

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

SCR 2011 0022

THE QUEEN

v

JOHN LESLIE COOMBES

JUDGE: NETTLE JA
WHERE HELD: Melbourne
DATES OF HEARING: 24 and 29 June; 19 August 2011
DATE OF SENTENCE: 26 August 2011
CASE MAY BE CITED AS: R v Coombes
MEDIUM NEUTRAL CITATION: [2011] VSC 407

CRIMINAL LAW - Sentence - Murder - Victim strangled - Post-offence aggravation by dismembering victim's body - Two previous murder convictions - *Verdins* considerations not applicable - Lack of remorse - No significant prospect of rehabilitation - Discount for guilty plea inappropriate - Discount for cooperation with authorities inappropriate - Serious violent offender - Sentence of life imprisonment without parole - *Sentencing Act 1991*, ss 6D and 6E.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Crown	Mr P Rose SC with Mr B L Sonnet	Mr C Hyland, Solicitor for Public Prosecutions
For the Accused	Mr D P Moen	Michael J Gleeson & Assoc

HIS HONOUR:

1 John Leslie Coombes you have pleaded guilty to the murder of Raechel Betts at Wimbledon Heights, Phillip Island on or about 12 August 2009 and you have been convicted of the offence. It falls to me to sentence you.

The facts

2 Raechel Betts was born on 5 January 1982. She was a qualified school teacher with additional early learning qualifications and, up until the end of 2008 or thereabouts, she was employed as an early learning teacher and in the child care industry.

3 Some years before her death, she was engaged to be married. During the engagement, she learned that she might not be able to bear children even though she wanted them very much. She seems therefore to have devoted herself to the care of other peoples' children as a substitute for having her own. A couple of years before her death, she met two young girls - PJ, who was then 15 years old and TJ who was 13 years old - and took on the role of their primary carer and mother figure. With the girls' parents' consent, and the approbation of school authorities, the girls moved in with the deceased and the deceased's friend, Deanne Royal, at a Heidelberg address.

4 At some stage, the deceased began to sell drugs. At least to begin with, she did so only in a small sort of way. But later the scale of her dealing increased. At about the end of 2008, she ceased to be employed in the child care industry and from about the start of 2009, her full time occupation became one of trafficking in methylamphetamine, MDMA, cannabis and other drugs of dependence.

5 In February 2009, the deceased, Deanne Royal and the two girls, moved to a Doncaster East address. The deceased conducted drug transactions from those premises, assisted by one Romeo Siciliano, with whom for some time she also had a sexual relationship. You were then one of the deceased's suppliers of drugs of dependence.

- 6 While living at the Doncaster East address, the deceased began to make claims that she and the girls had been subjected to burglaries, druggings and sexual assaults. She feared that their food had been drugged, and that they had then been sexually assaulted, and that the assaults had been filmed. She informed a number of her friends and associates that the resultant images had been posted on the internet.
- 7 Eventually, she sought assistance from one of her old friends, David Gould. He took the deceased, Deanne Royal and the girls into his and his wife's home in Mill Park, along with a sample of the foodstuffs which the deceased believed to have been drugged. Mr Gould's wife took the deceased and the girls to the Mill Park Medical Centre for medical examination.
- 8 Not long after that, the deceased's grandfather, Mr Neville Betts, formed the view, as a result of a letter written by the deceased, that the deceased was suicidal. He organised for the attendance of the Northern Crisis Assessment Team on the deceased at the Mill Park address on or about 11 June 2009. The deceased was arrested under provisions of the *Mental Health Act 1986* and involuntarily admitted to the Northern Hospital for treatment for a drug induced psychosis. The drugged foodstuffs were tested and nothing untoward was found. On the same day, Mr Gould checked websites on which the deceased claimed to have seen pornographic images of her and the girls. He could find no such images.
- 9 On or about 18 June 2009, the deceased was discharged from the Northern Hospital into the care of her mother, Sandra Betts. Soon afterwards, she held a party at Sandra Betts's home. It ended when Ms Betts asked the deceased and her guests to leave because of their illicit drug use. The deceased then moved to live with PJ's mother and the girls in Epping.
- 10 Early in August 2009, the deceased was confronted by Romeo Siciliano's long-term girlfriend, Corey Thomas, concerning the deceased's sexual relationship with Siciliano. The two women met in your sitting room and, according to persons who were present, the deceased admitted the affair.

- 11 At the end of July or at the start of August 2009, the deceased mentioned to some of her acquaintances that she was going 'fishing' with her boss. Those persons took the deceased to be referring to the deceased's drug dealing boss. Whether or not you were her drug dealing boss, I infer that you were the man to whom she was referring.
- 12 On 10 August 2009, the deceased spent the night at Epping with an old school friend, Donteaba Gunn. Gunn said that, during the night, she exhibited strange behaviour and said some very odd things. Gunn was also present the following morning when the deceased received a phone call from a man the deceased called 'John'. I infer that you were 'John'.¹ The deceased told Gunn that 'John' had 'a surprise for her, or something exciting for her'. Gunn and the deceased discussed the call – and the fact that the deceased was going away with 'John' for a couple of days – and where the deceased should park her car prior to being collected.
- 13 It was unusual for the deceased to be away from the girls overnight. Ordinarily, she stayed there to look after them. The deceased told TJ that she was going away 'fishing' with you, which TJ took to be code for going away to do 'drug business', and that you had put a proposal to the deceased that she become your mistress.
- 14 On 11 August 2009, the deceased dropped Gunn at his home address and then, after school, picked up the girls and their friend, BW, from BW's house. She drove the girls and BW back to the Epping address. En route to Epping, she repeated that she was going away on a 'fishing trip'. At Epping, the deceased packed an overnight bag and informed the girls she would be back in 48 hours, at the outside.
- 15 At approximately 6.00 pm, the deceased drove alone in her car from the Epping address to Heidelberg Heights and parked her car outside TJ's father's address. She did not tell him that she had done so and it was only days later, after her death, that the vehicle was found. Oddly, her wallet was inside it when it was found. Having so parked her car, she walked around the corner to the shops where, by pre-

¹ *Evidence Act 2008*, s 95(2)(c).

arrangement, she met you. She got into your Nissan Pulsar sedan and, some time later that night, you drove her to Phillip Island.

16 At 6.58 pm that night, Deanne Royal telephoned the deceased and gained the impression that she was in the company of friends and in good spirits. Ms Royal could not recognise the other voices she heard during the call but did hear a male voice say goodbye and leave. After that point, the deceased did not make or receive any further telephone calls.

17 Nicole Godfrey lived alone in a small three bedroom house on Phillip Island. She had known you for a number of years. Although she was much younger than you, she and you were involved in an occasional sexual relationship throughout the two or three months which preceded the killing.

18 On the night of 11 August 2009, you telephoned Ms Godfrey a couple of times and informed her that you would be attending at her address later that evening with someone else. You telephoned her again at around 9.11 pm from the vicinity of the Heidelberg West telephone towers and told her that you were on your way. Connect East records show that your Nissan Pulsar sedan travelled south along Eastlink commencing at 9.51 pm between Springvale Road and Police Road. After that, you did not make or receive any telephone calls until 4.07 am on the morning of Wednesday 12 August 2009. That call was made from Ms Godfrey's mobile telephone to your mobile telephone, while you were in the vicinity of Cowes at Phillip Island.

19 On 16 August 2009, a man jogging along the beach at Newhaven discovered a woman's severed left leg, 50 metres south of the San Remo bridge. That was less than a kilometre from the Newhaven Pier. It was later identified as the deceased's leg.

20 On 3 September 2009, two pieces of flesh, one of which was tattooed, were located by another jogger on Ventnor Beach. Those body parts were subsequently identified as parts of the deceased.

- 21 On 6 September 2009, a female resident of Phillip Island located yet another body part of the deceased near Grossard Point on Ventnor Beach.
- 22 The discovery of the deceased's body parts led to a police investigation. You were interviewed by investigating police on 21 August 2009 and 28, 29 and 30 October 2009. When interviewed on 21 August 2009, you denied being at Phillip Island on the night of 11-12 August 2009 and, when interviewed on 30 October 2009, you maintained the denial. You stated, falsely, that you had gone out and helped fix Ms Godfrey's broken down car somewhere near Cranbourne.
- 23 On 2 November 2009, you were arrested for the murder of the deceased. Following your arrest, you admitted that you had taken the deceased to Phillip Island on 11 August 2009. You said that you had gone there with her to plan how to kill or maim three men who the deceased stated or implied were responsible for sexual assaults committed on her and the girls at the Doncaster East premises. You said that you arrived with the deceased at Nicole Godfrey's house sometime after midnight and introduced the deceased to Nicole Godfrey. You claimed that the three of you then had coffee and listened to music. According to Ms Godfrey's statement to police, she was already in bed and did not get up when you and the deceased arrived.
- 24 You said that, after a while, the deceased went and lay on a bed under the covers in the guest bedroom and then, as you were walking past the door of that room, she called you in to chat further about the three men on the list whom she wanted to 'off'. You said that she lifted up her head so that you could sit next to her with your arm around her and that she then spoke words which implied or which you took to mean that she had allowed PJ and TJ to be sexually assaulted in order to satisfy the deceased's debts; adding expositively words in substance or to the effect that a 'girl's got to pay her debts'.
- 25 You claimed that you became extremely angry because you had gone down to Phillip Island to discuss the killing of some 'rapists' of the young girls and then

heard that the deceased had actually arranged for the sexual assaults. You said that you were so enraged that you brought your other arm up under the deceased's chin and put her in a 'sleeper hold' and just hung on and 'shut her up' and strangled her. You added that she kicked a little bit as you were strangling her and that you had to wrap your leg around her during the process to control her until she died.

26 After that, you said, you went to your car and got out a box of knives and some sash cord with which to dismember her body. You dragged her body into the bathroom, placed it into the bath, tied the feet to the taps and then set about dismembering the body with the knives. You told police that you had to have a break during the process and went and lay next to Ms Godfrey and slept.

27 You said that when you finally completed the dismemberment, you put the body pieces into garbage bags obtained from Ms Godfrey's kitchen and you gave the deceased's overnight bag to Ms Godfrey with instructions to dispose of it in a dumpster when she went to work next day. Then you took the body parts in the garbage bags by car to the Newhaven Pier. You said that you sliced open the garbage bags and released the body parts and the bags into the fast moving current and that, when opening the bag containing the deceased's head and torso, you sliced the abdomen to ensure that it would not float to the surface as a result of expanding stomach gases. You also said that you threw the knives and the deceased's clothing into the water. Then you returned to Ms Godfrey's house and cleaned the bathroom using bleach based cleaning products before returning to your home in Preston and setting about the establishment a false alibi.

Personal circumstances

28 You were born on 14 September 1954 and thus at the time of the killing you were almost 55 years of age. You were in the business of trafficking in drugs and the evidence suggests that you were one of the deceased's suppliers, if not her main supplier of the drugs in which she dealt.

29 You left school at the age of 15 after completing Form 4 and began an apprenticeship as a mechanic, but you failed to complete that and you joined the Army at the age of 18. You served as a truck driver in the Royal Australian Corps of Transport until you were 21. You were discharged after sustaining a head injury in a military truck accident in 1974. Following military service, you worked in numerous jobs, generally for periods of no more than one to one and a half years, although there was one period of eight to nine years which you spent managing a hotel in Sydney. You married at the age of 19 or 20 and you have two children from that marriage, now aged in their 30s. You and your wife divorced in 1985 after you were sentenced to life imprisonment for the murder of Henry Desmond Kells on 17 November 1984. After serving 11 years of that sentence, you were released on parole but, in 1998, you were convicted of having murdered Michael Speirani on 26 February 1984 (which is to say nine months before you killed Henry Kells) and you were sentenced to 15 years' imprisonment with a non-parole period of 10 years.

30 Early in 2007, you were released on parole and at the end of 2007 you began a relationship with Maureen Renwick. A little later, you moved in with her at her home in Viewbank. In February 2009, you moved into your own public housing flat in Preston. Some months after that, you began the occasional sexual relationship with Nicole Godfrey to which I have already referred while, at the same time, maintaining your relationship with Ms Renwick. As I have noted, there is some suggestion that you sought to persuade the deceased to become your mistress, too, although there is insufficient evidence of that for me to conclude it was so.

Nature and gravity of the offending

31 The nature and gravity of your offending places it in the worst category of cases of murder.² Although you have alleged that the deceased provoked you to kill her by telling you that she was involved in the sexual assault of young girls, I am satisfied beyond reasonable doubt that a substantial part of what you told police and others about the deceased's death, and particularly your allegation that she claimed to have

² *Veen v The Queen (No 2)* (1988) 164 CLR 465, 478; *Hudson v R* [2010] VSCA 32, [38].

been involved in the sexual assault of the young girls, is a fabrication or confabulation calculated to conceal the true nature and gravity of your offending.

32 One of the indicia of that is the differences in detail between the several versions of the killing which you gave police and others. Combined with the inherent improbability of what you allege, they are redolent of recent invention.

33 I have referred to the version which you gave police when interviewed on 2 November 2009. I shall call it the first version.³ In contrast, in a second version, of which you told police on 23 December 2009, you said that the principal reason for going to Phillip Island 'was to organise drug stuff'⁴ and that the deceased told you that, if you played your cards right, she could arrange to make TJ available to you for sexual purposes.⁵ You gave a third version to Maureen Renwick during a covertly recorded telephone conversation on 13 December 2009. It differed from both the first and second versions as to what happened immediately before you killed the deceased. You told Maureen Renwick: that:

I – I don't actually – as I said, *I can't actually remember the last words* that she said. I've got a pretty good idea what they were.

...

But I'm – I'm not sure that that was – you know, it just seemed – 'cos she was st-she was saying something and the – *and I'm not sure what it was.*

34 There are further differences between the first, second and third versions as to what you claim were the mechanics of the killing. In the first version, you told police that you *straddled* the accused, put a *sleeper hold* on her and *strangled her*.⁶ In contrast, in the second version, you said that you broke the deceased's neck but could not remember what means you used to prevent her from struggling.⁷ The third version was different again. You said that you could not remember how you killed the

³ See Schedule 1.

⁴ See Schedule 2.

⁵ Ibid.

⁶ See Schedule 3.

⁷ See Schedule 4.

deceased.⁸ Later, you gave a fourth version to Mr Bernard Healey, a consultant psychologist by whom you were interviewed on 4 June 2011 (so that he could write a report in support of your plea in mitigation). In that version (I shall call it the ‘Healey version’) you alleged that it was the young girl PJ who asked you to kill her attacker and, in contrast to the first and second versions, you made no mention of the deceased suggesting that you should do the killing.

35 In the Healey version, you said that the reason for going to Phillip Island was because you thought it might be a good place for the deceased to establish herself (which, in context, appears to mean establish herself as a drug trafficker, and thus accords with the second version); but, in contrast to the first and second versions, you said nothing of going to Phillip Island to make plans as to how to kill or maim the sexual abusers of PJ and TJ. As in the first version, you said that the deceased showed you some pornographic images while you were en route to Phillip Island but, in contradistinction to the other versions, you added that later, as the deceased lay on the bed at Phillip Island, she showed you further images of young women being sexually abused and told you that, if you played your cards right, you could also be involved. You implied it was that which triggered the killing.⁹

36 Significantly, although Mr Healey thought you to be ‘distressed and tearful’ as you related that fourth version of events to him, there is no suggestion that you were distressed or tearful when you related the first and second versions to police, still less the third version to Ms Renwick. That difference of detail is also redolent of fabrication.

37 Next, in addition to the differences of detail between the four versions, there is the inherent improbability of the deceased arranging for the sexual assault of PJ or TJ or offering you the chance to get involved ‘if you played your cards right’. The weight of evidence is that the deceased was deeply attached to both girls and spent what money she had in providing for them. Indeed, it appears reasonably possible that

⁸ See Schedule 5.

⁹ See Schedule 6.

the main reason she gave up her work as a teacher and took to drug dealing full time was to provide for the girls while spending more time with them. Among other evidence to that effect, the deceased's good friend, David Gould, expressed the opinion, based on his observations of the way in which the deceased cared for the girls, that it was inconceivable that she would have allowed them to be sexually abused for financial advantage. Mr Gould's observations were that the deceased devoted herself to the girls' welfare to the point of her own personal detriment.

38 Granted, there is evidence that the deceased believed that PJ and TJ, and she too, may have been sexually assaulted while under the influence of drugs. But her reaction to that was one of great consternation. As I earlier observed, she was so concerned for the welfare of PJ and TJ, and perhaps for herself, that she sought the assistance of David and Erin Gould and, with their help, arranged for TJ and herself to be medically examined. Such actions are diametrically opposed to what one might expect if the deceased were complicit in the sexual assault on the girls. Common sense dictates that, if she had been involved, the last thing she would wish to do would be to seek the Goulds' assistance, expose TJ to medical examination, and thereby attract the possibility of police intervention. Common sense implies that, if the deceased had been complicit, she would have striven to keep the fact of the assault, and her involvement in it, as quiet as possible.

39 Equally, if the deceased had been involved in arranging for the girls to be sexually assaulted, there would have been no reason for her to harbour or express animosity towards the men involved, still less to tell you about them and prevail on you to kill or maim them. And, if the deceased had some other reason to want you to kill or maim those men, and she had sought to persuade you to do that by telling you that the men were child sex abusers, it makes no sense that she would then turn around and tell you that she had arranged for the children to be sexually abused and offer you the opportunity to get involved 'if you played your cards right'.

40 Finally, there are suggestions in the depositions that you murdered the deceased because of a drug deal gone wrong or because she became a liability to your drug

dealing activities, or because she was not sufficiently careful in maintaining security. In the scheme of things, each of those possibilities presents as inherently more likely than the several versions of events which you offered to the police and Mr Healey. There is also evidence in the form of Mr Healey's opinion that you may have been drug affected at the time of the killing. If so, it would help to explain the extraordinary violence involved in the way in which you killed and cut up the body of the deceased. On the other hand, you later told Dr Douglas Bell of Forensicare that you had not consumed any drugs or alcohol at the relevant time.

41 As the evidence stands, I cannot say beyond reasonable doubt that drugs were in any sense the reason for the killing. On the available evidence, however, I am satisfied beyond reasonable doubt that you murdered the deceased by strangulation, or by breaking her neck, or by other violent means, for a reason other than you claim.

Post-offence circumstances of aggravation

42 The gravity of your offending is made worse by the way in which, immediately after the killing, you hacked up the deceased's body and cast the pieces into the sea.¹⁰ As you related that conduct to police on 2 November 2009, it was as follows:

So I pulled her through - I pulled her through to the bathroom. I got her clothes and everything off. I put 'em in the bath

- I think I got Nicky to make me a cup of coffee or a ... or some fuckin' stupid thing. I think I tried to pick her [the deceased] up. Yeah. One stage there, she was dead heavy. I thought oh fuck. That's when I decided then to - went out and had a look in my car. Fuckin' found a set of - in a box, a set of knife blades - and I told you and just all these different blades for cutting different things.

...

When I came back inside, I asked Nicky if she had garbage bags or - or any ... I brought in a - I took her bags and then, I brought in my little knife set and it was just a Stanley - like a Stanley knife, cutter, box cutter thing with a long blade. I'm not sure - I can't remember. I think it might've been - I think it might've been a short knife in the box too and I've tried to blot all of this out. I managed to get her into the bath and - oh sorry, I got her clothes off on the bathroom floor and put her into the bath and then just stopped and thought, 'What the hell am I goin' to do here? How the hell do I go about this?'

¹⁰ *DPP v England* [1999] 2 VR 258, 260; *R v Cavkic (No 2)* [2009] VSCA 43, [134].

...

...The ah, it was said about dismemberin' the body. I used a bit of the rope that I brought in from the boot of the car as just- I shouldn't call it rope, it's - it's just a cord, like a - like widow sash cord. The - the cheap Chinese shit... But it was strong enough to hold her feet up onto the tap and suited what I had to do. At some stage, I don't know how - you did ask, but I'm not sure how far in I was, I started getting' pretty crook. I had to spew in the dunny and in the end, I just had to stop. The - or in the bath. ..

..

And I think I must've settled a bit. I think she brang me a piece of toast and it was like chewin' a piece of cardboard or that foam cup. I couldn't do it. I had a bit more coffee and got some garbage - I think I've already said I got the garbage bags, didn't I. I got those garbage bags and with the pieces, I was puttin' 'em in - two or three and puttin' em' in.

...

Five. I'm pretty sure there was only five. There was the torso and the head - and the arms and the legs were in separate bags. I waited for a minute or two and was watching ... And I think I piffed the mobiles and - her mobile, off there as well. I think I walked to the end of the pier and piffed them and some other bits and pieces. Some of it was a bit of a blur. I - that's how I'm not saying I was fucking mad or anything like that. Its just little bits and pieces are a bit blurry. I got back in the car. I... got back in the car, drove back to Nicky's.

43 You also told police that you cut off the deceased's breasts:

Well, yeah, and I started off, as I said, I was going to cut the - the , you know, you fucking you don't deserve to die as a fucking woman I think I said to meself. There you go, I'm getting me anger back again. There you go. Where did that go.

44 You said, too, that:

I did open the abdominal area but, that was only to, sort of, pierce the intestines to let the gasses out so they didn't float.

45 In the second version, you added that:

I didn't want to do any of this to her to start with but I didn't even want to kill her at the start - there was no intent to kill her but I had to move - I had no other way of doing it. I didn't and despite the fact it was, like, you know, and I was trying to picture it as like just the life has gone. She's dead. It's a piece of meat. Do it that way. Work on it like a piece of meat. Make the cuts, separate the joints and do what you could there. Was I angry then at the pier trying to get rid of her? I was angry, I was sad but I knew basically that I was fucked so I knew straight up that - I think I said on the first day even though I was still trying to throw off I knew I was a monty to be looked at.

...

... Yeah, I was fuckin' angry but she didn't deserve what happened to her but at that point in time, I wasn't thinking about that. When I - when I took 'em off, I wasn't even thinking that. I don't know what I was fuckin' thinking. I don't remember thinking but later on, I would sooner have her been where fuckin' - where fuckin' Nicki is now. Those girls out there would have been able to give her more punishment than I could have. I've given her a quick release. It's more than she fuckin' deserved.

46 It is remarkable how many times you told police in the course of those statements of the anger you claim you felt as you killed the deceased and destroyed her body. As an exercise in repetitive advocacy, it would be laudable. But, as an accurate account of events, it is surely very doubtful. It stands in contrast to the absence of any suggestion of anger from the version of events which you gave to Maureen Renwick on 13 December 2009. As you related the story to her - apparently unaware that your conversation was being recorded - your only concern when cutting up the deceased's body was that, if you did not do so, you would be caught and punished for her murder; and, you said, you had no qualms in proceeding as you did, because you looked on the deceased's body as just a piece of beef.¹¹

47 Whether or not you were angry, however, it passes understanding that a sane human being could hack up and destroy the body of another as if, to use your own words, she were just a lump of meat. The heinousness of that conduct is shocking. It bespeaks an utter disregard of the law and basic norms of society and depraved inhumanity towards the deceased, her family and her loved ones.

Victim impact statements

48 I have before me three victim impact statements tendered in the course of the plea. The first, of Deborah Betts, the deceased's aunt, tells of the deep sense of loss and pain which Ms Betts has suffered because of the murder. The second, of the deceased's natural father, tells of the misery and illness which the deceased's death and even more so the manner of her death has inflicted on him and his mother. The third, of the deceased's mother, which she read out in court in the course of the plea,

¹¹ See Schedule 7.

gives voice to the awful grief, misery and hardship to which she and the other members of the family have been subjected by what you did. The sentence which I am to impose on you must take account of the misery and suffering which you have inflicted on them.

Previous convictions for murder

49 The sentence I am to impose on you must also take account of the effect of your prior offending. As I have observed, you have twice before been convicted of murder. The first time was in 1985, when you were sentenced to life imprisonment without parole for the murder of Henry Desmond Kells on 17 November 1984. Later, on 10 April 1990, when you applied for an order fixing a minimum term, Beach J set a minimum term of 11 years. In his reasons for judgment, his Honour recounted that Kells was aged 44 at the time of his death and lived in a bungalow at the rear of premises at 25 Joffre Street, Edithvale. You and a friend named Opie bore a grudge against Kells, at least so far as Opie was concerned, for no more significant reason than that Kells had been drinking with his landlady. On the night of the murder, you and your then wife went to the Chelsea RSL Club and were later joined by Opie where you drank substantial quantities of alcohol. You left the club at about 12.30 am and returned home, but then you and Opie went out ostensibly to get a pizza. Instead of going for the pizza, you both went to Kells' bungalow and entered it with the intention, as Beach J found, of beating him. Thereafter, you completely lost your self-control, gained possession of a knife and, in the fight which took place, proceeded to stab Kells a number of times thereby causing his death.

50 Beach J accepted expert evidence of a psychiatrist, Dr Lewis, to the effect that you were suffering from a psychiatric disability the consequence of the head injury you received in March 1974 while serving in the Royal Australian Corps of Transport. In Dr Lewis' opinion, the injury had resulted in a traumatic nervous condition of which the aggression which you manifested in killing Kells was a typical symptom. Dr Lewis also considered that your depleted mental state had been exacerbated by a combination of drugs and alcohol which you consumed on the night. On that basis,

Beach J found that you were not in a normal and rational frame of mind at the time of the killing and, because that was so, it mitigated your moral culpability. His Honour also accepted that your mental condition lessened the gravity of your escape from prison in 1988 and, as his Honour expressed it, put it in a completely different light.

51 You sought clemency on a similar basis when you were convicted before Teague J in 1998 of murdering Michael Speirani on 26 February 1984, nine months before you killed Kells.

52 Teague J found that you and one Glen Conlon took Speirani out to sea in a boat with the intention of assaulting him and throwing him overboard – although, to begin with, not killing him – because Conlon was concerned about a developing romantic relationship between Speirani and Conlon’s sister. According to another version of the story, which you gave to prison authorities in 2004 when you were seeking parole, you killed Speirani because he had ‘sodomised’ Conlon’s 15 year old sister. In any event, the plan, as Teague J found, was that, after you had thrown Speirani overboard, you would then pick him up and rescue him and warn him to stay away from Conlon’s sister.

53 Teague J inferred that, in order to induce Speirani to come to your home, which was the first step of the plan, you pretended to be interested in buying his car and that, when he came to your home, you agreed on a price and got your then wife to write out a cheque. The next step, was that you proposed taking the car with the boat towed behind it out on a trial run, and that led to you and Conlon and Speirani going out on the boat together.

54 Mr Speirani never returned. Teague J concluded that you and Conlon took him out to sea, and that you, Coombes, stabbed him and left his mutilated body out in the bay. His Honour also said that there was evidence from which to infer that you intended to kill Speirani even before you left shore, and that, as well as using the knife to kill Speirani, there were indications that you had applied the boat’s propeller

to his body. You finished up with Speirani's wallet and within days you lied to Mrs Speirani as to when you had last seen her son. Later still you lied to police and put in place a false trail which contributed to delay in the investigation into Speirani's disappearance. His body was never found

55 Teague J sentenced you on the basis that you had departed from the plan to scare and assault Speirani, either at the time when, or shortly after, you embarked on the assault; that you then formed the intention to kill Speirani; and that you had that intention when you did kill him. His Honour declined, however, to sentence you to life imprisonment. Although persuaded that the two murders which you had committed were 'high in the scale of what is horrifying and abhorrent', his Honour considered that they 'lack[ed] the chilling cold-blooded, premeditated elements of the most abhorrent'. Further, like Beach J, Teague J found that your moral culpability was lessened by your mental condition, and his Honour was persuaded that your prospects of rehabilitation were sound.¹²

56 The law is clear that a sentence is not to be increased beyond what is proportionate to the crime in order to extend the period of protection of society from the risk of recidivism. But, as the High Court said in *Veen No 2*:

antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, retribution, deterrence and protection of society may all indicate that a more severe penalty is warranted. It is legitimate to take account of the antecedent criminal history when it illuminates the moral culpability of the offender in the instant case, or shows his dangerous propensity or shows a need to impose condign punishment to deter the offender and other offenders from committing further offences of a like kind.¹³

57 In that regard, the similarities between this case and the murders of which you have previously been convicted are significant. In this case, you claimed that your motive was anger which you experienced at the thought that the deceased had arranged for the sexual assault of young girls. With Kells and Speirani, you claimed that your

¹² See Schedule 8.

¹³ (1988) 164 CLR 465, 477 (Mason CJ, Brennan, Dawson and Toohey JJ).

motive was to redress romantic or sexual wrongs which you perceived the deceased to have done to one or other of your friends' or their associates. In this case, you cut off the deceased's breasts and cut open her abdomen. In the cases of Kells and Speirani, you stabbed them multiple times. In this case, you cut up the deceased's body and disposed of the pieces into the sea. Likewise, you mutilated Speirani's body with the boat's propeller and left it at sea. In this case, you induced the deceased to go with you to Phillip Island, just as you lured Speirani to go to your home in Edithvale. In this case, you finished up with the deceased's handbag and jewellery, just as you finished up with Speirani's wallet and car. Within days of killing the deceased, you lied to the deceased's friends and associates as to when you had last seen her, just as you lied to Mrs Speirani as to when you had last seen her son. In this case, you lied to police and put in place a false trail which contributed to delay in the investigation into the deceased's disappearance, just as you lied to police and put in place a false trail which contributed to delay in the investigation into Speirani's disappearance.

58 In all the circumstances, I do not doubt that your prior offending illuminates your moral culpability in relation to the murder of Raechel Betts. In conjunction with her murder, it evinces a frightening predilection for homicide. Given the facts of your previous offending, and the expert psychological and psychiatric evidence to which I am about to refer, I am satisfied beyond reasonable doubt that your history of offending manifests a continuing attitude of disobedience of the law and a dangerous propensity to commit murder which requires condign punishment to deter you from reoffending.

Verdins considerations

59 Your counsel argued that the penalty to be imposed upon you should be lessened because of what he said was a causal connection between your offending and a psychological disorder. In general terms, that is similar to the arguments in mitigation of penalty which were advanced on your behalf when you stood to be sentenced before Beach J and later Teague J. There is a difference now, however, in

that when you were sentenced for the murders of Kells and Speirani, the experts called on your behalf attributed what they perceived to be your psychological problem to the head injury which you suffered in March 1974. Now, it is contended that your perceived psychological problems are the consequence of childhood sexual abuse suffered as a result of your stepmother making you available to a paedophile ring presided over by the headmaster of the local primary school. Thus, whereas previously the experts based their opinions of the existence of a causative traumatic nervous condition on medical records of your 1974 road accident and its neurological sequelae, this new sexual abuse thesis is based on more recent clinical notes made by medical staff within the prison system on occasions during your imprisonment for the murders of Kells and Speirani and after you murdered the deceased, and on what you very recently told Mr Healey.

60 Starting with the clinical notes, there are four pertaining to the period before you were released on parole in 2007¹⁴ and three relating to the period following your arrest for the murder of the deceased.¹⁵ I regard those which were made before you were released on parole as relevant, but I consider that those which were made in the period following your arrest are suspect.

61 In the covertly recorded telephone conversation of 13 December 2009 with Maureen Renwick, you frankly disclosed to her that:

One of my defences is gonna be is the fact that you [the prison system] let me out and all the reports and everything that goes with it.

That suggests that, by 13 December 2009, you had determined to base your defence on prison system records and what you proposed to contend on the basis of those records was a failure by the prison hospital system to diagnose the extent of your psychological disabilities.

62 The notes made in the period following your arrest for the murder of the deceased show a very significant increase in the frequency of your references to sexual abuse

¹⁴ See Schedule 9.

¹⁵ See Schedule 10.

and that for the first time you expressly attributed your offending to the way in which you say you were affected by sexual assault.

63 Taking the conversation of 13 December 2009 together with the increased frequency and specificity of the complaints about sexual abuse so shortly after 13 December 2009 suggests that those complaints were designed to establish an evidential connection between that sexual abuse and your murder of the deceased.

64 Possibly that is not so. It may be that the close temporal connection between the 13 December 2009 conversation and the increased frequency and specificity of your complaints about sexual abuse is nothing more than an innocent coincidence. But you chose not to give evidence on the plea, even though I pointed out to your counsel during the course of it that your failure to do so would leave a number of matters unclarified. You have demonstrated in the past that you are a liar. You also attempted to deceive the police and others concerning what you knew of the deceased's death. There is, therefore, such doubt about the truth of the contents of the post-arrest notes that I decline to give them much weight.

65 I turn to Mr Healey's report. It states that you told him the following:

Apparently his mother was part of a paedophile ring, that included the headmaster of the primary school, a person referred to as 'Dr Donald' and another male, Allan Wilson. The sexual abuse included anal rape of John, and he recalled going to a large dwelling in St Kilda with his mother, where the same assailants were present, but also other children (male and female). He was obliged to perform acts on them, and recalled his stepmother taking photos. Ultimately the school principal was charged, but he was never able to speak about what happened to him until he met a Psychologist (Kathy) at Pentridge Prison who assisted him to ventilate what had happened to him and to ease his feelings of self-deprecation. To this day he is troubled by distressing images of the abuses perpetrated upon him and other children, and he was tearful in speaking about it. In one particularly sadistic incident he said he was in the bath when the head master arrived, and his head was held under water while he was being subjected to the abuse; this happened to him on a number of occasions. When John was 13 he struck one of his assailants on the head with a baseball bat, which brought to an end the abuse perpetrated upon him. He remained living in the Edithvale dwelling to the age of 18, at which time he joined the Regular Army (Transport Unit).

66 In his oral evidence, Mr Healey added that he believed what you told him about

having been sexually abused, because you mentioned details of the abuse which were very similar to details related to Mr Healey by other sexually abused people about sexual assaults committed on them.

67 With respect, I do not think that to be very convincing. The sort of details of which he spoke are publicised in a number of resources, including sentencing decisions, and for all one knows they may well be the subject of discussion among prison inmates. At all events, they are sufficiently easily ascertained that one could not have much confidence that your knowledge of them derives solely if at all from personal experience.¹⁶

68 I accept that the likelihood of what you told Mr Healey is to some extent supported by the prison hospital record of 17 August 1993, in that it refers to an awareness of *past abuse* and of *resultant contribution to aggression*; and the note of 9 November 2006, in that it speaks of you identifying the ongoing negative and unresolved impact of your *experiences of abuse as a child*. On the other hand, the note of 29 September 2006 is equivocal and what you told Mr Healey ill-accords with the fact that there is no mention of sexual abuse in the reports of Dr Lewis, Dr Epstein or Mr Joblin, on which you relied when you were sentenced by Beach J and Teague J, or in their Honours' sentencing remarks. As I have said, the thesis then was one of traumatic nervous condition the consequence of your 1974 road accident.

69 Based on what you told Mr Healey, he concluded that:

John Coombes has been essentially institutionalised since his remand in 1984 so that in brief periods of liberty he had difficulty making an adjustment to the demands of normal community living. He drifted into unhelpful associations and derived dubious solace and escape from episodic smoking of amphetamine and cannabis. His problems, of course, were compounded by the need for surgery for stomach cancer in 2008, the symptoms of a post-traumatic stress disorder following a serious road accident in 1974 (ultimately requiring psychiatric intervention) but above all the ongoing memories of horrendous sexual abuse perpetrated upon him throughout his childhood.

¹⁶ Cf *Pollitt v The Queen* (1992) 174 CLR 558, 588 (Deane J).

... His father engaged in shift work, so that John was largely in the care of his stepmother, a cruel woman who was part of a paedophile ring, responsible for sadistic and degrading sexual abuses upon him until, at the age of 13, he was able to defend himself against the perpetrators. His father was never aware of the abuses perpetrated upon him and he had no opportunity to ventilate his distress until he confided in a female Psychologist (now deceased) when he was in Pentridge Prison. The subject was never raised again until his recent discussion with the writer. Clearly those matters would have been re-visited in his association with Raechel Betts and the images she disclosed of young people being similarly abused. John left home at the age of 18 when he joined the Army.

...

Over the years this man has carried a great deal of distress and disturbance over his life experiences. Note has been taken of two previous lengthy prison sentences for murder, and he demonstrated distress and self-reproach over the most recent incident in which he was re-visited by memories of the degrading sexual abuses perpetrated upon him by his stepmother. He was clearly overwhelmed at the time, although not psychotic, and remains resigned to spending many years (if not the remainder of his life) without his liberty.

70 In his evidence in chief, Mr Healey added that:

Well, clearly his [Coombes'] mental functioning was impaired. He wasn't - I don't think - psychotic. I don't think he lost contact with reality to that extent, that he was hallucinating or suffering delusions, but he was certainly under a great deal of focussed emotional stress, with those images being put before him, reminding him very graphically of what he went through. So that then reduces the scope, as it were, to act in alternative ways. To act in ways that are more rational or to move away from a situation which became a tragedy.

71 Asked whether you had demonstrated anger during the course of Mr Healeys' consultation with you, Mr Healey also said:

There was some anger, but there was more emotion, grief, tearfulness, uh, this person didn't deserve to die. In a sense, he was saying it was the wrong person. It wasn't the person who should have died. But he just wasn't in control, and I think he said that in the answers in the record of interview. Given all those circumstances, given his past, given the circumstances as they were at the time, and perhaps some disinhibition through the intake of cannabis or amphetamine. I think that's minor. I think the major overwhelming impact is the imagery being revisited. Not of him, photos being taken of him, but photos of others, or imagery of others.

72 The difficulty with all that, however, is that it assumes the truth of what you told Mr Healey. As he readily conceded in cross-examination, his assessment of your

psychological condition was based very much on the history which you gave him. For the reasons I have given, I am satisfied that substantial parts of your claims as to the circumstances of the deceased's death and, therefore, a significant part of what you told Mr Healey about them, are untrue. In particular, for the reasons I have stated, I consider that your claims that the deceased spoke of being complicit in the sexual abuse of children, and that she offered you the chance to get involved, are a fabrication or confabulation calculated to conceal the true nature and gravity of the circumstances in which you killed her and destroyed her body. Given that a significant part of what you told Mr Healey was false, I respectfully reject his opinion.¹⁷

73 So to say is not to exclude the possibility that you were sexually assaulted as a child. Nonetheless, it is remarkable, given what you claim was the nature and extent of the abuse, that the only evidence of it having occurred are your assertions to that effect. It is also apparent that, in the past, you have not hesitated to lie about your lifetime experiences and state of mental health in order to advance your interests. One striking example of that is that in the past you have claimed repeatedly to have suffered trauma symptoms, including intrusive recollections and disturbed dreams, the result of fire fights in which you said you were involved while on active service in Vietnam. More recently, you have felt the need to admit the fact that you never saw any military service in Vietnam. Given your age and previous convictions, it is notable, too, that the psychological consequences of childhood sexual abuse have not before now been asserted or counted among the causes of your offending. Accordingly, while I accept that you may have been sexually assaulted as a child, I am not persuaded on the balance of probabilities that you were sexually assaulted to the extent that you claim; still less that it caused you to murder the deceased.

74 I am strengthened in that conclusion by the very detailed confidential opinion of Dr Douglas Bell, consultant psychiatrist and Assistant Clinical Director, Inpatient and Prison Operations of the Victorian Institute of Forensic Mental Health, who

¹⁷ *Ramsay v Watson* (1961) 108 CLR 642, 649; *Whisprun v Dixon* (2003) 200 ALR 447, 460 [47].

interviewed you on 13 July 2011 for the purpose of preparing the pre-sentence psychiatric report I requested pursuant to s 96 of the *Sentencing Act 1991*.

Lack of remorse

75 Your counsel submitted that you have demonstrated genuine remorse by making admissions to the police; pleading guilty; and providing assistance to the authorities in connection with another matter, and by your statements to prison medical staff and to Mr Healey. I reject that submission for a number of reasons.

76 First, your admissions to the police were not made until after you were arrested. It appears to me that you realised you were likely to be convicted and took the view that your only real chance of avoiding a life sentence without parole was by appearing to be co-operative and remorseful. So much is apparent from your statement to the police on 23 December 2009:

I was angry, I was sad but I knew basically that I was fucked so I knew straight up that - I think I said on the first day even though I was still trying to throw off I knew that I was a monty to be looked at. Believe me, I haven't lost sight of the fact that, you know, three strikes you're fuckin' out, boy.

77 It also appears in some of your statements to Maureen Renwick during the covertly recorded telephone conversation of 13 December 2009:

Third strike you're out for fuckin' ever and ever, right?

Well, that's what I've gotta make sure doesn't happen, love.

What do you think I - I- I- I'm gonna fight.

...

- one of my defences is gonna be is the fact that you [the prison system] let me out and all the reports and everything that goes with it.

78 In those circumstances, I am not persuaded on the balance of probabilities that the admissions which you made to police were the result of remorse. The fact that you gave a version of the killing to the police which was false in material particulars points in the opposite direction.

79 Secondly, your plea of guilty was not entered until the first day of trial in circumstances where you knew that you faced a powerful Crown case. I do not overlook that the utilitarian value of a plea is not affected by the strength of the Crown case.¹⁸ But the law recognises that the strength of a Crown case is capable of casting doubt on the extent of an offender's remorse, genuine contrition, acceptance of responsibility and willingness to facilitate the course of justice.¹⁹ In your case, I am sure that it does.

80 Thirdly, despite pleading guilty, you have persisted in a version of the killing which I am satisfied beyond reasonable doubt is false in material particulars and which, because of its falsity, is bound to exacerbate the awful distress and suffering of the deceased's family. That makes it even less likely that you pleaded guilty in order to save the deceased's family and other witnesses from the ordeal of a trial and still more probable that your decision to plead was informed by what you perceived to be your own best interests.

81 Fourthly, although the evidence concerning your offer of assistance to the authorities was given in camera, and so it would be inappropriate for me to say a great deal about it, I must say that, in view of the nature and timing of the offer, I find no more reason to think that it was informed by remorse than was your plea of guilty.

82 Fifthly, I am not prepared to take your expressions of remorse to prison authorities at face value. For the reasons I have given, I think it not improbable that you contrived them for evidential effect.

83 Sixthly, although Mr Healey considered that your expressions of remorse to him were genuine, his opinion was based on what you told him; and, as I have said, I do not accept substantial parts of what you told him. Contrastingly, your statements to Maureen Renwick (during the covertly recorded telephone conversation of 13 December 2009) were unguarded and thus, in my view, provide a more accurate

¹⁸ *R v Pajic* (2009) 23 VR 527, 532 [20].

¹⁹ *Cameron v The Queen* (2002) 209 CLR 339, 346 [22]; *Siganto v The Queen* (1998) 194 CLR 656, 663–4 [22]–[23]; *R v Houlton* (2000) 49 NSWLR 383, 412 [118]; *Ciantar v R* [2010] VSCA 313, [31].

reflection of your state of mind. You said to her:

But even as my brief says, he said it's quite possible there's no murder charge to answer here. He said it's – it's the other side that's a bit gruesome. That's what the press has got hold of.

And I said, 'Yeah, well, they're sayin' she was murdered gruesomely. I said, 'Well, she wasn't'. It – , it's probably the cleanest killin' there's been – been in a long time. It was, just, click, it's over – gone.

I see no remorse, genuine contrition or acceptance of responsibility in that.

Prospects of rehabilitation

84 Your counsel's submission as to your prospects of rehabilitation was that you have shown by your plea and offer of assistance to the authorities, and by your statements to prison officers and Mr Healey, that there is a prospect of rehabilitation sufficient to require that I should set a non-parole period. Counsel also made reference to the courses which you have completed and qualifications which you have gained in prison as indicative of the prospects of rehabilitation.

85 The difficulty with that submission is that it assumes that your plea, offer of assistance to the authorities and statements to prison officers and Mr Healey are indicative of remorse. For the reasons I have given, I do not think that they are. I do not accept that you are remorseful and, in the absence of remorse, I do not see that there is a significant prospect that you will be rehabilitated. Given that you have now murdered three people; given the manner and circumstances in which you killed them; and given that you killed the last of them after spending almost half your life in gaol for killing the first and second of them, I am persuaded there is a real risk that, if you were afforded the opportunity to kill again, you would kill again.

Discount for plea of guilty

86 Your counsel contended that, apart from any question of remorse, the fact that you pleaded guilty of itself entitles you to a sentencing discount in order to reflect the utilitarian value of the plea in saving the state, witnesses and family of the deceased

from the expense and ordeal of a trial. In his submission, that should result, if nothing else, in the setting of a non-parole period.

87 The argument finds some support in the observation of Ormiston JA in *R v Diep* that:

In broad terms it may be said that in every case a person pleading is entitled to some discount from a sentence which he or she would otherwise be subjected to: if there are other factors, as often there are, they may also be taken into account in determining the significance of the plea.²⁰

88 With respect, however, I think the better view to be that, although a sentencing judge must take into account a plea of guilty in every case, regardless of whether it is made solely out of self-interest, there are circumstances in which it is proper to give such a plea no weight at all. The position was explained by Crockett and Southwell JJ in *R v Hall*, as follows:²¹

A plea of guilty is a mitigatory factor. Moreover, it is statutorily stated to be so. See s 4(1) of the *Penalties and Sentences Act 1985* (Vic) replaced by s 5(2)(e) of the *Sentencing Act 1991* (Vic). The latter provision (which is that now in force) states that:

In sentencing an offender a court must have regard to –

...

(c) whether the offending pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so.'

Both provisions were obviously intended to act as an inducement to an offender to enter a plea, furthermore, an early plea, in return for a lesser penalty than otherwise might have been expected to have been passed: see *Morton* [1986] VR 863 at 867; (1986) 23 A Crim R 433 at 437. *A court may (although such a case would be rare) elect to give no weight to such a plea.* For instance a plea which is no evidence of remorse, is entered at the 'eleventh hour' and is made in a case of overwhelming strength may attract no reduction in sentence ... (Emphasis added).

89 To the same effect, in *R v Donnelly*,²² Charles JA said:

I do not intend to convey that a plea of guilty must always result in a sentencing discount: cf *Wangsaimas, Vanit and Tansakun v R* 87 A Crim R 149 at 171. The law is merely that the judge must have regard to the plea and the stage in the proceeding at which it was entered or an intention to plead indicated. Nor do I say that a judge is bound to accept a Crown concession

²⁰ [2003] VSCA 203, [14].

²¹ (1994) 76 A Crim R 454, 469–470.

²² [1998] 1 VR 645, 649; cf. *R v Brazel* (2005) 153 A Crim R 152, 161 [29].

that there should be a discount in sentencing in consequence of a plea, although ordinarily one would expect the judge to give reasons for not acting on such a concession.

90 Consistently with what was said in *R v Hall*, I do not give your plea of guilty any weight. For the reasons I have stated, I do not accept that it is a reflection of remorse; not least, but not only because it was entered only at the 'eleventh hour' and in face of what I conceive to have been an overwhelming Crown case. Although it cannot be denied that it was of some utilitarian value, in this case I regard that as marginal. For, despite the importance of the general practice of allowing a discount on a sentence for a plea of guilty (to induce guilty offenders to plead guilty), I am satisfied beyond reasonable doubt that the nature and gravity of your offending, your lack of remorse and the absence of a significant prospect of rehabilitation render the idea of any discount on sentence in this case inappropriate.²³

Discount for cooperation with authorities

91 Finally, your counsel contended that you were entitled to a discount on sentence because of your offer of assistance to the authorities and, if nothing else, that it should result in the setting of a non-parole period. Other things being equal, that might be so. Although the assistance which you offered proved to be of little value, a discount on sentence is ordinarily allowed for an offer of assistance to authorities even if the assistance proves to be of no value. The extent of the discount depends, however, on all the circumstances of the case, including the objective worth of the assistance.²⁴ In the exceptional circumstances of this case, I consider that the gravity of your offending, the lack of remorse and the absence of a significant prospect of rehabilitation render it inappropriate to allow any discount.

Serious violent offender

92 Because you have previously been convicted of murder for which you were sentenced to a term of imprisonment, you now stand to be sentenced as a serious

²³ Sentencing Act 1991, s 11(1).

²⁴ *R v Cartwright* (1989) 17 NSWLR 243, 252-253; *R v Su* [1997] 1 VR 1, 78-79; *R v Johnston* (2008) 186 A Crim R 345, 350 [18].

violent offender. I am bound, therefore, by s 6D(a) of the *Sentencing Act 1991* to regard the protection of the community as the principal purpose for which the sentence is to be imposed.

93 Under s 6D(b), I am empowered to impose a sentence longer than that which is proportionate to the gravity of the offence if necessary to achieve the purpose of community protection. In your case, I do not find it necessary to do so. In my view, the dreadful nature of your crime, the consequent need for denunciation, deterrence and just punishment, and the requirement for community protection, combine to dictate that a sentence of the utmost severity is proportionate to the gravity of the offence. If that were not so, however, I would exercise the discretion conferred on me by s 6D(b) in order to arrive at a sentence of the utmost severity, for I am clear that this is one of those very exceptional cases where the evidence establishes beyond reasonable doubt that you are sufficiently likely to commit further murders that you should spend the remainder of your life in gaol.²⁵

Sentence

94 John Leslie Coombes, for the reasons I have given, I sentence you for the murder of Raechel Betts to imprisonment for life.

95 I declare that you are so sentenced as a serious violent offender within the meaning of s 6E of the *Sentencing Act 1991* and thus that, but for the fact that you are already serving a sentence of life imprisonment, the sentence which I now impose on you would be served cumulatively on that sentence. I direct that the fact of the declaration and its details be entered in the records of the court.

96 I decline to set a non-parole period.

97 I declare that the number of days already served under the sentence is 10 days, and I direct that the fact of the declaration and its details be entered in the records of the court.

²⁵ *R v Connell* [1996] 1 VR 436, 443; *R v Barnes* [2003] VSCA 156, [21]; *R v Tutchell* (2006) 168 A Crim R 25, 32 [35].

- 98 I state, for the avoidance of doubt that, in view of the sentence of life imprisonment without parole which I have imposed on you, I do not consider that it is appropriate to allow any reduction in sentence under the *Renzella*²⁶ discretion for time served following revocation of your parole on 11 November 2009.
- 99 Finally, I shall make forensic sample and disposal orders in the terms submitted by the Crown.

²⁶ *R v Renzella* [1997] 2 VR 88, 98.

SCHEDULE 1

1. In the first version, which Coombes gave police during the interview on 2 November 2009, he stated as follows:

Raechel [the deceased] had been talking to me about something that had allegedly happened out at this house at Doncaster and some other locale as well. *I'm not sure what it was.* In relation to [TJ] and [PJ], two young girls who were in her [the deceased's] care. (Emphasis added).

...

... That they'd been drugged and raped and or whatever. At this address, something terrible had happened and then they had to move to one other address. Rachel had been aware for some time that - I'd been the victim - had been the victim of abuse and at that time, I didn't think a, you know, great deal of it. I sort of believed what she was saying ... And Rachel wrote out a list which I showed you over at my house of ah three names. Two of them I don't really understand the connection of what she was trying to say 'cos she was getting' a bit emotional but one of them she did say was [TJ]'s neighbour who'd been stalking her and had cameras, more or less, and they had nude photos of her and there was stuff appearing on the internet and what have you and she borrowed my camera and she said she was going to show me something with it. *And she came back a day or two later I suppose, and showed me these pictures and two of them really did look like [TJ].* They were pretty graphic in nature. I couldn't really look too much at it because of my own feelings towards it. I'm just sort of like 'Okay, what's this about?' and then she's - she put to me that she wanted these fellows dead, but specifically the neighbour ... I made a plan to - said, ... 'Well, if we're goin' to do this, can we need to sit down, I need to know all about these fellows'. I said, 'Well, I imagine you need to know a fair bit too'. 'We'll go down, we'll sit down, we'll talk. We'll need to sort this right out'. It was arranged for - I told her that we had some - - - and that I'd thought of somewhere to go- It was to Nicky's at Phillip Island and just talk, plan, put everything together, you know.

...we went to Phillip Island or proceeded to Phillip Island and- and I've only just remembered now, we actually stopped at a garage. I think it's a BP. It was somewhere near the Coronet Bay turn off, I think it is. I'm not sure, somewhere down on that road. I'm - I'm not sure if it's still the Bass - - - Bass Highway or whatever they call it. And we got a coffee and something to eat. We sat out the front and ate that, had the coffee.

...

... We arrived at Nicky's place just to prop and talk. I don't know, maybe three quarters of an hour later or something like - I'm not very good on the times.

... so would've got there about 45 minutes later, I suppose, and we went in and I made the introductions. Coffee. Couple of cups of coffee, we listened

to the music and I think I said to Nicky, 'Look, I just need some time and we need to be away from Melbourne. We need time to have a bit of a chat and sit down and plan it and what have you'.

...And I did and as I say, we had coffee, listened to a bit of music, the whole lot. So, I decided it was time for a bit of a lay down. I went in to see if she was okay. I was propped on the couch and she - she went and slept - - - lay down on the bed in Nicky's spare bedroom and I sat up for a bit longer and went in to see if she was alright and she was awake and she was - and we started talking and I just laid down beside her and - well, she said, 'Come and lay down beside me.' So I said, 'Yeah, yeah, yeah, alright'.

And I had my - sort of had my arm stret-, she lifted her head so I could get - get my arm and everything underneath and get comfortable and we were talking about, you know, bits and pieces that have happened and she said a couple of little ---- and she ---- and it's almost like little Tourette's, like, little Tourette's like, fuckin' things that just didn't fit and she referred to - I - said, 'Are you sure this is the fuckin' path you want to take because this is - its' really - really - you've got no idea what you're asking here'. And sort of the first time, she raised me, she said, 'Oh no,' You know, 'You wouldn't have liked to have done that to the blokes that got...' 'Yeah, absolutely'. I said, 'As long as you're fuckin' sure'. And you know, and it was like just - what? It was - it's not like she yelled it out or anything like that. It was - it was - again like, it was just so out of place. It was so unexpected and just turned around and she said, 'You shouldn't worry too much about that', and she said 'The main thing is that we - we get to this' And I said, 'Well, fuck it,' you know, 'look, it's not just something that you get over', you know, 'you get over all this sort of shit'. Fuckin' - and then she started sort of- not taunting, not tormenting, just - 'Yeah, well, it happened to you'. You know, 'but you're alright now, you're - you're - you're fuckin' -' and I said, 'What's fuckin' goin' on now? Did you have somethin' to do with this?' 'Right. 'Is - is there more than to this than you're fuckin' tellin' me?' Said - *she said, 'A girl's got to - got to' you know, 'get some money to pay - girl's got to pay her bills', or something* and I - I just - 'Did you do - did you let this happen to them?' and she just fuckin' laughed and I just brought my arm up around her - under her chin. She - she thought I was fuckin' proud of her. I - she lifted her chin, like she wanted a cuddle and then I - *I straddled her at that, put a fuckin' sleeper hold on her and I just fuckin' hung on. I was so fuckin' angry.* How could you fuckin' cuddle that. So fuckin, angry. Sorry. I - I realised - *I don't know how long I hung on to her for but it was like fuck I checked for a pulse. When I went to move her over, she's lost control of her bladder.* I don't know how long we sat there possibly panicked or - but I was so fuckin' angry, I couldn't believe it. (Emphasis added).

2. Later in the interview, he added that, while en route to Phillip Island, before reaching the service station, the deceased showed him a film clip of her sister having sex with three fully grown adult men and insinuated that they were the three men on the list whom she wanted him to kill or maim:

We're on our way down there. And she's showing me these things that are supposed to [be] her sister.

She showed me a girl having sex with three fully grown adult men. One of them was very hairy. The girl, she said it was for - I believe she said her sister. Now, I don't know if it was her half sister or her sister, I don't know.

...

It was a small film clip.

...

Off the camera

...

Off a - off a phone probably. Well, I'll have apologise to you I can't remember because I was actually driving along. It wasn't long before we got [to] that bloody serviced station, 'cos I remember I had to sit there for a few minutes and get some composure. I'm not sure whether it was actually a camera or a camera on a phone. Sorry about that. But it was very short. But - and- and - but there was several of them [sic]. And they were the same girl and obviously the same three blokes and you couldn't see their faces or anything. And she said it was her sister and, you know, this is what happened to her and this is what had been occurring on the internet, rah, rah, rah.

3. The police asked:

So are these the three males - is that what you're saying?

4. Coombes answered:

Well, it was, sort of, what I - I was led to believe.'

5. Later still in the interview, Coombes added for the first time that the deceased told him that she had taken money or financial advantage for arranging for her sister to be filmed having sex with the three men:

Those three fucking names, we were down there to, fucking planning something for them. How did you then fucking turn around and tell me that it was down to you. And it was for fucking money that those girls have been whatever, and they're there possibly all over the fucking internet. It's your own sister, for fucking money. How do you get - sorry. 'How do you - how do you fuckin' dare tell me that? I've [gone] there to fucking plan to either cut someone's balls out or cut their fucking heads off, and then you tell me that you're - how can you fuckin' do that?'

SCHEDULE 2

1. In the second version, which Coombes gave police during the interview on 23 December 2009, police asked whether the real reason that Coombes went down to Phillip Island was 'to organise drug stuff'. He answered:

Yeah.

...

And discuss about what was going to happen to the three names you got.

...

There was that as well, Probably more the - the drug thing than the other because the other would have been very quickly to fill me in.

2. The police asked him:

I guess our question is and the question I just asked you before is why didn't you mention to us the reason why you were going down to the island. I don't think you mentioned that at all [in the first interview].

3. He answered:

Yeah, well, A, there was two reas - , well, not two reasons. There was only one. The other one came into it later. To roll up about the drugs and to sort out what was going to happen with these three and whether on not if it turned out, especially the next door neighbour, if it turned out that she wanted to put him off, whether or not we could do something to get rid of the body or whatever down there. Did - could we hunt somebody up with a boat that we could borrow or were there hire charters, whatever... I haven't been down there for over a quarter of a century. So I had no idea what was down there. I had - we would have had to go up and suss all that out. It was Raechel's intention that one of the chaps on that list, and that would be the next door neighbour, if she could get hold of him, she wanted to put But that was [TJ]'s next door neighbour I mean, whoever he - whichever one it was of the three. You would know. She wanted to put him off if he had anything to do with what allegedly happened out at the Doncaster place. She said that others, you know, basic torture, break their fuckin' legs whatever but this prick had to die. We had to discuss something and had to be somewhere to do it and she wanted to find out about the drug scene down there. She was interested in that. As you can see by the house, I wanted to put it to Nikki. I never got a chance obviously.

4. Later in the interview, police put to Coombes they had ascertained that he told Maureen Renwick that the deceased had said to him that, if he played his cards right,

the deceased would arrange for the TJ to be made available to him for sex. Coombes answered, falsely, that he had told the police the same thing during the first interview, and then continued:

I said she offered me - I think I said to you she offered 'if you play your cards right', or that's why I said to you I couldn't - *I wasn't quite sure what she said.* Whether it was, '*if everything goes right*', or, '*If you play your cards right, I can do the same thing and you can have the little one yourself*'. .

SCHEDULE 3

1. In the first version, which Coombes gave police during the interview on 2 November 2009, he stated as follows:

I – she lifted her chin, like she wanted a cuddle and then I – *I straddled her at that, put a fuckin' sleeper hold on her* and I just fuckin' hung on. I was so fuckin' angry. How could you fuckin' cuddle that. So fuckin, angry.

2. Coombes also said that the deceased was kicking for a while before she died. The police asked him:

Now, you've mentioned to – one of the things you mentioned, this was back at your place earlier today, you made a comment to us that she was kicking and that was she was kicking for a while.

3. He answered:

Mm.

4. The police asked:

Yeah. How long do you think – how long do you think you had your arm around her neck before she stopped kicking?

5. He answered:

In reality I don't think it was more than a few minutes but, it just seemed like, I don't know.

6. The police asked:

Was that technique a sleeper hold you mentioned? A sleeper hold. Is that something that you – you know about?

7. He answered:

Yeah. It's a figure four leg lock they call it in wrestling. It's across the front and you take them around the neck, the other hand up and tilt the head over, believe it breaks, cuts off the air, if you push it correctly with the palm of your hand [it] prevents anything from getting through here. It's fairly quick. That's what they say, in reality, it's a little bit longer.

SCHEDULE 4

In the second version, which Coombes gave police during the interview on 23 December 2009, he said:

I'm not sure if I strangled her but I think I might have broken her neck because of a only the tiniest amount of urine. Alright. Now, again, I'm not a pathologist and that but from what the army tell us and whatever, if you're strangling someone and they take quite a while to die, the bladder, the bowel, everything goes, but there was only a small amount of urine right on her jeans and I think I've already said that again today. Was only the smallest amount. Was just a wet patch.

...

Your sidekick asked me, you know, how did I stop her from moving. I must have held her, I held her or something. But lying on the side, the best I could have done was brought my leg over and if I'm choking her, she - and she knew a bit of martial arts and that as well. I mean if I'm choking her, she's gonna fight.

...

Just throwing my leg over it's not gonna - I've gotta put a leg lock, everything on it so - Jesus.

No, no, I'm just saying. I would have had to put a leg lock but she was under the covers so I couldn't --have done that.

SCHEDULE 5

In the third version, which Coombes gave to Maureen Renwick, he said:

Then I wake up – you know, like, the – the next thing I know I’ve got a cramp. I mean, she’s there. There’s no two ways about – well, I said to you, there’s no two ways about what I did.

But I – I don’t mm, I wish I could remember doin’ it. If – if I remembered doin’ it, I’d probably know what the – what the actual trigger was.

...

But, even as my brief says, he said it’s quite possible there’s no murder charge to answer here. He said it’s – it’s the other side that’s a bit gruesome. That’s what the press has got hold of.

And I said, ‘Yeah, well, they’re sayin’ she was murdered gruesomely. I said, ‘Well, she wasn’t.’ It – , it’s probably the cleanest killin’ there’s been – been in a long time. It was, just, click, it’s over – gone.

SCHEDULE 6

In his report, Mr Healey said that Coombes told him that:

Before setting off, Raechel borrowed his digital camera, and on the way to Phillip Island allegedly showed him images on her mobile 'phones (and possibly on his camera) of a female (said to be her younger sister) being forced to engage in oral sex while under the influence of drugs. She showed him an image of [PJ] being vaginally raped, and the same thing happening to another young female whose eyes were closed. He recalled becoming increasingly agitated, asking where and how often this had happened; apparently the activities occurred at Raechel's grandfather's dwelling in the Dandenongs on three occasions.

On the one hand he felt he didn't wish to view or discuss the images, but on the other felt compelled to do something to stop what was happening (the whole scenario reminding him of how he had been assaulted as a child).

Having arrived at the dwelling at Phillip Island, Rachel said she would collect 2oz of amphetamine from Frankston and asked him to be guarantor. *She lay down in one of the bedrooms and called him in, asking him to lie beside her, and she showed him further images on the digital camera of young females, all in situation where they were being sexually abused (including [PJ] and [T]).* He was even more distressed by an image of Raechel performing oral sex on one of the girls and inviting one of the males to be involved; she told Coombes that 'if he played his cards right' he could also be involved. As he lay next to Raechel he had his hand under her neck, and proceeded to tighten his grip on her throat until she was dead. He disposed of the 'phones (throwing them in the sea) and erased the images from the camera. *He was distressed and tearful as he related these events to the writer.*

SCHEDULE 7

Coombes told Maureen Renwick that his reason for cutting up the deceased's body was that:

...it had to be made smaller, so I could handle it.

Right? Well, it was darlin'. I said, 'Look, all it what was fucken then, was a piece of beef.'

And - and it sounds nasty and callous, but that's what she was - I mean, a - a - a lump of something that I had to make smaller to move

...

Right? Now, 15 kilos, I can manage.

60 or 70 deadweight, I - I couldn't manage.

Couldn't even lift it up ... I thought me guts was gonna explode. I - I know it's, you know ...

...

Third strike you're out for fuckin' ever and ever, right?

Well, that's what I've gotta make sure doesn't happen, love.

What do you think I - I - I - I'm gonna fight.

Because one of the reasons that I - I - I did what I did, in movin' her the way I did - is - first thing I thought of, 'No cunt's gonna believe this'.

SCHEDULE 8

Teague J said that:

There is also other evidence which suggest that what you did in 1984 was to some degree the product of alcoholism and other health problems no longer pressing and, more significantly, that there are clear indications of your having been rehabilitated.

As to rehabilitation, I refer to the impressive oral testimony of Karen Lindstrum, Lionel Wood and Ian Joblin, to the reports of Dr Epstein and Mr Joblin and to the review and other documents extracted from the prison file led upon the plea. I have noted the evidence as to your active participation in many educational courses, including courses designed to address your particular problems. I have noted the evidence as to the high level of trust vested in you by staff at various prisons.

Put shortly, the evidence indicates that the period of imprisonment between 1988 and 1996 has had a strongly maturing and stabilising effect upon you. You had only a limited period on parole from November 1996 but the indications during that period were favourable.

...

Although I do not propose to go into the details, I would also note that I have had regard to other matters affecting you position as at February 1984, including your difficult upbringing, your chequered employment history, the head injuries suffered in a 1974 motor vehicle collision and your alcoholism.

SCHEDULE 9

1. The earliest in time is dated 17 August 1993 and headed 'PROGRESS NOTES'.

It is as follows:

Seen by (Service and Signature): Psychiatrist J.: 4 Reviews since 1984. Two problems (i) Recent agitation and *awareness of past abuse. Resultant contribution to aggression. Request for psychotherapy.* (ii) unable to obtain diet medically indicated by SVH. MSE - Alert, active, charming, smiling, chatty. No depressive signs, non suicidal. No delusions evident > No: unable to establish all facts regarding release/escape not delusional intensity of ideas. (A) Require psychotherapy if accessible. (B) D/W RPN and MO. Dr Tuck re-availability.

2. The next is dated 29 September 2006 and headed 'Progress Report (Prison)'.

The relevant section of it is as follows:

Since the Board was appraised of his progress in 2005, Mr Coombes reports to have engaged in the exploring change program, commenced the leave program and continues to engage in one on one counselling. Mr Coombes stated that since being transferred to Marngoneet prison he has taken on a kitchen position, which has resulted in him training other prisoner's [sic]. The has been confirmed by CCO.

Mr Coombes was identified as a candidate to participate in the Cognitive Skills program in 2004. During that assessment he indicated that he was 'fully aware' of the consequences of his actions and did not feel as though the program could offer him anything. Despite this, he now contends that he would like to participate in any program of its sort in order to 'fully understand' why he did what he did. He indicated to the writer that he wasn't sure where the violence came from.

3. The third is a note dated 9 November 2006 which is headed 'TREATMENT FILE

NOTE'. It is as follows:

Focussed today on issues that John believed impacts [sic] upon his capacity to cope effectively on release.

Identified the ongoing negative + *unresolved impact of his experiences of abuse as a child* as an area of concern. Expressed a need to deal with this trauma.

Discussed with John how safe he feels to be able to do this in current setting and what other options are available to him.

Explored with him how living with trauma impacts upon his thoughts, feelings, actions.

4. The fourth, and the last relating to the period before Coombes was released on parole early in 2007, is a document dated 6 December 2006 which is headed 'COATS - COMMUNITY DRUG & ALCOHOL ASSESSMENT REPORT'. The relevant passage of that is as follows:

Mr Coombes is not in need of further drug and alcohol treatment at this point in time. Therefore should an early release be considered appropriate, he is not likely to be referred to an agency for post-release drug and alcohol treatment. However, if his circumstances should alter throughout the period of his parole Order, he may return to COATS for a re-assessment. It is further noted that Mr Coombes has requested post-release support with regards to ongoing counselling to address issues surrounding his history of sexual assault.

SCHEDULE 10

1. The first of the post-arrest notes is dated 27 December 2009 and written on a page headed 'CLINICAL RECORD'. It is as follows:

Nursing 4 outputs: Seen on unit with officer present, as requested by John due to concern that he may become angry, lose control & attack ... staff. When discussing issues then > this response.

Affect labile - smiling, often incongruent in situations > tearful or angry. Anger not directed towards staff however. Good eye contact. Otherwise body language betrayal anxiety eg. Wringing hands rubbing wrists, picking at finger nails or covering face. ↑ When discussing anger towards his stepmother & her friends who he stated sexually abused him over a long period when he was a child. Described feeling very happy and 'wanting to dance' when he watched his stepmother commit suicide. Does not wish his father to know about the abuse by his stepmother. John stated he remembers today for the first time what the woman he murdered (Raechel) by strangling said to him prior to his 'fit of rage'. 'They heal...' Stated this was I reference to 3 children who he knew were being raped. Believes Raechel was aware rapes were occurring & was involved. Feels very very angry towards sexual offenders, especially child , b/c of his experiences as a child. Feels more ready to be open about his experience now with regard to discussing working with Psychology.

John reports his mood is otherwise OK. He gets along with the co-prisoners on his unit & is happy/accepting to stay in prison for the rest of his life? Nil self harm ideation.

(P) Refer to psychology to work on trauma & anger mix issues. John keen for this.

2. The second is dated 18 February 2010. It is as follows:

Review of prison after receiving self referral for 'grief counselling immediately'. (S) I'm not sleeping, have lots of thoughts, I feel that I should not have killed that girl, she didn't deserve it'. Remorse, guilt, reflecting back on crime and reality of consequences of crime discussed [with] prisoner. John dominating in conversation difficult to interrupt, discussing childhood experiences of sexual abuse, discussing how 'delighted' he was when he witnessed his stepmother's death, dramatizing movement and reactions, affect incongruent, laughing inappropriately at times then teary, physical sx of guilt, remorse, concern, stress discussed ε prisoner. Prisoner did not discuss any court issues ε writer vaguely admits to poor impulse control and irregular management of emotions and poor anger control. (A) Nil SASH concern, requesting support at this time. (P) R/V 2/52 ----- Files of J RICHARDS RPNS. To disengage after this c/t in 2/52 as 4 nurses unable to provide the intensive contact that John is requesting. For 4 support only! PRN.

3. The third, and last to which counsel referred, is dated 28 June 2010. It is also on a page headed 'CLINICAL RECORD' and is as follows:

Psychiatric nursing note. D Reid (programs) Interested to know what support 4 nurses are giving John at this time. Prisoner requested counselling for past sexual abuse. Discussed role of 4 nurse with & that this is something that 4 nurses can't facilitate. Supporting counselling/monitoring M.S. only. Suggested at this that due to prisoner court matters/ appealing of sentence this may not be appropriate request. Nil acute 4 concerns. Nil 4 HX. Unit staff deny any concerns. Nil health concerns raised with medical. PRN R/N Refer to nurse.

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