SUPREME COURT OF QUEENSLAND

CITATION:	*R v Pryce* [2016] QCA 43
PARTIES:	**R** **v** **PRYCE, Aaron Paul** (applicant)
FILE NOS:	CA No 91 of 2015 CA No 246 of 2015 DC No 242 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Conviction) Sentence Application
ORIGINATING COURT:	District Court at Rockhampton – Date of Conviction: 25 February 2015; Date of Sentence: 22 April 2015
DELIVERED ON:	1 March 2016
DELIVERED AT:	Brisbane
HEARING DATE:	10 February 2016
JUDGES:	Fraser and Philip McMurdo JJA and Jackson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The application for leave to appeal against sentence be refused.** **2. The application to extend time to appeal against conviction be refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – GENERALLY – where the applicant was sentenced on his plea of guilty to ten counts for offences committed in the course of a violent home invasion – where the agreed facts of count 7 stated that the applicant made comments to a female victim, B, whilst the applicant's co-offender ran the blade of a machete up her back – where the agreed facts of count 10 stated that the applicant made similar comments to his co-offender whilst the co-offender threatened a female victim, C, with a machete – where the witness statement of B did not make reference to the applicant making the comments contained in the agreed facts of count 7 – where the applicant contends that the words attributed to him in relation to count 7 of the agreed facts were actually spoken after the assault which was the subject of count 10 – whether there was a miscarriage of justice by the applicant's conviction

on counts 7 and 10 because they were not supported by the prosecution's witness statements

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS AND OTHER RELATED OFFENDERS – where the applicant was sentenced on his plea of guilty to ten counts for offences committed in the course of a violent home invasion – where the applicant and his co-offender received identical sentences – where the applicant contends that his participation in the offences was less serious than the co-offender – where the applicant further contends that differences in their respective criminal histories warranted different sentences – whether the sentences imposed offended the parity principle

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was sentenced on his plea of guilty to ten counts for offences committed in the course of a violent home invasion – where sentences of eight years with a serious violent offence declaration were imposed for an offence of armed robbery and three counts of wounding with intent to do grievous bodily harm – where the applicant contends the sentences are manifestly excessive – whether the sentences are manifestly excessive

Commonwealth v Director, Fair Work Building Industry Inspectorate (2015) 90 ALJR 113; [2015] HCA 46, cited
Meissner v The Queen (1995) 184 CLR 132; [1995] HCA 41, cited
R v Amato [2013] QCA 158, distinguished
R v Eveleigh [2003] 1 Qd R 398; [2002] QCA 219, considered
R v Honeysett; ex parte Attorney-General of Queensland [2010] QCA 212, distinguished
R v Jones [2000] QCA 84, considered
R v Lyon [2006] QCA 146, considered
R v Marks; ex parte Attorney-General of Queensland [2002] QCA 34, considered
R v Peisley [2009] QCA 142, considered

COUNSEL:	C F O'Meara for the applicant (pro bono) M J Cowen QC for the respondent
SOLICITORS:	No appearance for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I have had the advantage of reading the reasons for judgment of McMurdo JA. I agree with those reasons and with the orders proposed by his Honour.

[2] **PHILIP McMURDO JA:** In April 2015 the applicant was sentenced for various offences which he and another had committed in the course of a violent home

invasion. Various concurrent terms were imposed, the highest being terms of eight years' imprisonment with a serious violent offence declaration for an offence of armed robbery, and three counts of wounding with intent to do grievous bodily harm. Each of the offenders was armed with a machete by which three of the occupants of the house were wounded.

[3] The applicant and his co-offender, a man called Winslade who was sentenced at the same time, received identical sentences. The applicant says that his sentences should have been less than those for Winslade, because Winslade had a more serious criminal history and most of the acts of violence in the present matter were committed by him. The applicant also contends that his sentences are manifestly excessive. He applied within time for leave to appeal against the sentences.

[4] Amongst the offences upon this indictment were counts 7 and 10, which charged the applicant and Winslade with sexual assault whilst armed and in company. Each was sentenced to five years upon each of these counts. The applicant, like Winslade, had pleaded guilty to each of the counts and agreed to a statement of facts which was tendered to the sentencing judge. However the applicant now wishes to challenge his conviction for the sexual offences and to that end, on 6 October 2015, he filed an application for an extension of time in which to appeal against those convictions.

The facts of the offending

[5] The applicant, who was represented by counsel, agreed to the sentencing judge acting upon a statement of agreed facts from which the following occurred. Shortly before 7 pm on 4 December 2013, the applicant and Winslade went to a house at which there were present six young people, five of whom lived there. The applicant wore a "skeleton half bandana" around his mouth. They entered through a closed but unlocked door. They began by telling the occupants to gather in the kitchen, including one of the young women who was then undressed in the bathroom. There followed threats and acts of violence over the next 30 minutes before police came in response to a call from neighbours who had heard screams from the house. Wallets and other items were stolen. When police arrived they found the applicant attempting to escape out of a bedroom window.

[6] Each of the offenders was carrying a machete and several of the occupants were wounded by them. Winslade struck one of the young women (B) to her face with the top of the blade of his machete, causing an injury before striking her shoulder with the blade of the machete causing a 2 cm laceration which required stitches. The applicant was present when that occurred. Winslade struck one of the young men to the knee with an overhead swing of the machete blade causing a wound to his leg down to the bone. Each of the defendants taunted the man inviting him to fight. Winslade punched and kicked him before removing other items in the house. The applicant went to strike another of the young women (C) with his own machete but one of the young men tried to defend against that blow with the result that the applicant's machete struck his hand and wounded him with a laceration to a tendon. When one of the women began screaming and one of the men moved to comfort her, Winslade struck him to the right side of the head with the machete blade causing a 10 cm laceration that ran from his right eye around to his ear. Again the applicant was present when that occurred. One of the offenders (although it could not be said which of them) struck C to the leg with the blade of his machete causing a 15 cm wound to her thigh together with a 7 cm laceration over her lower leg.

[7] The agreed facts as to the sexual offences were as follows:

> "Count 7
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> [B] was seated in the kitchen wearing only a towel. Winslade came towards her from behind and said 'I haven't had a root in a while and you are a fresh piece of meat, I might take you here and now'. He ran the blade of his machete up her back to lift her towel in order to look at her genitals. Pryce was present for this and likewise armed. He (Pryce) said 'you girls are lucky we don't rape you, we could'. He spoke about which of the girls present were 'prettier' and said to one of the men present, that they were 'lucky we are not raping your women'."
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> "Count 10
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> Winslade approached [C] whilst yelling at her and pointing his machete at her vagina. She pleaded with him 'please don't'. Winslade rubbed the complainant on the outside of her shorts, to her vagina. During the home invasion, Pryce mentioned to [C] that he 'should rape you, you're pretty aren't you' and he was present for the assault by Winslade."

The sentencing judge's reasons

[8] His Honour took into account the pleas of guilty but said that there was "no real sign of remorse" notwithstanding a letter from the applicant which claimed otherwise. His Honour continued:

> "The offences involved an extraordinary, sustained and gratuitous amount of violence combined with the malicious use of machetes. The victims were terrorised and intimidated. There was no resistance whatsoever to your plan to rob them so the violence was completely unnecessary and quite unexplained. You have each undertaken courses in jail and if you continue to do so then there may be some reasonable prospects of you being rehabilitated."

[9] His Honour said that he had had regard to comparable cases and referred to *R v Amato*[1] and *R v Honeysett; ex parte Attorney-General of Queensland*[2] but commented that each of those cases was less serious than the present one. He then said that he reasoned from a "starting point" of a sentence of 10 years but, having regard to the mitigating factors, the term should be eight years. Noting that the making of a declaration of a serious violent offence was discretionary and commenting that such a declaration should be reserved for "the most serious cases", his Honour concluded that the circumstances of these offences took them "outside the norm for such offences" and that a declaration should be made.

[10] His Honour said that he saw no reason to distinguish between the two offenders, commenting as follows:

> "While Winslade's history is more serious, [the applicant] was on probation at the time. While Winslade was the perpetrator in respect of counts 4 and 9, [the applicant] supported his actions and used the machete in respect of one of the complainants and clearly supported what was happening."

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1 [2013] QCA 158.
2 [2010] QCA 212.

The sexual offences

[11] The applicant was without legal representation when he filed his application for extension of time within which to appeal. The document did not identify any reason for his delay or grounds for the application. Subsequently he has had the benefit of pro bono assistance from Mr S J Thackeray of counsel (who prepared written submissions) and from Mr O'Meara of counsel who prepared further submissions and appeared at the hearing of these applications. It also appears that the applicant's former solicitor, Mr Cagney, assisted by providing counsel with relevant documents.

[12] The applicant's case is that there was a miscarriage of justice by his conviction of the sexual offences because it can be seen that they were not supported by the statements of witnesses in the prosecution case. These witness statements were not tendered in the sentencing hearing or in this court. However the respondent accepts that the content of them is accurately described in Mr O'Meara's written submissions.

[13] The witness statement of the complainant B referred to substantially the same conduct by Winslade as was attributed to him in the statement of agreed facts which I have set out above. It referred to Winslade's action of running the blade of his machete up and down her back although, according to the statement, Winslade was *trying* to use the knife to lift her towel and look at her genitals. That difference is immaterial. What is emphasised for the applicant is that the statement does not refer to the applicant making any comment while this occurred. The only evidence specifically confined to this count 7 was from B. So it is argued that the sentencing judge proceeded upon a false factual basis, namely that the applicant by his words encouraged the assault by Winslade upon B.

[14] In the witness statement of C, the complainant in count 10, Winslade's actions were described consistently with the statement of agreed facts. After Winslade then walked away from her, according to C's statement, the applicant said "You are lucky we are not raping your women" and said to B something such as "Honey, you are fine". The applicant's submission is that according to the prosecution evidence, the words attributed to him in relation to count 7 within the agreed statement of facts were instead spoken after the assault which was the subject of count 10.

[15] The argument also refers to another witness statement in relation to count 10, by one of the men who lived at the house. According to his statement, the applicant approached C saying something like "I should rape you, you're pretty aren't you" and he remembers the two offenders talking about who was the prettier between C and another of the women. He said that the applicant was threatening to rape the girls and saying "Youse girls are lucky that we don't rape you. We could". This witness said that it was the applicant who put his hands between C's legs and rubbed her on her vagina on the outside of her clothes. The evidence of this man was not inconsistent with the applicant's guilt although, it is argued, it was to be disregarded because it wrongly identified the applicant rather than Winslade as the actual assailant. It is then submitted that upon C's account, there was "an issue as to whether there [was] a proper foundation for the charge" which was count 10.

[16] There is no evidence from the applicant to support this application. In particular he does not testify that he was innocent of these offences or provide other evidence to that effect. Nor does he offer evidence to explain his guilty pleas and his agreement to the statement of facts upon which he was sentenced. Rather, his argument is that

upon the evidence available to the prosecution, he could not have been convicted or at least, for count 10, that the state of the prosecution evidence provided him with a prospect of an acquittal.

[17] In *Meissner v The Queen*,[3] Brennan, Toohey and McHugh JJ said:[4]

> "A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty … A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence."

In the same case Dawson J said:[5]

> "It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence."

[18] It may be accepted that, at least for count 7, there are material differences between the agreed statement of facts and the facts according to the complainant's statement. And for present purposes, it may be assumed that the prosecution may have been unable to prove this offence against the applicant upon the complainant's evidence alone. But those circumstances do not make for a miscarriage of justice. Ultimately this was a case where a conviction was secured by the admissions of the applicant. His admission of the offence and of the facts upon which the sentencing judge acted provided an entirely legitimate basis for the conviction and the sentence. The circumstances here are unremarkable, for in many cases a conviction is obtained, or more easily obtained, only by a defendant's admissions.

[19] Therefore the proposed appeal against conviction has no merit. Further there is no explanation for the failure to appeal within time. I would refuse the application for an extension of time in which to appeal against conviction.

Appeal against sentence

[20] The first argument is that the applicant should not have received the same sentences as were imposed on Winslade. One reason advanced by the applicant is that his participation in these offences was less serious. It can be said that most of the wounds

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3 (1995) 184 CLR 132.
4 (1995) 184 CLR 132 at 141.
5 (1995) 184 CLR 132 at 157.

which were inflicted were by the hand of Winslade. But each man went armed with a machete and each used it. On the agreed facts, each was a party to any assault by the other because each was aiding and encouraging the other. For count 11, a malicious act of wounding with intent for which an eight year term with a declaration was imposed, the admitted facts did not identify the actual assailant. In my view there were not significant differences between the conduct of the offenders such that different penalties had to be imposed.

[21] The other matter argued as to the parity principle is the difference in the offenders' respective criminal histories. The sentencing judge was alert to these differences but noted, not irrelevantly, that the applicant was on probation at the time. The differences between their histories did not require a different sentence.

[22] What remains is the argument that the sentences were manifestly excessive. As I have noted, the sentencing judge referred to two cases in this court, *R v Amato* and *R v Honeysett; ex parte Attorney-General of Queensland*, in which lighter sentences were imposed but which, his Honour said, were less serious cases.

[23] In *Amato* the applicant and two others broke into a house occupied by a young couple. The applicant and another in his group were each armed with a double barrelled shotgun. The applicant struck the male complainant with part of the gun whilst the other armed man pointed his gun at the female complainant. The applicant then hit the man with a pool cue causing him to bleed from the head and fall onto a bed. The applicant demanded to know where $40,000 was in the house and continued to strike the male complainant with the pool cue in his face and his back. At one stage the applicant called out to one of his group, who was in another room, to "grab the butcher knife…I'm going to give him a circumcision" and pushed the shotgun into the man's crotch. Whilst the other armed man took the female complainant to a garage where she said her purse was, the applicant continued to hit the male complainant in the head, demanding a sum of money and threatening the man's family and friends if the police were called. The three offenders left having stolen mobile phones, money and other items. The man suffered fractures to two facial bones as well as abrasions and lacerations. The applicant was 29 at the time of the offence and 30 when sentenced. He had a lengthy criminal history which included recent offences of producing a dangerous drug and unlawful possession of weapons and had received a sentence of 15 months' imprisonment from which he was on parole when he committed the subject offences. The sentencing judge reduced what he said would have been a nine year term to seven years to take into account the applicant's plea of guilty and fixed a parole eligibility date at one half of that term less the period of pre-sentence custody.

[24] The application in *Amato* was made on the basis that the sentence was manifestly excessive because the parole eligibility date should have been fixed after one third rather than one half of the effective period of imprisonment. This application was refused. Fraser JA, with whom the other members of the court agreed, endorsed the sentencing judge's summary that the aggravating features of the applicant's offence were as follows:[6]

> "this is an exceptionally serious example of a home invasion and violence; three people, two of you armed, and a terrible beating of somebody in his bedroom while his partner lay cowering on the floor. It was protracted, it was at night, there were threats, it was brazen and it was very violent."

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6 *R v Amato* [2013] QCA 158 at [18].

[25] In *Honeysett*, the offender was aged 19 when he committed offences on successive days against the one victim. On the first day he demanded payment of $20 said to be owing to the offender's girlfriend and when that did not occur he punched the complainant in the face causing him to lose consciousness. On the following evening, whilst the complainant was recovering at home, the offender in company with his brother went to the complainant's house. The offender punched the complainant through an open window and then kicked the front door open, attacking the complainant with the assistance of his brother. The complainant had obtained a stick with which to defend himself but the offender used it to hit him with the consequence that he lost consciousness. He continued to punch and kick the complainant and to choke him and gouge at his eyes. He desisted only when his brother physically restrained him. He admitted if his brother had not stopped him the complainant would probably have died. The brothers then stole the complainant's wallet, phone and watch, leaving him in an unconscious state. He suffered several fractures and lacerations, the fractures requiring surgery. He needed full time care for 12 months after discharge from hospital. The offender received various terms, the highest of which was eight years but with a recommendation for parole after two and a half years for doing grievous bodily harm with intent to do so. He was sentenced to concurrent terms of four years for robbery while in company and armed and with the use of personal violence and five years for breaking and entering with intent to commit an indictable offence and with the use of actual violence.

[26] Honeysett sought leave to appeal on the ground that the sentence of eight years was manifestly excessive. The Attorney-General appealed on the grounds of inadequacy, particularly by the recommendation for early parole. It was contended for the Attorney that a serious violent offence declaration should have been made. By a majority (Fraser JA and Atkinson J, de Jersey CJ dissenting) the sentences were disturbed only to substitute a parole eligibility date for the recommendation for release on parole. Fraser JA described the seriousness of the applicant's offending as arising from these circumstances:[7]

> "Importantly, the applicant committed his most serious offences in the context that the day before he had attacked the same complainant and rendered him unconscious; in that context, the applicant broke into the complainant's home and embarked upon a determined and violent attack; he persisted in the attack after he had rendered the complainant unconscious; and only a fortunate intervention by the applicant's brother halted the attack. The applicant himself anticipated that the complainant might die and, predictably, the complainant sustained serious injuries. The applicant then callously robbed the complainant and left him injured and unconscious."

Fraser JA continued:[8]

> "Taking those matters into account I do not accept that the sentence, though severe, was manifestly excessive. Notwithstanding those factors which operate in the applicant's favour, a term of imprisonment as long as eight years with eligibility to apply for parole after two and a half years, was within the sentencing discretion. However, in my respectful opinion a sentence of eight years imprisonment with a serious violent offence declaration would be too severe and inconsistent with the appropriate range suggested by decisions of this Court."

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7 *R v Honeysett; ex parte Attorney-General of Queensland* [2010] QCA 212 at [33].

8 *R v Honeysett; ex parte Attorney-General of Queensland* [2010] QCA 212 at [34].

[27] Inevitably each case will differ in some way from another. For example in *Honeysett* the offender was very young. But I respectfully disagree with the sentencing judge's comment that each of these cases was less serious than the present one. The outcome here was a much heavier sentence than those imposed in these cases, especially by the serious violent offence declaration. And in *Honeysett*, the eight year term was imposed for the more serious offence of doing grievous bodily harm with intent to do so. In the present case three of the four complainants sustained a wound injury. But the consequences for the complainant in *Honeysett* were more serious.

[28] The respondent's argument relies upon *Amato* and *Honeysett* and also a decision of this court in 2000 in *R v Jones*[9] where the offender, having pleaded guilty, was sentenced to eight years with a serious violent offence declaration for an offence of armed robbery in company in the course of a home invasion. He was then aged 55 years, with no history of violent offences but a long criminal history involving mostly offences of dishonesty. He had spent a good deal of his life in prison. The victims ran a service station in a country town and they lived in an adjoining house. When they closed the station for the night the applicant and his co-offender, who were wearing balaclavas, ran into the house following the couple. The applicant was armed with a sawn off rifle and his co-offender with a knife. The male complainant, a man in his sixties, attempted to fight off the applicant and during their struggle the rifle discharged although not in the direction of either of the victims. During this struggle the applicant called on the other man to help him by knifing the man. The applicant struck the male complainant with a torch several times to the forehead almost causing him to lose consciousness and with a consequence of dizziness still being suffered by the complainant some two years later. The female complainant had a knife pressed against her throat and at one stage received cuts to her hands in trying to grab it. The effects upon the complainants were said to be "shattering" and "devastating". As a result of the episode the couple sold their business at a substantial loss. The applicant initially insisted on pleading not guilty and the matter was listed for trial on several occasions. He did not cooperate with police and never identified his co-offender.

[29] In writing the principal judgment in *Amato*, Fraser JA discussed *Jones*, saying that it was a worse case particularly from the consequences for the victims, the long criminal history of the offender and the fact that his plea of guilty was "very late".[10]

[30] In *R v Peisley*[11] a young man was 22 at the time of the offences when he and another were engaged in a home invasion, the applicant carrying a sawn-off shotgun which he pointed at each of the three men in the house. The applicant struck one of them across the side of his face with the barrel of the gun causing heavy bleeding, the dislodgment of a tooth and the fracture of the man's jaw. He continued to strike that man in the face several times. He turned to another of the complainants, forcing his mouth open and placing the barrel of his shotgun into the man's mouth whilst he tapped the trigger with his finger and his co-offender urged him to shoot. Instead, the applicant struck him in the face with the gun and stole money from his wallet, threatening to kill the man if he complained to police. He was apprehended shortly afterwards and when asked to identify his co-offender he provided a description which was unlike any which had been provided by the complainants. For an offence of armed robbery in company with personal violence he was sentenced to eight years' imprisonment with a declaration of a serious violent offence. That was held not to be

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9 [2000] QCA 84.
10 *R v Amato* [2013] QCA 158 at [14].
11 [2009] QCA 142.

manifestly excessive. But as Holmes JA (as the Chief Justice then was) pointed out, that sentence was imposed in the context of the applicant also being sentenced for another event, in which he had broken into a house occupied by a man with two small daughters and in which a struggle with the man ensued which had left him and his daughters thoroughly traumatised by the event.

[31] In *R v Eveleigh*[12] the applicant and another man went to a suburban house at about 9.30 pm wearing balaclavas and carrying shotguns. They terrorised a couple and a girl who lived in the house demanding money and other items before tying them up with duct tape. They left the occupants on the floor telling them someone would be watching the house for the next 20 minutes and that police should not be contacted or they would return. They cut the telephone line in the house. There were victim impact statements referring to "lasting and severe emotional and financial effects on the victims". For entering a dwelling with intent with the circumstances of aggravation the applicant was sentenced to eight years' imprisonment with a serious violent offence declaration. That sentence was upheld on appeal.

[32] Of the cases discussed thus far, *Amato* and *Honeysett* provide support for the applicant's argument. *Jones, Peisley* and *Eveleigh* support the respondent's argument. Again differences between each of those three cases and the present can be identified but overall the criminality in those cases was not markedly more serious than in the present case.

[33] The applicant's argument relied on two further decisions in this court: *R v Lyon*[13] and *R v Marks; ex parte Attorney-General of Queensland*.[14] *Lyon* was a successful appeal against a sentence of nine years' imprisonment with a declaration of a serious violent offence, for an offence of unlawfully wounding the appellant's former partner with the intent to do grievous bodily harm. They had separated years earlier but lived in the same town. She lived with their young children. After drinking heavily during the course of a day, the applicant decided to go to the complainant's house with a machete. But first he set about sharpening the machete at his house. When he arrived at her house he attacked her with it and at one stage she was pinned against a wall. He swung the weapon towards her but for the most part she was able to avoid it. But she sustained a slash to her face, cuts to her neck and an arm and one to a finger. She suffered other significant physical injuries as well as psychological injuries. She was saved from further injury only by the intervention of their 12 year old son. The conviction followed a trial in which the appellant was acquitted of attempted murder. He was sentenced to a term of nine years with a declaration of a serious violent offence. The Court of Appeal substituted a sentence of seven years' imprisonment but maintained the declaration. In a dissenting judgment, Fryberg J would have substituted a term of eight years and 10 months' imprisonment for the sentence of nine years' imprisonment. This case provides some substantial support for the applicant's argument: the attack with the machete was more deliberate and more dangerous still than in the present case. And that offender did not plead guilty.

[34] *Marks* was an appeal by the Attorney-General against a sentence of five years' imprisonment for an offence of unlawful wounding with intent to do grievous bodily harm. There was no declaration of a serious violent offence. The offender and his brother went to the complainant's house having heard that the complainant had had

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12 [2003] 1 Qd R 398.
13 [2006] QCA 146.
14 [2002] QCA 34.

a sexual relationship with the offender's girlfriend about six weeks earlier. The offender and his brother broke into the house. The complainant described seeing a gun pointed in his direction before he turned and ran. He was hit twice by bullets but was able to seek assistance from neighbours. At hospital he was treated for gunshot wound injuries to his chest and back. He underwent surgery and was hospitalised for six days. He still carried shrapnel from the bullets. Grievous bodily harm was not alleged by the prosecution. The offender was nearly 30 years of age and had some criminal history, including an offence of violence when he and others had set upon an air hostess travelling from Tullamarine Airport by a train at night. The sentence was held to be manifestly inadequate and a sentence of seven years' imprisonment was substituted. The outcome in that case, although from an Attorney-General's appeal, supports the applicant's argument.

[35] This review of the authorities should illustrate the potential for disparity between sentences for cases which are in many respects very similar if not identical. That is unsurprising: when the assessment of the degree of criminality and a determination of an appropriate penalty involve a qualitative judgment, different sentences might be imposed between identical cases (if such could occur), just as "reasonable minds may differ as to the relative weights to be attributed to applicable sentencing considerations".[15] The present sentences, in my view, are heavy but ultimately I am unpersuaded that they are manifestly excessive. Both defendants were armed with machetes and did use them. Their violence ceased only when police arrived. There was no resistance from the victims. Three complainants were wounded. The sentences in *Amato* and *Honeysett* could be described as relatively light in comparison with the present sentences. But that is not to say that the present ones were manifestly excessive.

[36] I would order as follows:

(1) The application for leave to appeal against sentence be refused.

(2) The application to extend time to appeal against conviction be refused.

[37] **JACKSON J:** I agree with Philip McMurdo JA.

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15 *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 at [36].