

R v Mahoney - [2019] VSC 740

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IN THE SUPREME COURT OF VICTORIA Not  
Restricted

AT MELBOURNE  
CRIMINAL DIVISION

S CR 2018 0112

THE QUEEN

v

KENNETH PATRICK  
MAHONEY

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JUDGE: CHAMPION J

WHERE HELD: Melbourne

DATE OF HEARING: 24 June 2019



1. Kenneth Patrick Mahoney, on 18 March 2019 you pleaded guilty to the manslaughter of David Charles Tweedly. You pleaded guilty on the basis of manslaughter by an unlawful and dangerous act, in that you punched Mr Tweedly twice to the head and face.
2. The maximum penalty for the offence of manslaughter is 20 years' imprisonment. It is a category 2 offence pursuant to s 3 of the *Sentencing Act 1991*.

### **Circumstances of the offending**

3. On 18 October 2017 around lunchtime, you went to the College Lawn Hotel in Prahran and consumed alcohol with friends. Shortly after 5pm, you returned to 'The Regal' boarding house in Little Grey Street, St Kilda, where you were living, and continued to consume alcohol, becoming heavily intoxicated.
4. Shortly before 7:30pm, you walked to 'The Beach House' boarding accommodation, located less than 100 m from The Regal. CCTV footage shows that you kicked the gate of the premises at the same time Mr Tweedly was leaving, and the two of you engaged in a brief verbal exchange before Mr Tweedly walked off and you entered the residence. A few moments later, you exited the gate and pursued Mr Tweedly for around 20 paces along Little Grey Street. He turned to face you and you immediately punched him to the head, making contact with the left side of his face near his ear. He tried to push you off and attempted to walk away, but you punched him again hard. This second blow was a 'haymaker' style punch that struck the left side of his face, causing his head to recoil sideways. He stumbled several steps before he lost balance and fell to the ground. CCTV footage shows that he did not strike his head on the road during the fall. Following this assault, you threw your arms up in an apparently celebratory manner as you walked away. You did not help Mr Tweedly and left him dazed on the ground.
5. Your assault was unprovoked, with CCTV footage showing Mr Tweedly did not attack you or make any movements of physical violence towards you. The first punch you delivered appears to have been sudden, hard, and without warning. The content of the brief conversation between you and Mr Tweedly is not known, and there is no excuse for you punching him twice to the head.
6. Mr Tweedly managed to pick himself off the ground and walk towards Grey Street. CCTV footage shows blood drops on his left foot, consistent with passive bleeding from the nose. Shortly after 7:30pm he entered a chemist on Fitzroy Street, St Kilda, where he collected his medication and was given tissues for his bloody nose. He then walked to a bottle shop and attempted to make a purchase, but was unsuccessful due to his credit card being damaged.
7. At approximately 7:45pm, Mr Tweedly was captured on CCTV footage between The Regal and The Beach House, apparently looking for something on the ground. Markus Lovecraft was standing nearby and asked him what he was doing, and he responded, 'I'm looking for my spectacles'. You were also there and following a verbal exchange with Mr Tweedly, you approached him in a confrontational manner. Mr Lovecraft forced himself between you two, attempting to defuse the situation. You threatened Mr Tweedly that if he was not inside The Beach House in a couple of a seconds, 'it's going to be on', or words to the effect of 'that will be it'. Mr Tweedly returned The Beach House and went to his room.

8. Later, at about 8:20pm, you were involved in a physical altercation with a man named Russell Jones. CCTV footage shows you charging at Mr Jones outside The Regal, striking him to the left side of his head with a haymaker style punch, knocking off his bicycle helmet. Mr Jones retaliated by hitting you on the head and lower back with a pair of metal wire cutters. This incident lasted approximately one minute.
9. At approximately 12:20am the following morning, Mr Tweedly telephoned emergency services and requested an ambulance, saying he had been punched in the head the previous night and had fallen over and believed he may have a concussion. He was described as sounding slow and tired on this call. Call charge records identify that this was the last outgoing call from his mobile phone.
10. A few minutes later, police attended The Beach House and spoke to Mr Tweedly. He complained of a headache and told them he had been punched to the head by a man who had recently served a lengthy prison sentence outside the premises, sometime between 8:00pm-9:00pm. An ambulance arrived and Mr Tweedly informed paramedics of the incident and his worsening headache. Two paramedics advised him to accompany them to hospital, but he declined, saying he just wanted paracetamol and to remain at home. The paramedics left at approximately 1:10am and Mr Tweedly returned to his room. He was last seen alive going to the bathroom at 1:24am, and returning to his bedroom two minutes later.

#### **Police investigation and procedural history**

11. On 20 October 2017, Mr Tweedly did not arrive at his sister's house to celebrate his 50th birthday as planned. Two days later, following a series of unanswered calls and texts, Vanessa Tweedly reported him as a missing person.
12. Mid-afternoon on 22 October 2017, police attended Mr Tweedly's room and discovered he was deceased. He was found lying face up on his bed. On his bedside table, police located a handwritten note, believed to be authored by him prior to his death. It read, 'A guy called Ken who had just done ten years gaol kicked the door'.
13. On 24 October 2017, you were arrested and charged with manslaughter. Among other matters, you stated you did not know Mr Tweedly by name and had never had any contact with him, but knew he lived at The Beach House. You said you had no recollection of the events of 18 October 2017 and had drunk yourself into oblivion. You stated your only memory was being assaulted to the head and back with a metal bar. I note this appears to be a reference to the altercation with Mr Jones, not what occurred with Mr Tweedly. After being shown footage of the incident with Mr Tweedly, you admitted it was you in the footage, but that you had no memory of the assault and could not explain or justify your behaviour. You said you assumed something must have been said by Mr Tweedly for the assault to have occurred.
14. Your counsel points out your shock upon seeing what you did, and that you had difficulty understanding your actions. You have not sought to justify your conduct and have accepted that the events occurred when you were intoxicated.
15. On 26 April 2018, a contested committal hearing occurred and the matter was listed for trial in this Court. The issue to be tried appeared to be whether your conduct had caused the death of Mr Tweedly. On 14 March 2019, four days before the trial was due to commence, you made an offer to plead guilty to the charge of manslaughter, which was accepted by the prosecution.

16. I note that on 13 April 2018, the prosecution filed a notice of intention to seek application of the minimum non-parole period scheme. However, on 18 March 2019, a notice of revocation was filed in this Court, and therefore the minimum non-parole period of 10 years' imprisonment is not sought, [\[1\]](#).

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[\[1\]](#) See *Sentencing Act 1991* s 9C.

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### **Post-mortem examination**

17. On 23 October 2017, forensic pathologist Dr Steven Cordner conducted a post-mortem examination on Mr Tweedly. Dr Cordner determined the cause of death to be a blunt head injury, involving right-sided subdural haemorrhage, together with the consequences of raised inter-cranial pressure including brain stem haemorrhages. Dr Cordner observed bruising to the left side of the scalp and inner aspect of the lips which was consistent with this.
18. Mr Tweedly's precise time of death is unable to be determined, but it occurred sometime between 19-22 October 2017.

### **David Tweedly**

19. David Tweedly was born on 20 October 1967, and was therefore 49 or 50 years old at the time of his death. He grew up in Seaford with his parents and four siblings and worked as a windscreen fitter after completing Year 11 at school.
20. In 1991, following the death of his mother, Mr Tweedly started to consume illicit drugs and increase his alcohol consumption. In 1993, his only child, Ben Smith, was born. Due to his drug and alcohol abuse, Mr Tweedly separated from his then partner and lost contact with his son several years later. Sometime during 2002 or 2003, Mr Tweedly started living with his sister Vanessa and in 2005, resumed employment in the windscreen fitting industry. In 2008, he moved to Tasmania for work and then later to Townsville, but in 2011, he lost his job due to alcohol consumption. In early 2016, Mr Tweedly moved into Odyssey House, a long-term drug and alcohol rehabilitation centre, but left a short time after. In June 2017, he moved into The Beach House, where he was living at the time of his death.
21. Mr Tweedly is described by his family as a quiet, loving and placid person who loved his family and friends. It is said that he loved music and playing the guitar.

### **Victim Impact Statements**

22. I received four Victim Impact Statements, all of which I have carefully read and considered. These statements express the profound effect of your offending.

### **Vanessa Tweedly**

23. Vanessa Tweedly, sister of Mr Tweedly, describes how she still struggles with the fact that she will never see her brother again. She explained how they were very close, especially as he lived with her for the majority of the 15 years before his death.
24. Ms Tweedly describes the huge loss to her children, as their uncle was such a big part of their lives. She explains how her sleep has been affected by images of his death and how events such as Christmas and birthdays now feel hollow and empty. Ms Tweedly describes how her brother never made it to celebrate his 50th birthday at her house, and her heart breaks to know he died alone and scared.

### **Ebony Tweedly**

25. Ebony Tweedly, a niece of Mr Tweedly, describes how she has suffered nightmares, panic attacks, anxiety and depression in the two years since her uncle's death. She explains her immense struggle to come to terms with his death and the fear she experiences in public places, especially when alone and at night.
26. Ms Tweedly has had to defer her university degree due to mental health issues.

### **Ben Smith**

27. Mr Tweedly's only child, Ben Smith, describes his shock and disbelief when he flew home from overseas upon being informed of his father's death. He explains how he continues to think about his father's final hours and how he was alone.
28. He talks of his sadness that his father will not see him get married or have children, as nothing would have brought Mr Tweedly more pride and joy than watching him start his own family. Mr Smith feels lucky to have felt the love of his father.

### **Nicole Smith**

29. Nicole Smith is a former partner of Mr Tweedly and the mother of their son, Ben Smith. She explains how she remained friends with Mr Tweedly and that he still attended many of her family occasions. Ms Smith describes how Mr Tweedly showed a genuine delight with children, and how he was especially proud of his son.
30. The loss has affected Ms Smith's mental health, requiring prescription medication.

### **Personal circumstances**

#### **Background**

31. You were born on 14 July 1967 in Dublin, Ireland and are now 52 years old. Your family moved to Australia when you were three years old, and you grew up in the southern suburbs of Melbourne with your parents and three siblings. Your father worked as a marine board inspector and died in 1996. Your mother worked as a factory worker and currently lives in Moe.
32. You describe your family as dysfunctional and your parents' marriage as unhappy and characterised by frequent violence, until their divorce when you were 13 years old. You were

exposed to your father's alcoholism and violence from a young age and describe being singled out as a target of his physical abuse. You report being locked in your room during school holidays, then running away and receiving a beating when returned home.

33. When you were 14 years old you became a ward of the state after your mother requested child welfare collect you. You were placed at the Dandenong Youth Refuge, but as the youngest child there, you stayed with a volunteer. You report being sexually abused by this person, but were not believed when you informed the refuge.
34. Following this incident, you commenced using illicit drugs, including cannabis, amphetamine and benzodiazepines. Shortly after, in April 1982, you were hospitalised following a possible suicide attempt. After some time, you stole money from the refuge and travelled to Sydney with other residents. You were eventually apprehended and placed at Baltara Youth Training Centre, which you describe as a violent place where you lived in fear. You then lived in a number of youth residential placements while continuing to abuse drugs and commit petty crimes. In 1985, aged 17, this culminated in a sentence served at the Youth Training Centre in Malmesbury.
35. You have limited education, having completed two years of secondary school. Your work history has been intermittent, comprising mostly unskilled factory and abattoir work. At one point, you were self-employed in the concreting industry for a year.
36. You have three children, but have lost contact with two and only recently initiated contact with the other after learning of her existence. You have had three significant long-term intimate relationships. The first occurred when you were 19 years old, and resulted in the birth of your first child. When you were 28 years old, you commenced a seven-year relationship, which broke down as you both struggled with alcoholism.
37. In 2006, you met Selina Tilley at a homeless shelter and began a relationship. This relationship was marred by alcoholism and violence, culminating in Ms Tilley's death in November 2007 after you assaulted her, resulting in you being convicted of manslaughter. I will discuss this offence in greater detail shortly.
38. You report being without stable accommodation for most of your adult life, not living in any one place for more than a year, excluding periods of imprisonment. At the time of this offending, you were living in temporary boarding house accommodation.

### **Substance abuse**

39. As above, you have a history of drug abuse that commenced when you were 14 years old. You report learning to self-medicate and manage your anxiety using various substances. You later developed a heroin addiction, which led you to commit a large number of criminal offences to support this. You managed to beat this addiction in your mid-20s, although continued to have difficulties with alcohol. Prior to being incarcerated for the manslaughter of Ms Tilley in 2007, you were reportedly drinking up to four litres of port wine each day.
40. At the time of this offending, you were again struggling to manage your alcohol consumption.

### **Physical health**



41. In 2002, you were deliberately struck by a vehicle following a verbal altercation with the driver. You were rendered unconscious and suffered a compound fracture of the right tibia and fibula, resulting in surgery for a nail to be inserted into the bone. In May 2004, an orthopaedic surgeon assessed your leg and indicated you would require further surgery to replace the nail and for possible bone grafting. It was noted that you were not taking painkillers at that time, due to your history of drug addiction.
42. Your injuries have never completely healed and you manage the chronic pain through exercise and efforts at self-distraction. You also appear not to have worked since receiving this injury and have been in receipt of a disability pension.

### Psychological report

43. The Court received a report authored by clinical psychologist Alison Mynard, dated 5 June 2019. Ms Mynard opined that at the time of offending, your judgement appears to have been impaired as you were alcohol affected and under extremely high levels of stress. It is noted that your living situation was extremely stressful, with a lack of sleep, unstable housing and being surrounded by people who were addicted to various substances.
44. Ms Mynard observed various psychological symptoms and made several diagnoses, including:
  - (a) Generalised Anxiety Disorder, scoring in ranges consistent with severe anxiety on the Beck Anxiety Inventory;
  - (b) Major Depressive Disorder, scoring in ranges consistent with extremely severe depression on the Beck Depression Inventory II;
  - (c) Post-Traumatic Stress Disorder (PTSD), including a high level of hypervigilant and hyper-arousal relating symptoms;
  - (d) Alcohol Abuse Disorder;
  - (e) Cannabis Use Disorder; and
  - (f) A likely diagnosis of Attention Deficit Hyperactivity Disorder, although further assessment is required for this to be confirmed.
45. It is evident that upon being released from custody in early 2017, you faced many challenges in the community. You told Ms Mynard that you had no formal support, no stable housing and little family support. She reported that following your long period of incarceration, you struggled with internal boundaries to manage your emotions, relationships and substance abuse. Ms Mynard opined that your living environment at the time of offending was 'not conducive at all to pro-social behaviour' and appeared to exacerbate your pre-existing mental health issues. It is noted that only days before this offending, you contacted housing workers and pleaded with them to move you elsewhere.
46. In relation to your alcohol consumption, Ms Mynard observed that while you had previously resisted many times, on the day of this assault, you succumbed to others' requests that you

socialise and drink with them. Her report stated that at that time, you knew that when you had drunk alcohol in the past, your anger had sometimes manifested and you had difficulty containing yourself. Ms Mynard stated that stress, anger and alcohol intoxication were major factors in your offending, and that you reacted impulsively to a perceived slight, not thinking of any serious consequences. It is submitted on your behalf that the decision to drink on the day of your offending was on the back of a very long history of alcohol abuse.

47. Ms Mynard opined that you have still not learnt that you need to abstain from alcohol, but that you now appear insightful about the effects of PTSD, depression, anxiety and the symptoms you experience. She added that you have not grown in your insight about the links between your past traumas, your anger, and your constant relapses into alcohol abuse. It is suggested you would benefit from individual therapy, group programs, and drug and alcohol courses.

### Criminal history

48. You have an extensive criminal history dating back to 1985 and including various interstate matters. Many of your prior convictions are for drug and property offences. You have also committed several offences that demonstrate a disregard for law enforcement, including breaching an intervention order, failing to answer bail and resisting police.
49. Your prior history involves examples of violent offending. Most significantly, on 15 June 2009, you were convicted of manslaughter in this Court, after you pleaded guilty to assaulting and killing your then partner, Selina Tilley. For the purposes of sentencing you today, only brief details of this offence need be repeated. Further information is contained in the sentencing reasons of Hollingworth J, which I have read, [2]. In summary, on 27 November 2007, after a period of drinking by both Ms Tilley and yourself, you awoke to Ms Tilley hitting you over the head with an object, [3]. You reacted by physically assaulting her, and did so again the following day, [4]. When you woke on the evening of 28 November 2007, you discovered Ms Tilley apparently asleep and without a pulse, and called an ambulance, [5]. She was deceased. The postmortem examination concluded the cause of her death was ‘multiple injuries, with the most significant being to the head, chest, and abdomen’, [6]. You admitted to punching or hitting Ms Tilley, but could not recall how many times, [7]. Considering all the circumstances, Hollingworth J held this was a ‘serious example of the offence of manslaughter’, [8].

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[2] *DPP v Mahoney* [2009] VSC 249.

[3] *Ibid* [5].

[4] *Ibid* [5]–[9].

[5] *Ibid* [10].

[6] *Ibid* [13].

[7] *Ibid* [11], [14].

[8] *Ibid* [24].

50. At the time of that offending, there was an intervention order in place which you had already breached in May 2007 by assaulting Ms Tilley, resulting in a further conviction, [9]. Your relationship with Ms Tilley involved a history of violence, predominantly inflicted by you, [10]. In sentencing you, Hollingworth J remarked it was ‘common ground that you had been drinking’ on

the day of Ms Tilley's death, although your level of intoxication was unclear and no blood alcohol tests were performed, [11]. It is particularly relevant that her Honour noted 'you were well aware of your tendency to be unpleasant, argumentative, aggressive and violent when drunk', [12].

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[9] Ibid [4], [21].

[10] Ibid [4].

[11] Ibid [17].

[12] Ibid [18].

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51. Her Honour sentenced you to nine years' imprisonment, with a non-parole period of six years. On 26 November 2013, you were released on parole, but following accommodation difficulties and a failure to attend supervision appointments, parole was cancelled and you returned to custody. You were released on 27 January 2017, approximately nine months prior to your current offending.
52. You now find yourself in the tragic and unusual situation of being sentenced for the offence of manslaughter for the second time. Research conducted has not been able to identify any previous cases where this has occurred in Victoria.

### **Sentencing factors**

#### **Nature and gravity of your offending**

53. The prosecution submits this is a serious example of the offence of manslaughter. You punched Mr Tweedly twice to the head, in a public place, without provocation. It is conceded it was not a sustained assault, and in this regard, is a less serious instance of manslaughter when compared to your previous conviction for this offence.
54. Your counsel submits your offending falls within the middle range of manslaughter offences, noting the absence of a weapon, and that it was a brief and spontaneous attack which, on your account, occurred in the context of Mr Tweedly calling you a 'dog'. You told Ms Mynard that you were drunk, it was a stupid thing to do, that you did not intend to kill Mr Tweedly, and you thought you had just 'taught him a lesson'.
55. In my opinion, your assault on Mr Tweedly was a serious example of the offence of manslaughter as it involved the infliction of two blows to the head of your victim, who was not expecting to be struck and appears to have not had the opportunity to defend himself. Furthermore, these events occurred in a public street. However, I also accept that no weapon was involved, and your attack was not premeditated, or prolonged. Taking all matters into account, I accept your counsel's submission that this offending falls into the midrange of seriousness for the offence of manslaughter.
56. I note these remarks do not seek to minimise the significance of Mr Tweedly's death, and the immense suffering your actions have caused. Instead, I seek to consider your particular offending in the context of many other cases of manslaughter, the circumstances of which vary widely.

## Culpability

57. The prosecution submits your moral culpability for this offence is high, given you consumed a considerable amount of alcohol on the day of the assault, in circumstances where you:
- (a) were acutely aware you had a tendency to be violent when intoxicated; and
  - (b) only months earlier had finished serving a substantial sentence for serious violent offending that occurred while you were intoxicated.
58. The prosecution further submits that your apparent celebration after Mr Tweedly fell reflects an antisocial and callous attitude towards others when under the influence of alcohol. I note that after having assaulted Mr Tweedly, you confronted him again and threatened further violence. Later that evening you violently confronted and assaulted another man. It appears that when significantly intoxicated you are more likely to possess a generally angry and belligerent state of mind. However, in all the circumstances of your background, I have not afforded these circumstances significant weight in the sentencing exercise. I also make it clear that this sentence does not punish you for the apparent assault on another man later that night.
59. Your counsel concedes that your consumption of alcohol at the time of offending does not reduce your moral culpability, although may help explain your actions. It is submitted that your background of profound trauma is a matter of some weight, and that the principle enunciated in *Bugmy v The Queen* applies, reducing your culpability and acting as a mitigating factor. [\[13\]](#).

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[\[13\]](#) (2013) 249 CLR 571, 594 [40]. See also *Marras v The Queen* [2014] VSCA 119 [16].

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60. I accept that you were deprived, abused and suffered social disadvantage during your formative years, and this has likely had profound and lasting consequences. As already observed, your adult years have been characterised by long standing drug and alcohol addictions, unemployment, and significant periods of imprisonment. I have taken your dysfunctional background into account in the formulation of the appropriate sentence. These observations do not excuse your behaviour, but I accept your moral culpability is less than had you not experienced such disadvantages.

## Plea of guilty and admissions

61. You have pleaded guilty to this offence, albeit at a late stage. By doing so, you have spared Mr Tweedly's family and relevant witnesses the ordeal of a contested trial. You have also saved the community time and money. The prosecution acknowledges your sentence should be discounted to reflect this.
62. Your counsel submits the utilitarian benefit of your plea is substantial, as it was open for you to contest the causal connection between you punching Mr Tweedly, and his eventual death up to three days later.

63. I accept your plea of guilty is a significant factor in mitigation. While I acknowledge its timing, you have spared your victim's family the anguish of a contested trial. I accept your counsel's submission that you never denied striking Mr Tweedly, but rather, preliminary proceedings were conducted on the limited basis of whether your violent acts caused his death. ...

### **Remorse**

64. The prosecution acknowledges that your plea of guilty, together with your answers during your police interview, are demonstrative of remorse and an acceptance of responsibility for your conduct. ...
65. Your counsel points to your reactions at being shown the CCTV footage of your attack on Mr Tweedly during your record of interview, as reflecting immediate and genuine remorse. These reactions included remarks such as, 'I can't justify my behaviour', and 'I'm so sorry this has happened'. ...
66. I accept these submissions and am of the opinion that you are truly sorry for having assaulted and killed Mr Tweedly. ...

### **Rehabilitation**

67. The prosecution submits your prospects of rehabilitation are bleak given your previous failure to comply with conditions of parole, as well as your struggle to abstain from alcohol and the evidence of Ms Mynard that you have not yet learnt that you need to do so. ...
68. Your counsel concedes that your prospects of rehabilitation are not good and will be strongly linked to your capacity to remain abstinent from substances upon release, especially alcohol. It is submitted that given you appear to be developing a level of insight into your alcoholism and your willingness to engage with support services, your prospects would be greatly improved by a lengthy parole period. ...
69. Taking all matters into account, I am of the opinion that your prospects for rehabilitation, whilst currently poor, are not yet extinguished. Such prospects will depend on your ability to overcome your alcohol addiction. You will require considerable supervisory assistance upon your eventual release from custody to reduce your chances of reoffending. The report of Ms Mynard expresses the opinion that you will need stable housing, as a safe and supported environment will be essential for you to process past traumas and reduce risk of alcohol abuse. I agree with those observations. ...

### **Experience in custody**

70. Your counsel submits that the fifth of the principles articulated in *R v Verdins* [14], applies, that is, that your Major Depressive Disorder, Generalised Anxiety Disorder and PTSD, are mental impairments that will mean your experience of imprisonment will be more burdensome than that of someone without such conditions. This is conceded by the prosecution. ...

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[14] (2007) 16 VR 269. ...

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71. I accept this principle applies in your case, resulting in a degree of mitigation in the sentence that will be imposed. I note the evidence of Ms Mynard that your mental health conditions have the potential to improve, but that this is unlikely to occur in custody. It is the opinion of Ms Mynard that your mental health will 'probably deteriorate further while in custody'. I also note that due to your physical injuries, your prospects of engaging in work are likely reduced, and that time may pass slowly for you. These prospects are unlikely to assist the improvement of your mental health. Ms Mynard also noted that the term of imprisonment to be imposed will weigh more heavily on you than before, as you feel you will probably die in custody.

### **Sentencing practices**

72. Your counsel refers to the well-known fact that circumstances of manslaughter vary widely and it can be difficult to identify current sentencing practices for such offending. Counsel provided the Court with a table of comparable cases. I have considered the circumstances of the offending identified in those cases and the sentences imposed. As I remarked earlier, none of these cases involved offenders who had committed two offences of manslaughter.

### **Sentencing purposes**

#### **General deterrence, denunciation and just punishment**

73. The prosecution submits these purposes should be given significant weight in sentencing you. Your counsel concedes these considerations will have some significance.
74. In my opinion, each of these three purposes plays a significant role in the formation of the appropriate sentence. Explosive and unjustified violence perpetrated in public, against a stranger, and involving an attack to an individual's head, must be generally deterred in the community and denounced as utterly unacceptable. As a result, you must receive punishment that is just in all the circumstances. The courts see far too many instances of this kind of behaviour, which on many occasions results in the tragic death or disablement of innocent members of the community.

#### **Specific deterrence and protection of community**

75. The prosecution submits that as this is the second time your actions have resulted in the death of another person, specific deterrence is an important consideration. Further, it is submitted that due to your intoxication at the time of offending, combined with your knowledge of the risk that this can result in you becoming angry and violent, the community must be protected from you.
76. Your counsel concedes these are relevant considerations but submits they must be viewed in light of the circumstances surrounding your previous release from custody. Further, it is submitted that community protection is linked to your prospects of rehabilitation. It is submitted that your prospects are likely to be enhanced by the imposition of a sentence that is not crushing, as well as receiving support on parole.
77. In my opinion, the sentence to be imposed must give significant recognition to specific deterrence and community protection. In 2007, you committed a sustained assault and killed your female domestic partner. After having served a long period of imprisonment for this offence, including a failed period on parole, you then killed Mr Tweedly within a matter of months after your release.

78. Both of these killings occurred when you were intoxicated by alcohol. They were committed in different circumstances, upon very different victims, but both were violent, involving killing with your own hands. In the case of Ms Tilley, the injuries you inflicted included significant blunt force head injuries resulting in acute subarachnoid haemorrhages. When you later struck Mr Tweedly twice to the head, you were well aware of the potential damage such violent blows could cause.
79. However, it is to be recognised that you are not to be punished again for the offence you committed in 2007. It is important to keep in mind that whilst your prior conviction for manslaughter may be taken into account, ‘it cannot be given such weight as to lead to the imposition of a penalty which is disproportionate to the gravity of the instant offence’. [15]. That observed, the fact that you have committed a second offence of manslaughter in such circumstances bears particularly on the purposes of community protection and specific deterrence.

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[15] *Hunter v The Queen* (2013) 40 VR 660, 691 [128], quoting *R v O'Brien and Gloster* [1997] 2 VR 714, 718, quoting *Veen v R (No 2)* (1988) 164 CLR 465, 477.

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80. You have demonstrated little ability or real willingness to address your alcohol dependence. At the time of the assault on Mr Tweedly, you understood the possible adverse impact the abuse of alcohol could have on your behaviour. Despite this, you, in your own words, drank yourself to oblivion. The community is entitled to expect a sentence to be passed which offers it protection, and also acts to deter you from committing further offending once you are released from custody.

### Sentence

81. After considering all relevant factors and purposes, the sentence I will impose is a period of imprisonment for 11 years.
82. I order that you will serve 8 years before being eligible for parole.
83. I have imposed upon you a less severe sentence than I otherwise would have, because you have pleaded guilty to this offence. I declare that but for your plea of guilty, I would have sentenced you to 14 years' imprisonment with a non-parole period of 11 years.
84. I further declare you have served 750 days of pre-sentence detention, not including this day.

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### Cited by:

*Vu v The Queen* [2020] VSCA 59 (23 March 2020) (Kaye, T Forrest and Osborn JJA)

50. The applicant was sentenced to 12 years' imprisonment on the manslaughter charge and six years' imprisonment on the recklessly causing serious injury charge. For the reasons set out in paragraphs 33 and 34 herein, we are of the view that the manslaughter offence was, as the judge correctly observed, at 'the upper range of seriousness'. As we have said, we are not persuaded that the sentence of 12 years' imprisonment is wholly outside the range of his Honour's sentencing discretion. Whilst we are of the view that sentencing practices for this offence are of limited assistance, it seems clear that sentences at the top of the available range for manslaughter, following a plea of guilty or an offer of same, congregate at around 11 years' imprisonment, [\[30\]](#) or a little higher. [\[31\]](#).

*via*

[\[30\]](#) See, eg, *R v BA* [2019] VSC 90; *R v Mahoney* [2019] VSC 740; *R v Naddaf* [2018] VSC 429; *DPP v Wan* [2018] VSC 195; *Mocenigo v The Queen* [2013] VSCA 231; *R v Ramage* [2004] VSC 508.