
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CRIMINAL

CITATION : THE STATE OF WESTERN AUSTRALIA -v-
HARVEY [2019] WASCSR 77

CORAM : HALL J

HEARD : 21 JUNE 2019

**DATE OF
SENTENCE** : 19 JULY 2019

FILE NO/S : INS 32 of 2019

BETWEEN : THE STATE OF WESTERN AUSTRALIA

AGAINST

ANTHONY ROBERT HARVEY

Offence(s):

Murder x 5

Legislation:

Nil

Sentence Imposed:

Life imprisonment
Order that offender is never to be released

Representation:

Counsel:

Applicant : Ms A L Forrester SC
Accused : Mr S Vandongen SC

Solicitors:

Applicant : Director of Public Prosecutions (WA)
Accused : Max Crispe

HALL J:

1 Anthony Robert Harvey, you have been convicted on your pleas
of guilty of five counts of murder. It is now my duty to sentence you
for those offences.

The admitted facts

2 A detailed statement of facts was read to the court by the
prosecutor and you admitted those facts. It is not necessary to repeat
that statement in full, but I will give a summary of the facts for the
purposes of these sentencing remarks.

3 The offences occurred in September 2018. At that time you were
aged 24 years old. You were married and lived with your wife and
children in a house in Bedford.

4 You and your wife, Mara Lee Harvey, had met some years earlier
whilst both working at a mine site. You had been married for three
years and had three children; Charlotte, aged 3, and twins Alice and
Beatrix, aged 2. The children were happy and healthy.

5 You and Mara both worked. You ran a lawn mowing business
and Mara worked at a supermarket. Mara's mother, Beverly Quinn,
assisted you and Mara with the children and came to your house most
mornings for that purpose.

6 From at least late August 2018 you began planning to kill your
family. You wrote in a journal about killing your wife, children and
mother-in-law, selling your property, clearing out bank accounts,
buying a new car and going on the run.

7 On 23 August 2018 you began to put your plans into effect. On
that day you went to a Cash City shop and sold a number of electrical
items for \$1,100. Later the same day you went to a shop in Bibra Lake
that sells tools and knives and purchased a knife for \$100. That
evening you went to a camera shop in Leederville and purchased a
Polaroid camera.

8 On 27 August you again went to the knife shop in Bibra Lake.
You spent some time looking at various large knives and inquired about
a particular brand. The owner of the shop made some inquiries and
later contacted you to say that the earliest he could get the knife you
wanted was October.

HALL J

9 On 29 August you went back to the knife shop again and asked for a large knife. You purchased one of largest in the store, described by the owner as almost the size of a machete. You paid \$315 in cash for the knife.

10 Between Friday 31 August and Sunday 2 September your mother, who usually lives in the north-west of the State, stayed with you and your family. She then went to stay with a friend in Dawesville until 5 September, when she flew home. She did not hear from you or Mara after she left on 2 September.

11 On Monday 3 September you and Mara went to a bank in Dianella. Whilst there Mara signed a form that authorised you to operate her bank account. You persuaded Mara to sign the authority knowing that you were planning to kill her and with the intention of withdrawing all of the money in this and other accounts after you had done so.

12 Mara worked at the supermarket that evening, a shift from 8.00 pm to 11.00 pm. You stayed at home with the children. The details of what happened that evening were later provided by you to the police. Whilst Mara was out you went to a shed at the back of the house and obtained a piece of metal pipe. It was heavy and about 1.2 m long. You then went in to the house with the pipe and drank half a bottle of wine.

13 Mara arrived home soon after 11.00 pm. You heard her arrive and went outside with the pipe. When she went to go inside you hit her to the back of the head with the pipe. You estimated the force you used as 8 out of 10. She fell to the ground, bleeding but still alive. Your intention was to kill her. You went inside to the kitchen and grabbed the large knife that you had recently bought.

14 When you returned Mara was lying face-down on the back lawn. You stabbed her multiple times in the back with the knife, until she stopped breathing. You covered her body with a blanket and sat beside her for a while. You then lifted her body and placed her on a bed in the house. At around this time you finished drinking the bottle of wine.

15 Your intention was to also kill the children. For this purpose you obtained a smaller knife, another of those that you had recently purchased. The children were asleep in their beds, Charlotte in one room, the twins Beatrix and Alice together in another room. First you

killed Beatrix, then Alice, then Charlotte. Each of them was stabbed multiple times with the knife.

16 You knew that your mother-in-law, Beverly Quinn, came over to the house most mornings at around 7.00 am to 7.30 am. You intended to kill her too. But there was blood on the ground outside from where you had attacked Mara and you thought Ms Quinn would notice it when she arrived. So you made an attempt to clean up the blood. You also brought the metal pipe inside to the kitchen.

17 When Ms Quinn did arrive that morning she had a basket of laundry with her. You went out, apparently to help her bring her things inside. When she entered the house you hit her to the head with the pipe. This time you estimated the force used as 9 out of 10. You then used a knife to stab her multiple times to the chest, continuing to stab until she stopped moving.

18 You then went to the bathroom and had a shower. After that you told police that you went to the lounge room and fell asleep on the sofa. You said that you slept until the following morning and that you then went out, got a coffee and drove around for a while, before returning to the house.

19 You decided to arrange the bodies of Mara and the children to make it appear as if they were cuddling. For this purpose you took the children and placed them in the bed with Mara and stretched out her arms around them. You covered them with a blanket and collected the children's favourite toys, which you placed in the room. You also placed a blanket over Ms Quinn's body.

20 Sometime later you went out and bought flowers from a shop which you placed on the bodies. You wrote notes to Mara and Ms Quinn in which you stated that you were sorry for what you had done and that you loved them. The notes were placed near the bodies.

21 Your account to the police accords with the known objective facts, with some important exceptions. First, you told the police that you stabbed each of the victims, but your estimate of the number of times you stabbed each victim was a significant underestimate. The real number is apparent from the post-mortem examinations, which I will come to shortly. Secondly, you made no reference to the fact that you took photographs of the bodies of Ms Quinn and of Mara and the children. Those photographs must have been taken with the Polaroid

camera that you bought on 23 August. The photographs were found in your car after you were arrested. (suppressed)

22 Your plan was to gather together as much cash as you could, buy a new car and leave the city before what you had done was discovered. You had written about these plans in your journal before the murders. Your writings included a reference to calling Mara's employer and falsely saying that she had suffered an injury. There were other references to clearing out bank accounts, hocking valuables, selling your car and buying an 'incognito car' and how to dispose of a body.

23 On 4 and 5 September you began to put your further plans into effect. This included attending an army disposal store and buying some wet weather clothing. You also went to a Cash City store and sold tools and other equipment for \$1,700.

24 On 4 September Mara's store manager sent her a text message offering her an extra shift. The manager found her lack of response to be unusual. The following morning you called the manager and said that you were Mara's husband and that you were sorry for not getting back to him the previous day. You then said that Mara had hurt herself kicking a soccer ball and that she had broken two bones in her foot. You said that Mara had to have surgery to pin the bones and that you were calling because she was still under an anaesthetic. The manager asked for a medical certificate and you replied that that was not a problem. The manager said you seemed very calm.

25 On the afternoon of 5 September you went to a caryard in Osborne Park and said that you wanted to sell your car because your business was not going well and you were leaving to work up north. You agreed to sell the car for \$12,000 and asked for cash. When you were told that this was not possible you agreed to a bank transfer. You were unable to remember the account password and when the car salesman suggested you call your wife you went outside, returning a short time later to say that you could not get through. There was further discussion with the salesman about a cash cheque and when the salesman again suggested that you call your wife you said 'It's a bit complicated'. The salesman offered to give you a lift home, but you asked to be dropped at the Morley Galleria shopping centre. You said that you wanted to meet your wife and children there. You attended at the caryard the following day to pick up the cheque, but it was not ready. You attended again the next day in Mara's car and collected the cheque.

26 On the evening of 5 September you used Ms Quinn's mobile telephone to call a person who was selling a car on Gumtree. You arranged to meet and inspect the car. You agreed to buy it after a quick inspection and paid \$3,200 in cash for it. When you were filling out the transfer papers you said that your 'girlfriend' had messaged you your licence number.

27 On 6 September you transferred a total of approximately \$29,000 from a number of other bank accounts to the one that Mara had authorised you to operate. On the same day you attended a Cash Converters store in Morley and sold some jewellery for \$1,000.

28 On 7 September you went to a camping store in Malaga and bought three 20 litre jerry cans. You later drove to Hillarys Boat Harbour, where you parked and slept in your car that night.

29 You were seen leaving the marina just after 8.00 am on 8 September. At about 9.30 am you attended a bank in Morley and withdrew \$29,500 from the account that Mara had given you authority to operate, and a further \$9,500 from her credit card account.

30 At about 11.00 am on 8 September you called your father, who lives with your mother in Pannawonica, saying that you wanted to come to see him. Your father told you that was fine and to call him when you reached Nunutarra, which is about an hour out of Pannawonica. You called your father again at about 10.00 am the next day. You told him that you would be at Nunutarra in about an hour and would wait for him at a nearby rest area.

31 You eventually met with your mother and father and, after some prodding told your father that you had 'done something really wrong'. You later said that you 'hurt them', 'hurt all of them'. Your father took you to the police station, leaving your car at the meeting point. You seemed calm and you were saying that you missed them and that you did not understand why you would hurt them. Your father also made 000 calls in which he told the operator what you had said and the address of your house.

32 Police officers from Bayswater Police Station were dispatched to attend the house. They found the bodies of Mara, the children and Beverly Quinn as you had left them.

33 Your car was searched and a number of items were found. They included a jacket in the pocket of which was approximately \$40,000 in

cash, the knives which you had recently purchased and two journals with handwritten entries. Inside one of the journals were the photographs that I referred to earlier.

34 A number of entries in the journals were read out by the prosecutor. I do not intend to repeat them. It is sufficient to say that they refer to you wanting to disconnect yourself from a society that you viewed as being pointless and without meaning. You refer to embracing your darkness and your animal instincts and of doing the unthinkable to unshackle yourself. You make it clear that this means killing your wife, children and mother-in-law and going on the run.

35 You were interviewed by police in Karratha on 10 September. You told them what you had done and said that you could remember doing it. You said you did not understand why and that it did not seem to make sense. You said you had no reason, you were not mad or angry and that you loved them and missed them. You gave a detailed account of what occurred, which I have referred to, with the exceptions I have noted. You said that you were anxious and depressed, though you said there was no reason for these feelings. You said that you wrote about your thoughts in the journals, but said that this was mostly nonsense. You denied using illicit drugs, but said you drank more wine that night than was usual for you. You denied any difficulties in your relationship with Mara, who you described as supportive and a good mother. You also denied any difficulty with Beverly Quinn, who you said was very kind and giving and had done a lot to help with the children.

36 The post-mortem examinations of the victims revealed the nature and extent of the injuries they each suffered. Mara had significant head injuries, including a large laceration to the top of her head and fractures to the hyoid bone and to the base of the skull. She also had 12 stab wounds – five to her chest and seven to her back. A number of these wounds were deep and penetrated into the chest cavity, causing injury to the heart and other internal organs. The cause of death was head and trunk injuries.

37 Beatrix had a total of nine sharp force injuries. These were to her chest and right eye. There were two incised wounds to her right eye and a stab wound to her right cheek. There was also a wound to the right eye that penetrated the skull and the right carotid artery. She had four wounds to her chest, three of which penetrated vital organs, including the heart. The cause of death was sharp force injuries to the head and trunk.

38 Alice had a total of 13 sharp force injuries. These were to her chest, left wrist and left eye. One of the six wounds to the area of the left eye was estimated to be at least 40 mm deep. The six wounds to the chest all penetrated the chest cavity and caused injuries to vital organs, including the heart. The number and proximity of the wounds made it difficult to match external wounds with the internal injuries. The cause of death was multiple sharp force injuries.

39 Charlotte had a total of 38 sharp force injuries. Of these injuries 22 were clustered in an area on the front of the chest. A number of the wounds penetrated the neck and the chest cavity, causing injuries to vital organs, including the heart. Again, the number and proximity of the wounds made it difficult to match external wounds with the internal injuries. The cause of death was multiple sharp force injuries to the trunk.

40 Beverley Quinn had injuries to her head and trunk. There was a large laceration to the right side of her head, with underlying haemorrhage and bone fragments. She also had multiple sharp force injuries, the majority of which were stab wounds to the chest. One complex wound on examination was found to comprise 11 separate stab wounds. There were three other stab wounds to the chest. Most of these wounds were deep and one penetrated through to the back. Many of the wounds penetrated the chest cavity, causing injuries to vital organs. These included six almost vertical injuries to the heart. Again the number and proximity of the wounds made it difficult to match the external wounds with the internal injuries. The cause of death was head and trunk injuries.

41 (suppressed)

Personal circumstances and antecedents

42 You were born on 29 October 1993. You were 24 years old when you committed the offences. You are now 25 years old.

43 You were born in Queensland and have two younger sisters. During your early childhood your parents were employed in seasonal work and this meant that you moved with them around Queensland, before settling in Bundaberg when you were 8 years old. Your parents moved to Western Australia when you were aged 16. Initially you remained with an uncle in Gladstone, before moving to be with your parents. Your parents remain married and have continued to be supportive of you.

44 You completed high school part of the way through year 12, when you were offered full time employment at age 17. That work was as a cleaner with a company doing sub-contract work at a mine-site. You continued in that employment for five years, rising to a supervisor level with responsibility for up to 40 people. Within 12 months of starting this job you met Mara, who worked for the same company.

45 You and Mara dated for a short time before marrying in 2015. You had three children together in an 18 month period. Charlotte was born on 3 February 2015 and the twins, Beatrix and Alice, on 26 July 2016. Mara owned the house in Bedford prior to meeting you. You moved to Perth and into that house when Charlotte was 6 months old. You purchased a mowing franchise and ran that business until the commission of the offences.

46 You have no prior criminal history. There is also no history of illicit drug use or problematic alcohol consumption.

Psychiatric report

47 I have been provided with a psychiatric report that was prepared by Dr Wojnarowska at the request of your solicitor. She states that in her assessment you do not suffer from any major psychiatric disorder and that alcohol was not a factor in your offending. She notes that you have no prior history of violence and that you do not fulfil the diagnostic criteria for anti-social personality disorder.

48 You described a history of depressive episodes and high levels of anxiety from the age of 14. You said that you had a depressive episode in February 2018 in the context of financial pressure. You said that at this time your perception was that your and other people's lives were meaningless. You escaped into a fantasy world, becoming obsessed with serial killers and about being one of them. Your wife noticed that you were depressed and took you to a doctor. You were prescribed anti-depressants and your mood improved. You said that you stopped taking the medication about a week before the murders, because you felt well. You said you did not notice any change in your mood after stopping the medication. Dr Wojnarowska concluded that, given what you told her, depression was not a causal factor in your offending.

49 Dr Wojnarowska states that your childhood development was normal, but you were shy and anxious, had difficulty developing friendships and have a propensity to pursue narrow interests to the exclusion of other important areas of your life. You also have a

tendency to replace reality with fantasy, but never to the point of becoming psychotic. Your offending and subsequent behaviour demonstrates a lack of social understanding and deficient empathy. She states that your presentation is consistent with a diagnosis of high functioning autism. However, there is significant overlap between this condition and narcissistic personality disorder, which is characterised by grandiosity, lack of remorse, empathy or guilt, and a lack of concern for others. She states that it would be difficult to disentangle these two possible diagnoses without further assessments. (suppressed)

50 Dr Wojnarowka concludes her report by saying that you were not depressed or psychotic at the time of the offences. In her opinion you were driven by a desire to embark on a new life journey, inability to connect with others and living in a fantasy world. This led to you disregarding the needs and emotions of others in order to pursue your goal. She suggests that it is possible that empathy deficits related to autism allowed you to engage in extreme violence. Your long-standing obsession with existential issues such as old age and death, combined with a highly narcissistic need to leave a mark was a factor in the offending. (suppressed)

51 It is submitted on your behalf that high functioning autism is relevant in sentencing because it is not self-induced and that a deficit in empathy, likely caused by that condition, was a causal factor, along with other factors.

52 There are a number of important limitations on that submission. First, Dr Wojnarowska does not make a diagnosis of HFA, in fact she says it would not be possible to do so without further assessments. Secondly, the symptoms she refers to are also consistent with another condition, a personality disorder, which it is not suggested would have any mitigatory value. It is not certain that your lack of empathy is due to HFA. Thirdly, there is no suggestion that autism is a direct cause of extreme violent behaviour of the type that occurred here. It could only be said to be causative in the sense that the presence of empathy may have acted to inhibit your behaviour. Fourthly, there were other factors that contributed and the significance of the empathy deficit as opposed to other factors is unclear. Fifthly, any mitigatory value may be offset by the need to consider the protection of the community. Taking those considerations into account the matters referred to in the report have some relevance, but are not of great mitigatory value. They do not reduce your moral culpability to a significant extent, they do not make

you a less suitable vehicle for general deterrence and there is no suggestion that they would make imprisonment any more difficult.

Other mitigating factors

53 The fact that you have entered pleas of guilty to the charges is a mitigating factor. You were charged on 10 September 2018 and appeared in the Magistrates Court that day. There were a number of further appearances in that court before you pleaded guilty on 24 April 2019, at which time you were committed to this court to be sentenced. An indication of those pleas was given by your lawyer to the State on 27 March 2019

54 There were two factors that delayed the entering of pleas. First, there were some investigations made as to your mental health. Secondly, you deferred entering pleas until the disclosure of the post-mortem reports (which, due to the extent of the injuries, their number and the number of victims, took some time to produce). Nonetheless, I accept that the pleas were entered at a reasonably early stage.

55 The prosecution case was a very strong one and, it has been conceded on your behalf, pleas of guilty were probably inevitable. One factor that contributed to the prosecution case was the admissions that you made to the police when interviewed. However, the objective evidence independent of your admissions would have meant that there was a strong case in any event.

56 Whilst s 9AA of the *Sentencing Act* does not have application in this case, the fact that you have pleaded guilty is a mitigating factor that would ordinarily result in a reduction of any minimum non-parole period that is imposed. I acknowledge in this regard that your pleas have spared the State, witnesses and family of the victims a trial, which would undoubtedly have been traumatic.

57 Your cooperation with the police is also a mitigating factor. Whilst you avoided detection for some days after the offences and made plans to escape, you ultimately contacted your father and agreed to turn yourself in to the police. You then participated in an interview where you made detailed admissions as to what you had done.

58 Remorse can be a mitigating factor. It may be apparent from pleas of guilty and cooperation with the police, but also in expressions made to others, including to your father and the psychiatrist and in your hand-written letters to the victims. I accept that you have on many

occasions expressed regret and remorse for what you have done. However, those expressions have to be treated with caution because they sit uncomfortably with what the psychiatrist said about your empathy deficit. They are also off-set by a number of facts which are inconsistent with remorse, such as the way in which you continued to carry out your plan after the event and the taking of photographs of the bodies.

59 Youth can be a strong mitigating factor. In many cases this is because very young people can be impressionable or impulsive and are also more amenable to rehabilitation. At the age of 24, as you were when these offences were committed, you are past the age where those considerations have any significance. You were a mature man, with no serious intellectual impairment and there was nothing impulsive about these offences.

60 Youth may be relevant in another way. Imprisonment may be harder for a young person. One reason for this is that the younger the offender the longer a life sentence may be. I accept that as a relatively young man in good health a life sentence, whether with or without the possibility of parole, entails the likelihood of a very long time in prison.

61 The fact that an offender has no prior criminal record is usually a significant mitigating factor. I accept that you have committed no offences before this and that there is nothing to suggest that had any history of violence. However, that factor is very much outweighed by the serious nature of your offences.

Aggravating factors

62 There are a number of factors that aggravate these offences. These are factors that increase your culpability or moral blameworthiness.

63 First, these offences were pre-meditated. You planned the murders and wrote about your plans in the journals. It is plain from those journals that they were not a mere record of dark fantasies, rather they include details of what you would do and how you would do it. They include a statement of intent to kill all of your family apparently written on the morning of the day that the first four offences occurred. These plans were formulated over some time, and I note that you told the psychiatrist that you arrived at a decision to kill your family approximately a month before the murders.

64 Secondly, you began to put your plans into effect from at least 23 August 2018, that is, more than a week before the murders. In that week you purchased the knives, sold some property, bought the Polaroid camera and persuaded Mara to sign the authority to operate her bank account.

65 Thirdly, you used multiple weapons to carry out the murders, a pipe and two knives. You also used those weapons with great brutality, inflicting numerous and severe wounds to each victim. In each case there were more wounds than would appear necessary if your objective was only to kill each victim.

66 Fourthly, there were five victims. You must receive a sentence for each murder, but it is relevant in each case to take into account that it occurred in the context of the others. Furthermore, this was not a case where a single act caused multiple deaths, each victim was the subject of a separate attack and in each case you intended to kill the victim. You set out to murder five people and you achieved that objective.

67 Fifthly, there was a lapse of time between the murders. You murdered Mara, then sat with her for a while, drank the rest of the wine, moved Mara's body inside and then murdered the three children. You then had a shower, cleaned up the blood and waited for Beverley Quinn to arrive the next morning, intending to kill her when she did so. This was not a sudden occurrence of violence that was of short duration, rather it was conduct that extended over hours and was carried out with apparently calm deliberation. You had opportunity between each murder to consider what you were doing and stop. But, of course, you did not stop.

68 Sixthly, each of the victims was vulnerable. Mara was coming home from work late at night, she had no reason to suspect that she would be violently attacked by you. Beverley Quinn, who was aged 73 at the time of her death, was also unsuspecting. You helped her bring things in from the car, all the time planning to kill her. The children were very young and asleep in their beds in their home. This was the place they should have been safest. They should have been able to trust their father to protect them. That is the most fundamental duty any parent has. You breached that trust and failed in that duty in the most extreme way imaginable.

69 Seventhly, your conduct after the offences showed that your primary interest was yourself. (suppressed) You took photographs of the bodies. You posed the bodies of Mara and the children. You then continued to calmly carry out your plans to escape over several days. Your focus was to continue with the narrative that you had written and to continue with your own role in that narrative. All of this showed a callous disregard for your victims and is inconsistent with your later claims of remorse.

Victim impact

70 I must also take into account the impact on the primary and secondary victims. The primary victims are those people who you murdered. The secondary victims are the extended family.

71 As to the primary victims, you took the lives of these five people, including your entire immediate family, in an exceedingly brutal manner. They were all loving and much loved, and had much to live for. The children, in particular, were so very young. Their potential to grow and achieve and have families of their own was cut short by your actions. The murder of children is conduct that is held by society to be especially heinous.

72 As to secondary victims, I have received victim impact statements from Tarryn Tottman, who is Mara's sister and the daughter of Beverley Quinn, and from Wendy Frost, who is a sister of Beverley Quinn and the aunt of Mara. Those statements were read out in full by the prosecutor. No summary of those statements would be adequate. Their own words convey the profound and devastating loss that they and other members of their family have suffered. They continue to grieve for the loss of so many members of their family and have also endured the psychological impact that the loss has caused.

73 I should also mention the police officers who attended the scene. The first officers were young and junior. Police officers are required to see many scenes of human tragedy, but this scene must have been particularly terrible. The impact on the officers who attended will inevitably be long lasting.

Relevant law

74 In sentencing you for the offences that you have committed I am required to impose a sentence which is commensurate with the seriousness of the offence. In determining the seriousness of the

offence I am required to take into account the statutory penalty for the offence, the circumstances of the commission of the offence, any aggravating factors and any mitigating factors.

75 The maximum penalty for these offences is life imprisonment. Further, under the relevant section of the *Criminal Code* (WA), I must sentence you to life imprisonment on each count of murder unless:

- (1) that sentence would be clearly unjust given the circumstances of the offence and your circumstances; and
- (2) you are unlikely to be a threat to the safety of the community when you are released from imprisonment.

76 If a life sentence is imposed s 90 of the *Sentencing Act* provides that I must set a minimum period that you must serve before being eligible for release on parole or order that you never be released.

77 It is accepted on your behalf that sentences of life imprisonment on each count would not be unjust in the circumstances of this case. That concession is clearly correct. The circumstances of these offences require the imposition of life imprisonment in each case.

78 The real issue is whether an order should be made in each case that you never be released or whether minimum terms should be set. If it is appropriate to set minimum terms there would then be an issue of how long they should be.

79 The law provides that an order that an offender convicted of murder must never be released, must be made if it is necessary to do so in order to meet the community's interest in punishment and deterrence. In determining whether such an order is necessary the only matters relating to the offence that can be taken into account are the circumstances of the commission of the offence and any aggravating factors.

80 The way in which s 90 of the *Sentencing Act* is to be interpreted is an important matter in your case. For reasons that I have separately published, I have come to the following conclusions in that regard:

- (1) a 'never to be released order' should only be made in cases falling into the worst category of offences of murder and is intended for cases of rare and exceptional seriousness;

- (2) an order is necessary if it is required to meet the community's interests in punishment and deterrence, that is, that no sentence other than one that includes such an order would meet those interests;
- (3) the sentencing judge is required to make an objective assessment of the community's interests, namely the interests that the community has in offenders being properly punished and that penalties will act as a deterrent and thereby serve to protect members of the community from further offences. In this respect proper punishment means punishment that is proportional to the magnitude of the offending conduct; and
- (4) that in considering whether an order is necessary, mitigating factors are excluded from consideration. That means that factors that are personal to an offender and which would usually be relevant in sentencing, such as a plea of guilty and prospects for rehabilitation, cannot be taken into account – though they would become relevant if the court concludes that a never to be released order is not necessary and the length of the minimum term is under consideration.

Application to this case

81 I have set out the circumstances of the offences and the aggravating factors earlier in these reasons. I have also considered other cases where the Court of Appeal has considered sentences for offences of murder. There is no other case that is truly comparable.

82 It is usual for judges when referring to the seriousness of a particular offence to describe it in a way that enables it to be measured against other offences of the same type. These offences make that task very difficult. Frankly, I struggle to find words that are adequate to convey the magnitude of your offences. Your actions are so far beyond the bounds of acceptable human conduct that they instil horror and revulsion into even the most hardened of people. There can be no doubt that these offences fall into the category where the maximum penalty is a possibility.

83 The community's interest in punishment and deterrence requires that sentences be imposed that adequately reflect the seriousness of your offending and that act as a discouragement to others. The critical question is whether an order that you never be released is necessary to meet those interests.

84 On your behalf it is submitted that, as serious as your offences are, such an order is not necessary. It is pointed out that as a young man it would be possible to impose a life sentence with a very long minimum term. It is said that such a sentence would meet the community's interests in punishment and deterrence.

85 The State submits that there are cases, though rare, where the community's interest in punishment will require the imposition of a sentence which is for the whole of the offender's life. No person committing such acts should be entitled to have an expectation of a meaningful life in the community in the future. It is also said that the community has a legitimate interest in the courts condemning conduct of this level of seriousness in the most pronounced manner, in order to deter others from contemplating such acts.

86 This is a matter about which I have thought long and hard. An order that an offender should never be released is drastic and exceptional and should be reserved only for the very worst cases. Such an order has never before been made in this State. The profound consequence of imposing such an order on a young man is a fact that I acknowledge and have taken into account.

87 As to the suggestion that, due to your age, it would be possible to impose a life sentence with a very long minimum term, that is true as a matter of practical reality. However, any minimum term would have to take into account mitigating factors, which are excluded from consideration in respect of a never to be released order. Thus, it is not a matter of postulating an extraordinarily long minimum term but rather considering what minimum could properly be imposed in all of the circumstances of this case. In any event, there must be a point at which any minimum term that would properly reflect the seriousness of the offence would be so long that it indicates that the case falls into the category that should attract the maximum penalty.

88 After careful thought, I have come to the following conclusion. Taking into account only the circumstances of the offences and the aggravating factors, it is necessary to make an order that you never be released in order to meet the community's interest in punishment and deterrence. I am satisfied that no other outcome would meet those interests. That is due to the extraordinary seriousness of these offences that can only be properly reflected by the imposition of the heaviest sentence that it is possible to impose under our law.

Sentence

89 Anthony Robert Harvey, on each count on the indictment you are sentenced to imprisonment for life with an order that you must never be released.

90 Although it might seem pointless to do so, I will backdate the commencement date of your sentence to 10 September 2018 to take account the time that you have already spent in custody.