

William Rothwell and Jacob Brennan plead guilty to the murder of Billy Ray Waters. Mr Waters was killed on 4 August 2019. He was 18. Both defendants were 17 at the time. The law ordinarily prohibits their identification. However for a crime of this nature, I concluded that it would be in the interests of justice to give permission generally for the publication of material identifying both defendants, and I gave that permission during the sentencing hearing.

For some months prior to August 2019 Mr Rothwell was selling cannabis for another older man, who I will refer to Mr B. Mr Rothwell had been friends with Mr Waters for some time but Mr Rothwell and Mr B believed that Mr Waters had stolen cannabis from them. Mr B asked Mr Rothwell whether he knew anyone who would kill Mr Waters. After first responding that Mr B had asked the wrong person, Mr Rothwell approached Mr Brennan, who agreed. Mr Brennan also knew Mr Waters. On 31 July 2019 Mr B gave Mr Rothwell a sawn-off single barrel shotgun. On 2 August 2019 Mr Rothwell and Mr Brennan invited Mr Waters on a camping trip to Bridport intending to kill him in his sleep. They stole a car together and Mr Waters went with them, but the plan was thwarted when he stayed awake. Undeterred they came up with another plan. On 4 August 2019 Mr Rothwell and Mr Brennan went to the place in the bush at Mayfield where they had hidden the stolen car. They took with them the shotgun, a bowie knife and a wooden baton. They arranged to meet Mr Waters at an agreed location on the pretext that they would use the vehicle to commit burglaries. Together they walked to the car. When they arrived, as Mr Waters approached the driver's door, Mr Brennan fired the gun at him. The shot struck Mr Waters in the upper leg. As Mr Brennan attempted to fire the gun again, it jammed. Brennan and Rothwell retreated down an embankment to re-load it. Mr Waters came after them screaming for help. Both Rothwell and Brennan then bashed him repeatedly, Rothwell with the wooden baton to the jaw and Brennan with the barrel of the firearm. Brennan then took the knife from the backpack and stabbed Mr Waters at least 18 times to his head, neck and body. As Mr Waters lay moaning on the ground, one of the defendants picked up the firearm, by now unjammed, loaded it with a cartridge and shot Mr Waters in the back of the head. The shot resulted in traumatic damage to his head and brain and killed him immediately. Both defendants then dragged the body into the bush and covered it with vegetation.

Mr Brennan removed a ring from Mr Waters as evidence that he had been killed. The two men also removed his fluorescent trainers to make it more difficult for the body to be seen. They also took his house key. The gun was later returned to Mr B.

At just after 10 pm reports of gun shots and screams for help were reported to the police. They attended and searched but found nothing. In the early afternoon of the following day the stolen car was found by the property owner. Mr Waters was not reported missing until his house mates approached the police on Sunday 11 August 2019. An investigation was commenced. As a result of information generated by media reports, further searches were conducted. Mr Waters' body was found by the police and SES on Friday 16 August 2019 in the place where it had been hidden by Mr Brennan and Mr Rothwell. A post mortem examination disclosed the shotgun wounds to his leg and head, at least 10 stab wounds to his head and neck, at least eight stab wounds to his back, mostly on the left, and bruising consistent with blunt impact. One of the stab wounds penetrated the inner lining of the

abdominal cavity and caused internal bleeding. The examination disclosed that both shotgun wounds were inflicted from a range of less than one metre.

Both defendants were located together on 16 August 2019 and arrested. Both were interviewed. Both admitted the murder and their respective roles in its planning and execution. Mr Rothwell's admissions were made during two interviews on 16 and 18 August 2019. Mr Brennan was interviewed on 17 and 18 August 2019. In the first interview he denied his crime, but in the second he admitted it. The admissions made are consistent with the facts just stated. Mr Rothwell claimed that the murder was instigated by Mr B, who was "like his boss", that Mr Rothwell and Mr Waters had been friends until cannabis was stolen from him, that at Mr B's request he asked Mr Brennan if he would kill Mr Waters. Both defendants told the police that Mr Brennan shot Mr Waters in the leg. Mr Rothwell admitted striking Mr Waters to the head with a baton twice and Brennan admitted striking Mr Waters to the head with the butt of the gun. Both said that Mr Brennan used the knife, which Mr Rothwell had brought, to stab Mr Waters. Each claimed that the other fired the final shot. Mr Rothwell said that Mr Brennan said, after stabbing Mr Waters over 20 times, that "he's not done", reloaded the gun, laid Mr Waters face down, and shot him in the back of the head at close range. Mr Brennan told the police that Mr Rothwell reloaded the firearm and handed it to him, but as he was about to shoot Mr Waters, Mr Rothwell said that he wanted to do it because he was the one Mr Waters had stolen from. Mr Brennan said he handed the gun back and Mr Rothwell fired the shot. Both defendants agreed that they were paid an ounce of cannabis for the killing which was divided between them.

William Rothwell comes from a good family, has no prior convictions, and was part way through year 12. During 2019 conflict developed between him and his family. He moved out, became disconnected from them and fell into bad company. Nothing in his background, no psychiatric, psychological or underlying disorder or condition, explains why he may have resorted to a crime of this gravity. I was asked to obtain a report from Community Youth Justice about Mr Rothwell's engagement with services and programs at Ashley Youth Detention Centre. I do not find it necessary to obtain a report. I would accept for the purposes of sentencing, from his education, background, vocational interests and community involvement prior to this crime, and his engagement with services while in custody, that he has the intelligence and capacity to be a contributing member of society.

William Brennan turned 17 less than two months before this crime. His background is characterised by abuse and neglect. His young life was dominated by interactions with the child protection services in NSW. He does not know his father. As a young child his mother exposed him to drug use and domestic violence. He was taken into care at age 5 and between then and age 13 he was placed in about 11 different foster homes. He returned to the care of his mother when he was almost 14. She was an intravenous user of methylamphetamine. He says that she attacked him and, when he defended himself, he was charged with assault. He was sent to emergency care with his grandparents in Tasmania, but when, in May 2017, they told the authorities they could no longer look after him, he was placed in commercial accommodation. He, in effect, lived independently between the ages of 14 and 17 during which time he claims to have had virtually no supervision. In 2012, when he was about 10, a doctor in NSW recommended psychological intervention for a range of conditions. I was informed of a report from a clinical psychologist in April 2017. I was told some of the contents of the report but I do not have a copy of it. It refers to previous diagnoses of a range of psychological conditions including Asperger's syndrome, ADHD and oppositional defiance. The report attributes his challenging behaviours and emotional disturbance to his

past trauma from which I infer that there were, prior to the report, challenging behaviours and emotional disturbance. I have not been informed what they were. The author of the report strongly recommends a thorough psychological examination. No such examination was ever performed. I raised with counsel for Mr Brennan the question of whether I should now obtain a new assessment of him. I was informed that advice has already been sought, and that no mental disorder or abnormality or impairment of mental function is asserted as relevant to sentence. The present position is that Mr Brennan has virtually no social connection outside the detention centre. He has a friend who visits and some irregular contact with his mother. He is taking the opportunity presently available to him for education at Ashley. He says that he is interested in education so as to equip him for employment and engagement on release.

Murder is a uniquely serious crime. There are a number of aspects of this crime which make it a particularly serious example and which justify a greater head sentence than that imposed for most other single murders in this State:

- It was a planned and intentional killing. Both defendants planned the murder over several days. When one plan did not succeed another was implemented. It was not a spontaneous decision affected by immaturity or lack of judgment and cannot be attributed to rage or sudden impulse or other human frailty;
- The murder involved a betrayal of Mr Waters' friendship. He was tricked into going with the defendants and he would have had no hesitation in doing so;
- In Mr Rothwell's case, the motive could only have been either retribution for stealing the cannabis and interfering with his own or his dealers' illegal activities, or to ingratiate himself with his dealer and thereby advantage himself, or for the promise of an ounce of cannabis. In Mr Brennan's case, the explanation offered for his involvement is that Mr Rothwell told him that Mr Waters planned to do him harm. He now accepts that what he was told is unlikely to be true. For both defendants, the planned and deliberate killing of another human being for such reasons is to be regarded by a civilised society as being a very serious crime;
- The defendants acted in concert so that Mr Waters was confronted by the combined force of two men acting together;
- The carrying out of the murder involved extreme, cruel and prolonged violence. Mr Waters was subjected to suffering. The attack and then the fatal wound were inflicted when he was pleading for help. He was shot without mercy;
- Both men took steps to conceal the murder. Mr Waters' body was dragged into the bush and left hidden. It was a crude attempt but it was almost two weeks before his body was found.

Mr Waters' death has had a terrible impact on his family and friends, particularly his sister and his grandmother, from whom I heard moving statements. The law must uphold the sanctity of every human life.

There are three factors which I have been asked to take into account in favour of the defendants: their admissions, their pleas of guilty and their youth. Another factor will also be taken into account, details of which will be published to the parties only at this stage. Such is the seriousness of the crime, and the need to impose a head sentence proportionate to the

crime, that I have concluded that the mitigating factors should be taken into account in determining the length of the parole non-eligibility period.

Both defendants quickly made admissions of their respective roles to the police. The admissions and the early plea lessened the need for a complex investigation. Because of the admissions the case against them became irresistible. However the early plea of guilty facilitated justice by avoiding the need for a trial, thus sparing Mr Waters' family and friends of the anguish which would inevitably accompany that process. It indicates also that the defendants accept responsibility for their acts.

The law generally extends lenience to young offenders. That is so to allow for immaturity, lack of judgment, the greater potential for rehabilitation and avoidance of the corrupting influence of prison. In the circumstances of this case it is only the potential for rehabilitation which carries any weight, and it has much less part to play in a crime as disturbing and violent as this one. The prospect of rehabilitation is to be considered along with the assessment of the risk to the public which they may pose on release. Relevant to both questions is the fact that both defendants have demonstrated the capacity to commit such a crime. Considerations of youth are dominated by the need for punishment, denunciation, vindication of the victim and protection of the public. It may be that, for one or both of the defendants, this was an isolated act, not likely to be repeated, but no material is advanced on their behalf which would reassure me that this is so. The circumstances of the murder, and the trivial and dishonourable reasons for which it was carried out, suggest strongly that persons capable of such acts present a continuing danger to the public. For both defendants it is almost impossible to predict the extent to which, after many years in prison, he may be rehabilitated, and the level of the threat to society he may present if released. I take into account how old they will be when they become eligible for parole. It is the Parole Board which is required by the *Corrections Act* 1997, s72(4), to take into account, in determining whether or not a prisoner should be released on parole when a non-parole period has expired, the likelihood of the prisoner re-offending, the protection of the public, the rehabilitation of the prisoner, the prisoner's behaviour in prison, any reports tendered to it on the prisoner's psychiatric condition and the probable circumstances of the prisoner after release from prison. The Court should proceed on the assumption that these matters, as well as the others the Board is required to take into account, will be carefully considered by the Parole Board. At this stage what I am to determine is the minimum time that justice requires that each defendant must serve having regard to all the circumstances of his offence.

I must also consider, as between the two men, whether they should receive the same or a different sentence. Because of their joint involvement, both are responsible for all of the criminal conduct. However, there is a distinction between an offender's responsibility for criminal conduct and his culpability. Each defendant's level of moral culpability is assessed by reference to his particular conduct. Counsel for Mr Rothwell submits that he should be permitted an earlier eligibility for parole because he played a lesser role in the physical acts which led to Mr Water's death. Mr Rothwell asserts that his application of force was limited to striking Mr Waters with the baton.

On one version, Mr Brennan was responsible for a greater level of direct violence, but Mr Rothwell instigated the plan, supplied the gun and brought the knife intending Mr Waters would be killed. It was not suggested that he was overborne by Mr B and he had ample time to consider and withdraw from his involvement. Mr Brennan willingly joined in. It has not been determined who fired the fatal shot, but both are equally blameworthy for it. Mr

Rothwell brought the gun intending for it to be used for that purpose. If Mr Brennan did not fire the shot, he admitted that he was prepared to do so.

One matter causes me considerable concern. Mr Brennan admitted using the knife which Mr Rothwell had brought to inflict the stab wounds. Mr Rothwell could only have brought a knife of that nature as a possible means of killing. However, Mr Brennan told the police that he stabbed Mr Waters in the neck, back and head to "end his suffering." There were at least 18 stab wounds. Although there was only one deep penetrating wound, infliction of such an extreme number of stab wounds gives rise to an impression of his acts being uncontrolled and unrestrained. Whatever the explanation, the number of stab wounds is a particularly disturbing aspect of Mr Brennan's conduct and poses a real question about the risk he may present to the community on release. In the end I have, for reasons I have already expressed, decided that it is a matter for the Parole Board. The Board may take into account these comments on passing sentence. I have decided that both should receive the same sentence, but I would record my view that before Mr Brennan is granted parole, the Board should have some psychiatric assessment of the nature and effect of the conditions with which he has seemingly been diagnosed so as to inform the level of risk he may pose on release. It will be for the Board to determine whether the same should apply to Mr Rothwell.

For a further reason published only to the parties at this stage, I have reduced the period of ineligibility for parole by two years.

William Rothwell and Jacob Brennan, you are each sentenced to imprisonment for 26 years from 16 August 2019. I order that you not be eligible for parole until you have served 15 years of that sentence.