

STATE OF TASMANIA v ADRIAN WAYNE SMILLIE
COMMENTS ON PASSING SENTENCE

5 MAY 2014
ESTCOURT J

The defendant Adrian Wayne Smillie is to be sentenced, having been found guilty by a jury of the murder of Benjamin Murray Maxwell and the wounding of Ashley Richard Stott, both at Devonport in Tasmania on 25 December 2012.

Mr Smillie is convicted of both crimes, and I make the required orders imposing levies under the *Victims of Crime Compensation Act*.

On Christmas Day 2012, Mr Smillie became involved in an altercation with the now deceased Mr Maxwell and Mr Stott in the common forecourt of 55 Croft Avenue in Devonport where Mr Smillie had parked his 4WD vehicle, in which he was living at the time.

The origin and commencement of the fight were not clear on the evidence. It may have involved Mr Smillie parking his car next to Mr Stott's unit at 55 Croft Avenue, or it may have been that Mr Smillie had declined to take Mr Stott and Mr Maxwell to a bottle shop to buy alcohol. It may have been that Mr Smillie was jealous of the two men, suspecting that they had been involved in some way with his partner.

But, however occasioned, in the result Mr Smillie stabbed Mr Maxwell with a knife 18 times to the chest and arms. Mr Stott was stabbed four times to the rear chest, and also in the left arm.

At his trial Mr Smillie claimed that he was acting in lawful self-defence when he stabbed both men, asserting that he was pinned to the ground by them, that Mr Maxwell had the knife that was involved and had stabbed Mr Smillie in the hand with it before Mr Smillie took it from him and used it in order to defend himself. He claimed that he did so from underneath Mr Maxwell, reaching up and around and stabbing at Mr Maxwell's back.

How Mr Smillie came to stab Mr Stott is also unclear on Mr Smillie's account. On Mr Stott's version of events, Mr Smillie and Mr Maxwell were standing up fighting and Mr Stott came between them to separate them and was himself stabbed. I am satisfied to the requisite degree that that is how Mr Stott was stabbed.

There was evidence from Mr Smillie's partner to support the proposition that Mr Maxwell and Mr Stott were on top of Mr Smillie at one point in the altercation. But whatever course the stabbing of both men took, it follows from the jury's verdict that it rejected Mr Smillie's claim that he had used only reasonable force to defend himself against both men in the circumstances as he understood and believed them to be.

The State did not contend at trial that Mr Smillie intended to kill Mr Maxwell. However, for the purposes of sentencing, I am satisfied that it was clear from the type of knife used and the very large number of stab wounds inflicted upon Mr Maxwell that, at the time that the fatal wound or wounds were inflicted, Mr Smillie intended to cause Mr Maxwell bodily harm, which he must have known was likely to cause death.

As to Mr Stott, I am satisfied, given the type of knife used and the number and life-threatening nature of the stab wounds involved, that Mr Smillie intended to wound him.

Mr Maxwell was barely 30 years old when his life was taken and his death has had a wholly debilitating effect on his mother who has never recovered from the shock of her son's death. She is unable to function properly or to gain the motivation to do anything, including seeking

psychological assistance. Mr Maxwell's three sisters have also been devastated by his death. And Mr Stott suffers ongoing psychological problems, as well as the effects of his physical injuries.

I have had a pre-sentence report from Probation and Parole, and had the benefit of a Forensic Mental Health Services report, and I take the contents of those reports into account when sentencing.

Mr Smillie had a difficult childhood, marred by his parent's separation when he was 11, by sexual assault by an adult male the same year, and by the involvement of child welfare services during his adolescence.

He is now 34 years old and has experienced psychotic symptoms since his early 20s. His symptoms were initially attributed to poly-substance abuse, but he was later diagnosed with schizophrenia, and he has some long-held delusions, despite responding well to antipsychotic medication.

Mr Smillie does not accept responsibility for Mr Maxwell's death and the report from Forensic Mental Health Services states that Mr Smillie's current denial of his offending is consistent with his personality function and his tendency to attribute his own inappropriate behaviours to the actions of others.

The report concludes that it is not clear to what degree, if any, active symptoms of psychosis contributed to his conduct in committing these crimes, but it is said that Mr Smillie did not appear to have any active delusions towards Mr Maxwell and Mr Stott, and there is no suggestion that Mr Smillie is not legally responsible for his actions.

Mr Smillie has no prior convictions of any relevance. There is, however, little that mitigates the commission of these terrible crimes, save perhaps that they were spontaneous and not planned in advance.

Mr Smillie expresses no remorse for his conduct, although I do take into account that his refusal to accept responsibility may be attributable to the effect of his psychiatric disorder on his personality functioning.

In assessing eligibility for parole I am required to take into account the circumstances of the offences of which Mr Smillie is convicted and the goals of punishment and deterrence and condemnation. In fixing a non-parole period I do take account of Mr Smillie's tolerable record prior to the commission of these crimes.

Adrian Wayne Smillie, you stand convicted of the crimes of murdering Benjamin Murray Maxwell and of wounding Ashley Richard Stott. For these crimes you are sentenced to a term of 21 years' imprisonment from the date you were taken into custody on 26 December 2012, and I order that you not be eligible for parole until you have served 12 years of your sentence.