

STATE OF TASMANIA v BRAYDON EUGENE KELLEHER 23 FEBRUARY 2023
COMMENTS ON PASSING SENTENCE GEASON J

Mr Kelleher you were convicted after a trial by jury for the murder of Adrian Garcia.

The broader context in which your offending occurred was the death of your mother.

I find as follows noting that the factual circumstances are not complex.

The circumstance which led to your offence was your becoming aware that the deceased had made comments about your mother which you regarded as disparaging of her and which were as a result, hurtful to you.

These were communicated to you by your grandmother.

She had met Mr Garcia, with whom she was in a relationship, at the main park in Sorell. He had travelled to Sorell to see her but he had begun drinking. He was intoxicated having consumed a large quantity of vodka and they had argued about his drinking. She was fed up with his drinking and his failure to keep promises to do something about it

She had returned to her home, a short distance away where you were residing in a converted area that had been set aside for you. It operated as your bedroom. You had a baseball bat in that room.

Upon becoming aware of what occurred and more particularly the remarks about your mother you decided to go down to the park to confront Mr Garcia.

Your grandmother had suggested that you might remove the alcohol from his possession. You agreed to do this but that was not your primary purpose in going there. Your primary purpose was to confront Mr Garcia about the remarks you found so offensive.

You enlisted the support of Mr Abel who had been in a relationship with your mother, and he accompanied you to the park. You took the baseball bat. He took a broom handle. He is not implicated in your crime and has been sentenced already on a charge of assaulting Mr Garcia, an action which your conduct served to encourage.

As I say your intention was to confront Mr Garcia, and I find that you took the baseball bat for that purpose intending to use it if you decided it was necessary for your purpose. You did not go there to kill him.

When you got to the park you confronted Mr Garcia and you became upset, agitated by his intoxicated state, an observation which reinforced your frustration and anger towards him. He appeared to you to be not at all contrite but ambivalent towards you, making no meaningful response to you. Driven by anger you impulsively struck him to the head with the baseball bat three times with considerable force. At least one of those blows was delivered whilst he was on the ground and you could see that he was bleeding. Your actions were voluntary and intentional, driven by a wish to cause him harm.

These were actions heavy blows to his head which you ought to have known would be likely to cause death.

It brings your crime within s 1571C of the *Criminal Code* and I sentence you on that basis. That is that by a voluntary and intentional act which you ought to have known was likely to cause death, you in fact caused his death.

An aggravating feature of your crime is that it occurred in broad daylight in full view of members of the public including students who had just left school and who are waiting for a bus. It is clear from the evidence on the trial from one of those students that your actions caused considerable distress to them.

I accept the state's submission that your actions amounted to unnecessary violence that was completely disproportionate to any grievance you may have had with Mr Garcia making the objective seriousness of your crime high.

In the aftermath of your violent actions you immediately regretted what you had done and you took steps to notify authorities and made arrangements for an ambulance to be called. Having left the scene you returned shortly after. You made full admissions about what you had done almost immediately after indicating your regret and that you did not wish to kill Mr Garcia.

There is some inconsistency between that conduct and the evidence that you gave on your trial, but I sentence you on the basis that you immediately regretted what you had done and what you did was impulsive.

I do not consider that your plea of not guilty in any way undermines your claim to remorse. It is consistent with the absence of an intention to cause death and your apparent acceptance that your actions could at least amount to manslaughter. You have always accepted you caused his death and you have consistently indicated that you regretted having done so. Your plea of not guilty is not therefore inconsistent with your claim to remorse.

You appear before the court without prior convictions. You are a youthful offender in respect of whom, as Justice Nettlefold once put it, society has no greater interest than that you should become a good citizen.

In that respect it is appropriate to give consideration to your rehabilitation as an important sentencing objective and I will reflect that consideration in the non-parole period I prescribe in your sentence. Notwithstanding that objective, the seriousness of your crime requires other sentencing considerations to be given significant weight. They are general deterrence punishment and the vindication of your victim.

The consequences for your victim and his friends and family who are left to grieve his loss, are vitally important sentencing considerations. The family of the deceased and other friends have made victim impact statements and I have regard to them. Your crime has had significant impacts on many people. No sentence this Court imposes can undo those impacts. No sentence imposed by this Court is likely ever to satisfy those so terribly, perhaps irretrievably hurt by your actions.

For the victim of your crime there can be no sense of justice. no sentence this Court imposes can ever compensate for the harm that you have caused to him.

The sentence I impose today is not intended to represent any measure of the value of his life. By your actions you extinguished the possibility of any future for Mr Garcia. You may consider yourself entitled to have been upset about what he said about your mother, but you know there is no justification for what you did. you will never forget this episode. You will have to live with it for the rest of your life, and that will be painful, as it ought to be.

I have regard to the matters put in mitigation on your behalf. They focus on matters I have already referred, including your actions immediately after your conduct and your remorse and your youth; that your actions were impulsive and not premeditated.

I note to your family background. Your father has been in prison much of his life, and when he has been involved with you, your experiences have been characterised by significant amounts of family violence. Your counsel emphasises your acceptance that there was no justification for your actions and also your prospects for rehabilitation.

Mr Kelleher in all the circumstances I have determined that you should be sentenced to prison for 16 years. That sentence commences from the date that you were taken into custody, which is 2 May 2021.

I further direct you not be eligible for parole until you have served half that sentence, that is after eight years.

That does not mean the sentence of this Court is a sentence of eight years imprisonment. To suggest otherwise is to misinterpret it. Parole is not automatic, it is earned. It requires you to demonstrate that you are a suitable candidate for parole which in turn requires that you have exhibited insight into your behaviour, and sufficient effort to address it, in particular your propensity to impulsive and violent overreaction.