

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Smith* [2019] QCA 179

PARTIES: **R**  
**v**  
**SMITH, William Cody**  
(applicant)

FILE NO/S: CA No 302 of 2018  
DC No 201 of 2018  
DC No 561 of 2018

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Beenleigh – Date of Sentence: 26 October 2018 (Chowdhury DCJ)

DELIVERED ON: 10 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 24 July 2019

JUDGES: Morrison and Philippides JJA and Applegarth J

ORDER: **The application for leave to appeal against sentence is dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was sentenced to concurrent terms of nine years’ imprisonment for a malicious act with intent and three years’ imprisonment for doing grievous bodily harm – where the applicant was sentenced to lesser terms of imprisonment for three summary offences including assault occasioning bodily harm – where the applicant, as part of a premeditated attack and in company, stabbed his ex-wife’s new partner in the leg multiple times causing life-threatening injuries – where the applicant’s ex-wife also sustained severe lacerations to her hand, causing permanent injuries, when she intervened – where the applicant attacked a third victim one month later by punching her in the face, after entering her home in breach of a domestic violence order – where the applicant had an extensive criminal history including violent offences – where the applicant submits that the range of seven to ten years adopted by the sentencing judge was not supported by comparable cases involving serious attacks with potentially fatal consequences – where the cases cited were not closely comparable in terms of offending, antecedents or consequences – whether the sentence was manifestly

excessive

*Attorney-General v Tichy* (1982) 30 SASR 84, cited  
*R v Beer* [2000] QCA 193, considered  
*R v Dwyer* [2008] QCA 117, cited  
*R v Gatti* [2018] QCA 98, considered  
*R v Oakes* [2012] QCA 336, considered  
*R v O'Malley* [2019] QCA 130, cited  
*R v Piper* [2015] QCA 129, considered  
*R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116,  
 cited

COUNSEL: D Caruana for the applicant  
 D Balic for the respondent

SOLICITORS: Guest Lawyers for the applicant  
 Director of Public Prosecutions (Queensland) for the  
 respondent

- [1] **MORRISON JA:** I have read the reasons of Applegarth J and agree with those reasons and the order his Honour proposes.
- [2] **PHILIPPIDES JA:** I agree that the application for leave to appeal against sentence should be dismissed for the reasons given by Applegarth J.
- [3] **APPLEGARTH J:** The applicant, as part of a premeditated attack, stabbed his first victim in the leg multiple times, severed an artery and left his victim with permanent injuries. The applicant's second victim, his ex-wife, sustained grievous bodily harm to her hand as she tried to push the applicant and another attacker away from the first victim. A month after this ferocious attack, the applicant assaulted his third victim when he punched her in the face, occasioning her bodily harm. This offence breached a domestic violence order.
- [4] After pleading guilty, the defendant received a head sentence of nine years' imprisonment for a malicious act with intent (count 1), a concurrent sentence of three years for doing grievous bodily harm (count 2) and lesser concurrent terms of imprisonment for three summary offences. The learned sentencing judge declined to make a serious violent offence declaration, and granted eligibility for parole after three years' imprisonment. Pre-sentence custody of 634 days was declared.
- [5] No specific error is pointed to in the sentencing remarks. The only issue raised by the application for leave to appeal against sentence is whether the sentence was manifestly excessive.
- [6] The applicant's submissions acknowledge that his offending was protracted and serious, that he caused serious injuries to two people and that he had an "unenviable criminal history". However, the range adopted by the learned sentencing judge of seven to ten years is submitted to be not supported by authorities which involved very serious attacks with potentially fatal consequences. Also, the applicant relies on the fact that, whilst his offending caused very serious injuries and risked causing death, stabbing someone in the leg creates less risk of death than stabbing someone in the neck or near vital organs.

- [7] The respondent submits that the circumstances of the applicant's offending are not closely comparable with the cited authorities. His offending involved the deliberate use of a weapon, in company, after being recruited to attack his first victim, and multiple stabs which left permanent injuries. The applicant injured three victims on two different occasions. The sentence of nine years' imprisonment was a global sentence for all of his offending, and was imposed in circumstances where the discretion to impose a serious violent offence declaration was exercised in favour of the applicant. The applicant had a lengthy criminal history, including offences of violence.
- [8] According to the respondent, even if some attempt at comparison is made with authorities which are not closely comparable, the sentence was a proper exercise of the sentencing discretion and is not manifestly excessive.

### **The circumstances of the offending**

- [9] The applicant's ex-wife, GK, was in a relationship with PV. PV had a history of being violent towards GK and there was a domestic violence order in place at the time.
- [10] On 24 December 2016 the applicant and his co-accused, Jamie Lee Ianna, attended at the address of GK's father to purchase drugs. After they left, PV and GK arrived at the unit complex. While PV was in a different unit, GK's father telephoned the applicant and recruited him to attend and assault PV. Ianna accompanied the applicant back to the unit complex.
- [11] Following the telephone call, GK's father told her that he was sick of seeing her being beaten by PV and asked if it was "okay" if he organised for one of his friends, who had just got out of jail, to give him a "slap and tickle". GK told her father not to do this, but he said that it was too late as he had already made the phone call.
- [12] Ultimately, PV and GK went to leave the unit complex. As they approached their car, they saw the applicant and Ianna on the driveway. The applicant had an item of clothing wrapped around his head in an attempt to disguise himself, but the complainants could identify him. As the applicant and Ianna started to come towards PV, GK told him to run and he did so. GK's father yelled "get him" as PV started to run. The applicant and Ianna chased PV, with the applicant yelling "I'm going to get you". PV ran up a road, then into the driveway of a neighbouring unit complex. He then climbed over a fence to head back towards his car. By this time GK was in the driver's seat, but the car would not start. PV jumped into the front passenger seat, and tried to close his door. However, he was prevented from doing so by Ianna. Ianna kicked PV on the left side of his face. The applicant, who was behind Ianna, produced a knife. While Ianna was punching PV to the head, the applicant stabbed PV multiple times in his left leg, which was hanging out the passenger side door.
- [13] The stabbing severed an artery in the lower left leg, which caused immediate and uncontrolled blood loss.
- [14] As the applicant was stabbing PV, GK reached over to try and push the applicant and Ianna away from PV. In doing so, she was severely lacerated on her left hand by the applicant's knife. The lacerations severed tendons in her hand.
- [15] At this point, Ianna told the applicant that he had "gone too far". The applicant went to hit PV again, but Ianna stopped him. In doing so, Ianna's hand was lacerated by the knife.

- [16] The applicant fled from the scene. PV rolled out of the car and onto the ground. GK also got out of the car and collapsed on the ground.
- [17] Emergency services arrived a short time later. PV was transported to hospital with life threatening injuries and underwent emergency surgery to repair his severed artery. He was found to have a number of other injuries to his blood vessels. He underwent complex surgery and was deemed to have compartment syndrome. As a result, he had to undergo four left leg compartment fasciotomies.
- [18] GK was transported to hospital where her injuries were treated. Her wounds were closed prior to expected surgery. However, she left hospital before tendon surgery could be undertaken. Injuries to her tendon meant that she could not move the fingers on her left hand properly and she reported loss of sensation, consistent with nerve damage to her left index finger.
- [19] PV's injuries were more serious. His physical injuries required him to spend 12 weeks in hospital. Before the attack, he had worked as a concreter for 17 years, earning a good income. As a result of his injuries he could not work and was on Newstart, being paid \$560 per fortnight. He struggled to get by on that small income. He also was affected by frustration and fear of going out in public by himself.
- [20] PV's life was completely transformed by the attack. His physical injuries include nerve damage and he is unable to wear shoes most of the time. He cannot return to the work he once did. He feels isolated and experiences nightmares, anxiety and depression.
- [21] By way of overview, the attack on PV on 24 December 2016 occurred when the applicant was recruited to inflict violence on him. The applicant welcomed the opportunity to attack the new partner of his estranged wife. Although GK had experienced violence at the hands of PV, the applicant's actions were not some act of selfless chivalry. They were instigated and persisted in at the instance of the applicant's drug dealer. The applicant attacked his first victim in company and with a knife. His victim was vulnerable, with his leg protruding out of the car. The knife attack was persistent and inflicted multiple injuries. As a result of the persistence, a second victim suffered grievous bodily harm. The attack only stopped when the co-accused intervened, and he sustained injuries as a result. The applicant's first victim sustained life threatening injuries and significant life-long consequences. The second victim suffers permanent injuries as well, though not nearly as severe as the first victim.
- [22] On 26 January 2017 the applicant attacked his third victim. A domestic violence order had been issued on 1 June 2016, requiring the applicant to be of good behaviour towards that complainant and not commit any domestic violence towards her. He was also prohibited from approaching to within 100 metres of her at any place. In breach of that order the applicant attended the complainant's address at 4 am, entered her unit and spoke to her for about an hour. At about 5 am he walked towards her and started punching her in the face. This victim sustained a swollen and cut lip, pain and bleeding. She also suffered a swollen left cheek as a result of the assault. The applicant left the premises after she retreated upstairs and into a bedroom. The victim was taken to hospital by paramedics. The next day the

applicant again breached the domestic violence order when he verbally abused the complainant in the street.

- [23] The applicant's conduct on 26 and 27 January led to three summary offences: two breaches of a domestic violence order and a charge of assault occasioning bodily harm. The applicant received concurrent sentences of 12 months' imprisonment for the assault occasioning bodily harm and six months' imprisonment for each contravention of a domestic violence order.
- [24] The applicant spent 634 days in custody between the date of his arrest (30 January 2017) and the date of being sentenced. He pleaded guilty on 30 August 2018 to the two counts on the indictment and pleaded guilty on 26 October 2018 to the summary offences.

### **Antecedents**

- [25] The applicant was 37 at the time of the offending and 39 at the time of sentence. He had an extensive and serious criminal history, including violent offending in both Queensland and New South Wales. His history included domestic violence dating back to 1998, when he head butted his then partner twice. Seven months after being sentenced he committed an armed burglary involving the home invasion of the 57 year old complainant. The applicant was present with two others and was armed with a baseball bat. In 2003 he again breached domestic violence orders. He committed further offences of violence in 2004. He was sentenced by the District Court in 2005 for three offences of assault occasioning bodily harm. These included attacks on a pregnant woman who was holding a child at the time. He also stabbed his father who came to the defence of the woman. He was sentenced to three years' imprisonment, to be suspended after serving 15 months.
- [26] His record included numerous breaches of domestic violence orders over many years. In 2011 he threatened his then-wife (the same victim as Count 2) with scissors, in breach of a domestic violence order. He was sentenced in 2012 to 12 months' imprisonment with a non-parole period of three months. In 2014, he committed seven breaches. These also related to the same victim as Count 2. On 13 July 2016 he was sentenced in New South Wales to two months' imprisonment for assault occasioning bodily harm. That offence was committed in breach of a domestic violence order and involved threatening his partner with scissors, threatening to kill her and punching her, causing her to break her nose.
- [27] His criminal history included drug offences and dishonesty offences.
- [28] The applicant had a disadvantaged upbringing. His family circumstances were dysfunctional. He did not see his mother after he was 13 years of age. He saw violence throughout his childhood. He ran away from foster homes, and left school at Year 8. His father, with whom he stayed in contact, was a member of a motorcycle gang. Despite the many difficulties in his life, the applicant became a boilermaker and there were periods of time when he was able to work full time. He was married to GK for about 10 years and they have four children aged between four and seventeen.
- [29] Whilst in custody on remand he was waitlisted for courses and worked in responsible positions in cleaning and maintenance. During 12 months of his pre-sentence custody he became the carer of his father-in-law (the drug dealer who had

recruited him for violence on 24 December 2016). That man was ill and the applicant became his day-to-day carer. The applicant was regarded by the authorities as a respectful and responsible prisoner.

### **Submissions and sentencing remarks**

- [30] At the sentencing hearing the prosecution's ultimate submission was for a sentence in the order of nine years' imprisonment. Given the acts of violence and the injuries they caused, it was further submitted that it was open to the learned sentencing judge to make a serious violent offence declaration.
- [31] Defence counsel at the sentencing hearing contended for an overall sentence in the vicinity of seven to seven and a half years' imprisonment. The making of a serious violent offence declaration was submitted to be not appropriate, but the concession was made that, in the circumstances, the parole eligibility date might be slightly longer than the one third mark.
- [32] The learned sentencing judge canvassed the facts, the applicant's antecedents and the authorities that had been cited to him. Having done so, he concluded that the appropriate range was one of seven to ten years' imprisonment. In deciding whether to make a serious violent offence declaration, the judge had regard to the serious violence that was inflicted, the existence of planning and premeditation and the "vigilante justice" aspect of meting out extreme violence. Regard also was had to the applicant's serious history of violence, and the consequences of making a serious violent offence declaration. Despite the serious nature of the offence, the sentencing judge was not satisfied that a declaration should be made. As noted, a head sentence of nine years' imprisonment was imposed. Count 2 attracted a sentence of three years' imprisonment and the most serious summary offence (assault occasioning bodily harm) attracted a further concurrent sentence of 12 months' imprisonment.

### **The applicant's submissions to this Court**

- [33] The applicant contends that the range adopted by the learned sentencing judge of seven to ten years was not supported by the authorities of *R v Gatti*<sup>1</sup>, *R v Piper*<sup>2</sup>, *R v Oakes*<sup>3</sup> and *R v Beer*<sup>4</sup>, being cases which involved serious attacks with potentially fatal consequences, resulting in an effective head sentence of less than eight years. Even allowing for the sustained nature of the applicant's attack, his criminal history and the presence of two other victims, a range extending as high as 10 years is submitted to be not supported by the authorities.

### **Manifest excess and comparable cases**

- [34] Appellate intervention is not justified simply because the sentence is markedly different from other sentences that have been imposed in other cases.<sup>5</sup> What is called "the range" is no more than information about sentences that have been imposed in comparable (but not identical) cases. The range is the historical fact that

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<sup>1</sup> [2018] QCA 98.

<sup>2</sup> [2015] QCA 129.

<sup>3</sup> [2012] QCA 336.

<sup>4</sup> [2000] QCA 193.

<sup>5</sup> *R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116 at [15].

there has been a general pattern of sentencing over a particular period.<sup>6</sup> As Bradley J (with whom Gotterson and McMurdo JJA agreed) stated in *R v O'Malley*<sup>7</sup>:

“Past decisions in other cases are not determinative of the sentence in this case and they do not set a “range” of permissible sentences. However, they may assist in understanding how the various relevant factors should be treated in deciding the sentence.”

- [35] Comparable cases are of most use where their facts, both in terms of offending conduct and the subjective circumstances of the offender, are closely comparable. Where cases differ, both in terms of aggravating and mitigating circumstances, their utility is reduced. For example, another case may involve a more serious act of violence, which was committed by a person with a far less serious criminal history than the current offender, or no criminal history at all. The existence of points of distinction, some of which favour the offender and others which do not, cannot be treated as completely balancing each other out, so that the case is treated as closely comparable and justifying the same or a similar sentence.

### **The cases cited as comparable cases in this matter**

- [36] The cases cited to the learned sentencing judge and to this Court are not closely comparable in terms of offending, antecedents or consequences. The following discussion seeks to support that conclusion, rather than grade criminality by a close comparison of aggravating and mitigating factors. An approach which seeks to grade the criminality involved in cases by a close comparison of aggravating and mitigating circumstances, as if there is only one correct sentence, is to be deprecated as involving the illusion of a degree of precision which is both unattainable, and, in truth, alien to the sentencing process.<sup>8</sup>

### ***Gatti***

- [37] In *Gatti*,<sup>9</sup> the applicant pleaded guilty to unlawful stalking with violence in contravention of a domestic violence order, burglary with violence whilst armed, and malicious act with intent to cause grievous bodily harm. The complainant was his former partner, whom he stalked for two months after she ended their relationship. One morning, the applicant attended the complainant's unit with a fishing knife and broke into her house. He stabbed her, once, under the breast and struck her in the head. The complainant underwent surgery for a collapsed lung and spent four days in hospital. The applicant had a criminal history consisting largely of driving and dishonesty offences, but including breaches of domestic violence orders and an assault conviction. He had been sentenced to periods of actual imprisonment on eight occasions. The sentencing judge accepted that at the time of the offence, the applicant was in a “very poor mental state” and met the diagnostic criteria for severe major depressive disorder with anxious distress. The sentencing judge observed the applicant had shown some insight into his offending and had written a letter of apology to the complainant. He had also entered an early guilty plea. The effective sentence of seven and a half years' imprisonment, with parole eligibility after serving one third, was not disturbed on appeal.

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<sup>6</sup> Ibid.

<sup>7</sup> [2019] QCA 130 at [77] (footnote omitted).

<sup>8</sup> *R v Dwyer* [2008] QCA 117 at [37].

<sup>9</sup> [2018] QCA 98.

**Piper**

- [38] In *Piper*,<sup>10</sup> the applicant pleaded guilty to malicious act with intent, which was accepted in respect of an indictment that included attempted murder as an alternate count. The applicant was separated from his wife. His wife and a male friend were at a bar. The applicant believed, mistakenly, that they were in a romantic relationship. He entered the hotel and stabbed the man six times. The complainant sustained a serious, life-threatening wound to the side of his neck. He lost a significant quantity of blood and spent three or four days in intensive care. While he recovered physically, he experienced continuing psychological difficulties. The sentencing judge noted the attack was premeditated and in breach of a domestic violence protection order. The applicant's plea was entered after a jury was empanelled for his trial. To his credit, the applicant had desisted from the attack and thrown the knife away, but this only occurred when a bystander sought to intervene. He cooperated with police as to his apprehension and the location of the weapon, and was remorseful. He had no criminal history, a good work history, performed well in custody and was suffering from depression at the time of sentence. On appeal, the head sentence of seven years' imprisonment was upheld but the applicant was ordered to be eligible for release after serving two and a half years, rather than three years, to reflect his late plea of guilty and his remorse.

**Oakes**

- [39] In *Oakes*,<sup>11</sup> the applicant was convicted after a trial of one count of malicious act with intent. He was acquitted on the alternative charge of attempted murder. The complainant was his ex-partner. They lived together with their children but were separated. The complainant had recently become engaged to another man. The complainant was in her bedroom with her young son in the bed with her. The applicant entered the room on the pretence of saying goodnight to his son, but began trying to speak to the complainant about her new relationship. As he neared her, he attacked her with two steak knives. The attack was sustained. The complainant suffered lacerations to her arm, torso, back, thigh, face, hands and fingers. Another son, who was twelve, stopped the attack. Most of the complainant's injuries were superficial and healed without lasting symptoms. However, she required surgery to repair tendon and nerve damage on two fingers, was hospitalised for five days and required extensive follow-up treatment. The applicant was highly emotional and intoxicated at the time of the offending. He had a good work history and a moderate criminal history that did not show a tendency to violence. The sentence of seven years' imprisonment with a serious violent offence declaration was upheld. Of particular relevance was the fact the offending took place in the presence of a young child and that the assaults were premeditated and sustained.

**Beer**

- [40] In *Beer*,<sup>12</sup> the applicant was acquitted, after a trial, of attempted murder but convicted of causing grievous bodily harm with intent. The complainant's step-daughter lived with the applicant's son in a downstairs flat under the applicant's home. She ended their relationship. The complainant was peacefully assisting his stepdaughter to remove belongings from her former home when he was stabbed by

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<sup>10</sup> [2015] QCA 129.

<sup>11</sup> [2012] QCA 336.

<sup>12</sup> [2000] QCA 193.

the applicant with an oyster knife. He was stabbed once in the throat and twice in the abdomen. The complainant was hospitalised for six days and required surgery. He recovered physically, except for some difficulty swallowing. The applicant was aged 60 at the time of the offending. His criminal history included dishonesty offences and convictions for assaulting police and assault occasioning bodily harm, but he had committed no like offences for almost 25 years. The sentence of eight years' imprisonment with a serious violent offence declaration was set aside, and a sentence of seven years' imprisonment imposed.

[41] In summary there are significant points of distinction between this case and the four cases which have been cited. The points of distinction include:

- the criminal history of the offender;
- the attack in this case was in company;
- the severe and permanent consequences of the stabbing on the first victim; and
- in this case there was more than one victim.

### **The potential for fatal consequences and actual consequences**

[42] The applicant's submission that, whilst his offending caused very serious injuries and was undoubtedly serious, it was not as inherently dangerous as stabbing the neck or near vital organs should be accepted. The risk of death existed because of the significant possibility that one or more of the stabs would sever a major blood vessel. Still, the relative risk of causing death from stabbing in the leg compared to a stab directed at the neck or heart should be recognised as one of many factors.

[43] It cannot be said that the applicant would have stabbed PV in the neck, head or chest if the opportunity had presented itself. As matters transpired, the only part of PV's body which the applicant could stab was his left leg, which was protruding out of the car. The victim was vulnerable to being stabbed in the leg.

[44] The applicant's ferocious and persistent knife attack to his victim's leg created a significant risk that the victim would bleed to death. The prompt arrival of emergency services avoided that consequence. However, the actual consequences to the applicant's victim have been severe and enduring.

[45] In summary, the first victim in this case sustained different injuries to the victims in other cases, some of whom were stabbed in the neck or body. In this case, there were multiple stab wounds, and this is a point of distinction from a case involving a single stab like *Gatti*. The risk of serious injury was high. Grievous bodily harm was intended and life-threatening and life-altering injuries were in fact sustained.

### **A head sentence to reflect the applicant's overall criminality**

[46] Little is to be gained by seeking to state or restate a range based on the cited cases, some of which concerned single stab wounds by an offender who did not have the applicant's history of violence or a similar criminal history, or superficial wounds inflicted by an offender with a moderate and non-violent criminal history.

[47] A significant point of distinction is that this case involves three victims of the applicant's violence, which was inflicted on two different occasions.

- [48] The offending on 24 December 2016 might be characterised as a single course of criminal conduct which comprises two technically identified crimes.<sup>13</sup> The first crime was intended to cause grievous bodily harm, while the second was not. Still, two victims suffered permanent injuries.
- [49] The further offence of violence on 26 January 2017 was a separate invasion of the community's right to peace and order, and created a third victim. It might have warranted a consecutive sentence,<sup>14</sup> but neither party contended for such a course. The sentencing judge was required "to use the various tools of analysis to mould a just sentence"<sup>15</sup> for two courses of criminal conduct on different dates. The imposition of concurrent sentences was an appropriate course. Where concurrent sentences are imposed "there is the danger that the primary term does not adequately reflect the aggravated nature of each important feature of the criminal conduct under consideration".<sup>16</sup> The learned sentencing judge avoided that danger.
- [50] His Honour's statement that the appropriate range was one of between seven and ten years necessarily recognised that the stated range had to reflect the applicant's violent criminal conduct on two different occasions which resulted in three victims. When regard is had to the range of sentences in cases that were not closely comparable, and which did not involve multiple victims of violence perpetrated on different dates, the sentencing judge's statement of the appropriate range was appropriate for the different circumstances of this case. It was not a statement of the range appropriate to a case in which there was a single stab wound or even multiple stabs to a single victim.

#### **Was the head sentence of nine years manifestly excessive?**

- [51] It is only when the Court of Appeal is convinced that the sentence is definitely outside the scope of appropriate sentencing discretion that it is ever justified in exercising the discretion to resentence on the basis that the sentence was manifestly excessive.<sup>17</sup> The sentence imposed in this case was not outside the scope of appropriate sentencing discretion for the applicant's overall criminal conduct which included:
- a premeditated attack for which he was recruited;
  - persistence in inflicting multiple stab wounds to the initial victim, whose leg was vulnerable to that attack;
  - an additional victim who tried to ward off an attack by two offenders upon the primary victim;
  - life-threatening injuries and life-altering consequences to the primary victim; and
  - a separate, cowardly assault occasioning bodily harm a month later and two breaches of domestic violence orders in respect of that third victim.
- [52] Because of the applicant's criminal history, personal deterrence was a significant factor. General deterrence required a substantial sentence because of the premeditated

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<sup>13</sup> *Attorney-General v Tichy* (1982) 30 SASR 84 at 93.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116 at [14].

nature of the attack, in company, and the vulnerability of each of the victims. The only significant mitigating factors were the applicant's timely pleas of guilt, his prejudiced upbringing and his good behaviour in custody. These were appropriately reflected in the parole eligibility date.

- [53] The applicant's submission to the sentencing judge that the appropriate head sentence was in the vicinity of seven to seven and a half years was an ambitious one, having regard to the cited cases, the objective circumstances of the offending in respect of three victims over a one month period and the applicant's criminal history. The submission, however, recognised that if the sentencing judge did not make a serious violent offence declaration the parole eligibility date might be later than the one third mark. If the learned sentencing judge had acceded to imposing a head sentence of seven and a half years, and ordered parole eligibility after 40 per cent, then there would have been a non-parole period of three years. This was the non-parole period in fact imposed.
- [54] None of the cases cited to the sentencing judge or to this Court are closely comparable. The nine year head sentence, with parole eligibility after three years, is not markedly different from other sentences which have been imposed in broadly comparable cases. Even if it was, that fact alone would not justify appellate intervention.<sup>18</sup> The applicant has not shown that the head sentence, with parole eligibility after serving one third of that sentence, is manifestly excessive. I would order that the application for leave to appeal against sentence be dismissed.

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<sup>18</sup> At [15].