SUPREME COURT OF QUEENSLAND

CITATION:	*R v Macklin* [2016] QCA 244
PARTIES:	**R** **v** **MACKLIN, Shannon Bruce** (applicant)
FILE NO/S:	CA No 118 of 2016 DC No 111 of 2015 DC No 212 of 2015 DC No 370 of 2015 DC No 372 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Maroochydore – Date of Sentence: 5 April 2016
DELIVERED ON:	30 September 2016
DELIVERED AT:	Brisbane
HEARING DATE:	15 September 2016
JUDGES:	Margaret McMurdo P and Gotterson and Morrison JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Application for leave to appeal against sentence granted.** **2. Appeal against sentence allowed.** **3. Vary the sentences imposed on counts 1, 2 and 3 on indictment number 111/15 by substituting six years imprisonment for seven years imprisonment on each of those counts.** **4. The sentences imposed at first instance are otherwise confirmed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant after arrest on these charges served 11 months of non-declarable pre-sentence custody serving an earlier sentence having breached parole – where the applicant contends that the sentence was manifestly excessive in that the judge failed to apply the totality principle or give sufficient weight to his guilty pleas – where the judge reduced the head sentence by 18 months to reflect mitigating features and the applicant's poor prospects of parole following multiple parole breaches – where the reduction did not adequately reflect the

applicant's guilty pleas and his period of non-declarable pre-sentence custody – whether the sentence was manifestly excessive

Penalties and Sentences Act 1992 (Qld), s 159A

Mill v The Queen (1988) 166 CLR 59; [1988] HCA 70, cited
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, cited
R v Amato [2013] QCA 158, cited
R v Blenkinsop [2007] QCA 181, cited
R v Gills [1996] QCA 34, cited
R v Lewis (2006) 163 A Crim R 169; [2006] QCA 121, cited
R v SBI [2009] QCA 73, cited
R v Woods [2001] QCA 474, cited

COUNSEL:	L D Reece for the applicant D R Kinsella for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **MARGARET McMURDO P:** The applicant pleaded guilty on 20 October 2015 to a five count indictment: burglary with violence while armed in company; two counts of armed robbery in company; unlawfully using a motor vehicle to facilitate the commission of an indictable offence; and unlawfully possessing a weapon to commit an indictable offence. These offences occurred on 9 August 2014. On 25 November 2015 he pleaded guilty to the following counts contained in two further indictments: fraud, breaking entering and stealing, entering premises with intent to commit an indictable offence, breaking and entering premises and wilful damage, unlawful possession of a weapon, and two counts of receiving tainted property. He also pleaded guilty to the summary offences of possession of tainted property and obstructing police. These offences occurred between 3 and 11 August 2014. He was sentenced for all offences on 5 April 2016 to seven years imprisonment for the burglary and armed robbery counts, with lesser concurrent terms of imprisonment on the remaining counts. Pre-sentence custody of 251 days was declared as time already served under the sentence. Parole eligibility was set at 29 January 2019.

[2] He has appealed against his sentence contending that it was manifestly excessive as the judge failed to:

(i) adequately apply the totality principle to the global head sentence; and

(ii) give sufficient weight to the applicant's guilty plea and the lengthy period of non-declarable pre-sentence custody.

The applicant's antecedents

[3] The applicant was 38 at the time of offending and 39 at sentence.

[4] He had a lengthy and relevant prior criminal history commencing in 1996 and extending over nine pages. He was initially sentenced to community based orders but between 1999 and 2008 he was sentenced to increasingly severe terms of imprisonment, mostly for property offences. He also had convictions for drug and street offences.

In November 2002 he was sentenced to four years imprisonment suspended after 18 months with an operational period of four years for housebreaking and other property offences. In April 2006 he was sentenced for further property offences, as well as the breach of the 2002 partially suspended sentence, to five years imprisonment with a recommendation for post-prison community based release after two years. In March 2008 he was sentenced to a further five years cumulative imprisonment for property offences including burglary at night with a circumstance of aggravation of using or threatening violence whilst armed in company. This offence involved an armed and violent home invasion. He was released on parole and returned to custody on a number of occasions before his most recent release on parole on 10 June 2014, about two months prior to his latest offending. He returned to custody on 11 August 2014, completing his 2008 sentence on 28 July 2015. He was on remand for the present offences from 29 July 2015 until sentenced.

The facts of the present offending

[5] An agreed schedule of facts[1] recorded the following. On the evening of Saturday 9 August 2014, the male complainant returned home at about 7 pm. He noticed a small dark blue car parked in the street. After dinner he and the female complainant watched a movie. She had a shower and he fell asleep on the couch. He woke up when something hard hit him on the top of his head. He saw two men whom he did not know. One was the applicant who was armed with a shotgun which he pointed at the male complainant's face. The other was Daniel Willemse who was armed with a crowbar. Willemse walked to the bathroom, tried to open the door and demanded the female complainant's mobile phone. She told him it was in the lounge room and he returned there while she ran to the kitchen and grabbed a knife. The applicant turned and pointed the shotgun at her, telling her that it was "definitely loaded" and not to do anything stupid. She put the knife down and sat next to the male complainant. Both men were agitated pacing back and forth across the room. The applicant tipped out the contents of the female complainant's handbag and took a gold bracelet. The offenders also took the complainants' mobile phones. The applicant repeatedly asked "where is it". The male complainant offered his wallet but the offenders continued searching the house.

[6] The male complainant asked if they were looking for "Julz", who had lived in the house some months earlier. The complainants explained they had nothing to do with him. The applicant called out to Willemse, "Oi brother we got the wrong people mate". The applicant continued to point the shotgun at the complainants stating, "If I find something you'll be in trouble" and "I want Julian, I want the money". After a period during which Willemse stood guard and pointed the shotgun at the complainants, the applicant received a phone call and yelled out "come on brother, we need to get out of here". The applicant checked the complainant's identification, removed $50 from one wallet and the coins from another, apologised saying he needed the money because he was sick, and acknowledged that the complainants were not who he was looking for.

[7] The offenders then demanded the complainants drive them to an ATM. The applicant and the complainants left, taking the male complainant's sports bag which the offenders had filled with stolen property, and three gift boxes of champagne. Willemse stayed at the complainants' home. The applicant told the complainants not to make trouble as the shotgun was loaded and if they were pulled over by police he would shoot. He

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1 Exhibit 9, AB 121 – 125; Exhibit 11, AB 127 – 132.

told the male complainant to withdraw $500 and agreed to return the female complainant's bracelet, telling her not to "tell the other guy or he'll kill me". The male complainant withdrew the $500 and gave it to the applicant who said he would be in trouble for what he had done and that he had family and children. He asked them not to report the matter and again apologised, stating he was sick. He repeated that the complainants were not who he was looking for. The male complainant asked if Julz was selling "heroin or weed" and the applicant replied, "heroin, that is why he owes me the ten grand". The complainants asked for the return of their phones. The applicant told them they were in the boot of the car but as the neighbours had turned on lights the offenders had to leave. He said that if the matter was not reported to police, he would leave their phones in the letterbox by morning.

[8] Once the offenders fled, the complainants found a jewellery box and contents were missing. They went to their neighbours and reported the matter to police.

[9] The male complainant told police that he believed that if he did not follow the offenders' directions they would harm him or the female complainant. She said she was frightened for her life and thought that if she did not comply she could be killed.

[10] On 11 August 2014 when police entered a unit in search of a suspect in an unrelated matter, the suspect and the applicant fled. Police eventually apprehended the applicant and found him in possession of $487. Willemse was another occupant of the unit. Police found the loaded shotgun, illicit drugs, the applicant's wallet and identification, and property stolen from the complainants.

[11] The remaining offences were detected when police found in the unit stolen property and clothing worn by suspects during the commission of some offences. Another co-offender stole the wallet of a newsagency employee. He and the applicant used credit cards from the wallet to purchase items. In the early hours of 7 August 2014, the applicant broke into a pharmacy and stole or damaged approximately $400 worth of stock and stole over $400 in cash. CCTV footage implicated him in the commission of other property offences. He declined to participate in an interview with police.

The submissions at sentence

[12] The prosecutor tendered a report from the Maroochydore Office of Corrective Services.[2] It noted that in light of the applicant's criminal history, his previous and current response to community based supervision, his significant substance abuse problem and the nature and circumstances of his new offences committed while on parole, he was highly unsuitable for future community based supervision orders.

[13] The female complainant provided a victim impact statement[3] outlining the significant detrimental psychological and emotional effects of the offending and her subsequent medical treatment.

[14] The prosecutor submitted that the most serious offences concerned the armed robberies. The applicant was a recidivist offender with an escalating criminal history. He referred to *R v Amato*,[4] *R v Blenkinsop*,[5] *R v Gills*,[6] *R v Woods*,[7] *R v SBI*[8] and *R v Lewis*.[9]

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2 Exhibit 5, AB 118 - 120.
3 Exhibit 10, AB 126.
4 [2013] QCA 158.
5 [2007] QCA 181.
6 [1996] QCA 34.
7 [2001] QCA 474.
8 [2009] QCA 73.
9 [2006] QCA 121.

It was appropriate, the prosecutor submitted, to look at the whole of the applicant's offending and impose a global sentence as the offending all occurred within a very short period of time. There should also be some amelioration to reflect the pleas of guilty.[10]

[15] The applicant's counsel tendered a report from psychologist Mr Peter Perros[11] which noted the following. The applicant was in a 19 year relationship and had three children aged 16, 14 and 8. He had a dysfunctional upbringing and began using speed intravenously and sleeping pills by the age of 14. He claimed to have been sexually assaulted by a priest when he was 14 and this increased his drug taking. He said he suffered injuries to his head and left arm in a 2003 motor vehicle accident. His recent addiction to narcotics resulted in part from self-medication and in part from prescribed pain-relief medication. He claimed to have used heroin since he was 16, and more recently also methylamphetamine. His current offending was linked to his drug habit. When released from prison in July 2014 he moved into a supervised hostel in Townsville to begin a three month rehabilitation program but was excluded for consuming alcohol after two weeks. A warrant issued for his return to prison but he wanted to see his partner and children before handing himself in. He hitchhiked to Caloundra where they were living, but took up with friends and then offended to support his drug habit.

[16] Mr Perros conducted a series of tests which showed the applicant had poor reasoning and problem solving skills. His struggles at school and his poor work history may reflect congenital factors. He may also have sustained a brain injury in the 2003 accident but this did not explain his criminality. His speeding offences may be because he has become more impulsive after the accident. He was in need of a support person for assistance and guidance and cannot be relied on to make sound decisions independently. When eventually released from prison, it may be useful to have a neuropsychological assessment through Centrelink. He was experiencing levels of psychological distress and may have PTSD. He may also benefit from the ongoing support of a clinical psychologist. Left to his own devices, he will relapse and reoffend. With professional support he stood a better chance of rehabilitating. Regular supervision and drug testing is necessary to ensure abstinence and to optimise his rehabilitation.

[17] The applicant wrote a letter to the judge[12] in which he apologised to the victims for his offending. He claimed he had little memory of the alleged crimes because of his drug addled state and was horrified to read of his conduct. He claimed to be ashamed of the example he had set for his family and that he was not by nature a violent person. He had completed a number of courses in custody and was regularly attending Narcotics Anonymous and Alcoholics Anonymous. He had strong support from his partner and children and from his mother, uncle and aunt. He hoped to build a decent life with them on his release from prison.

[18] Counsel tendered a reference from the applicant's partner.[13] She stated that their eldest child had been adversely psychologically affected by the applicant's return to prison. She contended that the applicant was remorseful and genuinely determined to change his life and, for that reason and because he was a loving father, she was prepared to give him one last chance.

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10 T1-30, AB 68.
11 Exhibit 13, AB 133 - 139.
12 Exhibit 14, AB 140 – 142.
13 Exhibit 15, AB 143 – 144.

[19] Defence counsel emphasised that the applicant had pleaded guilty to some counts at an early stage. Whilst some guilty pleas were relatively late, that was explicable by the applicant's lack of memory. He did not engage in any gratuitous violence or property damage and had no prior convictions for offences of violence as a principal offender. All offences occurred over a one week period. He was ashamed, remorseful and aware of the pain and suffering his actions had brought on others. He was fortunate that, despite his past, he had the support of his family and partner. As a direct result of his most recent offending he had been in custody since 11 August 2014, a period of 20 months prior to sentence, much of which was not able to be declared as time served under the sentence. She submitted that a sentence of imprisonment in the range of seven years was appropriate. Given the applicant's criminal history, it was questionable whether he would achieve an early parole release. The objective seriousness of the offending was towards the lower end of the range so that a sentence of imprisonment of six to seven years was appropriate. In recognition of his guilty plea and his unpromising prospects of parole, the head sentence should be reduced to allow for a suspension. This was not a case where it was appropriate to make a declaration that the offence was a serious violent offence and the head sentence of six to seven years should be reduced to five years, suspended beyond the halfway point at three years to give him a certain release date.[14]

[20] In response, the prosecutor submitted that a suspended sentence was not appropriate. It would be an attempt to get around the parole regime when all the material suggested the applicant was in need of parole.[15]

The judge's sentencing reasons

[21] The judge described the applicant's offending as a home invasion which must have terrified the complainants. Drugs were clearly involved. Whilst little personal violence was used, the incident at the house and the trip to the ATM was protracted. The victims were confronted by armed intruders and menaced by a loaded sawn off shotgun. The applicant additionally pleaded guilty to other indictable property offences and summary offences. He was now 39 years old with an extensive and concerning criminal history commencing in 1996. He had been sentenced previously to significant terms of imprisonment for property related offending including in 2008 for an offence which had the hallmarks of a home invasion. Since 2004 most of his life had been spent in prison, with short releases on parole followed by subsequent offending and a return to custody. The present offences were committed about two months after his last release on parole. He was returned to custody on 11 August 2014 to complete his previous sentence and had been on remand since 28 July 2015. Unsurprisingly, he was assessed as highly unsuitable for future community based supervision orders.

[22] The judge referred to the psychological report and that the applicant was fortunate to have the continuing support of his partner and family. His Honour noted the applicant's apology and his wish to return to his family. His drug abuse and consequent re-offending made him an ongoing danger to society and it was this which had separated him from any meaningful family life. His Honour noted the applicant's involvement in courses in prison and his attendance at Narcotics Anonymous and Alcoholics Anonymous. His future would be determined by his ability to remain abstinent.

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14 T1-36, AB 74.
15 T1-45, AB 83.

[23] His Honour determined that, because of the applicant's situation, it was appropriate to take into account the main mitigating factors by moderating the head sentence and setting the parole eligibility at the statutory entitlement date. None of the cases referred to were closely comparable. This was a suitable case in which to impose an effective sentence that reflected the most serious offences and took into account the total criminality involved in all the offending.

[24] The offences committed on 9 August 2014, his Honour concluded, warranted a term of imprisonment in the order of seven years. The additional offending was of a kind for which he had significant criminal history and during that period he was in possession of a loaded sawn off shot gun. To reflect the total offending, a sentence in the order of eight and a half years imprisonment was appropriate. In light of the guilty pleas and the long period of imprisonment served prior to 28 July 2015 which could not be declared as time served under the sentence, the judge moderated the sentence to seven years imprisonment.

The contentions in this application

[25] The applicant accepts that a seven year sentence was an appropriate starting point for the offences of 9 August 2014; that a global head sentence was appropriate to reflect the overall criminality of all his offending; and that this required a reduction to give effect to mitigating features. The applicant contends, however, that the sentence imposed did not adequately reflect totality considerations, particularly the period of non-declarable pre-sentence custody, and the applicant's guilty pleas. The effect of the sentence, the applicant contends was unfairly crushing. The judge was required not merely to take into account the unserved portion of his 2008 sentence from arrest for the present offending on 11 August 2014, but also the fact that he had served the whole of that five year sentence, and the whole of the 2006 five year sentence, and then further pre-sentence custody. The judge should have ensured that the aggregation of past sentences and his present sentence was a just and appropriate measure of the total criminality involved.[16]

[26] Whilst there is no hard and fast arithmetical rule, the applicant contends that this total period of imprisonment should be clearly taken into account either by reduction in the head sentence or in the non-parole period. It is unclear from His Honour's sentencing remarks what effect, if any, he gave to this consideration. An 18 month reduction of the head sentence did not meaningfully take into account the guilty pleas and the totality principle. Following as it did on an effective period of more than 10 years imprisonment, it was a crushing sentence and gave insufficient credit to the mitigating features. An appropriate global sentence was six years imprisonment with parole eligibility at the halfway point.

[27] The respondent accepts that the applicant's non-declarable pre-sentence custody from 11 August 2014 to 28 July 2015 was a relevant matter to be taken into account in the sentencing process, although the weight to be given to it was a discretionary matter, not a mathematical exercise. But the respondent does not accept that the judge gave insufficient weight to the time served on the 2006 and 2008 sentences prior to the applicant's most recent return to custody on 11 August 2014. The judge, the respondent contends, gave sufficient weight to the mitigating factors including the guilty pleas. The sentence was not manifestly excessive and no error was demonstrated.

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16 *Mill v The Queen* (1988) 166 CLR 59, 63; *Postiglione v The Queen* (1997) 189 CLR 295, 307 – 308.

Conclusion

[28] The applicant's offending history is gravely concerning. It demonstrates that he is a recidivist drug addicted property offender whose anti-social behaviour in recent times has escalated to offences of violence. Even accepting the submission that he has no previous convictions for violence as a principal offender, he had a conviction in 2008 for a violent home invasion, not dissimilar to the most serious of his present offences. He offended on many separate occasions over nine days, sometimes whilst armed with a loaded sawn off shotgun, and whilst on parole for similar offending. Deterrence, both general and personal, was an important consideration. The complainants in this latest home invasion must have been frightened for their lives; the gun was loaded and, as the victim impact statement unsurprisingly demonstrates, the offence has had a serious detrimental impact, particularly on the female complainant.

[29] The psychological report tendered on the applicant's behalf provides some insight into his troubled upbringing and the reasons for his disturbing, recidivist and escalating criminal behaviour. He seems to have some redeeming features, demonstrated by his letter of remorse and the continuing support of his family and partner, an apparent display of optimism over experience. It is to his credit that, when sober, he demonstrates some insight into his offending, a desire to abstain from substance abuse and live a pro-social life with his family, and an ability to participate in and complete courses which will assist his rehabilitation. But unfortunately his most recent poor decision-making and behaviour on parole raises real doubts as to whether he will be able to live up to his sober aspirations.

[30] I accept the respondent's contention that the primary judge was right to consider a sentence of about eight and a half years imprisonment as a starting point for the applicant's serious and diverse offending over a short period in August 2014. There was no contention at first instance or in this Court, that a serious violent offence declaration was warranted. That is likely to be the next step, however, if he continues to re-offend. His Honour then discounted that sentence to seven years imprisonment with parole eligibility at the halfway point to reflect the mitigating features of the applicant's guilty plea and that he had been in custody since 11 August 2014, almost 12 months, a period which could not be declared under s 159A *Penalties and Sentences Act* 1992 (Qld). His Honour made clear that he was reflecting the mitigating features by reducing the head sentence rather than setting an early parole eligibility date as the applicant's prospects of release on parole, in light of his past conduct and the unfavourable report from his parole officer, were poor.

[31] In submitting that the judge should have taken into account the totality of the period the applicant had spent in custody since 2004, counsel placed reliance on the following observations of McHugh J in *Postiglione*:

> "The totality principle of sentencing requires a judge who is sentencing an offender for a number of offences to ensure that the aggregation of the sentences appropriate for each offence is a just and appropriate measure of the total criminality involved. In *Kelly v The Queen* O'Loughlin J, sitting in the Full Court of the Federal Court of Australia, applied the following unreported remarks of King CJ in *R v Rossi*:
>
> > 'There is a principle of sentencing known as the principle of totality, which enables a court to mitigate what strict justice would otherwise indicate, where the total effect of the sentences

> merited by the individual crimes becomes so crushing as to call for the merciful intervention of the court by way of reducing the total effect.'

The application of the totality principle therefore requires an evaluation of the overall criminality involved in all the offences with which the prisoner is charged. Where necessary, the Court must adjust the prime facie length of the sentences downward in order to achieve an appropriate relativity between the totality of the criminality and the totality of the sentences.

Recent decisions in the Court of Criminal Appeal have extended the ambit of the totality principle. Those decisions hold that, in order to comply with the totality principle, a sentencing judge must consider the total criminality involved not only in the offences for which the offender is being sentenced, but also in any offences for which the offender is currently serving a sentence.

The most recent statement to this effect was made by Hunt CJ at CL in *R v Gordon*:

> 'When a custodial sentence is to be imposed which will be cumulative upon, or which will overlap with, an existing custodial sentence, the judge must take into account that existing sentence so that the total period to be spent in custody adequately and fairly represents the totality of criminality involved in all of the offences to which that total period is attributable.'

This line of authority is consistent with the recognition of the totality principle found in s 16B [*Crimes Act* 1914 (Cth)] which provides as follows:

> 'In sentencing a person convicted of a federal offence, a court must have regard to:
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> (a) any sentence already imposed on the person by the court or another court for any other federal offence or for any State or Territory offence, being a sentence that the person has not served; and
>
> (b) any sentence that the person is liable to serve because of the revocation of a parole order made, or licence granted, under this Part or under a law of a State or Territory.'

The totality principle is also reflected in s 19AD [*Crimes Act*] which deals with non-parole periods and sets out considerations to be taken into account and orders to be made where the offender is subject to an existing non-parole period in respect of a federal sentence."[17] (Footnotes omitted).

[32] Nothing in McHugh J's observations supports the contention that the application of the totality principle in this case required the judge to take into account the crushing effect of the fact that the applicant had spent most of his life since 2004 in prison

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17 *Postiglione v The Queen* (1997) 189 CLR 295, 307 – 309 (McHugh J).

because of his constant re-offending whilst on parole. The applicant's lengthy periods of imprisonment since 2004 consequent upon his persistent re-offending whilst on parole were relevant to the overall exercise of the sentencing discretion but I do not consider they invoked the totality principle. What the judge was required to take into account in applying the totality principle was the non-declarable pre-sentence custody the applicant served in completing his 2008 sentence following his arrest on the present offences on 11 August 2014.

[33] The question at the heart of this application is whether, in reducing the sentence for all the applicant's present offending from eight and a half years imprisonment to seven years imprisonment with parole eligibility at the half way point, his Honour imposed a sentence which was manifestly excessive in light of the pleas of guilty and the more than 11 months of non-declarable pre-sentence custody.

[34] I am persuaded that a reduction in the head sentence by only 18 months, with parole eligibility at the halfway point, does not adequately reflect the applicant's co-operation with the authorities and remorse shown through his pleas of guilty to such a large number of offences, together with the additional 11 months of non-declarable pre-sentence custody. This is particularly so as the judge was ameliorating the head sentence rather than giving early parole as the applicant was unlikely to receive early parole, given his history. The result is that the sentence imposed was manifestly excessive and that this Court should re-exercise the sentencing discretion.

[35] Like the primary judge, I consider that, as the applicant's prospects of early release on parole are presently slight, it was appropriate to give credit to the mitigating features by imposing a head sentence towards the bottom of the appropriate range rather than by giving an early parole eligibility date. I consider, however, that the objective seriousness of the offending coupled with the applicant's disturbing recidivism and his commission of the present offences whilst on parole required him to serve at least three and a half years further imprisonment before parole eligibility. The unusual combination of circumstances present in this case warranted an effective global sentence of six years imprisonment, but with the unusual feature of parole eligibility later than the halfway point. It will be a matter for the parole authorities to determine when the applicant is released on parole after 29 January 2019. Whilst his prospects of successfully performing parole do not presently appear promising, the community may be best protected if, when he is released, he is subject to a parole order with conditions and support of the kind referred to by Mr Perros in his report.[18]

[36] I would grant the application for leave to appeal against sentence, allow the appeal, and vary the sentences imposed on counts 1, 2 and 3 on indictment number 111/15 by substituting six years for seven years imprisonment on each of those counts. I would otherwise confirm the sentences imposed at first instance.

Orders

1. Application for leave to appeal against sentence granted.
2. Appeal against sentence allowed.
3. Vary the sentences imposed on counts 1, 2 and 3 on indictment number 111/15 by substituting six years imprisonment for seven years imprisonment on each of those counts.
4. The sentences imposed at first instance are otherwise confirmed.

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[18] Exhibit 13, discussed in [16] of these reasons.

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

[38] **MORRISON JA:** I have read the reasons of Margaret McMurdo P and agree with those reasons and the orders her Honour proposes.