course a legislative rule. It is a useful "rule of thumb". Unlike the legislatively fixed non parole period set out in a provision such as s 184(2) of the *Corrective Services Act* 2006, failure to comply with it does not require the sentencing judge to necessarily explain his reasons for doing so – the period chosen simply reflects the sentencing judge's view as to the minimum time that justice requires that the offender must serve having regard to all the circumstances of his offending conduct.

[27] In truth there is no justification for the adoption of any set formula as emphasised, albeit in the context of Commonwealth offences, by Keane JA, with the concurrence of the Chief Justice and Douglas J, in *R v Chandler*[1]:

> "So far as the fixing of the non-parole period as an aspect of the total sentence is concerned, in *R v Ruha, Ruha & Harris; ex parte Cth DPP*, this Court said:[2]
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> "… provisions for early release confer a benefit upon the offender but such provisions are made in the interests of the community; the non-parole period is the minimum period of imprisonment that justice requires the offender to serve; it mitigates the offender's punishment in favour of rehabilitation through conditional freedom after imprisonment for the minimum period; and relevant factors to be taken into account in determining the length of the non-parole period include the length of the head sentence and its position in the permissible range, the seriousness of the offence and the prospects of rehabilitation, and the need to ensure that the sentence reflects the criminality involved and does not lose the important significant effect of general deterrence.
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> Accordingly, and because the relevant factors and the relative differences in the weight to be afforded to each factor in the different aspects of the overall sentencing process may differ according to infinitely variable circumstances, there can be no "mechanistic or formulaic" (See *R v Harkness* [2001] VSCA 87 per Callaway JA, quoting from his Honour's judgment in *R v Pope* (2000) 112 A Crim R 588 at [28]) approach which requires sentencing judges to ensure that the proportion which the pre-release period bears to the sentence of imprisonment must or must usually fall within a range which is substantially narrower than the whole period of the imprisonment, which is the range the statute expressly contemplates for recognizance release orders. The proportions commonly encountered in the decided cases should themselves be the results of application of conventional sentencing principles to the particular circumstances of each case …"

[28] Chesterman JA made the point directly in *R v Hopper*, where the head sentence was eight years:[3]

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1 [2010] QCA 21.
2 [2010] QCA 10 [46]–[47].
3 [2011] QCA 296 at [30] – Muir JA and Margaret Wilson J agreeing.

> "Fixing a parole eligibility date after three years rather than two years and eight months did not make the sentence excessive. The difference is too small to have that effect. A reduction in the period by four months would amount to unwarranted "tinkering" with the sentence. There is no invariable rule that following a plea of guilty parole eligibility will be fixed after the offender has served one third of the head sentence. The existence of such a rule, which could only be one of practice, would be inconsistent with the existence of sentencing discretion."

[29] I agree with Fraser JA that the non parole period chosen here by the sentencing judge does not demonstrate that the sentence imposed was manifestly excessive or that the discretion miscarried. Hence my concurrence in the orders previously made.

[30] **PETER LYONS J:** I have had the advantage of reading in draft the reasons for judgment of Fraser JA. I agree with the views expressed by his Honour about the construction of s 180 of the *Corrective Services Act* 2006 (Qld). I gratefully adopt his Honour's description of the circumstances, both of the offending and of the applicant's personal background; and of the proceedings at first instance and on the hearing of this application.

[31] As his Honour has noted, it was common ground that the sentences of imprisonment imposed on the applicant were within range, but at the high end of the range, of the proper exercise of the sentencing discretion. The focus of the appeal therefore was on the order made by the sentencing judge which fixed the applicant's parole eligibility date at 6 December 2013.

[32] The description which appears in the reasons for judgment of Fraser JA, makes it plain that the offending was serious; and appropriately identifies the aggravating circumstances. The common position of the parties that the sentences were at the high end of the range demonstrates that those matters were fully reflected in the sentences of imprisonment imposed at first instance. It seems to me that the real question in the appeal is whether, in truth, weight was given to factors of mitigation.

[33] The applicant had pleaded guilty; indeed, as noted by Fraser JA, he sought to have the indictment presented against him as soon as possible, and he entered the earliest possible plea of guilty. The importance of a plea of guilty is emphasised by s 13 of the *Penalties and Sentences Act* 1992 (Qld) which requires the sentencing court to take such a plea into account, though not necessarily to reduce the sentence which would otherwise have been imposed. The section also makes relevant the time at which the offender entered the plea, or informed the relevant law enforcement agency of his intention to plead guilty. Moreover, if the sentence is not reduced by reason of the plea, the section requires the sentencing judge, in open court, to state that fact, and to state reasons for not reducing the sentence on account of the plea.

[34] As a matter of general practice, the date on which one-third of a sentence of imprisonment is completed is seen as an appropriate starting point for the recognition of a plea of guilty, though the date might be adjusted in either direction depending on the circumstances of the case.[4] Under the sentence, the applicant

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[4] *R v PAA* [2006] QCA 56 at [14]; *R v Ungvari* [2010] 134 at [30]; *R v Torrens* [2011] QCA 38 at [31]; *R v Amato* [2013] QCA 158 at [19].

would become eligible for parole approximately one month after he had served one-third of the period of imprisonment resulting from the sentences. Where the term of imprisonment is already at the high end of the range, and adequately reflects the seriousness of the offending, including the aggravating circumstances, then a delay of the parole eligibility date beyond the one-third must be considered unusual, requiring some justification.

[35] On the other hand, there were other, significant, mitigating factors. Not least of them was the efforts the applicant had made towards his own rehabilitation during his period of pre-sentence custody. In light of that, there is no reason not to accept the applicant's expressions of remorse, itself a mitigating factor. The applicant's significantly disadvantaged background is also a mitigating factor, being relevant to his moral culpability.[5] In my view, the applicant's age at the time of the offending (he was then 19 years old) is also a relevant mitigating factor.

[36] Although the sentencing judge referred to these matters, it is not possible to detect that he gave effect to them in imposing the sentence. Having imposed a sentence at the upper end of the range, he then extended the parole eligibility date to a date which was beyond the one-third mark. Neither his sentencing remarks, nor the circumstances of the case, provide an explanation for taking this course.

[37] Accordingly, I would have granted the application for leave to appeal against the sentence; allowed the appeal; and ordered that the parole eligibility date be fixed as the date of the hearing of the application (31 October 2013) in lieu of 6 December 2013.

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5 *Bugmy v The Queen* [2013] HCA 37 at [37]-[45].