IN THE SUPREME COURT
OF NEW SOUTH WALES
CRIMINAL DIVISION

No. 70082 of 1995

BADGERY-PARKER, J.

MONDAY 10 NOVEMBER 1997

REGINA v. RICHARD WILLIAM LEONARD

SENTENCE

HIS HONOUR: On 2 August 1994 at Deep Creek Reserve near Narrabeen Lake, the prisoner Richard William Leonard killed Stephen Reginald Dempsey with an arrow shot from a compound bow. On 13 October 1997 he was indicted before a jury on a charge of murder; on 29 October the jury found him guilty. He was remanded to 7 November 1997 for a sentencing hearing.

On 18 November 1994 at Collaroy Plateau, the prisoner killed Ezzedine Bahmad by repeatedly stabbing him. On 13 October 1997, in a closed court and immediately before his trial on the other charge, the prisoner pleaded guilty to the murder of Ezzedine Bahmad. Again he was remanded to 7 November 1997 for a sentencing hearing.

The prisoner gave evidence at the trial but did not give evidence in the sentencing proceedings.

At the conclusion of the proceedings on 7 November 1997, the prisoner was remanded for sentence today.

Fact finding for the purpose of sentence

The manner in which facts are to be determined for the purpose of sentencing is well established and has been so for at least as long as I have been

a judge. Nevertheless, from time to time the courts find it necessary to restate those principles and that was done most recently by the Court of Criminal Appeal in **Regina v. Isaacs** (1997) 41 NSWLR 374 when a five judge court restated the relevant principles as follows:-

> "The following principles concerning the law and practice of sentencing in this State are well established.
>
> 1. Where, following a trial by jury, a person has been convicted of a criminal offence, the power and responsibility of determining the punishment to be inflicted upon the offender rests with the judge and not with the jury. ...
>
> 2. Subject to certain constraints, it is the duty of the judge to determine the facts relevant to sentencing. Some of these facts will have emerged in evidence at the trial; others may only emerge in the course of the sentencing proceedings. The fixing of an appropriate sentence ordinarily involves an exercise of judicial discretion, and it is for the judge to find the facts which are material to that exercise of discretion. ...
>
> 3. The primary constraint upon the power and duty of decision making referred to above, is that the view of the facts adopted by the judge for purposes of sentencing must be consistent with the verdict of the jury ...
>
> 4. A second constraint is that findings of fact made against an offender by a sentencing judge must be arrived at beyond reasonable doubt.
>
> 5. There is no general requirement that a sentencing judge must sentence an offender upon the basis of the view of the facts, consistent with the verdict, which is most favourable to the offender ... However the practical effect of (4) above in a given case may be that, because the judge is required to resolve any reasonable doubt in favour of the accused, then the judge will be obliged, for that reason, to sentence upon a view of the facts which is most favourable to the offender. When that occurs, it will be because of the application of the principle referred to in (4) to the facts of the particular

> case, and not because of some principle requiring sentencing on the basis of leniency ..."

In that case, the trial judge, called upon to sentence after a jury verdict of not guilty of murder but guilty of manslaughter, said in the introductory part of his remarks on sentence:-

> "In determining the criminal responsibility of the prisoner for his actions, it is important to determine, if possible, the basis upon which the jury found the prisoner guilty of manslaughter."

The Court of Criminal Appeal said (at 380):-

> "We consider that [the trial judge] erred in his formulation of the issue that he was required to determine. His task was not to determine the basis upon which the jury found the appellant guilty of manslaughter. In accordance with the principles set out above, his task was to find for himself the facts material to sentencing, consistently with the jury's verdict of manslaughter, and bearing in mind that the appellant was to be given the benefit of any reasonable doubt."

Notwithstanding repeated references in the submissions of counsel for the prisoner to the facts which the jury may have found and to the likely process of reasoning followed by the jury in reaching its verdict that the prisoner was guilty of the murder of Stephen Dempsey, I expressly decline the implied invitation to take such matters into account. I proceed in that matter, as also in sentencing for the murder of Ezzedine Bahmad to which the prisoner has pleaded guilty, to make findings of fact based on my own view of the evidence, applying the familiar principles restated by the Court of Criminal Appeal in **Isaacs**.

The murder of Stephen Dempsey

The accused had owned a compound bow for some months prior to August 1994. It is an extremely powerful weapon. The feature of its construction that leads to its description as a compound bow is the incorporation of a system of cams or pulleys which create a mechanical advantage such that, the archer, having drawn the bow string back to a certain point by exerting a

force equal to the draw weight at which the bow is set, is then assisted by the mechanism and needs to exert only about one-third of that force to draw the string back the remaining few inches and to hold it to aim and shoot. The draw weight of the bow may be set between 45 and 65 pounds. If, for example, it were set at 60 pounds, the archer could hold it in the shooting position by exerting a force of only about 20 pounds. That means that even without sights, the bow is capable of considerable accuracy at relatively close ranges, though it becomes inaccurate over longer distances. The prisoner practised with the bow regularly, and acquired considerable skill and the ability to hit even a relatively small target.

The prisoner used to take the bow to Deep Creek for the purpose of shooting fish at which he was sometimes but not always successful. On one occasion in about November 1993, he had taken the bow to that area for, so far as appears, the same purpose. Whether or not he did actually shoot fish on that day, I am unable to say, but I am satisfied that while he was on the track which passes along the northern or western side of the creek, he used the bow to menace two men who were walking on that path. I accept their evidence of what occurred and I accept that the person who was involved was the prisoner: although when shown, many months later, a folder of photographs including a photograph of the prisoner, neither man was able to make a positive identification, the fact is that shortly after the incident, the prisoner described just such an incident to another witness, Christopher Tobin. The prisoner, carrying the bow, passed the two men who were walking in the opposite direction. After he had passed them, so that they were continuing to walk with their backs towards him, he notched an arrow into the bow, drew the string back fully, to the shooting position, and, as the men, apparently alerted by some sound that was made, turned back to face him, the prisoner trained the bow directly on one of the men. That man leapt sideways to seek cover in the undergrowth beside the path, and the prisoner immediately transferred his aim to the second man who

reacted similarly. That man armed himself with a substantial branch and went back onto the road to confront the prisoner who, by then, had unstrung the arrow and who asserted that he was only joking. I have no reason to think that at that time he entertained any intention of actually shooting either man; I have no reason to believe that his intention was other than to frighten them, "joking" as he said.

The Crown case was that on 2 August 1994, the prisoner went to the reserve with the intention of shooting one of the homosexual men who regularly frequented that area. That is indeed a possibility, but it has not been proved beyond reasonable doubt that such was the case. The prisoner may have gone there with the intention of causing alarm to one or more of the people he expected to find there in the manner in which he had done just that in November 1993, an episode which obviously had given him some pleasure or satisfaction, judging from Mr. Tobin's evidence of the manner in which the prisoner described it to him; but I am unable to be satisfied beyond reasonable doubt that it was with that intention that he went there on 2 August 1994. It remains a reasonable possibility that he went there for the entirely innocent purpose of shooting fish.

There was no-one to witness the encounter between the prisoner and Mr. Dempsey. Counsel for the prisoner submitted that I should gauge from the duration of the jury's deliberations, having regard to the way in which the matter was left to them in summing up, and the fact, revealed by their request for further directions on the issue, that the jury had considered provocation, that they were not persuaded beyond reasonable doubt that the prisoner's account was false; and that therefore I must, consistent with my duty in the fact finding process to give the prisoner the benefit of any reasonable doubt (**Isaacs**, supra at 380), proceed on the basis of an acceptance of the prisoner's version of events. That submission must be rejected, because it is entirely inconsistent with **Isaacs**. All that the passage at p.380 means is that I must not find a particular fact proved against the prisoner if I have any reasonable doubt about that fact. It is open to

me in the fact finding process, as it is to any judge or jury called upon to find facts in the course of a trial, to accept all of what a witness says, or to reject all of it, or to accept so much thereof as appears credible and reject the rest; and that is so in respect of any witness, including the prisoner. I look at his evidence with that principle in mind. It is true, as his counsel pointed out, that each of his several accounts (namely, in an electronically recorded interview on 3 May 1995; in a brief conversation with Detective Sergeant Lynch immediately before that formal interview, and in his evidence in chief at the trial) is broadly consistent with the others, but that of itself says little as to their truthfulness particularly in light of the self-serving nature of much of what he said and the fact that it was not until nine months after the event that he first elected to give an account of it, so that he had every opportunity to fabricate a version best suited to serve his own interests. In fact, cross-examination exposed a number of improbabilities, even absurdities, that render much of what he said quite unacceptable. The prisoner was a most unimpressive witness. He was evasive when pressed. His demeanour strongly suggested to me that he entertained no belief in the truth of much of what he was saying. Often he attempted to confuse the issue by giving non-responsive answers or by non-responsive elaboration of his answers by the addition of self-serving comments. It appears to me that when he realised, as clearly he did, that the police were very close to arresting him, he fabricated a story in which he tried to link together a few islands of truth in a manner which would show his terrible actions in the best possible light. Only when his evidence appears to accord with the probabilities of the situation or is the subject of convincing corroboration do I find it possible to place any reliance upon it at all.

I reject the description that he gives of the precise circumstances of his meeting with Mr. Dempsey - the hiding of his bow in the cave, Mr. Dempsey's entry into the cave, followed by the prisoner's entry to the cave to retrieve his bow. However, I accept that Mr. Dempsey did make a sexual advance to the

prisoner, in words to the effect of those attributed to him by the prisoner. The jury, inevitably in my view, rejected the partial defence of provocation but the jury's verdict does not establish the basis of that conclusion. It is neither necessary nor appropriate that I speculate as to the basis of the jury's decision. My obligation is to make those findings which appear to me to be warranted by the evidence and which are not inconsistent with the jury's verdict, while giving the prisoner the benefit of any reasonable doubt. Accepting the probability that Mr. Dempsey made a sexual advance to the prisoner, I for my part am satisfied beyond reasonable doubt that the prisoner was not thereby provoked to lose self-control. At most, Mr. Dempsey's conduct had no other effect than to attract that unfortunate man to the malicious attention of the prisoner. Not only did he have again the opportunity to terrify a victim by pointing the bow and arrow at him, but on this occasion the victim had revealed himself to be a homosexual which fed the prisoner's hostility to people of that kind as to which I accept Dr. Westmore's evidence.

I am satisfied that when he encountered Stephen Dempsey, the prisoner notched an arrow and trained the bow upon him for the same reason as on the earlier occasion, which he may have thought of as "joking" but which in fact was calculated to instil terror in his victim. From that finding, however, it follows in favour of the prisoner, that I am not satisfied that at the time when he raised the bow and arrow and pointed the weapon at Mr. Dempsey, he had formed any intention to kill. I have no doubt that Mr. Dempsey was frightened. No doubt he could have turned and run, at risk of an arrow in the back; or he could have leapt sideways and sought cover as did the two men on the earlier occasion, but if he did he could not be sure that the prisoner would not discharge the arrow and score a hit. The prisoner gave an account of what Mr. Dempsey in fact did. The Crown invited the jury, and in the sentencing proceedings invited me, to reject this part of the accused's evidence as utterly improbable. On the contrary, it is one part of the prisoner's evidence that appears to me to be acceptable, one of the

islands of truth to which I earlier referred, although I reject entirely the construction which the prisoner has subsequently sought to place upon it. That Mr. Dempsey should have acted as the prisoner described appears to me to accord with the probabilities of the situation. It appears to me obvious, to the point of certainty, that Mr. Dempsey, confronted by the prisoner pointing his fearful weapon at him, saw his only chance as being to attempt to reason with the man and at the same time to move towards him in the hope either that the man would be persuaded not to shoot or that he could get into a position to grapple with him and disarm him. That, and that alone, appears to me to account for the prisoner's description of Mr. Dempsey's approach (in his answer to Q.740 in the electronically recorded interview) as walking cautiously towards him while at the same time expressing his disbelief in the prisoner's threat to shoot him. Perhaps the prisoner did begin to fear what Mr. Dempsey might do to him if he reached him, but the jury's verdict (in which I entirely agree) excluded self-defence and I am, myself, satisfied that the prisoner did not perceive in Mr. Dempsey's conduct at that stage any threat such as gave rise in his mind to a belief that he might have to do something in self-defence.

There are answers in the electronically recorded interview and a passage in the prisoner's evidence at the trial that seem to cast some light on what really did cause the prisoner to form and act upon an intention to kill:-

> "Q.489. When you fired the bow at Mr. Dempsey, what were you trying to do to him? A. Stop him from coming closer.
>
> Q.490. Were you ... A. I really ...
>
> Q.490. ... aware ... A. ... wanted him, it's like, I, I, I don't know what's, what, what's wrong with, with people. If somebody pointed a bow at me and said, you know, go away, right, I would, I would tail it out of there.
>
> Q.491. Right? A. I wouldn't say, I don't believe you. I'm gonna come towards you now. And it's like, and then walking towards

> me, it's, ah, I don't know what, what, I don't know whether I was, I was intensely paranoid, I, I don't know how I was, I mean how, how is somebody meant to react if somebody's holding, holding it like that and saying, don't come any closer, and a person says, I don't believe you. I mean, you know, like, otherwise I'll shoot you, and the other person says, I don't believe you, then, then say, I'm gonna come towards you now, then, then just like stepping closer and closer and closer. What am I meant to feel like."

Clearly the prisoner felt aggrieved by Mr. Dempsey's behaviour. At t.133:-

> "... I thought I could frighten him away ... and he said words to the effect of - of, "you're not going to use that". He obviously didn't feel threatened by, by me at all and that, that made me even, even more scared."

I do not accept for one moment that the prisoner was seriously scared. As will later appear, one of his answers in the electronically recorded interview relating to the slaying of Mr. Bahmad reveals an entirely similar reaction to that which he revealed when asked about Mr. Dempsey's conduct.

I am satisfied that the prisoner reacted to the fact that Mr. Dempsey did not yield to the threat and satisfy the prisoner's ego by demonstrating his fear by flight, as others had done on a previous occasion. The prisoner's reaction was to discharge the arrow at Mr. Dempsey's chest with no other intention than to kill him.

Immediately after the killing, the prisoner threw his bow and the remaining arrows into the water as far from the scene as he could throw them, and he then dragged the body of the deceased to the water's edge and rolled it over into the water where it sank to a depth of five or six feet. He then left the scene and went home. Shortly thereafter, he went to purchase a birthday present for his mother and then went to his parents' home where birthday celebrations were to take place. He wore inappropriate clothes including heavy boots, waterproof clothes suitable for motorcycle riding and a motorcycle helmet. He did not participate in the celebratory mood or activity, and he appeared very distressed, according to his father, whose evidence on this I accept. Indeed his

dress and his attitude are vividly portrayed in a video tape which the father made on that occasion. It was submitted on his behalf that I should accept on the basis of that material that the prisoner was stricken by remorse. I do not interpret the prisoner's demeanour in that light. I have no doubt that immediately after the killing the prisoner was shocked and concerned but it does not appear to me that his shock and concern arose from anything other than fear of the consequences for himself of what had occurred.

The prisoner left his parents' home at 8.00 or perhaps 9.00 pm; he went back to the scene to satisfy himself that the body was still undiscovered. It had not been discovered and he set about disposing of it. He went to a shop and purchased some garbage bags; he went to his home and procured a knife; he returned to the scene, brought the body out of the water, stripped it and proceeded to dismember it; he wrapped the body parts in two parcels, one containing the torso, the other containing the head and limbs. He made two separate journeys on his motorcycle to transport those two parcels to his home where he concealed the body in a large refrigerator. He kept it there for almost four months. Some time late in November 1994, he purchased a quantity of chicken wire, wrapped the body parts in it and took them to McCarr's Creek and then by boat out into Pittwater where, using more wire, he secured heavy rocks to the body parts and threw them overboard.

The Crown contended that all of these steps were in pursuance of a carefully thought out plan to conceal the body and to minimise the chance that the prisoner's guilt would be detected. Dismemberment of the body rendered it less likely that the body would be identified and less likely that the cause of death would ever become known, the cause of death being the one thing which had the capacity to connect the prisoner to the killing. It was contended on the other hand on behalf of the prisoner, that everything that he did after the killing was simply the result of panic. I reject that explanation of the prisoner's behaviour but I do not go so far as the Crown in attributing to him quite that

degree of prior planning which the Crown's theory involves. I have indicated that I do not accept the Crown's submission that I should find that the prisoner went to the reserve with the intention of selecting a victim and killing him, and it follows that I do not accept that it was part of his intention when he first went to the reserve that he would then dispose of the body of that victim in the manner in which he disposed of the body of Mr. Dempsey.

The prisoner himself said in the course of his evidence at the trial in answer to the question from his own counsel, "Why did you throw your bow in the water?":-

> "Well, you see, because I'd been down to Deep Creek before I'd had - and people knew I went to Deep Creek, you know, it wasn't a secret; I'd go down there bow fishing or I'd go down there and I might catch the local yabbies or something like that or I'd go bush walking. People knew I used to go there and as soon as - as soon as it happened I was thinking, everybody knows I come here. As soon as they - they see this - as soon as they see this fellow and they realise what's happened then - then the - everything is finished and the police - and - and so that's why I threw the bow."

That is the clearest evidence that at least part of his reaction after the killing was the immediate realisation that as soon as the manner of death became known, he would be suspected. It was the realisation of that which was, in my judgment, the source of his mental state during the period that he was at his parents' home, as he cast about in his mind for a solution.

It appears to me that when he returned to the scene and saw that the body was still in the water, apparently undiscovered, he began to formulate the plan which he later carried out. He realised that the body, having been in the water for some hours, would be substantially cooled making dismemberment of it a practical possibility. In that regard he drew on the knowledge which he had acquired during the period of his employment at an abattoir in north western New South Wales. I am satisfied that he proceeded to prepare for the dismemberment of the body and to carry out that procedure specifically in order

to conceal the fact that the killing had occurred; to conceal the identity of the deceased man should his body ever be discovered; and to conceal the cause of death which would clearly implicate the prisoner in the killing.

The findings which I have made involve rejection of everything said by the accused to the contrary. I do that without hesitation. I have already sufficiently indicated my reasons for treating the prisoner's evidence in that manner. Not only do I reject as untrue his claim that his actions after the killing were governed by panic, but also I reject any claim that he makes that he was on the evening of the day of the killing or at any time subsequently, at any rate prior to 28 April 1995, moved by any sense of remorse.

A few weeks after the killing, the prisoner formed an association with a person who commenced to live with him at the premises at Warriewood where the dead body was stored in the refrigerator. Up until that time, it appears to me that it was always his intention to dispose of the body in some way which would perpetuate the concealment of Mr. Dempsey's death and his own involvement in it, but had not yet formulated a particular plan. The presence of another person in the premises precipitated action on his part. He then formulated and carried out the plan to dispose of it in Pittwater in the manner that I have described. She assisted him in that, by driving the hire boat from the marina to a secluded beach where he met her, took over the boat, loaded the body parts into it, and disposed of it as I have described.

Shortly before that, namely on 18 November 1994, he committed the murder of Ezzedine Bahmad.

The murder of Ezzedine Bahmad

Mr. Ezzedine Bahmad was a taxi driver. On the evening of 18 November 1994, the prisoner and his girlfriend went into the city by bus. In the city, they walked around for some time and eventually returned to Wynyard with a view to travelling back to Warriewood. They had only enough money for a bus but the

prisoner's girlfriend wished to travel by cab and they decided to do that, intending, when they got to a suitable spot, to stop the cab and run away without paying the fare. However, that is not what the prisoner did. Not content simply with running away without paying the fare, he drew a knife and placed it against the driver's neck. I assume his initial intention was merely to subdue the driver whilst he and his girlfriend left the cab and made good their escape; and I find in his favour that he had not at that stage formed an intention to kill.

What followed bears a chilling resemblance to what occurred at Deep Creek Reserve when the prisoner's first victim, Mr. Dempsey, instead of being intimidated by the prisoner's weapon to the point of flight, sought to protect himself by more positive action. Similarly, Mr. Bahmad, instead of being intimidated by the prisoner and his knife into meek submission, grabbed for the knife. The prisoner described his own reaction in a manner which echoes what he said in relation to the Dempsey killing. He said (ERISP 260):-

> "At the time when I pulled the knife out I had no idea what, ah, I had no idea what it would actually lead to. I believe that, that this man was going to be co-operative because I know if I had, if I, 'cause I thought, I would think the way I, I would act and if somebody put a knife to my throat, at the tip of my throat, I would, I would stay still. If you, what do you want, and I'd try and split as soon as I could, alright. But, but, but he took the knife and it just got, it just went completely, ah, it went, it went very badly and, and the worst possible thing that could have happened, happened. ... On the other hand I, I really didn't realise that he was gonna, ah, grab the knife and I know that if he didn't, if I, okay, okay, first of all I must accept responsibility for what happened because I took the knife out of my jacket in the first place. I had the intention of wanting to get out of the situation. Ah, and, and then secondly on, on less of responsibility, ah, which was provoked by my action, ah, he took the knife but I, I could definitely say if he didn't take the knife then he would have been out of there and split and, and gone home and, and that would have been it."

Thus again, it seems to me, the prisoner reacted badly to his victim's refusal to be intimidated.

A struggle ensued in which, at one stage, the deceased was able to use the knife to inflict wounds on both the prisoner and his girlfriend. At the time the incident began the prisoner was sitting in the back seat behind the deceased, his girlfriend was sitting in the front seat. The prisoner regained possession of or control of the knife and, in his own description, "was wildly stabbing as I was trying to get ah, into the front on top of him and was stabbing everywhere". He described how he cut the deceased's throat with two or three sweeps of the knife which was razor blade sharp. The post-mortem report shows that the deceased suffered 37 stab wounds including three terrible wounds to the neck and throat, these last probably occurring immediately after death rather than being the cause of it.

The prisoner and his girlfriend fled from the scene and travelled to St. Vincent's Hospital where they sought treatment. They gave a false history of having been set upon by some Asian men in a park. To one doctor at the hospital, however, the prisoner gave a quite different history, namely that he had been stabbed by his girlfriend in the course of a sado-masochistic sexual encounter. The prisoner's girlfriend later gave a similar account when interviewed by a police officer at the hospital. The girlfriend was not charged by police in respect of the injury allegedly inflicted on the prisoner by her, evidently because the prisoner asked that no proceedings follow.

The motivation for the killings

I am satisfied beyond reasonable doubt that in each of these two terrible killings, the formation by the prisoner of an intention to kill and the immediate carrying out of that intention was precipitated by his sense of grievance, when, using a deadly weapon, he attempted to assert his dominance over his victim, only to find that his victim was not prepared meekly to submit. That view of the prisoner's behaviour is, in my mind, clearly supported by the pieces of evidence to which I have referred, and it is in the opinion of Dr. Westmore entirely

consistent with his diagnosis of the prisoner as a psychopath. The Crown, I think, contended that if I were to make such a finding I would be taking a view of the case more favourable to the prisoner than the evidence warranted. Mr. Zahra, on the other hand, submitted that I should not make such a finding but should, on the contrary, accept (because I could not be satisfied beyond reasonable doubt that it was untrue) the whole of the prisoner's account of each killing. I have indicated my reasons for rejecting the latter. Clearly the view that I have formed is more favourable to the prisoner than that which the Crown advanced and which I have rejected for the reasons that I have given.

Should the view which I have taken be regarded as not justified by the evidence, in particular if it is an explanation of the sequence of events which requires to be proved beyond reasonable doubt and the view is taken that it is not proved to that high standard, the consequence must be, in my view, a conclusion that on each of two occasions the prisoner killed a defenceless man for no reason which the court is able to discern, in particular not by reason of any provocation nor apparent rational motivation. If that be the correct view that the court should take, or whether it is correct to take the view which I have expressed as that which the evidence appears to me to demonstrate, probably matters not in an evaluation of the measure of the prisoner's criminality. Certainly, in sentencing on the basis of that view of the facts which I have formed, I do not regard myself as taking a view of the facts more adverse to the prisoner than the only alternative.

The arrest and charging of the prisoner

The torso of Mr. Dempsey was washed up near a wharf in Towlers Bay, Pittwater, on 21 December 1994 and shortly thereafter the remains were identified. The post-mortem examination of the torso of the deceased revealed the presence of the fatal arrowhead. This gave great significance to the finding

of the prisoner's bow by police divers a few days after Mr. Dempsey's disappearance.

On 16 March 1995, police issued a media release detailing the cause of Mr. Dempsey's death. Information received in response to that led police to commence investigations about the prisoner. In the course of that investigation, the police became aware of the strange events at St. Vincent's Hospital involving the prisoner and his girlfriend on the early morning of 18 November 1994. Thus the prisoner became the subject of enquiries into both murders and subsequently, on 27 April 1995, police executed a search warrant at the premises where the prisoner and his girlfriend were residing, and interviewed both of them. The prisoner at that stage denied having owned a compound bow at the time of the killing of Mr. Dempsey; he admitted that he had previously owned such a bow but claimed that it had been stolen from him prior to August 1994. Both denied any involvement in the death of Mr. Bahmad and adhered to the claim that the prisoner's injuries for which he was treated at St. Vincent's Hospital early on the morning of 18 November were inflicted by the girlfriend in the course of an S and M session. By that time, the prisoner was under surveillance, his telephone was tapped, and he himself formed the opinion, after that first interview with police, that he was "sure the house was bugged and sure the phone was" (t.41, ln.10). On 28 April 1995, the police interviewed the prisoner's father, who told them of statements made by the prisoner implicating himself in the killing of both men. The prisoner's father, for whom one must have the utmost sympathy, acted courageously and correctly, by at once reporting that conversation to the police. Over the next few days, the prisoner and his girlfriend absented themselves from the places they usually frequented, staying at one or more hotels in the city.

On 3 May 1995, the prisoner and his girlfriend went to the premises at Brookvale of the City Christian Church where the prisoner revealed to the pastor his involvement in the death of the two men and asked the pastor to contact

police. Detective Lynch who had conducted the interview with the prisoner on 27 April went with other police to the church. The prisoner and his girlfriend were arrested and conveyed to Manly Police Station and there the prisoner took part in an electronically recorded interview.

The prisoner asserted at his trial that he deserves some credit for having disclosed his guilt at a time when, as he chose to put it, "the police had nothing on me", and I was asked to sentence on that basis: cf. **Regina v. Ellis** (1986) 6 NSWLR 603 at 604. However, that assertion by the prisoner simply does not accord with the facts. The police were hard on his heels and it seems to me that the only realistic appraisal of the situation is that the prisoner well realised that, and thought that his best interests were served by disclosing his involvement in the killings, at the same time fabricating, at least in respect of the Dempsey killing, a version of events which placed him in the best possible light. I am comfortably persuaded that, notwithstanding his repeated expressions in the course of the recorded interviews and at other times of remorse for the killings, his only motivation in confessing his guilt was to achieve the best possible outcome from the terrible situation in which he was placed. Nevertheless, once he did give himself up, he co-operated with the investigators and gave them a great deal of information which enabled them to verify the details of both killings and ultimately, as already noted, he did plead guilty to the Bahmad murder, putting an end, so far as he was concerned, to the necessity for a trial for which the court had allocated a period of two weeks. Those matters stand in some small measure to his credit although in the overall context of the circumstances which have to be considered in this sentencing process, they cannot possibly amount to much.

Sentencing for murder

Punishment for murder is prescribed by s.19A of the Crimes Act which, as now relevant, provides as follows:-

> "(1) A person who commits the crime of murder is liable to penal servitude for life.
>
> (2) A person sentenced to penal servitude for life for the crime of murder is to serve that sentence for the term of the person's natural life.
>
> (3) Nothing in this section affects the operation of s.442 (which authorises the passing of a lesser sentence than penal servitude for life)."

Given the provision of subsection (2) of that section, the imposition of a life sentence is obviously a very serious step: cf. **Regina v. Petrof** (Hunt, CJ. at CL., unreported 12 November 1991); **R. v. McCafferty** (Wood, J., unreported 15 October 1992). Nevertheless, where the application of the appropriate sentencing principles dictates that result, the court must not shrink from imposing such a sentence. The Court of Criminal Appeal in **Regina v. Boyd** (unreported 18 September 1995) said:-

> "It is to be borne in mind that the Parliament of New South Wales in enacting s.19A of the Crimes Act has recently declared that it is consistent with current community standards in this State for a person convicted of murder to be sentenced to serve the remainder of his life in prison."

Sentences of penal servitude for life, meaning for the term of the person's natural life, have been imposed only 12 persons convicted of murder since the section was amended into its present form in 1989 (of those sentences, one was set aside by the Court of Criminal Appeal as excessive and a determinate sentence was substituted; in another, the sentence was quashed when the conviction was set aside on appeal, and at a re-trial after conviction, the prisoner was sentenced to a term of years).

The appropriate sentencing principles which I must apply include those which identify the purpose of sentencing.

In **Regina v. Cuthbert** (1967) 86 WN (Part 1) NSW 272 at 274, Herron CJ. said:-

> "The sentence should be such as, having regard to all the proven circumstances, seems at the same time to accord with the general moral sense of the community and to be likely to be a sufficient deterrent both to the prisoner and others: per Jordan, CJ., **R. v. Geddes** (1936) 36 SR NSW 554 at 555. Courts have not infrequently attempted further analysis of the several aspects of punishment: **R. v. Goodrich** (1952) 70 WN NSW 42 at 43 where retribution, deterrence and reformation are said to be its three-fold purposes. In reality they are but the means employed by the courts for the attainment of the single purpose of the protection of society."

That that is the basic purpose of punishment was reaffirmed by the Court of Criminal Appeal in **Regina v. Camilleri** (unreported 8 February 1990) where Allen, J., with whom Gleeson, CJ. and Finlay, J. agreed, said:-

> "In seeking to determine in any case the sentence appropriate to a particular crime, it is always of importance to have regard to the gravity of the offence viewed objectively. Unless that is done, the other facts requiring consideration in order to arrive at the proper sentence cannot be given their rightful place. A sentence imposed must be commensurate with the seriousness of the crime in the sense that it should, having regard to all the proved circumstances, accord with the general moral sense of the community. It should also serve as a sufficient deterrent both to the offender and to others. The purpose of that deterrence is to prevent the commission of such offences and whilst justice and humanity require that the previous character and conduct and the probable future life and conduct of the individual offender should be given most careful consideration, those are factors which are necessarily subsidiary to the main consideration which determines the appropriate amount of punishment, that is the protection of the public. The fundamental purpose of punishment is the protection of society. Unless those basic principles of sentencing are adhered to, errors will occur."

The second principle which I am obliged to apply is commonly referred to as the principle of totality which "is a convenient phrase descriptive of the significant practical consideration confronting a sentencing judge when sentencing for two or more offences": per Street, CJ. in **Regina v. Holder & Johnstone** (1983) 3 NSWLR 245 at 260.

Any attempt to state the principle must not confuse the principle with that which its application in a particular case may require in a practical sense. The principle is that in sentencing for two or more offences, whether or not committed at the same time, the sentencing court is required to make an assessment of the totality of the criminality of the offender reflected in all of the offences for which he or she is to be sentenced. The court must determine a sentence which, in its real effect, reflects the totality of that criminality. Where the principle is applied in a case where a prisoner stands for sentence in respect of two offences each of which, considered alone would attract a sentence of a term of years, the sentence appropriate to be imposed in respect of both offences taken together will rarely amount to the sum of the two sentences which would otherwise be appropriate but will usually be a term of years somewhat less than that total.

I will turn in a moment to consider the application of the principle of totality in the present case. Before I do, it is appropriate to refer to yet another sentencing principle which requires consideration here because of the submission made by the Crown that the only sentence appropriate to the total criminality of the prisoner involved in the two offences is a sentence of penal servitude for life, the maximum which the law allows. The imposition of the maximum penalty for any offence including murder is a sentencing option reserved for cases which can properly be characterised as falling within the worst category of cases for which that penalty is prescribed: **Ibbs v. The Queen** (1987) 163 CLR 447 at 451-452:-

> "That does not mean that a lesser penalty must be imposed if it be possible to envisage a worse case: ingenuity can always conjure up a case of greater heinousness.": **Veen v. The Queen (No. 2)** (1987-88) 164 CLR 465 at 478.

In the words of Wilson, J., at 489, "the imagination is not required to ascend to great heights to identify a case which is to head the category as the worst case".

On behalf of the prisoner, Mr. Zahra of counsel advanced an ingenious submission which purported to be based upon the principle of totality, and on the principle which I have just identified as to the circumstances in which a maximum penalty may be appropriate. His approach was to invite me to consider the sentences thought appropriate in other cases where a savage killing was followed by the dismemberment of the victim's body, and he selected as an example of such a case: **R. v. Graham Gene Potter** (Allen, J., unreported 20 August 1993). Potter was sentenced to life imprisonment in 1982 under the former sentencing regime, following his conviction for the murder of Kim Narelle Barry. In 1993, an application by Potter pursuant to s.13A of the Sentencing Act 1989 for the determination of a minimum term and an additional term replacing that sentence of imprisonment for life was dealt with by Justice Allen who determined that the appropriate total sentence was of the order of 18 years comprising a minimum term of 13½ years and an additional term of 4½ years, although his ultimate order departed from those figures slightly, having regard to certain particular matters not now relevant. (I observe that the selection of a sentence imposed upon a re-sentencing under s.13A does not necessarily provide guidance as to what would be an appropriate sentence in the first instance under the present sentencing regime, because obviously the sentence imposed after a s.13A hearing takes account of all that has happened to the prisoner during the period of his imprisonment which means, in most cases, that the sentence imposed turns out to be less than would have been given in a similar case by an original sentencing judge.)

Then Mr. Zahra referred to the sort of sentences that have been regarded as appropriate to the murder of a taxi driver in the course of his work. Mr. Zahra selected for his purpose the case of **Regina v. Erron Lee MacDonald** (Levine, J., unreported 12 May 1993; CCA, unreported 18 August 1994) where a sentence imposed at first instance, comprising a minimum term of 18 years and an additional term of six years was reduced by the Court of Criminal Appeal to a

total of 22 years, comprising a minimum term of 15 years and an additional term of seven years.

Mr. Zahra suggested that if those sentences be accepted as reflecting the "tariff" in respect of crimes of those kinds, the sentence appropriate to be imposed on the prisoner in respect of the murders of Stephen Dempsey and Ezzedine Bahmad could not exceed the total of the sentences ultimately imposed on Potter and MacDonald, namely 40 years and would necessarily, by reference to the principle of totality and the practical considerations identified by Street, CJ. in **Holder** (supra) be substantially less than that. That submission was linked to another to the effect that the maximum penalty of penal servitude for life was not available in respect of either of the murders committed by this prisoner because neither murder, considered on its own, could be described as falling within the worst category of cases for which alone such a penalty may be imposed. I reject both submissions. The first totally misconstrues the principle of totality and tends to the error I referred to earlier, of confusing the statement of the principle with the practical considerations to which it gives rise in some categories of case. The second submission misconstrues the principles according to which a maximum penalty may be imposed.

The principle of totality never requires a judge sentencing for a number of offences to assign a notional or provisional sentence to each one, aggregate them all, and then apply some specified or unspecified discount to produce the final sentence. The task of the sentencing judge called upon to sentence for two or more offences is, as Street, CJ. said in **Holder**, to "evaluate in a broad sense the overall criminality involved in all of the offences". The Chief Justice continued, "It is both inevitable as well as proper that the ultimate decision be arrived at in the light of the totality of the criminality involved in all of the offences".

Mr. Zahra's submission seems to proceed on the unstated assumption that where a prisoner stands for sentence on more offences than one, each such offence is to be considered separately to determine whether that offence is within

the worst category of cases. That submission runs directly counter to authority, to common sense, and to the principle of totality. The "case" to which the sentencing judge must look to determine whether it is in the worst category so as to attract the maximum sentence is the case which the judge is considering at the time of sentence, and if the fact be that the prisoner is for sentence on more offences than one, the application of the principle of totality dictates that the "case" to which the judge must direct his or her attention is the case of sentencing for all of those offences. The principle of totality requires, in combination with the principles regulating the application of a maximum penalty, that the judge evaluate the totality of the criminality involved in all of the offences which are before him or her that day for sentence, and to determine whether that level of criminality is in the worst category so as to attract the maximum sentence.

In **Regina v. Edwin Thomas Street** (CCA, unreported 17 December 1996), the decision of the trial judge to impose life sentences in a case where the prisoner was convicted of two murders committed 12 weeks apart was upheld unanimously in the Court of Criminal Appeal. The leading judgment was delivered by McInerney, J. with whom Grove, J. agreed. His Honour said:-

> "In my view, each murder (standing alone) would not justify the imposition of penal servitude for life, even allowing for the serious nature of the offence, the appellant's lack of remorse, and his bad criminal background. The question is whether his Honour was justified in imposing the sentence of penal servitude for life when considering the totality of punishment for these offences. His Honour concluded that the two murders, committed some 12 weeks apart, were amongst the worst category of case. ... I am not convinced that his Honour's sentencing discretion miscarried. His Honour, in my view, was entitled to conclude that these two murders, 12 weeks apart, place these offences in the worst category of case."

Hulme, J. summarised the authorities which state the principles relevant to the application of the maximum sentence and noted certain subjective factors

which tended in his view "to ameliorate the accumulated gravity of two separate offences". His Honour continued:-

> "Nevertheless, when one has regard to all of the factors relevant to the topic of the appropriate sentence, I do not regard these matters as taking the case outside the category of those where the maximum penalty is within the range for sentencing judge's discretion."

Thus, quite clearly, the Court of Criminal Appeal has accepted that "the case" the gravity of which is to be considered in determining whether a maximum sentence is appropriate is a "case" comprising all of the criminal acts for which the prisoner stands for sentence at the one time. The question involves the evaluation of the totality of criminality involved. Thus, in the case of **Regina v. Ivan Milat** (unreported 27 July 1996), the sentencing judge, the Chief Judge at Common Law, Justice David Hunt, had no occasion to distinguish between one of a series of murders and the others. The case with which his Honour was concerned was a case in which one prisoner had been convicted of seven murders. Together, "these murders must unhesitatingly be labelled as falling within the worst class of case". Later, referring to the principle of totality, his Honour said:-

> "As I propose to impose concurrent sentences, the longer of the sentences must represent the totality of the prisoner's criminality involved in all of the crimes of which he has been found guilty."

That observation reflects what had been said by Street, CJ. in **Holder** (supra at 260) to the effect that where a sentence was to be imposed in accordance with the principle of totality in respect of more than one crime, it ultimately mattered not in what way technically the sentence was constructed (that is to say whether by a series of cumulative sentences, or by the use of concurrent sentences with one overriding term) so long as the total effective sentence imposed was appropriate to the totality of the criminality involved in the instant case. In **Regina v. Trotter** (unreported 10 August 1993) Hunt, CJ. at CL. was called

upon to sentence a prisoner for murder and for an act of homosexual intercourse upon the child victim prior to the killing. He said:-

> "I do not believe that this is a case in which it would be appropriate to impose two cumulative sentences. If cumulative sentences were imposed, the need dictated by the principles of totality that each such sentence be less than it would otherwise have been if it had been the only sentence imposed would inevitably lead to a misunderstanding by the public as to the gravity with which I have viewed these two crimes. On the other hand, where two concurrent sentences are imposed in circumstances such as these, the more substantial sentence tends to be longer than it would otherwise have been if it had been the only sentence imposed, so as to represent the totality of the criminality involved: **Regina v. Dennis William Thomas** (CCA, unreported 14 December 1992 at 10); **Regina v. John Andrew Hawkins** (CCA, unreported 15 April 1993 at 7). [Counsel] has submitted that such an approach would have the necessary consequence that the principles laid down by the High Court in **The Queen v. Di Simoni** (1981) 147 CLR 383 at 389 would be infringed. It is wrong to take into account as circumstances of aggravation of the one offence, conduct by a person which would have warranted his conviction of a more serious offence. But to take into account for the purpose of assessing the totality of that person's criminality, the circumstances of two offences, where that person has been convicted of both of them, does not constitute any infringement of that principle."

I therefore proceed on the basis that what I am required to do in sentencing this man for these two murders is to evaluate the totality of the criminality involved in both and to consider whether the totality of criminality is such as to place this case within that category of the worst for which the maximum penalty is appropriate

In a number of cases, judges of this court and the Court of Criminal Appeal have attempted to analyse the concept of worst category of case. In **Regina v. Twala** (unreported 4 November 1994) the Court of Criminal Appeal set aside a sentence of penal servitude for life and substituted a determinate

sentence. In a judgment with which the other members of the court concurred, I said:-

> "... in order to characterise any case as being in the worst case category, it must be possible to point to particular features which are of very great heinousness and it must be possible to postulate the absence of facts mitigating the seriousness of the crime (as distinct from the subjective features mitigating the penalty to be imposed) ..."

The statement of principle has been applied by sentencing judges in many cases since: for example in **Regina v. B. & V. Fernando** (Abadee, J., unreported 21 August 1997) where life sentences were imposed; **Regina v. Reginald Keith Arthurell** (Hunt, CJ. at CL,, unreported 3 October 1997) where a determinate sentence was imposed, and reflects the approach taken by sentencing judges considering a life sentence since the introduction of s.19A in its present form. In **Regina v. Arthurell**, Hunt, CJ. at CL. said:-

> "The adjective 'heinous' which gives the noun 'heinousness' its meaning has been variously defined as meaning atrocious, detestable, hateful, odious, gravely reprehensible and extremely wicked. The test to be satisfied is thus a substantial one."

The Crown Prosecutor identified a number of facts which it was submitted would lead me to conclude that this was a case within the worst category. The facts which he identified included repetition of the Crown contention that the prisoner had gone to Deep Creek Reserve specifically for the purpose of killing a homosexual man. For reasons already given, I exclude that consideration. On the other hand, as I have indicated, I am satisfied that the circumstance that the prisoner found that his victim was a homosexual added to the pleasure that the prisoner has evidently derived from committing the offence.

The Crown invited me to take into account the description which the prisoner gave of the killing in the **I269** tape including his laughter from time to time and his ghastly joke about a head job. It is, I think, appropriate to take those matters into account but I need to make clear the basis on which I do so, which

is, I think, also the basis on which the Crown urged me to have regard to them. The point is not that the manner in which the prisoner spoke about his offence is an aggravating circumstance which elevates his crime to a greater level of gravity than otherwise it would have had. It is that it is to be gathered from the prisoner's account of the crime in the **1269** tape his obvious enjoyment of the killing itself and of his observation of his victim as he died. Where, as here, the killing is committed for no motive that any rational mind can discern, the prisoner's obvious pleasure in the event leads inevitably to the conclusion that this was a man who killed for his own gratification and for vindication of his own self-esteem. Dr. Westmore has described him as a psychopath. When I asked him to explain what he intended to convey by that word he said:-

> "It's a term which is used with considerable caution these days in psychiatry and some psychiatrists believe it should not be used at all because of its uncertainty regarding the criteria to make the diagnosis. It means, literally, psychically disturbed - that's the literal translation, as I understand it, of the word psychopathic. It's used by psychiatrists in a quite different way from the way it's used in the general community where it's used as a term of derision of denigration. In psychiatry it refers to individuals who have an inherent and innate inability to relate to the psychological, emotional and physical needs of others - that is often extended to, not just other human beings, but to living creatures."

I accept Dr. Westmore's opinion that the prisoner is a psychopath which, he said, was quite clear. His later reference to caution is somewhat ambiguous but eventually I think clarified in later answers as being a reference to caution in predicting a favourable prognosis.

Hunt, CJ. at CL. remarked in sentencing **Robert Mark Steele** for his involvement in multiple murders (**Regina v. Robert Mark Steele** (unreported 12 May 1994)), "The prisoner's psychopathic personality is, if anything, a matter in aggravation. It is certainly not a matter in mitigation." I agree.

The Crown also identified as a further factor adding to the heinousness of the offence the manner in which the prisoner dealt with the body. Again, that is

a matter which I see as appropriate to take into account. It is necessary that I make clear the manner in which I do so, which is the manner in which the Crown submits I should have regard to it. It is not to be regarded as a matter of aggravation directly to be reflected in the sentence: **Regina v. Graham Gene Potter** (per Allen, J., unreported 20 August 1993); but it is relevant because it is evidence of his utter contempt for his victim (of which also the **I269** tape provides cogent evidence) and as also Allen, J. pointed out in **Potter**, it speaks eloquently of his lack of any revulsion at what he had done and remorse for it. The victim of the killing did nothing to produce such an outcome. An invitation to a sexual act, if thought distasteful, might reasonably be expected to produce nothing but a firm refusal. His movement towards the prisoner, in what I accept to have been a defensive manoeuvre on the part of Mr. Dempsey, in no way mitigates the gravity of the prisoner's crime.

In relation to the murder of Mr. Bahmad, the circumstances again bespeak the operation of the prisoner's psychopathic personality, his total lack of empathy for the feelings or needs of a fellow human being. The manner of the killing was savage in the extreme. In no way did the unfortunate victim contribute to what occurred. The case is one of a category which have their own inherent element of extreme seriousness stemming from the vulnerability of those who work as taxi drivers and the obligation of the courts to offer them protection by the imposition of substantial sentences. In **Regina v. MacDonald** (CCA, unreported 18 August 1994), Carruthers, J., with whom Smart and Hunter, JJ. agreed, said:-

> "The Crown has correctly in the instant case relied heavily on the fact that the victim was a taxi driver. It is now a well established sentencing principle that assaults upon taxi drivers are viewed with particular seriousness by criminal courts. This is because the public service which they render puts them in a particularly vulnerable position. It is well known that they are required to drive taxi cabs alone, at all hours in remote parts of the city, carrying inevitably sums of money with them, and from a

> deterrence point of view that aspect, the Crown submits, correctly, must be taken into consideration and special emphasis given to it."

Finally, I mention the matter which the Crown placed at the forefront of its submission, namely the inescapable and obvious fact that this man killed two innocent victims within the space of barely three months. There is nothing in the circumstances of either offence which mitigates the seriousness of the crime other than that each was the product of the prisoner's psychopathic personality.

I am satisfied that the case with which I have to deal is one which can properly be characterised as falling within the worst category of cases for which the maximum penalty, penal servitude for life, is available. That conclusion does not, however, lead automatically to the imposition of that sentence. Other factors must be considered. They include such material as is available on the subjective side and they include consideration of the question of future dangerousness.

The prisoner is only 24 years of age and this is, in itself, a major matter to be taken into account before determining to propose a sentence of imprisonment for life. A life sentence for him will be a substantially greater punishment than it will be for almost every one of those on whom previously such a sentence has been imposed (only, I think, of those who have suffered such a penalty, Robert Mark Steele was about the same age as this man).

Before the murder of Stephen Dempsey, the prisoner had not committed any criminal offence which had brought him under the notice of police, although he had engaged in some anti-social behaviour, in particular involving the use of his bow and arrow in circumstances which I have referred and some others which I do not need to detail. He had acquired some trade skills as a boat builder, completing successfully an apprenticeship in that trade with his father and he had for the most part engaged in regular employment. He was much loved and still is much loved by his parents and his siblings from whom he has

enjoyed considerable support since he first disclosed to his father the terrible circumstances which bring him now before the court.

Behind all of that, however, there has existed from early childhood years what Dr. Westmore described as "a very severe extreme personality disorder of some type". He is not entirely without the capacity to inter-relate with other people, for example his family and to involve himself in some emotional response to them. But tragically, at a deeper level, a psychopathic personality persists. From his late teens he has been user of a variety of illicit drugs including hallucinogenic substances which may well have come to have an effect on his behaviour by the time of the first of the murders. Dr. Westmore was prepared to acknowledge a possibility that he was able, when not using drugs, to control the anti-social aspects of his personality, which may have caused the significant breakdown of control, be he was clearly not happy with that as an explanation of what had occurred. He described the prisoner as suffering from a condition of ego-dystonic homosexuality which Dr. Westmore explained as meaning that he is homosexual in his sexual orientation, but having a great deal of difficulty in accepting and adjusting to that. Both his psychosexual disturbance and his drug dependence may respond to appropriate therapy, including, of course abstinence from drugs because he is in custody. In overcoming those problems he will be much assisted by the loving support of his family.

In respect of the Dempsey killing, the prisoner, as was his right, entered a plea of not guilty and allowed the matter to proceed to trial and verdict. He attracts no greater penalty for having adopted that attitude but he deprives himself of any element of leniency that might have accrued from a plea of guilty. In relation to the Bahmad murder, he did plead guilty. I am obliged to take that into account in his favour in the sentencing process. I do. I recognise that at a purely utilitarian level, he has avoided the necessity of a trial and spared those involved the physical strain and emotional torment which that may have

involved and he has saved the community the cost which would have been involved. In the context of this case those are but minor considerations. I do not find in his plea of guilty convincing evidence of remorse. He has, on a number of occasions expressed sympathy for the living victims of his crime and I am prepared to assume in his favour that those feelings are genuinely expressed. I note, as did Dr. Westmore in the course of his evidence, that it is not possible to identify any clear feelings of remorse or concern that he has, directed to the victims of his crimes.

The fact that the prisoner has killed two people and the diagnosis of him as a psychopathic personality gives rise to obvious concern as to the prospect that if released into the community he would represent a danger to the community.

The position appears to me to be clearly this that, beyond reasonable doubt, as he now stands he would be a risk to the community were he to be released. He has a personality disorder which on one view is untreatable and incurable. If not successfully treated, it will persist notwithstanding successful attention to his psychosexual difficulties and his drug abuse. There is a theoretical prospect that it may yield to treatment, if he is ever given treatment. Attempts to treat individuals with psychopathic disorders have historically had little success. It is possible that the severity of his disorder will decline with increasing age. All in all it appears to me that the evidence of Dr. Westmore amounts to saying that at this stage there are no signs which indicate he is likely to be rehabilitated after spending a lengthy period in gaol, although Dr. Westmore is not prepared to say that he never will be. I regard the prospects of rehabilitation as only slight and given the magnitude of the danger which he presents to the community today, I am persuaded beyond reasonable doubt that there will be a risk of his committing further crimes of violence upon release, if ever he should be released. The protection of society does not permit the imposition of a sentence extended beyond what is appropriate for the crime, but

where a risk of further offences exists, as it does here, it may well have the effect of reducing or setting at nought the weight which can be given to subjective features which might otherwise attract a measure of leniency.

Weighing all of these factors together in an endeavour to reach an appropriate synthesis, I am driven to the conclusion that even if the subjective features were not largely outweighed by the risk of future dangerousness, even if they were able to be given their full effect untrammelled by any such consideration, they could not attract such weight as to lead to any conclusion other than that to which I have come.

My conclusion is that the objective seriousness of the two crimes taken together is such that no penalty would fit the case other than the imposition of the maximum sentence.

Richard William Leonard, you were convicted by the jury of the murder of Stephen Dempsey and you have pleaded guilty to the murder of Ezzedine Bahmad. In respect of each of those crimes, you are sentenced to penal servitude for life, such sentences deemed to have commenced on 3 May 1995.