SUPREME COURT OF QUEENSLAND

CITATION:	*R v McDougall & Collas* [2006] QCA 365
PARTIES:	**R** **v** **McDOUGALL, Ricky Wayne** (applicant) **R** **v** **COLLAS, Shane Garry** (applicant/appellant)
FILE NO/S:	CA No 83 of 2006 CA No 94 of 2006 SC No 262 of 2006 SC No 614 of 2005 SC No 220 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	22 September 2006
DELIVERED AT:	Brisbane
HEARING DATE:	5 September 2006
JUDGES:	Jerrard, Keane and Holmes JJA Judgment of the Court
ORDER:	**1. In CA No 83 of 2006: Application for leave to appeal against sentence is refused** **2. In CA No 94 of 2006: Application for leave to appeal against sentence is granted** **3. In CA No 94 of 2006: Appeal against sentence is allowed. Delete the declaration that Shane Garry Collas was convicted of a serious violent offence**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – applicant McDougall pleaded guilty to one count of manslaughter, two counts of wilfully and unlawfully damaging a motor vehicle and one count of dangerously operating a motor vehicle – applicant was sentenced to eight years imprisonment for the offence of

manslaughter with a serious violent offence declaration – concurrent but lesser terms of imprisonment were imposed for offences of wilful damage and dangerous operation of a motor vehicle – sentencing judge declared that 706 days spent in pre-sentence custody be deemed time already served – whether the serious violent offender declarations made under s 161B(3) of the *Penalties and Sentences Act 1992* (Qld) rendered the eight year imprisonment sentence manifestly excessive in all the circumstances

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN GRANTED – GENERALLY – applicant Collas pleaded guilty to one count of manslaughter, two counts of wilfully and unlawfully damaging a motor vehicle and one count of dangerously operating a motor vehicle – applicant pleaded guilty to assault occasioning bodily harm – sentenced to eight years imprisonment for the offence of manslaughter with serious violent offence declaration – concurrent but lesser terms of imprisonment were imposed on applicant for offences of wilful damage, dangerous operation of a motor vehicle and the assault occasioning bodily harm – sentencing judge declared that 706 days spent in pre-sentence custody be deemed time already served – whether the serious violent offender declarations made under s 161B(3) of the *Penalties and Sentences Act 1992* (Qld) rendered the eight years imprisonment sentence manifestly excessive in all the circumstances

Penalties and Sentences Act 1992 (Qld), s 161B(3)

Markarian v R (2005) 215 ALR 213; [2005] HCA 25, considered
R v AR [2003] QCA 538; CA No 283 of 2003, 2 December 2003, considered
R v BAW [2005] QCA 334; CA No 116 of 2005, 9 September 2005, cited
R v BAX [2005] QCA 365; CA No 162 of 2005, 30 September 2005, cited
R v Bidmade [2003] QCA 422; CA No 230 of 2003, 26 September 2003, cited
R v Bojovic [2000] 2 Qd R 183; [1999] QCA 206, cited
R v Collins [2000] 1 Qd R 45; [1998] QCA 280, cited
R v Cowie [2005] 2 Qd R 533; [2005] QCA 223, cited
R v Cunningham [2005] QCA 321; CA No 145 of 2005, 29 August 2005, cited
R v DeSalvo (2002) 127 A Crim R 229; [2002] QCA 063, cited
R v Duong, Nguyen, Bui and Quoc [2002] QCA 151; CA Nos 343 of 2001, 338 of 2001, 336 of 2001, 344 of 2001, 30 April

2002, considered
R v Eveleigh [2003] 1 Qd R 398; [2002] QCA 219, considered
R v Lewis [2006] QCA 121; CA No 325 of 2005, 21 April 2006, cited
R v Mitchell [2006] QCA 240; CA No 42 of 2006, 23 June 2006, considered
R v Orchard [2005] QCA 141; CA No 11 of 2005, 6 May 2005, considered
R v Schuurs [2000] QCA 278; CA No 403 of 1999, 14 July 2000, considered

COUNSEL: S R Lewis, with M H McAuley, for applicant McDougall (pro bono)
J R Hunter for applicant Collas (pro bono)
M J Copley for the respondent

SOLICITORS: No appearance for applicant McDougall
No appearance for applicant Collas
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** On 20 March 2006 Ricky McDougall and Shane Collas each pleaded guilty to the manslaughter of Dean Ronald Tennant, who was killed on 13 April 2004 at Currimundi, and to wilfully and unlawfully damaging a motor vehicle on that same day. Mr McDougall and Mr Collas also pleaded guilty to having dangerously operated a motor vehicle on 10 April 2004 at Caloundra, and wilfully and unlawfully damaging a motor vehicle on that day too, and Mr Collas pleaded guilty to an offence of an assault occasioning bodily harm committed on 2 August 2003 at Caloundra.

[2] Both offenders were sentenced on 21 March 2006 to eight years imprisonment for the offence of manslaughter and the learned sentencing judge declared that each had been convicted of a serious violent offence; concurrent but lesser terms of imprisonment were imposed on each for their offences of wilful damage and dangerous operation of a motor vehicle, and on Mr Collas for assault occasioning bodily harm. In Mr McDougall's case, the learned judge activated three suspended sentences, directing that those activated sentences be served concurrently with the eight year term. The judge declared for each offender that 706 days spent in pre-sentence custody from 15 April 2004 to 21 March 2006 be deemed time already served under their respective sentences. Both men have applied for leave to appeal against the sentence imposed for manslaughter, contending that the declaration made under s 161B(3) of the *Penalties and Sentences Act 1992* (Qld) ("the Act") rendered those eight year sentences manifestly excessive in all the circumstances.

The offenders and the offences

[3] Mr Collas was 21 when he committed the offence of assault occasioning bodily harm, 23 when the other offences were committed, and 24 when sentenced. Mr McDougall was 23 at the time of all offences, and 25 when sentenced. Both men had prior convictions, although Mr McDougall had substantially more. The only

convictions Mr Collas had were for unlawful use of a motor vehicle, in 1999, and three offences related to dangerous drugs, incurred in 2002 and March 2004. Mr McDougall had a much more significant criminal record, which included a finding of guilty in the Brisbane District Court in 1999 in relation to an offence of assault occasioning bodily harm; a conviction for dangerous operation of a motor vehicle in the District Court in August 2000; one conviction for possession and one for production of dangerous drugs in 2000; one conviction for supplying dangerous drugs (2002); more convictions in 2002 for unlawful possession of a motor vehicle (three counts), and possession of a motor vehicle with intent to interfere with its mechanism (two counts), dealt with in the Brisbane District Court; convictions in the District Court in February 2003 on two counts of entering premises with an intent to commit an indictable offence and one of attempted stealing; convictions on two counts of possessing dangerous drugs and unlawful possession of weapons, in the Magistrates Court in February 2003; 10 counts of supplying dangerous drugs and three counts of possessing them in July 2003; a conviction for a breach of a probation order (2003); and a finding that suspended sentences previously imposed had been breached (July 2004), in the Brisbane District Court.

[4] Their offending behaviour relevant to these appeals is as follows. Mr Collas committed the offence of assault occasioning bodily harm when he assaulted another young man at about 12.30 am on Saturday 2 August 2003 at the Caloundra RSL. The incident began with his pushing the complainant, who responded, and when Mr Collas pushed the complainant to the ground, Mr Collas kicked him in the stomach and in the head some four or five times. The complainant was taken to hospital; Mr Collas explained his behaviour when interviewed on 3 November 2003 by saying that the complainant was "eyeing him off" and verbally abusing him, and had asked him to fight. Both the complainant and Mr Collas were adversely affected by liquor. His other offences were committed when Mr Collas was on bail for that matter.

[5] On 10 April 2004, 10 days after an appearance in the Magistrates Court when he was convicted of two drug offences, Mr Collas was driving a Commodore, with Mr McDougall in the front passenger seat, and became involved in a dispute with the driver of a Toyota Landcruiser. That driver thought Mr Collas had cut in front of him and followed Mr Collas, tail-gating the Commodore, before overtaking it. McDougall waved a black pole threateningly out of the window at the occupants of the Landcruiser and then Mr Collas overtook it, and then brought his vehicle to a stop. The Landcruiser stopped and Mr McDougall got out and walked towards it carrying a pole, whereupon the Landcruiser driver reversed and drove away. Mr McDougall then took over the driving of the Commodore, and pursued the Landcruiser; when he came up to it he deliberately drove the Commodore into the right hand side of the Landcruiser, and Mr Collas used a baton to hit the Landcruiser. Once again the Commodore stopped in front of the Landcruiser and both Mr Collas and Mr McDougall got out, one carrying a pole and the other a baton, and when the Landcruiser drove past Mr Collas threw that baton at the vehicle, causing the front windscreen to smash.

[6] Three days later they each played a part in events resulting in the death of Dean Tennant. Mr Tennant had driven to a shopping centre at Currimundi to meet a man named Daniel Page, and Mr Collas and Mr McDougall happened to be there too. Words were exchanged between Mr Page driving his vehicle, and Mr Collas driving

the Commodore, and both Mr Page and Mr Collas got out of their cars. So too did Mr McDougall, and then Mr Tennant, the deceased, came upon the scene in his motor vehicle, and was heard to tell Mr Collas and Mr McDougall that "You better get back in your car or you will be fucking killed."[1]

[7] That resulted in Mr Collas and Mr McDougall, at Mr Collas' suggestion, driving back to the house from which they had left to attend the shopping centre, and getting help from a Lyall McGuire, who was later charged with the murder of Mr Tennant. Mr Collas had said "Let's go back and get Lyall", and at the house he said they were going to "sort out" somebody. Mr Collas, Mr McDougall and Mr McGuire all got into Mr McGuire's four wheel drive vehicle, and Mr McDougall was carrying a long black metal bar when he got in. Mr McDougall had asked Mr McGuire for a loan of the four wheel drive, but Mr McGuire decided to come too, and to drive. They went back to the shopping centre, and saw that Mr Tennant was driving his vehicle out of the parking bay. Mr McGuire then drove his four wheel drive over a median strip and rammed his vehicle into Mr Tennant's Commodore. Mr McDougall got out of the four wheel drive, and began hitting Mr Tennant's car with the metal bar, and Mr Collas picked up a torch in Mr McGuire's vehicle, got out of it, and he also began to hit the Commodore.

[8] Mr Tennant alighted from his vehicle and began to move away from it, and (the Crown alleged on the sentence) Mr McGuire then ran over to him and stabbed him once in the chest with a knife. It penetrated his heart, resulting in massive blood loss, and Mr Tennant then began to run away, apparently quite fast. He was chased for a short distance by Mr McDougall, who was armed with the metal bar, and Mr McDougall heard Mr Tennant say "He stabbed me."[2] Mr McDougall returned to Mr McGuire's four wheel drive, and reported that Mr Tennant said he had been stabbed; McGuire replied "I stabbed him all the way."[3] There was nothing in the material put before the sentencing judge to suggest that up to that moment either Mr McDougall or Mr Collas knew or had reason to know Mr McGuire had a knife or had used it. Mr Collas was on the other side of the car when Mr McGuire stabbed Mr Tennant.

[9] Thereafter nobody helped or tried to help Mr Tennant, who managed to run about 200 m from the car park, before he collapsed and died on the roadway. The knife blade had penetrated his chest to a depth of up to 10 cm and the width of the blade would have been up to 3.5 cm. Instead, the offenders sought the help of a tow truck driver to dislodge their four wheel drive vehicle bullbar from Mr Tennant's Commodore. Throughout all this Mr Page was driving around the car park in his Subaru, pointing a replica firearm at the group, who then drove off in the four wheel drive, with the bullbar rubbing against the front tyre. Witnesses recorded the registration number of the vehicle, registered to Mr McGuire, and ultimately all three were apprehended by police.

[10] Mr Collas and Mr McDougall pleaded guilty to manslaughter on the basis of s 8 of the *Criminal Code 1899* (Qld); the Crown alleged that they had an unlawful common purpose of a physical confrontation involving a serious assault on the

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[1] At AR 10.
[2] At AR 11.
[3] At AR 11.

deceased (and Mr Page too, for that matter) using weapons, and that an unlawful killing was a probable consequence of the execution of that plan. By their pleas of guilty they admitted the truth of those propositions, although neither of them actually used a weapon on Mr Tennant or directly did him any harm. The information placed before the learned sentencing judge did not reveal when Mr Collas actually learned that Mr Tennant had been stabbed; there was no information showing that he necessarily learnt that when Mr McDougall returned from chasing Mr Tennant, and described what were Mr Tennant's last words. What the material did show was that when the three offenders left the car park, Mr McGuire promptly divested himself of possession of the four wheel drive and the knife.

[11] The learned sentencing judge recorded that there was evidence that Mr Collas had been an amphetamine user for several years, and had worked with his father installing security alarms and also installing facias for another employer. His work ethic since being held in custody has been very favourably commented upon, and tests showed that he was drug free while in prison. A psychologist's report recorded that Mr Collas has had time to mature and reflect on his life while in prison, and was remorseful.

[12] The judge recorded that Mr McDougall had conducted his own business in the motor industry for a period, and likewise his prison conduct too had been favourably commented upon by authorities. He had expressed remorse in a written personal submission, and had done anger management programs in prison. The judge added that both Mr Collas and Mr McDougall and their families had been the subject of threats since the night of the stabbing, which in Mr McDougall's case resulted in his being put under a form of protection and thereby losing privileges he might have otherwise had.

Serious violent offence declarations

[13] The learned judge determined that their offending behaviour met the criteria for a serious violent offence. The judge said:

> "It was not one that occurred on the sudden in response to something that annoyed them. It was a case where having had the opportunity to cool down, albeit perhaps fairly short, they went away intending to get [reinforcement] to sort out the person who had upset them. It was a compelling inference that this was to entail the infliction of serious level of violence. The plea of guilty implies that force that might lead to death would be used. In those circumstances, it seems to me that it would be unreal not to make a declaration of the offence as a serious violent offence."[4]

[14] The *Penalties and Sentences Act* contains general provisions which prescribe the usual consequences of a sentence of imprisonment in terms of the eligibility of the offender for parole. As part of the process of fixing upon a just sentence, the sentencing judge may, for good reason, order that the offender be considered for parole earlier than would otherwise be the case under the Act.[5] On the other hand, a

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4 At AR 43-44.

5 Section 135 and s 157 of the Act.

sentencing judge may, for good reason, postpone the offender's eligibility for parole pursuant to s 161B(3) or (4) of the Act.

[15] This Court has considered the question of when it is appropriate to make a discretionary declaration that an offender has been convicted of a serious violent offence in a number of cases; and likewise the effect of that automatic consequence when a sentence of 10 years imprisonment or more is imposed in respect of any of the "serious violent offences" listed in the schedule to the Act. Decisions in which the applicable principles have been considered include *R v Collins* [2000] 1 Qd R 45[6], *R v Bojovic* [2000] 2 Qd R 183[7], *R v DeSalvo* [2002] QCA 63[8], *R v Eveleigh* [2003] 1 Qd R 398[9], *R v Bidmade* [2003] QCA 422[10], *R v AR* [2003] QCA 538[11], *R v Orchard* [2005] QCA 141[12], *R v Cowie* [2005] 2 Qd R 533[13], *R v BAW* [2005] QCA 334[14], *R v BAX* [2005] QCA 365[15], *R v Lewis* [2006] QCA 121[16] and *R v Mitchell* [2006] QCA 240[17].

[16] Differences of view and emphasis have emerged in those decisions, with the principal disagreement being as to whether the discretion to declare that an offender has been convicted of a serious violent offence can arise when the circumstances of the case do not take it beyond the "norm" for offences of that type. A secondary issue has been whether the exercise of the discretion has resulted in a "two step" or an "integrated" sentencing process. The joint judgment of the High Court in *Markarian v R* (2005) 215 ALR 213[18] discourages focus on those terms, and encourages the view that a sentencing court take into account all relevant considerations, and only relevant considerations.

[17] As the High Court stated in *Markarian v R*, the sentencing process is an integrated process directed to the determination of a just sentence. The exercise of the discretion conferred by s 161B(3) of the *Penalties and Sentences Act* thus falls to be exercised as part of, and not separately from, the conclusion of the process of arriving at a just sentence.[19]

[18] When determining the appropriate level of a head sentence for an offence which is a serious violent offence if a sentence of 10 or more years is imposed, relevant considerations include:

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6 [1998] QCA 280; CA No 238 of 1998, 18 September 1998.
7 [1999] QCA 206; CA No 4 of 1999, 8 June 1999.
8 (2002) 127 A Crim R 229; [2002] QCA 063; CA No 284 of 2001, 15 March 2002.
9 [2002] QCA 219; CA No 356 of 2001, 21 June 2002.
10 (2003) 39 MVR 470; CA No 230 of 2003, 26 September 2003.
11 CA No 283 of 2003, 2 December 2003.
12 CA No 11 of 2005, 6 May 2005.
13 [2005] QCA 223; CA No 42 of 2005, 24 June 2005.
14 CA No 116 of 2005, 9 September 2005.
15 CA No 162 of 2005, 30 September 2005.
16 (2006) 163 A Crim R 169; CA No 325 of 2005, 21 April 2006.
17 CA No 42 of 2006, 23 June 2006.
18 [2005] HCA 25; S600 of 2003, 18 May 2005.
19 *R v Bojovic* [2002] 2 Qd R 183; *R v Cowie* [2005] 2 Qd R 533 at 537-538, [16]-[19].

- that sentencing is a practical exercise which has regard to the needs of punishment, rehabilitation, deterrence, community vindication, and community protection;

- that courts cannot ignore the serious aggravating effect upon a sentence, of an order of 10 years rather than, say, nine years. The inevitable declaration if the sentence is 10 years or more is relevant in the consideration of what sentence is "just in all the circumstances", in order to fulfil the purpose of sentencing which is prescribed s 9(1) of the Act;[20]

- but that courts should not attempt to subvert the intention of pt 9A of the Act by reducing what would otherwise be regarded as an appropriate sentence;

- with the result, as described by Fryberg J in *R v Eveleigh* [2003] 1 Qd R 398[21], that while a court should take into account the consequences of any exercise of the powers conferred by the pt 9A, adjustments may only be made to a head sentence which are otherwise within the "range" of appropriate penalties for that offence; and

- the court should also take into account the relevant sentencing principles set out in s 9 of the Act.

[19] It is where the making of a declaration is discretionary that a difference in views has arisen about whether declarations are available as a sentencing tool, when the circumstances are not beyond the norm for that offence.[22] The following observations may assist sentencing courts:

- the discretionary powers granted by s 161B(3) and (4) are to be exercised judicially and so with regard to the consequences of making a declaration;

- a critical matter is whether the offence has features warranting a sentence requiring the offender to serve 80 per cent of the head sentence before being able to apply for parole.[23] By definition, some of the offences in the Schedule to the Act will not necessarily – but may – involve violence as a feature, such as trafficking in dangerous drugs or maintaining a sexual relationship with a child;

- the discrete discretion granted by s 161B(3)(4) requires the existence of factors which warrant its exercise, but the overall amount of imprisonment to be imposed should be arrived at having regard to the making of any declaration, or not doing so;[24]

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20 See the joint judgment of McPherson and Keane JJA and McMurdo J in *R v Cowie* [2005] 2 Qd R 533.

21 [2003] 1 Qd R 398 at [111].

22 Jerrard JA can confess to having supported each of the different views at different times; see for example *R v BAW* [2005] QCA 334 and *R v BAX* [2005] QCA 365.

23 See the judgment of McMurdo P in *R v Eveleigh* [2003] 1 Qd R 398 citing the majority view in *R v DeSalvo* (2002) 127 A Crim R 229.

24 See the judgment of Holmes J in *R v Bidmade* (2003) 39 MVR 470.

- the considerations which may be taken into account in the exercise of the discretion are the same as those which may be taken into account in relation to other aspects of sentencing;

- the law strongly favours transparency and accessible reasoning,[25] and accordingly sentencing courts should give reasons for making a declaration, and only after giving the defendant an opportunity to be heard on the point;[26]

- for the reasons to show that the declaration is fully warranted in the circumstances[27] it will usually be necessary that declarations be reserved for the more serious offences that, by their nature, warrant them;[28]

- without that last feature, it may be difficult for the reasons to show that the declaration was warranted;

- where a discretionary declaration is made, the critical question will be whether the sentence with that declaration is manifestly excessive in the circumstances; accordingly the just sentence which is the result of a balancing exercise may well require that the sentence imposed for that declared serious violent offence be toward the lower end of the otherwise available range of sentences;

- where the circumstances of the offence do not take it out of the "norm" for that type, and where the sentencing judge does not identify matters otherwise justifying the exercise of the discretion, it is likely that the overall result will be a sentence which is manifestly excessive, and in which the sentencing discretion has miscarried; probably because of an incorrect exercise of the declaration discretion.

[20] The considerations which may lead a sentencing judge to conclude that there is good reason to make a recommendation apt to bring forward the offender's eligibility for parole will usually be concerned with the offender's personal circumstances which provide an encouraging view of the offender's prospects of rehabilitation,[29] as well as due recognition of the offender's co-operation with the administration of justice.

[21] The considerations which may lead a sentencing judge to conclude that there is good reason to postpone the date of eligibility for parole will usually be concerned with circumstances which aggravate the offence[30] in a way which suggests that the protection of the public or adequate punishment[31] requires a longer period in actual custody before eligibility for parole than would otherwise be required by the Act

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25 *Markarian v R* (2005) 215 ALR 213 at 225 [39].
26 *R v Cunningham* [2005] QCA 321 at [5]; CA No 145 of 2005, 29 August 2005.
27 A requirement stated by McPherson JA in *R v Collins* [2000] 1 Qd R 45 at 56, and approved by the whole court in *R v Bojovic* [2000] 2 Qd R 183 at [29].
28 A proposition established in *R v Collins* [2000] 1 Qd R 45 and repeated in *R v Orchard* [2005] QCA 141.
29 Cf s 9(3)(b) of the Act.
30 *R v DeSalvo* (2002) 127 A Crim R 229 at 231 [10] and 232 [15].
31 Cf s 9(3)(b) of the Act.

having regard to the term of imprisonment imposed.[32] In that way, the exercise of the discretion will usually reflect an appreciation by the sentencing judge that the offence is a more than usually serious, or violent, example of the offence in question and, so, outside "the norm" for that type of offence.[33]

[22] An example of a sentence in which the learned judge did express reasons, upheld on appeal, for the discretionary declaration of a serious violent offence for an offence of manslaughter, is in *R v AR* [2003] QCA 538. The judge referred to a relatively long period of pre-planning, the preparation for commission of the offence, a strong element of revenge, the fact that that applicant was the instigator of the offences and the principal offender, and was responsible for the vast majority of the violence inflicted on the complainant. Weapons were used.

[23] The learned sentencing judge in this matter gave specific reasons for making the declarations in each case, which were sufficient to explain and justify the exercise of the discretion. Although the judge did not describe the manslaughter as beyond a "norm" for that offence, that is an appropriate description of Mr McDougall's offence. The respondent director points to the decisions of this Court in *R v Duong, Nguyen, Bui and Quoc* [2002] QCA 151[34] and *R v Schuurs* [2000] QCA 278[35], to support the argument that such declarations can be made in s 7 and s 8 manslaughter cases, in respect of those who did not do the act which caused death. That is undoubtedly so, but it was appropriate to distinguish between Mr Collas and Mr McDougall, and the head sentence and declaration result, in the case of Mr Collas, in a sentence which is manifestly excessive. He had been behaving aggressively toward others for a prolonged period, but did not attempt to use a weapon on anyone. Importantly, he was not shown to have had the opportunity of realising at the car park how seriously hurt Mr Tennant was. His conduct was not shown to have exhibited that degree of callous disregard for others which makes protection of the community an especially relevant consideration in Mr McDougall's case.

[24] That distinguishes his conduct from the offenders Quoc and Bui in the matter of *R v Duong*, who were present (encouraging and aiding by that presence), and witnessed the remorseless beating, by the co-offenders, that killed their victim. The matters upon which the learned judge relied here were, in Mr Collas' case, not such as to make his offence an abnormally serious example of a s 8 manslaughter. Those aspects of his offending distinguished him from Mr McDougall. They called for a lower head sentence (with a declaration), or the same head sentence without the declaration, when considered together with his much more moderate record of prior convictions.

[25] Mr McDougall's case is different; he chased Mr Tennant with a weapon, and when he learnt immediately after that Mr Tennant had been stabbed, he did nothing to try to help him. An extra degree of callousness was shown in his behaviour, which, when added to the matters to which the learned judge referred, show that the eight year sentence with a declaration did not result, for him, in a sentence that was

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32 *R v Eveleigh* [2003] 1 Qd R 398 at 430-431 [111].
33 *R v DeSalvo* (2002) 127 A Crim R 229 at 230 - 231 [8] - [9], and 232 [16]; *R v BAW* [2005] QCA 334 at [27] - [28].
34 CA Nos 343 of 2001, 338 of 2001, 336 of 2001, 344 of 2001, 30 April 2002.
35 CA No 403 of 1999, 14 July 2000.

manifestly excessive. As it happened, Mr Tennant could not have been saved, but Mr McDougall did not know that. Further, his history of offending in the preceding four years suggested he was unlikely to respond to leniency. He was given a wholly suspended sentence in February 2003 for dishonesty offences; a partly suspended sentence in July 2003 for the 10 offences of supplying drugs, and other drug offences; and a wholly suspended sentence in August 2003 when re-sentenced for motor vehicle offences for which he was originally given probation in 2002.

[26] Accordingly, the application in the appeal by Ricky Wayne McDougall, CA No 83 of 2006 should be dismissed; but in the appeal by Shane Garry Collas, CA No 94 of 2006, the application and appeal should be allowed, and the sentence varied by deleting the declaration that Mr Collas has been convicted of a serious violent offence. The Court will not fix an early parole eligibility date, because the other offences Mr Collas committed make it appropriate he serve a minimum term of four years before being considered for release, and that he then satisfy a parole board that his release is appropriate.