

# APPENDIX TO CHAPTER EIGHT

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## Sentencing

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## Sentencing

### 1. Sentencing: Comments by the Hon Justice Murray

“As to sentencing, there is, of course, the well-known difficulty which may arise in remote areas in respect of non-custodial dispositions which involve supervision in the community, but these are problems which in such areas affect non-Aboriginal persons as much as they do persons of Aboriginal descent. Further, a sentence of imprisonment or other detention may, as you know, in some cases be a more severe punishment to an aboriginal person, particularly if it involves not only incarceration, but transfer out of the prisoner’s own country. The courts well recognise such matters as being valid grounds for leniency, but the matter remains one to be dealt with in the exercise of the discretion of the sentencing judge.

I am also inclined, as the authority of decided cases supports, to treat more leniently a person who has suffered or will suffer tribal punishment, but I always make clear the fact that I do not condone the infliction of such punishment, particularly if it involves acts which are criminal in character or otherwise contrary to the law. I do not amend a punishment so as to reduce it below that which, in my judgment, the law would otherwise require, for the express purpose of permitting the early release of a convicted Aboriginal person so that he or she might voluntarily submit themselves to acts of tribal punishment. It would very often be the case that to do so would, in my opinion, involve the court in condoning an unlawful activity.

In passing sentence I would, of course, in the remarks I make in open court, make it clear that I have relied upon any special factors such as those mentioned above. Otherwise, when passing sentence upon an Aboriginal person, as in the case of every other accused person, I try always to bear in mind that the sentencing remarks are primarily directed to the convicted person before the court, to his or her victim and to his or her family and community. I try therefore to speak in terms which I hope those persons may understand so they will know upon what basis the court has acted to impose the sentence which has been passed.”

## **2. Sentencing: Comments by the Hon Justice Templeman**

“[I refer] to the sentencing of Aboriginal persons convicted of serious offences. I note that in your template you refer to discussion of charges arising from the carrying out of traditional punishments. There is, however, the other aspect of traditional punishment; the extent to which the likelihood of such punishment being carried out should be taken into account in sentencing the offender.

Obviously a person who administers traditional punishment is guilty of an offence. However, the reality is that traditional punishments are meted out and may involve serious injury to the victim.

My personal view is, that, in sentencing an Aboriginal offender, it is appropriate to acknowledge the fact that there is likely to be a traditional or tribal punishment; assuming, of course, that this is established. It is a matter which I would ask a community corrections officer to consider when preparing a pre-sentence report. I appreciate that this may be seen as condoning assaults. However I consider it wrong to ignore the reality.

In the case to which I referred, above, I sentenced the young woman to a community-based order because she had already spent a considerable time in prison awaiting trial and because it was likely that she would receive traditional punishment. The Crown did not appeal.”

### **3. Sentencing: Comments by the Hon Justice Owen**

“I attach my sentencing notes in relation to a 34 year old Aboriginal man [R] whom I sentenced recently. It is fairly typical of the way I sentence Aboriginal people. I always do it in writing so that their lawyer can go through it with them at leisure. You will note a few things:

- i. The word ‘Aboriginal’ does not appear.
- ii. There is an oblique reference to what was a very important but culturally-sensitive issue: the death of his father. The old man had been killed as tribal punishment. This is at the root of the offender’s problems. He cannot identify with Aboriginal law because he believes that his father was wrongly treated. I thought it was very important for the offender to know that I had taken it into account but I did not wish to go into culturally-sensitive areas. He also feels that the white man’s law has treated him unfairly (a typical attitude) and this has deepened his identity crisis.
- iii. You will note also my recommendations to put this man in touch with the old people to help him work out his problems. I use this quite a lot.”

#### 4. Extracts from Sentencing Remarks: the Hon Justice Owen

[The offender [R], an Aboriginal male aged 36 years, was convicted by a jury of one count of aggravated burglary and one count of armed robbery in [Town A]. Five days later he was convicted by a jury of one count of aggravated burglary, one count of armed robbery and one count of attempted armed robbery in [Town B]. The two sets of convictions arose from separate incidents.]

##### **Owen J:**

[His Honour set out the facts giving rise to the convictions and the penalties which were applicable, and the need for specific and general deterrence in relation to offences of these types.]

“I now turn to matters personal to you that will have an effect on the sentencing process. At the time of the offences you were 34 years of age. You are now 36 years of age. You were the third of eight children. Your father died when you were about 12 years of age and although your mother tried valiantly to look after her children she had her own problems and for a period of two years or so there was a lack of parental supervision and care and you began to steal and commit other offences. You are single but until March 2000 you had been in a 10 year de facto relationship that produced three children. You have no contact with your de facto or the children. You have a 20 year old daughter from a previous relationship and have some contact with her.

I am told that the circumstances of the death of your father (which I do not wish to discuss on the public record) and of the breakdown of your most recent relationship have had a profound effect on you. The latter led to you attacking your former de facto with a machete, for which you were charged with unlawful wounding. I have seen references from [TW], [NK] and [SD] which all attest to the great esteem in which your father was held and which confirm what you have said about the traumatic effect which his death had on you. I have also read letters from your mother and sister. They are to the same effect. They also show that you retain strong family support. This will be important to you as you try to rebuild your life. The tragedy of your life is brought out in a comment made by your mother, “if his father was around you would not have heard his name in a court room but on a football field”.

You have very little formal education. You attended primary school but, apart from intermittent studies while in various correctional institutions, have had very little schooling at secondary level. You have had virtually no employment history. I understand that you felt traumatised by the death of your father and that this disrupted any chances you had of going on with your education.

It is apparent that you have a very serious substance abuse problem. You have a long history of alcohol abuse and commenced using benzodiazapines from the age of 17 years, which you say is your drug of choice. You have also used cannabis, heroin, amphetamines, LSD, Ecstasy and inhaled volatile substances. I have had the advantage of a thorough

and comprehensive pre-sentence report and psychological report. The author of the pre-sentence report says that you have previously completed substance abuse counselling but that while you were able to “verbalise” what actions you needed to take and the outcomes you wished to achieve, there had been little real desire to rid yourself of the use of illicit drugs.

Your prior criminal record is bad. It can be summarised in this way. From 1977 to 1981 (as a juvenile) you appeared before courts on 63 charges. Between 1983 and 1998 the adult courts saw you on 111 charges. Most of the offences were property related but they also include assaulting a public officer, assault occasioning bodily harm, unlawful wounding, stealing with violence and firearms offences. There has been an escalation in the seriousness of the offences and, perhaps inevitably, you have now committed crimes which carry life imprisonment.

It is clear that your constant use of benzodiazapines has been a major contributing factor to your continual unlawful behaviour. You admit that you were under the influence of those substances at the time when you committed these offences and that you were after money to buy more drugs, and did so. This may be an explanation for your offending behaviour but it is not an excuse.

It is an extremely sad fact that, in approximate terms, you have spent 18 of the last 23 years in detention or in gaol. This illustrates the point.... that imprisonment achieves virtually nothing other than to exact some form of retribution and transitory incapacitation. What it does achieve is a hardening of the attitude of the offender and the completion of his or her “education” in the ways of crime. It also demonstrates that society has now yet been able to identify (or if it has, then to counter) the underlying social and cultural disadvantages that lead to grossly offending behaviour of this type. You told the author of the pre-sentence report that you “do gaol time easy but then stuff up on drugs” when you are released.

The psychological report indicates that the circumstances of your father’s death, your initial experiences with incarceration, breakdowns in relationships and drug abuse have all contributed to your present situation. You have what the psychologist described as personal identity problems which are culturally sensitive. You also have a deep distrust of “the system”, which you say has been unfair and has not given you a chance. There are many unresolved issues in your life.

One of the issues that causes you to have a distrust for the system is the number of “straight” sentences you have been ordered to serve, the lack of opportunities for parole or other forms of community based orders and the fact that you have most often been held in a maximum security establishment. In 1993 you successfully completed (after some initial problems) a two month community based order and in 1994 you successfully completed a six month parole order.

Both the pre-sentence report and the psychological report indicate that your attitude to counselling and rehabilitation programs in the past has been ambivalent and has been directed more at securing your release from custody rather than on addressing the underlying issues that you face. However, both reports suggest that there may be a change in your attitude

this time. While you have been in custody you have organised and completed some painting work through the prison and have encouraged other prisoners to assist you in creating a garden area. This is a positive initiative and indicates that you can take some responsibility and can achieve when you set your mind to it. The author of the pre-sentence report suggests that you may now have accepted the need to address factors influencing your negative lifestyle and that you may, at last, be considering your future in a more positive manner. The psychological report is to similar effect.

The references from [TW], [NK] and [SD] all support the tentative views expressed in the reports that you may have made a significant decision to address your problems, to accept your family responsibilities and to lead a productive life.

In one of the references submitted on your behalf I was urged not to impose a prison sentence. I have seriously considered whether any form of non-custodial sentence is appropriate. However, the offences and the circumstances in which they were committed are very serious. While you may have come to the realisation that you have to make changes it is very early days and the process will be long and, I suspect, at times painful. You will have to come to grips with the personal identity problems that you face and work through them. Until you cure your substance abuse problem and attack the personal issues that confront you I think you are at risk of re-offending. For these reasons, and unfortunately, I think a prison term is inevitable.

It is a difficult sentence to structure. I have to bear in mind the sentence I imposed on [B] for the [Town B] offences, which was effectively 5 years imprisonment. He was entitled to some credit for a plea of guilty and for his offer to co-operate in giving evidence in this matter. Nonetheless, like you, [B] fell to be sentenced for the other offences as well and I had to take into account the totality of the terms of imprisonment. That will make comparing the sentences imposed on you and [B] difficult.

I have come to the view that the overall criminality of your offences, even giving full weight to the deprived nature of your background and the cultural and social issues that you have faced and continue to face, demands a sentence of imprisonment of 9 years. ....[S]ome of the individual terms may be less than would otherwise be the case.

[His Honour then specified the terms to be served in respect of each count.]

### Parole

I have decided that you should be eligible for parole in respect of each of the sentences that I have imposed. I do so for two reasons. First, you are still a young man. If the resolve that you seem to be showing continues then by the time you become eligible for release you will be a more capable person than you are at the present. It is imperative that you take stock of your situation and, while in custody, engage in programs to overcome substance abuse. If you do, your prognosis should improve markedly. I think you need also to talk to the old people of your race in order to help you address the personal identity issues that have been mentioned. Secondly, it will be in

the public interest that when the time comes for you to be released into the community, you be under formal supervision so that your progress in overcoming your drug problem can be monitored. It will also provide a support mechanism to assist you in reintegration into the community. This will mean that the time actually spent in prison will be somewhat less than the term that I have mentioned. However, you should appreciate that the balance of the term will remain very much a part of the sentence and will be served in the community and under strict supervision. You will be required to comply with such conditions as the Parole Board may set and if you breach those conditions or offend again, you could well find yourself back in prison serving further time.

One of your problems seems to be a distrust of the "system". I hope that the fact that you have been made eligible for parole indicates, perhaps only a small way, that "the system" is prepared to give you this opportunity. I have no power to direct the prison authorities to grade you in such a way as to make you eligible for transfer to a medium or minimum security institution. All I can do is place on the public record (in the hope that the authorities will see it) that you believe that the more you are given incentives to change the greater will be the changes of you accepting responsibility and acting accordingly. To me that makes sense and I would hope that in due course you will be given such opportunities. Much will, of course, depend on your own behaviour and development.

I note also the recommendations in the psychological report (with which I agree) that you would benefit from specialist input including:

- (a) psychological counselling focussed on unresolved personal issues and the development of victim empathy;
- (b) life skills training; and
- (c) specialist drug rehabilitation preferably on a one to one basis.

To these I would add the opportunity to speak to the old people and other Aboriginal mentors to assist in resolving cultural issues."

## 5. Extracts from Sentencing Remarks: the Hon Justice Roberts-Smith

[The offender, [T], an Aboriginal woman from a traditional community in the Eastern Goldfields, was convicted on her own plea of guilty to a charge of manslaughter. The victim was the offender's husband.]

### Roberts-Smith J:

"This case presents a very difficult sentencing exercise. I must have regard to the sentencing options in s 39 of the *Sentencing Act 1995* and I do so in increasing order of severity until reaching one which is appropriate to the circumstances of the offence and the offender. I have done that.

It seems to me that an intensive supervision order is not appropriate. [T] whilst intoxicated used a knife to stop the deceased annoying her and with it she caused his death, but there are other factors to which regard must be had. The death was an extremely unfortunate and in a sense accidental event. The deceased was annoying her, she was drunk, sleepy and groggy. She poked at him with the knife to stop him irritating her.

It was of course, as [counsel] says, a gross overreaction. Nonetheless it was not the result nor part of a fight nor was it a deliberate attack. There was nothing sustained about it. There was just one thrust and it was a thrust or poke, not a deliberate stabbing. Tragically, as I have said, it severed the deceased's femoral artery.

[T] has demonstrated extreme and genuine remorse throughout. That has been evident from the time she realised what she had done. She hugged and comforted the deceased until after a while, as I have said, he died in her arms. When she realised that she woke the others. She was distraught, crying and asking to be beaten. She has repeatedly said she wants to go back to the community to take her tribal punishment. I accept this. It's all indicative of genuine and deep distress and remorse.

That brings me to the question of community punishment. Appeal courts in a number of Australian jurisdictions have long recognised this is a relevant consideration for a sentencing judge to take into account....

[His Honour then considered *Jadurin* (1982) 7 A Crim R 182 at 187; *Rogers v Murray* (1989) 44 A Crim R 301; *Fernando* (1992) 76 A Crim R 58; *Minor* (1992) 99 A Crim R 227 and J Nicholson 'Sentencing of Aboriginal Offenders' (1999) 22 *Criminal Law Journal* 85.]

To return to the present case I note and accept that [T] not only intends but is determined to present herself to the community for traditional punishment and I accept that it will be inflicted as described by [counsel] not only on her but on her mother and three brothers; that is to say, the expectation is that she and her mother will be hit with fighting sticks and her three brothers will be speared in the thigh.

Other mitigating factors in this case are that within the group she has more often than not been recognised as the peacemaker and that she has never been imprisoned before. She has already spent approximately 7 months'

imprisonment and that equates to a served portion of a 20-month term of imprisonment and because she is a community woman imprisonment has been particularly severe and traumatic for her.

Her alcohol problem is obviously a concern. I accept that her stated intention is to return to the [X] community and that that intention is genuine and that because that community is one in which alcohol is banned and that ban is positively enforced, living there is likely to considerably assist her rehabilitation. I do not accept [the Crown's] submission that I could not be confident to the degree necessary that there would not be a repetition by her of a resort to violence.

The circumstances of this offence were to my mind exceptional and do not indicate a likelihood of repetition. Whilst I have come to the conclusion that a term of imprisonment is necessary to mark the seriousness of the offence, I am of the view that a suspended sentence would be proportionate and appropriate to the criminality of what was involved.

I would have thought that a sentence of 4 years' imprisonment was appropriate for unlawful killing in these circumstances standing alone. I reduce that by 12 months for the plea of guilty and further reduce it by 21 months for the time already spent in custody which will leave a result of 15 months' imprisonment and I will order that that be suspended for 2 years.

[T], would you please stand up? I want you to talk to [counsel] afterwards and listen to what he tells you about my reasons for doing with you what I am doing. You just heard me give a lot of talk. He understands all of that and he will explain to you what you need to know from it.

The sentence I impose upon you is one of 15 months' imprisonment but I am going to order that that sentence be suspended for 2 years. What this means is that you will not have to go to gaol again at the moment. You should go back to your community and you should not drink alcohol because, as you know, of you drink alcohol, you get into trouble. If you do get into trouble and you commit any other offence within the next 2 years, then you will be punished for whatever offence you commit but you are also then likely to have to serve the 15 months' imprisonment that I have just imposed on you and suspended. Do you understand that?

[T]: Yes.

**Roberts-Smith J:** [Counsel] I'm sure will explain it to you very carefully. You may stand down now to the body of the court. You are released from custody."

## 6. Extracts from Sentencing Remarks: the Hon Justice McLure

[The offender, [R], a young Aboriginal man from a traditional community in the Eastern Goldfields, had pleaded guilty to a charge of manslaughter. Both the offender and the victim were intoxicated at the time of the offence: they had been fighting over the offender's relationship with a particular girl. The offender had hit the victim at the back of the head with a tree branch. Subsequently the offender was speared in the leg twelve times by way of customary punishment]

### **McLure J:**

"[R], you have been convicted on your own plea of guilty of one count of manslaughter. As the witnesses to the offence had been drinking over the course of the day in question, it's not possible to obtain an entirely reliable picture of relevant events, in particular in the order in which they occurred. However, I find the facts to be as follows.

You and the deceased man lived at the [X] Aboriginal community situated approximately 180 kilometres east of Kalgoorlie. You and the deceased, both from a traditional Aboriginal background, were close friends. Some time after 8 pm on 18 April 2001 you went into the yard in which the deceased's house was situated. Before you arrived at the yard you had altercations with a number of other persons at the community.

You were angry because the deceased had requested you for tribal reasons not to go out with a particular girl. The deceased was related to that girl and had been an outspoken opponent of your relationship with her. Further, you were told something shortly before the killing which caused you to become very angry with the deceased. There was a confrontation between you and the deceased in which blows were exchanged and you left the deceased's yard.

You and the deceased, being of a similar weight and height, were very intoxicated. You returned to the yard carrying a sharp object and hit the deceased at least once while he was sitting on the ground. The deceased suffered an injury to the side of his head which caused him to fall on to the ground. However, a short time later he stood up and chased you out of the yard.

You and the deceased ran away from the house, although it's not clear who was chasing who. At some distance from the house you and the deceased stopped and had an argument. You grabbed a branch from a tree and struck the deceased with that branch a number of times. The deceased fell to the ground and started bleeding from the mouth. You left for a short while and on your return the deceased was dead.

You collected articles of clothing and left the community. On the way out of the community you saw the deceased's mother and told her that her son was dead. The injury that caused the death was inflicted by a blunt weapon, the tree branch, being applied to the back of the head. The fatal blow could have been delivered by one blow to the neck, using moderate force which ruptured a vertebral artery. The deceased suffered other

injuries, including nine injuries to the scalp, a fracture to the jawbone and fractured ribs.

You were born on 1 July 1982 and were 19 years of age at the time the offence was committed. You were born in the Great Victorian Desert, and you and your family lived a traditional and nomadic lifestyle until you were 4 years old. You then lived at the [X] Aboriginal community and from time to time at the [Y] Community. That community is 800 kilometres north-east of Kalgoorlie and was set up by the [X] Community as an alcohol-free community in 1998. [X] has had an alcohol problem for some time.

As a teenager you became exposed to fringe dweller camps and urbanised lifestyles in Kalgoorlie which exposed you to substance abuse and antisocial behaviour. You attended formal education at the communities in which you have lived and although your literacy skills and formal education is limited, you are assessed as an intelligent young man with prospects of rehabilitation. Mr [T] spoke highly of you.

It's clear that your alcohol abuse was the major contributing factor to the commission of this offence. Your relatively late introduction to alcohol consumption was by way of binge drinking and there was little safe or moderate drinking education or example available to you. All your employment to date has been undertaken on community development employment programs in which your referees describe you as a very reliable and hardworking person.

Following the commission of the offence you were speared in the legs on a number of occasions by persons entitled under Aboriginal law to inflict punishment upon you. There was a total of 12 wounds, more than expected because of the well-intentioned intervention of a member of the police force assisting you in the belief that the punishment was at an end.

You accept that your spearing was part of tribal law and have expressed considerable shame and remorse for what you have done. You do not have an extensive record of offending and this is your first offence in which violence was a significant element. It's against this background that I must consider the sentencing options. A sentence must be commensurate with the seriousness of the offence, this being determined by taking into account the statutory penalty, the circumstances of the commission of the offence, any aggravating factors and any mitigating factors.

A sentence of imprisonment should not be imposed unless it's justified by the seriousness of the offence or the protection of the community requires it. The serious nature and circumstances of the offence you committed means that only a sentence of immediate imprisonment can be imposed.

However, there are a number of mitigating factors which must be taken into account in determining the appropriate sentence. Firstly, you pleaded guilty to manslaughter at the first reasonably available opportunity, having regard to the fact that you were originally charged with murder. The second mitigating factor is your youth; you were 19 at the time of the offence. Thirdly, I have taken into account your relatively and relevantly minor record of offences prior to the commission of the offence for which

you are being sentenced today. Fourthly, I take into account that you have already received tribal punishment from your community.

It's well recognised in the authorities that payback punishment is a relevant sentencing consideration because fairness and justice require a court to have regard to all material facts, including those which exist only by reason of an offender's membership of an ethnic or other group. I also accept that you are truly remorseful for what you have done.

I also accept that alcohol and alcohol-induced rage was the immediate cause of the offence, and that your alcohol abuse reflects the circumstances and environment in which you have spent a significant part of your life today. However, all members of the community are entitled to the protection to which the sentencing aims of just punishment and deterrence are directed. In the circumstances I propose to sentence you to a term of 5 years' immediate imprisonment which will be backdated to 26 April 2001.

Please stand. [R] you are sentenced to a term of 5 years' imprisonment backdated to 26 April 2001, the date upon which you were taken into custody for this offence. I also order that you be eligible for parole. Please stand down. The court will now adjourn."

**7. Extracts from Sentencing Remarks: Offence of Wilful Murder by Non-Aboriginal Persons of an Aboriginal Youth: the Hon Justice Miller**

[The three offenders, [S], [B] and [P], were non-Aboriginal. They were convicted of the wilful murder of a 14-year-old Aboriginal boy.]

**Miller J:**

All right. Thank you. You, [S], [B] and [P], were convicted by a jury on 25 May of the crimes of deprivation of liberty and wilful murder. On 11 May 1999 you, [S] and [B], chased and captured a 14-year-old Aboriginal boy, [the victim], and brought him back to your house..... where he was deprived of his liberty and wilfully murdered.

There is no need for me to detail the circumstances which led to this event. It is sufficient to say that [the victim] was considered by the three of you to have committed a number of offences at [the house] in Langford, including breaking and entering, stealing and making sexual overtures to you, [P]. Although you had reported the matter to the police, there had been no action taken against [the victim] and the three of you were thoroughly fed up with him.....

It was against this background that on 11 May when you were told he had cycled past the house, you, [S] and [B], pursued him and eventually caught him.

Your attitude, [B], is also evidenced by the fact that when [the victim] was caught by [S] in the backyard of a house in the nearby area, you slapped him several times across the face and addressed him with racial vilification. I will not repeat the words. The mistake that the two of you made was to take the boy back to [the house] in your vehicle. He should have been let go after having been caught and after being reprimanded, even perhaps having been slapped. Instead of that, you took him back for the purpose of teaching him a lesson and I accept the Crown's submission that you took him back to give him a beating and a severe beating at that. This fact, as with all other facts which I find, I find beyond reasonable doubt.

At [the house] [the victim] was mercilessly dealt with. You, [P], had come into the picture. You identified him as soon as he was brought in. You were not involved in the chase and capture of him, but you were certainly involved thereafter. The boy was deprived of his liberty from the time he was captured, but more particularly from the time he was taken into the house at [the house]. He was tied in a manner described as being hogtied. He was kept and kept against his will in the house. The crime of deprivation of liberty is therefore at the upper end of seriousness for an offence of its kind.

Over a period of 4 to 5 hours [the victim] was violently assaulted, tortured and eventually killed in that house.....

As to you, [S], I conclude that it was you who inflicted the majority of the injuries found by Dr [X] on the body of [the victim]. You did this by striking

him with a shovel numerous times across his back, by standing on his back, by kicking him and by striking him with a baton. How many times you struck him is not known, but I conclude that there were numerous blows inflicted.

I accept from the evidence that during the time you perpetrated these injuries on [the victim] you were laughing and at one stage dancing around him. You used words of racial vilification against him which is an extremely aggravating aspect of the matter.

I conclude that having severely beaten [the victim] as you did, you were responsible for the possible causes of death occasioned by extensive bruising to the body and subarachnoid haemorrhage; that is, the multiple soft tissue injuries which were a possible cause of death.

As to you, [B], I accept the crown case that you were guilty of the crime of wilful murder as an aider and also as one who formed a common intention to prosecute an unlawful purpose in conjunction with others, in the prosecution of which an offence was committed of such a nature that its commission was a probable consequence of the prosecution of that purpose. Specifically, I find that you encouraged [S] to do what he did and certainly took no steps whatever to intervene to prevent the boy's death. To the contrary, you aggravated the situation.....

As to you, [P], you are guilty on the same basis as [B]; that is, as an aider and as part of the common enterprise.....

In relation to each of you there are also these aggravating factors: after [the victim] had been taken from [the house] and buried, you acted in a calm and satisfied manner, exemplified by the fact that you even stopped to buy chicken on the way home..... Thereafter you lied consistently to investigating police officers in relation to what had occurred, contending brazenly that the boy had been sent on his way on his bicycle from a location close to your house and was therefore still alive.

In relation to each of you there was not one ounce of remorse for what you did to [the victim], either immediately afterwards or at any time since. I say this because I observed each of you closely during the course of the trial and I was unable to detect the slightest remorse from any one of you. Indeed, as I pointed out during submissions when they were made to me, you, [B], conceded in evidence that 4 or 5 days after the boy's death you told a removal man that he was a little black bastard and that was then exactly what you thought of him.

Lack of remorse does not aggravate the sentence but the fact that there has been no remorse on the part of any one of the three of you means that the penalty to be imposed upon you cannot be mitigated for that reason. The brazen way in which each of you lied to the police when twice interviewed on video was a stark illustration of your attitude to what occurred.

It is difficult to differentiate between cracking under pressure, as I have described it, and true regret for the family of [the victim] who at that time were vainly and desperately searching for him, but the benefit of any doubt about it should be given to you in the sense that you were of assistance in finding the body, which was a very important aspect of the investigation.

I turn now to the sentences. [S], I have outlined the role that you played in relation to the two offences of which you have been convicted. As I say, you were the principal offender. I accept that prior to 11 May 1999 you were a person who had no prior convictions for criminal offences. You were a person who is generally well regarded in the community. I have read the various references which have been tendered on your behalf.

I accept [counsel's] submission that what you did was out of character with the person generally known in the community. Why you acted in the manner in which you did may never be known. The fact remains, however, that you did. Whatever your past reputation may have been, on the afternoon and night of 11 May 1999 it was destroyed over a period of several hours because you were involved in one of the most serious wilful murders that there could be.

This wilful murder was at the upper end of seriousness for this offence. The question which I have to consider is whether in sentencing you to life imprisonment for wilful murder, you should be sentenced to ordinary life imprisonment or strict security life imprisonment. The submission of the Crown is that only strict security life imprisonment is appropriate for you. The Crown submits that because of the central role you played and the manner in which you carried out the killing.

It is said that this overshadows anything that could be said in your favour, such as your prior good character and cooperation in leading police to the vehicle. In my view, the seriousness of the offence of wilful murder committed by you is such that only strict security life imprisonment can be imposed. I reach that conclusion for these reasons: the wilful murder you committed was one of the worst of its kind.

That was so because you mercilessly attacked and beat [the victim] over a period of hours in the way in which I have described and ended up ensuring his death by asphyxiation, as I have described. There was further chilling evidence given from you as to how after fixing plastic bags to his head you thought that he might still be alive and for that reason pressed down on his neck with a piece of wood.

The magnitude of the injuries sustained by the boy was such that it is hard to imagine a worse case of wilful murder by beating and asphyxiation. In reaching the conclusion that strict security life imprisonment is the only appropriate penalty for you, I take into account what was said by the Court of Criminal Appeal in *Griffin v R* (2001) WASCA 11, and particularly the observations of the chief justice at paragraphs 34 to 55.

In summary, I consider the circumstances of the offence and its gravity are at the highest end of the scale for wilful murder and your antecedents and personal circumstances cannot outweigh the seriousness of the crime, nor are they sufficient to justify any sentence less than strict security life imprisonment. Having reached that decision, I am required to set a minimum period of at least 20 years and not more than 30 years that you must serve before being eligible for parole.

I turn to you, [B]. The crown has not submitted that you should be sentenced to strict security life and I accept, therefore, that submission that ordinary life imprisonment is appropriate in your case, although it is a close thing.....

Your participation in the offences was of a high order within the meaning of sections 7 and 8 of the *Criminal Code*. I have set out exactly why I conclude that. Would you please stand while I impose the sentences I am going to impose? In relation to deprivation of liberty, 5 years' imprisonment. For wilful murder, life imprisonment with a minimum term of 18 years that you must serve before becoming eligible for parole. These sentences will be concurrent and will date from 25 May 1999.

[P], you are in the same position as [B] in relation to your criminal responsibility. The Crown concedes you were slightly less criminally responsible than her. I accept that, but I stress only slightly....

Would you please stand, [P]? In your case the sentences I impose are these: deprivation of liberty, 5 years; wilful murder, life imprisonment with a minimum term to be served before eligibility for parole of 17 and a half years. The sentences will be concurrent. They will date from 25 May 1999. You may stand down. The court will adjourn.

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