

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S CR 2018 0102

THE DIRECTOR OF PUBLIC PROSECUTIONS

v

HAMISH JENSEN (a pseudonym)

<u>JUDGE:</u>	Beale J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	11 April 2019
<u>DATE OF SENTENCE:</u>	17 May 2019
<u>CASE MAY BE CITED AS:</u>	DPP v Jensen
<u>MEDIUM NEUTRAL CITATION:</u>	[2019] VSC 327

CRIMINAL LAW - Sentencing - Attempted murder - Intentionally causing serious injury - Home invasion - Stabbing - Offender in long-term incestuous relationship with his sister - Offender aggrieved by sister's new relationship with first victim - Offender, intoxicated, attended first victim's home finding him and the offender's sister asleep in bed together - Offender stabbed them both repeatedly and also stabbed first victim's mother who intervened - Offending against sister example of domestic violence - Upper end examples of offences - Relatively youthful offender - Limited non-violent antecedents - Plea of guilty - Remorse - Sentenced as a Serious Violent Offender on Charges 2 and 3 - Total effective sentence of 19 years' imprisonment - Non-parole period of 14 years.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Crown	Mr J Rapke QC and Ms T Saville	Office of Public Prosecutions
For the Accused	Mr J Williams and Ms C Lloyd	Victoria Legal Aid

HIS HONOUR:

Circumstances of offending

- 1 Hamish Jensen¹, you have pleaded guilty to three offences – the attempted murder of Daniel Whitelaw (charge 1), attempted murder of your sister Samantha Jensen (charge 2) and intentionally causing serious injury to Daniel Whitelaw’s mother Madison Kirby (charge 3).
- 2 The maximum penalties for attempted murder and intentionally causing serious injury are 25 years’ and 20 years’ imprisonment respectively.
- 3 Though there was little planning to your offending, in another sense these offences had a long gestation.
- 4 For many years, commencing when you were 17 years old, you maintained an incestuous relationship with your sister, Samantha. The two of you had a child together, who is now 8 years of age. In 2013, you pleaded guilty to incest with your sister and were placed on a Community Corrections Order (‘CCO’) by Judge Mason of the County Court but you remained infatuated with Samantha and the two of you continued living together.
- 5 Your sister and Daniel Whitelaw were workmates from 2014 onwards. According to the agreed Prosecution Summary, after the cessation of your incestuous relationship with Samantha, but whilst she was still living with you, Samantha began an intimate relationship with Daniel. You were unhappy about her new relationship. Binge drinking did nothing to cure your unhappiness. On the night of 5 to 6 May 2017, you were drinking spirits to excess – bourbon and vodka – and at approximately 6.00am on 6 May 2017, you attended Daniel’s home, which he shared with his mother Madison. By unknown means you entered the house, armed yourself with several knives from a knife block in the kitchen, and made your way to the bedroom where Daniel and Samantha were in bed asleep. You entered the bedroom and

¹ Pursuant to the anonymisation order in paragraph 85 of these reasons, the name of the accused and the victims have been anonymised in these reasons. These reasons have also been prepared in a form which omits other identifying details.

began punching Daniel as he lay sleeping. He awoke to a nightmare.

6 Paragraphs 17 to 24 of the agreed Prosecution Summary described it in this way, noting first that Daniel and Samantha both jumped out of bed:

17. The accused was in possession of the knives and was making swinging and stabbing motions with them. Samantha screamed and tried to disarm the accused by hitting him with a fan and grabbing the knives. This resulted in lacerations to her hands.

18. The accused then swung the knife with his right hand connecting with Daniel's neck. The accused continued to stab Daniel in both the back and the leg and slashed his throat. Samantha yelled at the accused "Stop it, you'll kill him." The accused continued to stab Daniel. At one point he stopped and said to him "Why would you steal my one love?".

19. After Samantha told the accused to stop, the accused stabbed her in the back. Samantha tried to run from the room but the accused stabbed her again causing her to fall to the ground.

20. Madison Kirby was woken by the screaming and entered Daniel's bedroom where she observed the accused standing over Daniel punching him. The accused then turned to Madison and punched her in the face, causing her glasses to fall off. He then stabbed her in the back.

21. The accused then stabbed Samantha again. On this occasion he stabbed her in the left arm which caused the knife blade to break and remain lodged in Samantha's arm.

22. The accused returned his attention to Daniel and was "going at him with the knives." Madison was begging the accused to stop and said to him "Please, he is all I have". The accused replied "She is all I have."

23. In an attempt to prevent a further assault Samantha told the accused that she would leave with him. Samantha walked out of the house through the back door. The accused followed her and told her to stop and that they had to go the other way. Samantha told the accused that they were going to their uncle's house as she was bleeding and couldn't breathe. CCTV footage collected from a nearby premises depicts Samantha and the accused on foot with the accused holding knives in his hands.

24. Madison and Daniel stumbled into the kitchen where Madison was able to call Emergency Services for help. "

7 Your violence did not cease after leaving Daniel's home. The threat of violence continued as you and Samantha made your way to your uncle's home and re-ignited

there.

8 Your uncle lived with his girlfriend and their six children.

9 Paragraphs 26 to 34 of the agreed Prosecution Summary describes how things unfolded outside your uncle's home:

26. When the accused and Samantha arrived at [the accused's uncle's home], the accused told Samantha not to call out and said "If he comes out you better watch out".

27. [The accused's uncle and his girlfriend] heard the yelling outside and looked out the window where they observed a male holding two knives. The accused's uncle took a stick from near the front door and walked outside where he recognised both the accused and Samantha.

28. The accused ran at Samantha with both knives in his hands. She ran between two trees and the accused started stabbing the trees to break them to get to Samantha. Armed with the stick the accused's uncle approached the accused and Samantha where he blocked Samantha from the accused. The accused's uncle poked the stick at the accused. The accused grabbed the stick and tried to pull it from him. The accused's uncle grabbed Samantha and told her to run. Samantha ran into the house and the accused attempted to chase her.

29. [The accused's uncle's girlfriend] called Emergency Services for help. The accused walked off and the accused's uncle followed. As the accused got to a nearby intersection, he turned around and ran back past his uncle towards his uncle's house.

30. The accused was still in possession of the knives and ran onto the front porch of his uncle's house, and attempted to gain entry through the locked front door by shaking the handle. Unable to gain entry, the accused started pacing up and down the porch.

10 Police attended and drew their firearms, telling you to drop the knives. You asked them to shoot you and began cutting your wrists. Police fired non-lethal baton rounds into your legs. You stumbled but did not drop the knives. They tasered you once but you still hung onto the knives. They tasered you a second time and finally you let them go.

11 You were arrested and taken to hospital for assessment and treatment and later that day taken to Narre Warren Police Station for interview.

12 In your record of interview, in relation to how much you had drunk overnight you

said this:

“Well, I pretty much finished one whole bottle myself of Jim Beam and one my other one is pretty much shared and my vodka.”

13 Your recollection of events was extremely patchy. You said you remembered being at a house, possibly your uncle’s house, holding knives. You did not remember where the knives came from.

14 As to whether you had stabbed anyone you said:

“I don’t know if that’s real. I don’t know if it’s real” and “I think I stabbed some people. I’m not sure.”

15 You told police you had been in an incestuous relationship with Samantha for seven years and that you were not sure if it was ongoing. You said her relationship with Daniel made you feel “jealous, mad some time[s].”

16 At the time of the offences you were 24 years old, Samantha was 21, Daniel 26 and Madison Kirby, 44.

Victims’ injuries

17 Daniel Whitelaw, who was in a critical condition after your attack, was operated on at the Alfred Hospital, where he was given two units of blood and other fluids. His injuries, which were life threatening, included:

- a neck wound entering behind the left ear which caused a tear of the throat cartilage, detaching the left neck muscle, and cutting the prevertebral muscle, and paralysing the left vocal cord;
- a stab wound to the right arm which divided his triceps’ muscle belly, an artery and nerve; and
- a 10cm stab wound to the right thigh.

18 Samantha Jensen’s injuries were also life threatening and she also required two units of blood, having sustained over 10 incised wounds. Her injuries included:

- a 3cm area of de-scalping which required a rotational flap to close the

scalp;

- two wounds to the left shoulder with the knife blade remaining in the wound requiring removal and repair;
- a wound to the chest or back caused a leakage of blood and air into the chest cavity; and
- a punctured lung, which became compressed.

19 Madison Kirby was also hospitalised, having suffered multiple lacerations and incised wounds to the arms and upper body region. As a result of a wound to the chest or back, she sustained a leakage of blood into the chest cavity which required surgery. Her left index finger sustained a severed tendon and nerve. She had to wear a splint for six weeks and could not use that hand, her dominant hand, at all during that period. She was unable to work for four months.

Victim Impact Statements

20 Each of your victims made victim impact statements.

21 Each victim impact statement speaks of substantial and prolonged physical, psychological and financial suffering as a result of your actions.²

22 Each victim impact statement is inspirational in its own way.

23 Whilst Samantha feels she is still a shadow of her former self, she writes :

“I’ve had such great support from my closest family members and a handful of friends. My family kept me sane. My friends kept me active. And my partner who was as well harmed in the incident has chosen to love me unconditionally. My life is slowly improving. I have new friends, a new job and most important of all, I have my baby girl.”

24 Daniel writes:

“I’ve changed for the better and come back a new person. I’ve worked out what is important and I don’t dwell on the small stuff.”

25 Madison Kirby writes:

² Daniel was off work for a year and his mother was off work for four months.

“I made a decision some time ago that no matter how many negatives there were to this that I would be positive. Everyday I would look at my son and see that he couldn’t do it so I had to be strong for him because if he saw me breaking he would as well. I needed to get back to work and my psychologist applauded me for being so strong. I started thinking differently about getting better and looking after myself and things started slowly getting better. It’s been a roller coaster but we are finally now going up.”

26 Each of the victim impact statements are also remarkable for the absence of expressions of animosity towards you.

Gravity of the offending

27 I turn now to an assessment of the gravity of your offending.

28 Your offending involved little planning. And the injuries you inflicted on Daniel and Samantha, whilst life threatening at the time, have not left them substantially and permanently disabled, at least not physically, but I have no hesitation in viewing your offending on all charges as “upper end” examples of those kinds of offences. You invaded someone’s home, terrorising Daniel and Samantha and Daniel’s mother, stabbing each of them repeatedly and inflicting life threatening injuries on Daniel and Samantha. Your attack on Samantha continued even after the two of you arrived at your uncle’s house. Samantha was your sister, but she was also, unfortunately, your long-term lover. Women must be able to end intimate relationships and not be subjected to violence or threats of violence by their former lovers. Your offending was a form of domestic violence, which aggravates the seriousness of the offending. Denunciation of your conduct and general deterrence loom large in sentencing you.

Personal History

29 You were born in 1992 and are now 26 years of age.

30 You were born in the Cook Islands and raised in a small village by your maternal grandparents after your parents abandoned you as an infant for reasons that are unknown. Until the age of seven you were led to believe that your grandparents were your parents. Your grandfather was an alcoholic.

- 31 Your counsel in written submissions described your childhood life with your grandparents as “unbearable”, stating that you were “often subjected to physical and emotional abuse”. Counsel went on to detail some of the abuse.
- 32 The prosecution indicated that it challenged the reliability of this history, given the absence of evidence to support it. I also indicated to your counsel that in significant respects the history did not correlate with the account of your personal history given by Judge Mason in His Honour’s sentencing remarks in 2013 and that, in all the circumstances, I could not act on “evidence from the Bar Table”. Counsel chose not to call you, nor did he seek the opportunity to call other evidence on this point. Consequently, whilst I am prepared to accept that your childhood with your maternal grandparents was difficult, and that difficulty was compounded by the knowledge that you had been abandoned by your real parents who at some time had emigrated to Australia, I am not satisfied on the balance of probabilities that your childhood was marked by the kind of profound deprivation and abuse which would enliven the sentencing principles discussed in the High Court case of *Bugmy v The Queen*.³
- 33 You left school – where you were sometimes bullied about being abandoned by your parents – when you were 16, not having completed Year 10.
- 34 When you were 17, your parents returned to the Cook Islands with your sister for a brief time. That was the first time you met Samantha, who was approximately three years younger than you. Your parents took you and Samantha with them when they returned to Australia in 2009.
- 35 A short time after the reunification of your family, your parents separated. You continued living with your mother and Samantha.
- 36 Appropriate parental supervision of the two of you was wanting. Your emotional attachment to your sister was in your counsel’s words “immediate and strong, albeit dysfunctional”. Your incestuous relationship began when you were 17 and she was

³ [2013] HCA 37 at [43] – [44].

14 and continued, on your counsel's submission, at least until 2016, that is, for at least approximately three years after the imposition of the CCO for the offence of incest.

37 You and Samantha have a son, who is now approximately eight years old, who lives with your mother in New South Wales.

38 Your counsel told me that you have not had any other intimate relationships.

39 Your counsel said you have been a heavy drinker at times. Certainly, on the night of the offending you were very intoxicated.

40 The prosecution argued that your state of intoxication on the night of the offending was an aggravating feature because on a previous occasion when you were drunk you had acted violently towards Samantha, throwing an object at her and overturning a table. To my mind, that is an insufficient basis, particularly given your absence of priors for violence, for inferring that you must have appreciated that by getting drunk, you were running the risk of doing what you did to Samantha and her new boyfriend, or anything like that. As I said to counsel during the plea hearing, the two incidents, though both involving violence directed at Samantha when you were drunk, were so different in degree as to be different in kind. However, your history of binge drinking is something that gives me pause in relation to my assessment of your prospects of rehabilitation, which I will come to soon.

41 More positively, you have had a good work history since moving to Australia. You have been steadily employed in a number of manual and manufacturing type jobs since coming to Australia in 2009.

Criminal History

42 You have a criminal history but it is a limited one.

43 From four court appearances between May 2013 and March 2017, you have been convicted or found guilty of eight offences, none involving violence or threatened

violence against persons.

44 You have never before received a sentence of imprisonment, whether immediate or suspended.

45 The only antecedents that I consider relevant, unsurprisingly, relate to your prior conviction on 28 May 2013 for incest with Samantha, to which you pleaded guilty. As mentioned, Judge Mason convicted you of that offence and placed you on a CCO for 12 months. One of the special conditions of that order was that you undergo mental health assessment and treatment. Your counsel told me that that did not occur, regrettably. On 12 June 2014, you were convicted of three counts of failing to comply with your reporting obligations under that CCO and were fined.

46 Despite those court proceedings for incest, and the imposition of the CCO, you continued your intimate relationship with Samantha and that in turn contributed to your outburst of extreme violence against her, Daniel and Daniel's mother on 6 May 2017.

47 Your breach of the CCO, most significantly by continuing the intimate relationship with Samantha, is troubling.

Prospects of Rehabilitation

48 Notwithstanding your relative youth, good work history, limited prior convictions and plea of guilty, I do not accept your counsel's submission that you have good prospects of rehabilitation. Your violence on the 6 May 2017 was so extreme and sustained that I am guarded about your prospects of rehabilitation. Whilst your intimate relationship with your sister is well and truly over, your ability to cope with any future relationship difficulties is unknown, as is your capacity to drink in moderation.

Particular Hardship of Jail

49 You do not have any familial supports. I am told, and accept, that during the almost two-year period that you have been on remand you have had no jail visits other than

professional jail visits. That unfortunate situation is unlikely to change, at least in the foreseeable future. As a consequence, you will find jail a harsher experience than many other prisoners.

Risk of Deportation

50 Your counsel submitted that this hardship will be compounded by the prospect that at the end of your sentence, you will be deported to the Cook Islands, where you have not lived for many years. In written submissions, your counsel stated that you have “received correspondence from the Department of Immigration and Border Protection with respect to the cancellation of [your] visa” and that you “will not be contesting the cancellation of your visa.” Whether you will maintain that attitude remains to be seen. If your position changes, and you contest deportation, the fact that you have a son living here in Australia may weigh in your favour, but even so, the possibility of deportation occurring against your wishes cannot be denied.⁴

51 Although the prospect of deportation has been recognised by our Court of Appeal as potentially relevant to sentencing – first, imprisonment may be more burdensome for an offender because of anxiety over the prospect of deportation⁵ and, second, deportation may constitute an additional punishment for the offender – the Court of Appeal has stressed that there must be a proper evidentiary basis for the sentencing court to act on⁶ or there must be an appropriate concession by the prosecution.⁷

52 Whilst no evidence was adduced by you with regard to the prospect of deportation and how that will affect you, the prosecution appears to have implicitly accepted in its submissions (both written and oral) that you are not an Australian citizen and the prosecution did not challenge your counsel’s submissions that the prospect of deportation will make your sentence more onerous. Indeed, the prosecution

⁴ For a helpful summary of the legal position under the *Migration Act 1958* (Cth), see *Loftus v The Queen* (2019) VSCA 24, [72]-[78].

⁵ See *Guden v The Queen* (2010) 28 VR 288; *Konamala v The Queen* [2016] VSCA 48; *Da Costa Junior v The Queen* (2016) 258 A Crim R 60; *Loftus v The Queen* [2019] VSCA 24; *Magedi v The Queen* [2019] VSCA 102.

⁶ *Guden v The Queen* (2010) 28 VR 288 at [26].

⁷ *Guden v The Queen* (2010) 28 VR 288 at [29].

conceded in written submissions that “it is appropriate in the instant case for the additional burden that the possibility of deportation will mean for the accused during his imprisonment to be recognised”.⁸ I therefore proceed on the following basis. I conclude that it is possible that you will be deported from Australia at the conclusion of your sentence.⁹ I accept that this possibility is likely to make your experience of imprisonment more onerous. Accordingly, I consider this a relevant factor in sentencing you.

Comparable cases

53 Your counsel helpfully presented in tabular form brief summaries of a large number of sentencing cases in respect of attempted murder. I will annex that table to my reasons. One of the cases mentioned in the table, *R v Boaza*,¹⁰ had some significant similarities with your case. The offender, a Cook Islander aged 31, could not accept the break-up of a relationship. He attacked his ex-girlfriend with a knife, stabbing her multiple times. Unlike your case, Mr Boaza had subjected his ex-girlfriend to violence or threats of violence on several prior occasions and he stalked his girlfriend on the day he attempted to kill her. Mr Boaza pleaded guilty at a late stage of proceedings and was sentenced to 14 years’ imprisonment with a non-parole period of 11 years. The Court of Appeal regarded the sentence as a heavy one but within an acceptable range.

54 As well as the cases referred to in the defence table of cases, I have had regard to the Judicial College of Victoria Sentencing Manual’s attempted murder case collection (Chapter 26.10.4) and the Court of Appeal overview regarding intentionally causing

⁸ I note that in oral submissions, the prosecution made reference to the case of *Wan v The Queen* [2019] VSCA 81. I accept that the relevant ground of appeal in *Wan* was framed more narrowly in relation to the applicant’s lack of legitimate expectation of release at the expiration of his non-parole period. This was due, according to the applicant’s counsel, to the current practice of the Adult Parole Board to not grant parole to those awaiting deportation, which placed him in a special position of ‘uncertain suspense’ or anxiety, which would make his imprisonment more burdensome. At [34], the Court of Appeal held, whilst accepting that a degree of uncertainty exists, that there was “no basis upon which we could find that he [the applicant] is in a position conducive to greater uncertainty than a significant proportion of the prison population who might be anxious about their prospects of release on parole for any number of reasons”.

⁹ *Migration Act 1958*, ss 501, 503, 198.

¹⁰ [1999] VSCA 126.

serious injury (Chapter 29.7.1.1). I have also had regard to the sentencing statistics in the sentencing snapshots of the Sentencing Advisory Council in relation to the offences of attempted murder¹¹ and causing serious injury intentionally¹². For attempted murder, the median sentence during the relevant 5 year period was 11 years' imprisonment and the median non parole period was 8 years. For causing serious injury intentionally, the median sentence was 5 years imprisonment and the median non parole period was 3 years, 3 months and 15 days.

55 Whilst consideration of other sentencing cases and sentencing statistics is of assistance, each case of course has to be decided on its own facts.

Summary of Mitigating Circumstances

56 Let me summarise the mitigating circumstances in your case.

57 Your childhood was a difficult one.

58 The development of your incestuous relationship with your sister, Samantha, which contributed so much to your offending, was due in part to that difficult childhood and a lack of parental supervision when you and Samantha were teenagers.

59 You pleaded guilty at a relatively early stage. Your victims were not required to give evidence at a contested committal hearing, thus sparing them the ordeal of having to recount in court the events of that horrific day in May 2017.

60 I am satisfied that you are remorseful.

61 You are still relatively young.

62 You have a limited criminal history and no violent antecedents.

63 This will be your first prison sentence.

11 Sentencing Advisory Council, *Sentencing Trends for Attempted Murder in the Higher Courts of Victoria 2001-02 to 2005-06* (Sentencing Snapshot 21, 30 January 2007).

12 Sentencing Advisory Council, *Sentencing Trends for Causing Serious Injury Intentionally in the Higher Courts of Victoria 2012-13 to 2016-17* (Sentencing Snapshot 213, 28 June 2018).

64 Imprisonment will be a harsher experience for you than for other prisoners because of your lack of familial supports and the anxiety that I consider you are likely to experience over the possibility that you will be deported at the end of your sentence.

Summary of Aggravating circumstances

65 It is appropriate to also summarise the aggravating circumstances in your case.

66 Your offending involved a terrifying home invasion.

67 Your attack with knives was not momentary but sustained. And you continued the attack on Samantha when the two of you arrived at your uncles home.

68 Your offending against Samantha, given your long term incestuous relationship, was an instance of domestic violence.

69 The injuries you inflicted on Daniel Whitelaw and Samantha were life threatening.

70 You have a relevant prior conviction for incest. Clearly those proceedings did not lead you to put an end to your intimate relationship with Samantha.

Sentence

71 In relation to the charges on the indictment, you fall to be sentenced as a Serious Violent Offender on Charges 2 and 3 pursuant to the *Sentencing Act 1991*. The prosecution are not seeking a disproportionate sentence on those charges, but I must make protection of the community the principal purpose in sentencing you on those charges.

72 On Charge 1, attempted murder of Daniel Whitelaw - I sentence you to 12 years' imprisonment.

73 On Charge 2, attempted murder of Samantha Jensen - I sentence you to 14 years' imprisonment. Charge 2 is the base sentence.

74 On Charge 3, intentionally causing serious injury to Madison Kirby, I sentence you to 7 years' imprisonment.

75 I order that four years of the sentence on Charge 1, and one year of the sentence on charge 3, be cumulative on the sentence imposed on Charge 2 and on each other.

76 The total effective sentence therefore is 19 years' imprisonment.

77 I fix a non-parole period of 14 years.

78 But for your plea of guilty, I would have imposed a total effective sentence of 22 years' imprisonment and a non-parole period of 17 years.

79 I declare that you have served 741 days by way of presentence detention.

Ancillary Orders

80 There are some ancillary orders to be made, namely a retention order, disposal order, a partial suppression order and an anonymisation order.

Retention Order

81 In relation to the retention (forensic sample) order sought by the prosecution (namely, a saliva sample), I am satisfied that it is appropriate to make such an order given the seriousness of your offence and your consent to the order. Accordingly, I order you to undergo the forensic procedure and inform you that, if you do not cooperate in the provision of the saliva sample, a police officer may use reasonable force to enable a blood sample to be taken. A copy of the order will be provided to you.

Disposal Order

82 I make the disposal order sought by the prosecution, which you have consented to.

Suppression Order

83 On 23 April 2018, I made a proceedings suppression order in relation to your trial pursuant to s 17 of the *Open Courts Act 2013* (the 'Act'). It suppressed publication of parts of the proceeding. My order was made on the following grounds under the Act:

- (a) pursuant to s 18(1)(c), to protect the safety of any person; and
- (b) pursuant to s 18(1)(d), the order was necessary to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence.

84 Whilst I acknowledge the importance of open justice and free communication of information in relation to proceedings generally, I am of the view that a further suppression order in this matter is required on the same grounds and in the same terms as my previous order dated 23 April 2018. The order will operate for 5 years.

Anonymisation of sentencing reasons

85 I also direct that your true identity, as well as the true identities of Samantha Jensen, Daniel Whitelaw and Madison Kirby be anonymised in the published version of these reasons.

ATTACHMENT - Attempted Murder Table of Comparative Cases

IN THE SUPREME COURT
OF VICTORIA
AT MELBOURNE
CRIMINAL JURISDICTION

DIRECTOR OF PUBLIC PROSECUTIONS

v

HAMISH JENSEN

ATTEMPTED MURDER TABLE OF COMPARATIVE CASES

Case name	Summary	Head Sentence	NPP
<i>R v Kasulaitis</i> [1998] 4 VR 224	Plea of guilty to attempted murder of 8 year old son by father during catastrophic breakdown of normal integrated functioning in the context of family breakdown, financial stress and alcohol abuse. Offender intended to kill himself and tried to kill his son out of love rather than hatred. Unpremeditated attack by stabbing. Clear remorse. Offender likely to spend entire period of imprisonment in protective custody. On appeal, sentence reduced from 10 years with NPP of 6 years, to 8 years with a NPP of 5.5 years.	8y	5.5y
<i>The Queen v Boaza</i> [1999] VSCA 126	Plea of guilty to attempted murder. Male 31. Cook Islander resident in Australia since 1986 (offence occurred in 1996). Offender could not accept break up of relationship. On day had a phone conversation with victim which did not go well, Judge found that he decided during that day to kill her. Lay in wait at her work tailgated her car, forced her to stop, dragged her from car and stabbed her multiple times including 2x heart and 1x in lung and liver. No remorse. Lies to police. Late plea of guilty. Victim almost died, 16 days in hospital, still receiving treatment at time of sentence. No mental illness or incapacity. Sentence upheld on appeal.	14y	11y
<i>R v Tanasi</i> [1999] VSC 553	Plea of guilty, to attempted murder and ICSI. He shot several times two friends who had introduced his former wife to her new partner. Threats made beforehand. Offender came armed to victims home. Victims lucky to survive. Male 56. Immigrant from Sicily, previous good character. Depressed. Remorse, shame. Health issues.	Att murder: 5y ICSI: 3y TES: 6y	3y
<i>DPP v Kelly</i> [1999] VSC 399	Plea of guilty to attempted murder of ex-partner and drugging of daughter. Premeditated drugging then smothering and strangling of ex-partner. Break up 6 weeks earlier, but when she told him she was moving interstate he fell into depression. Deep depression – intended suicide, desisted and called police. No permanent physical injury to victim. Overwhelming remorse. Male 31 at time of offence. No history of violence. Sentence approved on appeal.	10y	7y
Case name	Summary	Head Sentence	NPP

<i>R v To</i> [2001] VSC 257	Convicted of attempted murder of wife after trial. Argument, stabbed wife in back, fatal if not treated. Male 42. Immigrant from Vietnam Intervention order. Breaches and previous assaults, separation from wife. No priors apart from incidents involving his wife. Epileptic. Depression.	7y	5y
<i>R v Vuocolo</i> [2003] VSC 472	Convicted of attempted murder of stepmother and intentionally cause serious injury to father following trial concerning mental state. Protracted knife attack commencing in parents' home. Offender suffering from major depressive illness and possible effects of withdrawal from medication. No prior convictions. Genuine remorse. Excellent prospects of rehabilitation. Level of moral culpability reduced.	10y	5y
<i>R v Keshtiar</i> [2004] VSC 140	Convicted of attempted murder x 2 following trial. Shot girlfriend (1x) who he thought was being unfaithful and a friend (3x) in sudden rage, then repented and called for help. Male 34. Born in Afghanistan, arrived in Australia at age 19. Confessed to police that intended to kill them. Friend 's injuries life threatening – in hospital 1 month. At trial claimed 3rd party responsible. Drug and steroid abuse. On bail for ICSI at time, ultimately convicted of that offence, prior to sentencing for these offences (sentenced to 7.5, 5 NPP). Sentenced as a serious violent offender.	Count 1: 8y Count 2: 7y 3y concurrent. TES: 12y	7y but 12 y with earlier senten ce.
<i>R v Bookham</i> [2005] VSC 483	Plea of guilty of attempted murder of ex-girlfriend and intentionally causing serious injury of ex's step-sister. Offender thought the 2 victims were having an affair. Inflicted 15 cm cut over ex's throat, 1 day in hospital, damage to skin, tissue and muscle but not larynx or thyroid. Scarring to throat. Wounds delivered to ICSI victim were life threatening and occurred in front of 6 year old boy. Offender suffered from severe depression took medication from time to time. Some illicit drug use, progressively worse, high intake of alcohol, cannabis and ice day before offence. Male 21 at time of offences. Priors of drink driving. Remorse. Excellent prospects for rehabilitation.	8.5y (att murder) 5y (ICSI) TES 11.5y	7.5y
<i>R v Walsh</i> [2005] VSC 233	Plea of guilty to attempted murder of a helpful security guard at bank, unknown to offender. Unprovoked stabbing. Very serious injuries. Victim disfigured. Remorse, early guilty plea. 45 y.o. woman suffering from depression.	11y	8y
<i>Ibrahim</i> [2006] VSC 475	Plea of guilty to robbery and attempted murder. 30yo Somali refugee. After allegations by former wife that he had robbed her, he lay in wait for her in the street and stabbed her several times in front of witnesses. Life threatening injuries. Some priors for violence.	10y	7y
Case name	Summary	Head Sentence	NPP

<p><i>R v Kumar</i> (2006) 165 A Crim R 48; [2006] VSCA 182</p>	<p>Convicted of intentionally causing serious injury, recklessly causing serious injury and attempted murder after trial.</p> <p><u>Causing Serious Injury Intentionally</u> Spontaneous assault upon offender's spouse – an unarmed woman. Hit her in the head with a steel bar. Injury did not result in hospitalisation. No remorse, lies told in an attempt to cover up the assault. No priors at time of this assault. Delay of 3 years before charge. Low IQ. Aged 25 at time of offence. On appeal, sentence of 6 years for this charge reduced to 3 years.</p> <p><u>Attempted murder</u> Same victim, offending 3 years later when victim was pregnant. Spontaneous stabbing after offender lost control because of intoxication, anger and jealousy. Multiple stab wounds to victim's neck, spine, arm, fingers, chin. Victim permanently scarred on chin and neck. No remorse whatsoever, offender blamed victim for assaults. On appeal, acknowledged that the sentence of 12 years was stern and more severe than other judges would impose but not manifestly excessive.</p> <p>Sentenced as serious violent offender (s 6F <i>Sentencing Act 1991</i>)</p>	13y, 9m	10y
<p><i>R v AM Black</i> [2007] VSC 385</p>	<p>Plea of guilty to attempted murder and reckless serious injury. Young offender (19 at time of offending). Motiveless crime but savage, inexplicable knife attack on 39 year old woman as she slept in her home. Victim was a stranger to the offender. Victim's teenage son also stabbed and injured as he tried to defend her. Victim subsequently suffered disabling stroke. Offender had been drinking heavily but no psychiatric explanation. Normal background, no prior criminal history, remorse.</p>	13.5y	8.5y
<p><i>R v Belete</i> [2007] VSC 296</p>	<p>Late guilty plea (during trial) to attempted murder of wife. No priors. Ethiopian refugee. Stabbed estranged wife in street in front of children. Unpremeditated, frenzied attack. Multiple wounds. Some permanent effects. B's mental state unclear.</p>	11y	8y
<p><i>R v Nguyen</i> [2011] VSC 632</p>	<p>Convicted of attempted murder after trial. Spontaneous stabbing attack on spouse because he wanted to terminate the relationship. Stabbed her again after initial attack and wounded his liver. No degree of planning. 36 year old woman with no prior convictions. Deprived background. Highly distressed state at time of offending, clinically significant mood disturbance and loss of control. No English making time in custody more onerous. Reasonably good prospects of rehabilitation.</p>	8y	5y
<p><i>R v Dong</i> [2012] VSC 525</p>	<p>Convicted of attempted murder after trial. Single stab wound. Offender stabbed man he believed to be having an affair with his wife. Injury not too serious. Offender extremely intoxicated at the time of offending. No relevant priors, previous good character, powerful character references. Offending out of character, intoxication reduced moral culpability. Good prospects of rehabilitation.</p>	8 y	5 y

Case name	Summary	Head Sentence	NPP
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<i>The Queen v Brew</i> [2013] VSC 131	Attempted murder and intentionally cause injury. Guilty plea. Spousal revenge. Premeditated and unprovoked attack (stabbing) upon ex-wife. Offender purchased the knife and lay in wait in her home. Her new partner intervened during attack and also sustained injuries. Sustained attack accompanied by threats to kill. 58 year old with limited prior criminal history. Depression, anxiety and terminal illness. Remorse.	10.5y	8y
<i>The Queen v Quail</i> [2013] VSC 190	Convicted of attempted murder after trial. Premeditated and carefully planned attack. Offender shot victim multiple times with a semi-automatic pistol fitted with a silencer and then drove his car towards the victim multiple times. History of long-standing dispute between offender and victim. Victim suffered perforated bowel and kidney, bullet permanently lodged in spine. No remorse and therefore limited prospects of rehabilitation. Prior good character. Depression.	12.5y	10y
<i>Soteriou v The Queen</i> [2013] VSCA 328	Convicted of attempted murder after trial (acting in concert). Husband of offender attacked with a knife by offender's lover. Serious injuries. Victim only saved by doctor's passing by. Offender tried to blame co-accused (lover) for offending. Maintained this approach at trial. Moral culpability higher for offender because she developed the plan to kill her husband simply to be rid of him. Crime of passion laced with greed.	12y	9y
<i>R v Rapovski</i> [2015] VSC 359	Convicted of attempted murder after trial. Offender shot victim once in the neck because he believed victim had just thrown a bottle at his girlfriend, injuring her jaw. Victim left paraplegic. Provocation caused loss of self-control. No premeditation. Mid-range of attempted murders but upper end of that range because of catastrophic injury. Relevant priors for violence including prior incarceration and firearms offences. History of drug use. Reasonable prospects of rehabilitation. Steady employment.	12y	9y
<i>The Queen v Sandhu</i> [2016] VSC 516	Guilty plea to attempted murder despite strong defence of mental impairment. Offender stabbed wife repeatedly to neck with knife, lacerating jugular vein. Victim left with debilitating psychological and physical harm. Objectively grave offence but very low moral culpability because offender's behaviour caused by deluded thoughts, precipitated by schizophrenia, that victim was trying to kill him by poisoning. Corresponding reduction in weight to general deterrence, specific deterrence, curial denunciation and just punishment. Some remorse. No prior convictions but history of domestic violence. Impact of schizophrenia on hardship of imprisonment. Illness now controlled by anti-psychotic medication and therefore very good prospects of rehabilitation.	7y	4y
<i>R v Darrington</i> [2016] VSC 60	Convicted of attempted murder after trial. Offender shot deceased body in belief that deceased was still alive and wanted to end his suffering. Reasonably serious (although unusual) example of attempted murder. 39 year old with prior convictions for dishonesty, breach of bail, assault etc. Difficult childhood. History of drug addiction. Chronic lower back pain which will make imprisonment more difficult. Prospects of rehabilitation limited.	8y	5y

Case name	Summary	Head Sentence	NPP
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<p><i>R v Byrne</i> [2016] VSC 580.</p>	<p>Convicted of attempted murder after trial. Cowardly, unprovoked attack with a knife on defenceless stranger in public. Multiple stab wounds inflicted. Life threatening injuries treated in hospital. Offender armed with a knife for no apparent reason but offending not premeditated. No remorse. Intoxication and heavy methamphetamine use. 23 year old man with substantial history of childhood abuse, trauma state care and homelessness suffering from a complex trauma disorder and ADHD. Significant prior criminal history for violent offending and prolonged periods of incarceration in maximum security due to poor behaviour in prison.</p>	<p>12 y</p>	<p>9 y</p>
<p><i>DPP v Black</i> [2016] VSC 564</p>	<p>Convicted of two charges of attempted murder and one charge of attempting to pervert the course of justice after trial. Offender attacked two local shire enforcement officers on his property with a piece of scaffolding because he was angry at being forced to demolish buildings he constructed without a permit. Premeditation and planning but then offender offered assistance to one of the victims. 46 year old with priors for violent offending but no previous incarceration. Alcohol abuse at the time contributed to offending. Extensive work history prior to arrest. Partial admissions to police. Mid-range of seriousness for attempted murder offending. Experienced hardship on remand because of prison riots and being accused of being an undercover police officer. Moderate prospects for rehabilitation. Sentenced as a Serious Violent Offender in relation to second offence of attempted murder.</p>	<p>11y 6m</p>	<p>7y 6m</p>
<p><i>DPP v Boodhoo</i> [2016] VSC 458</p>	<p>Guilty plea. Attempted murder of wife in family home. Offender suffering from spiralling depression and suicidal ideation at the time. He believed wife and son would suffer if he died. He researched mercy killings, tried to persuade wife to join him in suicide pact. Attempted to strangle wife in context of a struggle. Admitted to his wife he was trying to kill her. Admissions to police at scene, full co-operation and remorse. 65 years old with no prior convictions. Blameless life prior to offending. Employed as nurse and team leader in aged care. Psychiatric decompensation at core of offending. Verdins applicable as background trigger to offending and also as because offender still labouring under effects of major depressive illness in custody. Reasonable prospects of rehabilitation enhanced by psychiatric treatment.</p>	<p>6y 6m</p>	<p>4y</p>
<p><i>R v Hammarong</i> [2017]VSC 264</p>	<p>Guilty plea. Spousal revenge. Offender attacked defenceless victim when she would not reconcile with him. Armed himself with a knife (premeditation) inflicted multiple life threatening stab wounds. Offender (40) history of alcoholism. No prior criminal history. Remorse. Good prospects of rehabilitation. Solid work history.</p>	<p>9y</p>	<p>6y</p>
<p><i>R v Tedford</i> [2018] VSC 476</p>	<p>Guilty plea. Offender (76), attacked his wife (62) with a knife in their home. Marriage breakdown at the time but attack was unjustified and unprovoked. Degree of premeditation. Sustained attack. Multiple stab wounds inflicted. No life threatening injuries. No previous convictions. No remorse. Good prospects of rehabilitation. Offending out of character.</p>	<p>9y</p>	<p>6y</p>

CERTIFICATE

I certify that this and the 21 preceding pages are a true copy of the reasons for sentence of Justice Beale of the Supreme Court of Victoria delivered on 17 May 2019.

DATED this twentieth day of May 2019.

