

SUPREME COURT OF QUEENSLAND

CITATION: R v ACY [2026] QCA 163

PARTIES: **R**
v
ACY
(applicant)

FILE NO/S: CA No 99 of 2025
SC No 1272 of 2024
SC No 129 of 2025

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane – Date of Sentence: 7 April 2025
(Treston J)

DELIVERED ON: 4 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 17 July 2026

JUDGES: Mullins P, Bradley JA, Doyle JA

ORDER: **Application for leave to appeal against sentence refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – where the applicant youth pleaded guilty on an *ex officio* indictment to murder (count 1), threatening violence (count 2) and contravening order about device information from digital device (count 3) – where the sentencing judge made a declaration under s 176(3)(b)(ii) of the *Youth Justice Act 1992* (Qld) that count 1 was a particularly heinous offence – where the sentencing judge took into account all relevant circumstances of the offending including the subjective features of the applicant relevant to the offending – where there was no error in the sentencing judge’s conclusion that count 1 was a particular heinous offence

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – where the applicant youth pleaded guilty on an *ex officio* indictment to murder (count 1), threatening violence (count 2) and contravening order about device information from digital device (count 3) – where a presentence report was prepared attaching a psychiatrist’s report – where the presentence report gave minimal detail about the applicant’s engaging in two behavioural programs while on remand in youth detention –

where the psychiatrist's report stated that the applicant had not undertaken any substantial rehabilitation, and it was difficult to predict whether the applicant would move toward rehabilitation or continue to maintain antisocial attitudes and conduct – where the reference to the behavioural programs in the presentence report was displaced by the psychiatrist's opinion – whether the sentencing judge failed to consider the applicant's steps towards rehabilitation – where the sentencing judge expressly acknowledged the presentence report in the sentencing remarks – where there was no error by the sentencing judge

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant youth pleaded guilty on an *ex officio* indictment to murder (count 1), threatening violence (count 2) and contravening order about device information from digital device (count 3) – where the applicant was sentenced to 12 years detention on count 1 and lesser concurrent terms on count 2 and count 3 – where the applicant was ordered to be released after serving 70 per cent of the period of detention under s 227(1) of the *Youth Justice Act 1992* (Qld) – where the applicant does not challenge the 12 year period of detention – where the applicant was given credit for his very early guilty plea – where the sentencing judge found there were no special circumstances under s 227(2) of the *Youth Justice Act 1992* (Qld) to justify release after serving between 50 and 70 per cent of the detention period – where the applicant failed to show that release after serving 70 per cent of the period of detention made the sentence manifestly excessive

Youth Justice Act 1992 (Qld), s 176, s 227

R v HCZ [2025] QCA 147, considered

R v Maygar; ex parte A-G (Qld); R v WT; ex parte A-G (Qld) [2007] QCA 310, considered

R v William (a pseudonym) [2020] QCA 174, considered

R v YTZ; Ex parte Attorney-General (Qld); R v YTZ [2023] QCA 87, cited

The King v HCZ [2026] HCA 24, considered

COUNSEL: C W Wallis, with T G Zwoerner, for the applicant
C M Cook for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **MULLINS P:** On 17 December 2024 the applicant pleaded guilty to an *ex officio* indictment that charged him with murder (count 1), threatening violence (count 2) and contravening order about device information from digital device (count 3). The

sentence hearing was subsequently listed for 7 April 2025. At the date of sentence the applicant was aged 18 years and six and one-half months. Count 1 on the indictment was amended on that date to substitute 18 June 2024 as the date of the murder. A summary charge that was committed at the same time as the applicant had stabbed the deceased, namely possession of a knife in a public place, was transmitted to the Supreme Court to be dealt with at the same time as the indictment. The applicant was arraigned on the amended count 1 and the summary charge and pleaded guilty.

- [2] The sentencing judge made a declaration pursuant to s 176(3)(b)(ii) of the *Youth Justice Act 1992* (Qld) (the Act) that the Court considers count 1 to be a particularly heinous offence having regard to all the circumstances. The applicant was sentenced on count 1 to detention for 12 years. The applicant was also sentenced to concurrent detention of 12 months and six months respectively for each of counts 2 and 3. The applicant was reprimanded on the summary charge. Pursuant to s 227(1) of the Act, the applicant was ordered to be released after serving 70 per cent of the period of detention. The version of the Act that applied to the sentencing was that which was in effect on 30 August 2024.
- [3] The applicant applies for leave to appeal against the sentences on the following grounds:
 1. The sentencing judge was wrong to conclude count 1 (murder) was particularly heinous.
 2. The sentencing judge erred by failing to consider a material fact, namely the applicant's steps towards rehabilitation.
 3. The requirement for the applicant to serve 70 per cent of the sentence in detention before release renders the sentence manifestly excessive.

Circumstances of the offences

- [4] There was an agreed statement of facts (exhibit 1). The applicant and the deceased were friends. On 17 May 2024, they were walking together to a park. The applicant was aged 17 years and eight months. The deceased was aged 18 years and four and one-half months. They sat together on a park bench and spoke for a couple of minutes before meeting with a group of persons. The applicant and the deceased left the park after about 10 minutes. The applicant returned about a minute later and waved a hunting knife that had a blade 15 cms in length at that group of persons. After yelling at them, the applicant ran back to the street. (CCTV footage which recorded these events in the park and was included in exhibit 2 was played at the sentencing hearing.)
- [5] After the applicant left the park, he joined the deceased again. An argument then took place between them. The applicant pushed the deceased to the ground and punched and slapped him. The applicant held the knife in one hand while punching the deceased with the other but did not use the knife at that stage. The applicant stopped assaulting the deceased and helped him to his feet. They continued walking together and after a short distance another argument occurred. The applicant pushed the deceased to the ground again. The applicant punched the deceased while he was on the ground and then stabbed him three times in the abdomen with the knife. The sentencing proceeded on the basis that the applicant intended to cause the deceased at least grievous bodily harm.

- [6] The complainant for count 2 (the complainant) was a nearby neighbour who observed the applicant stabbing the deceased. She approached the applicant to try to defuse the situation. As she walked towards the applicant, she was saying words to the effect “I don’t want to get involved, but I don’t want you to get into trouble either, mate. You can hear the sirens”. The applicant approached the complainant who put up her hands and walked backwards. The applicant said to the complainant “look here, bitch” while still armed with the knife. The complainant was fearful and walked away. This interaction between the applicant and the complainant was the threatening violence charged as count 2.
- [7] The applicant left the scene and continued to walk up the street. He had the knife in his hand when intercepted by the police. The applicant threw the knife on the ground and was detained by the police. This resulted in the summary charge. The applicant told the police that he had stabbed the deceased, because the deceased had broken the applicant’s phone. The applicant told the police that he was a trafficker and had to sell “weed” and that the phone contained the applicant’s contacts. At the police station, the applicant told police that he had got into a fight with another group of men earlier that day and the applicant had lost the fight but recorded the fight on his phone. When he later showed the recording to the deceased, the deceased smashed the applicant’s phone. The applicant told police that he stabbed the deceased in retaliation because he had “disrespected” him.
- [8] On 7 June 2024 police obtained an order under s 154A of the *Police Powers and Responsibilities Act 2000* (Qld) which required the applicant to provide police with the PIN code to his mobile phone. The PIN code which the applicant provided was incorrect and the applicant therefore did not comply with the order. That resulted in count 3.
- [9] The deceased was transported to hospital where he underwent emergency surgery. He had a horizontal wound to the central upper abdomen that was 65 mms, an oblique stab wound to the left anterolateral abdomen that was 80 mms, and a horizontal stab wound to the left lateral hip that was 55 mms in length and to a depth of 100 mms. The deceased also had three lacerations to his left hand measuring 15 mms, 20 mms, and 35 mms. He also had a wound of 25 mms to his posterior upper arm and a wound of 25 mms to the anterior proximal shin. There was also an abrasion on his mid-forearm, multiple small bowel lacerations, a gastric laceration and injuries to the arteries in his abdomen. The deceased suffered significant blood loss due to the stab wounds to the abdomen which led to a lack of blood and oxygen supply to the body causing damage to the major organs. Even though the deceased underwent surgery, he suffered from ongoing bleeding. He suffered multiple organ failures, including liver and acute renal failure, and was on life support. He ultimately developed sepsis and died in hospital on 18 June 2024.

Applicant’s antecedents

- [10] The applicant was born in a refugee camp in Eritrea to Somali parents. The applicant and his family emigrated to Australia as refugees, when the applicant was seven years old. The applicant commenced his education in Australia in year 2. He attended four different schools between year 2 and year 6. He regularly faced bullying related to his race and his limited English. The applicant had difficulty integrating and became alienated and frustrated. The applicant changed from being bullied to being the bully and began fighting with other children. He began stealing

money and later cars, although he was never charged with any offences. He missed significant amounts of school and his education suffered. The applicant became engaged with gangs which got into fights with other gangs. The applicant began to carry a knife for his own safety. He commenced using cannabis in year 7 and started drinking alcohol significantly by year 9. By year 9, the applicant was selling cocaine, acid, Xanax, cannabis and MDMA pills. The applicant became increasingly isolated from his home environment.

- [11] When the applicant was in year 10, a close friend was stabbed and killed. The perpetrator of the crime sent videos to the applicant of the stabbing that led to the applicant experiencing intrusive images, sleep disturbance and anger. The applicant did not seek or obtain any treatment. He stopped going to school and became even more isolated. His involvement in drinking alcohol and drug culture escalated. The applicant became more violent and had increasing contact with gang members. The applicant felt angry all the time. His mental health gradually deteriorated.
- [12] After being charged, the applicant was held in youth detention until 16 December 2024, when he was transferred to an adult prison.
- [13] The presentence report dated 4 March 2025 included the report of psychiatrist Dr Beech who interviewed the applicant at the prison on 16 January 2025 over two sessions. Dr Beech had also interviewed the applicant's mother in person on 14 January 2025.
- [14] The applicant informed Dr Beech that by 2024 he was drinking alcohol, using about one ounce of cannabis and taking 10 Xanax tablets and codeine syrup all on a daily basis. He became more violent and there was increased conflict with gang members. He found "stabbing more joyful" in that when he got into fights while intoxicated, it felt good to stab people. (The case worker made an observation in the presentence report in relation to Dr Beech's recording of this statement made by the applicant that "[t]his violence, fuelled by his polysubstance use may be seen to be an outlet for his grief and anger". The applicant told Dr Beech he was at a house party where he had consumed alcohol, Xanax, cannabis and codeine syrup for two days before the offending. Dr Beech observed that the applicant's description of the events that resulted in the stabbing minimised some of his responsibility but, at the same time, he "articulated regret, some remorse, and some empathy".
- [15] Dr Beech was given records and reports held by the Department of Education and Children's Health Queensland and information provided by the Youth Justice Service. A psychometric assessment undertaken when Mr ACY was in year 9 showed he had an IQ of 61 and the teacher's rating placed him in the extremely low range across all scales. He met the criteria for intellectual disability. He was assessed by psychiatrist Dr Cameron on 5 December 2024 who expressed the opinion that the applicant had intellectual disability, developmental disorder of speech and language and post-traumatic stress disorder (PTSD). The information from the youth detention centre was that the applicant had been involved in 12 incidents at the youth detention centre which included eight assaults and risk-causing behaviours. Some of those incidents occurred when he was attacked by others. He was diagnosed by Forensic Child and Youth Mental Health Services (FCYMHS) with PTSD, moderate intellectual disability and a neurodevelopment language disorder and prescribed Prazosin for nightmares due to his PTSD. The FCYMHS confirmed the intellectual impairment based on the information provided by the Department of Education

without doing further testing or assessment. The information from the Youth Justice Service provided to Dr Beech was that the applicant did not participate in any alcohol or other drug program at the youth detention centre, but he may have had general conversations with his case worker. There were some concerns at the youth detention centre about the applicant's refusal to participate in programs. The applicant had not been involved in any breaches or incidents after his transfer to the adult prison.

- [16] Dr Beech was of the opinion that the applicant had struggled to settle into the school system and with his learning and language difficulties became increasingly disaffected. He developed oppositional behaviours that expanded because of problems at home. While Dr Beech accepted that the applicant struggled with learning and language and that psychometric testing indicated that he had mild intellectual impairment, Dr Beech suggested that reliance on the formal test results was problematic, as the applicant's performance was likely affected by his difficulties with English proficiency. Dr Beech considered that, clinically, the applicant was in the range of borderline intellectual functioning (between low range and mild intellectual impairment) but that should be confirmed. Dr Beech noted that the applicant had "not undertaken any substantial rehabilitation" since his arrest.

- [17] Dr Beech also expressed the opinion that, by the time of the offending, the applicant "had developed a severe conduct disorder with antisocial personality traits, an oppositional and defiant stance towards family and authority, and an attitude that condoned gang affiliation and violence". Dr Beech considered that the applicant was in the process of reflecting on his conduct and considering changes to his trajectory but there was a substantial risk he might develop an antisocial personality disorder. Dr Beech was of the opinion that the applicant was "at a crossroads". He could reflect on his circumstances, abandon the attitudes he held when he offended and his gang associations and move to rehabilitation or, in prison, he could gravitate towards violent offenders, with the risk that would reinforce his beliefs and attitudes. Dr Beech assessed the applicant at "much above average risk of committing another violent offence" based on his antecedents, the nature of the offending, and his overall circumstances. Dr Beech recommended a formal neuropsychological assessment and formal rehabilitation programs, including an intensive course for anger management and violence intervention and a substance use intervention program. There was a significant possibility that the applicant's antisocial trajectory could be changed were he to engage in treatment and programs.

- [18] The case worker who prepared the presentence report and works in the Youth Justice Service Centre had personal interviews with the applicant on 3 and 4 February 2025, videotelephony interviews with him on 13 and 24 February 2025, and personal interviews with his parents on 11 and 12 February 2025. The case worker included more specific information in the presentence report about the counselling engaged in by the applicant at the youth detention centre. The presentence report recorded that the applicant engaged in "offence-focussed, therapeutic interventions such as the *Changing Habits and Reaching Targets* (CHART) program" which is then described as "a structured individual intervention for clients to address their risk of offending". (This reflects what Dr Beech had been advised by the youth detention centre that the applicant may have had general conversations with his case worker as the CHART program is focused on individual intervention.) The case worker also referred to the applicant having engaged in the *Re-navigating Anger and Guilty Emotions* (RAGE) program whilst at the youth detention centre and described the program as "a strengths-based, solution-focussed program" that assists clients "to identify

feelings of anger and recognise triggers”. There is no further detail in the report about the length of this program and whether it involved any more than discussion with the case worker. The case worker noted the subjects in which the applicant was enrolled at the youth detention centre and that he received 16 positive behaviour reports and two incident reports that reflected his engagement and conduct in educational settings. (Those reports are explicable as relating only to participation in education and training at the youth detention centre in contrast to the information otherwise provided by the youth detention centre to Dr Beech that the applicant had been involved in 12 incidents.)

Sentencing remarks

- [19] The sentencing judge noted that much of what was summarised in the sentencing remarks about the applicant’s antecedents “is taken from the pre-sentence report and the report of Dr Beech, both of which [her Honour] ... had close regard to”. Apart from summarising the circumstances of the offending and the applicant’s antecedents, the sentencing remarks included the following.
- [20] Victim impact statements were presented from the family of the deceased (exhibit 4) and one of the deceased’s sisters (exhibit 5). The sentencing judge noted that the statements revealed “the devastating loss of their much-loved child, brother and family member with an emotion that is raw and heartbreaking”.
- [21] In considering whether the offence of murder was “particularly heinous”, the sentencing judge referred to the observations of Sofronoff P (with whom the other members of the Court agreed) in *R v William (a pseudonym)* [2020] QCA 174 at [25]-[26] to the effect that whether an offence is particularly heinous must be evaluated having regard to all the circumstances, including subjective features that are relevant for the application of the youth justice principles (set out in schedule 1 to the Act). The sentencing judge also referred to the observations of McMurdo JA (with whom the other members of the Court agreed) in *R v SDK* (2020) 6 QR 568 at [40] to the effect that the statutory context indicates that the essential character of a particularly heinous offence is that it may, having regard to all the circumstances, warrant an order that the child be detained for more than 10 years.
- [22] The sentencing judge’s analysis that resulted in the conclusion the offence was particularly heinous was as follows:

“It is impossible to conclude that the death of a young man such as the deceased, stabbed in virtually unprovoked circumstances by the side of the road, is other than heinous. It is a circumstance which should appal the community. But it is not enough that the offence is heinous. It must be particularly heinous, having regard to all of the circumstances. In other circumstances, Judges of this court have observed that any murder might well be considered heinous, but merely because the offence involves murder does not mean it falls into the category of being particularly heinous. On your behalf, it is submitted that the offence here is not properly characterised as particularly heinous for the following circumstances.

Firstly, you had no prior criminal history when you offended; second, that liability falls upon you because it is considered that, by stabbing the deceased, you intended to do grievous bodily harm; third, that you

had entered a plea of guilty by requesting the presentation of an ex officio indictment; fourth, that you have not, at any stage, put the Crown to proof; fifth, there is no evidence of any premeditation; sixth, you did not offend in company; seventh, you did not comprehend that your actions were of such seriousness that they would ultimately lead to death; eighth, that you were younger and smaller in stature than the [deceased], and therefore the [deceased] could not be said to be vulnerable in the sense that exists in a range of other matters; ninth, that your subjective antecedents relevant to your engagement in education, your experience of bullying, later violence, disengagement in education, your lack of self-worth, being amongst negative peer associations and gang subculture, are all matters I ought to take into account.

I accept that each of those factors are ones in your favour, and I ought to take them into account, and I do. But they are largely subjective factors. The other factors which I take into account include some of the more objective factors that are relevant to the offence itself. They include firstly that the deceased was someone who you knew. He was not a gang member against whom you had a gripe. He was, in fact, on the statement of facts, a friend. Next, the assault upon him was effectively unprovoked. The fact that he had smashed your phone can hardly be considered to have provoked the violent response that ensued. Third, the deceased was on the ground when you repeatedly stabbed him. The Crown describes that you inflicted violence when no violence was offered back. The deceased did not fight back. Fourth, the deceased was defenceless, in fact, was saying to you, 'Don't kill me.' Fifth, the nature of the offence was violent, including multiple stab wounds, three very significant stabs to the abdomen accompanied by defensive wounds to the deceased's left hand, and his arm and shin, all suggesting something of a frenzied attack.

Additionally, although of lesser weight, are the fact that you were affected by alcohol and drugs at the time of the offending, that you were carrying a knife in public and were prepared to use it against a person. Next, that there is not any real evidence of remorse, and there is little evidence of insight. In relation to this last issue regarding remorse, I do take into account the expressions of your remorse that were given through your barrister this morning, but there was certainly no remorse at the time, when you spoke to police. Giving full weight to the subjective factors regarding your own personal circumstances, I nevertheless consider and find that this should be regarded as particularly heinous in all the circumstances. In doing so, I particularly have regard to the fact that the deceased was stabbed whilst he was on the ground, defenceless at the side of the road, that the alleged provocation was the damage to the phone, a trifling provocation if ever there was one, that you described to the police that you thought he deserved it, and that the attack involved multiple stab wounds.

Overall, I find that the objective features of the offending outweigh the subjective aspects of your circumstances. Right-minded members of the community should consider that your conduct was, in fact, hateful, odious and atrocious."

- [23] The sentencing judge analysed comparative sentences, including *R v YTZ; Ex parte Attorney-General (Qld)* [2023] QCA 87, *R v PZW* [2025] QSC 39, *R v HST* [2024] QSCSR 65 and *R v LZY & Porter* [2024] QSC 237.
- [24] The sentencing judge observed that it was difficult to know what the applicant's prospects genuinely were in terms of rehabilitation. He had a poor history of substance abuse and a poor educational background. He had not exhibited any remorse prior to his counsel's expressions of (the applicant's) remorse at the commencement of the sentencing hearing. The offence of murder was violent and unprovoked.
- [25] The applicant's youthfulness and his personal circumstances were taken into account in determining the period of detention, but also the protection of the community. Unjustified killing of persons should attract "a significant punishment". The applicant's early plea was even earlier than usual and was "a strong act of cooperation with the administration of justice". The matter had to be adjourned from an earlier date when the applicant was due to be sentenced but was assaulted in the courtroom. That involved "an element of public shame and humiliation".
- [26] The sentencing judge noted the prosecutor's submission that there were no special circumstances to reduce the period of detention from 70 per cent to a period between 50 per cent and 60 per cent.
- [27] The special circumstances relied on by the applicant for such a reduction were his lack of any criminal history, his mild cognitive impairment, his prejudicial upbringing in terms of his education and disengagement from it, his negative peer association and the various features of his life as a young child as a refugee who did not speak English and was bullied at school. The sentencing judge concluded that there were not sufficient factors to demonstrate special circumstances. The sentencing judge distinguished *PZW* because there were not the good signs for the applicant's rehabilitation as there was in *PZW*. It was also relevant to take into account the matters referred to by Dr Beech on the question of rehabilitation. (That was a reference to the applicant being at a crossroads where he either engaged in rehabilitation and changed the antisocial trajectory on which he had embarked or, if he did not, he risked becoming entrenched in his antisocial attitudes and conduct.) The sentencing judge did not give any significant weight to the risk of cancellation of the applicant's refugee visa because that risk was speculative. The sentencing judge stated:
- "... I make particular reference to your severe conduct disorder, your risk for violent recidivism notwithstanding your lack of criminal history, and your highly prejudicial background, but you have not actively pursued rehabilitation as yet, and therefore it is difficult to know what benefit you will get from it. I also take particular regard to the protection of the community as a matter of great significance in a case like this, even in the circumstances of your young age."
- [28] It is of note that the sentencing judge's reference to the protection of the community was an acknowledgement of the new principle 1 of the youth justice principles that the community should be protected from offences and, in particular, recidivist high-risk offenders.
- [29] In concluding the sentencing remarks, the sentencing judge listed the mitigating features that applied to the applicant and accepted that the expressions of remorse

conveyed by his counsel at the sentencing were genuine but emphasised the seriousness of the offence and the circumstances in which it occurred before observing:

“The unprovoked violence which you inflicted on this person is a matter of very great concern. That you would use such gratuitous violence to a friend gives the court concern about violence on other members of the community, and therefore I take this issue into account on the question of personal as well as general deterrence. And as I have previously said, I take into account the consequences of this offending on the family of your deceased friend, and [the complainant for count 2]. In the circumstances, the case calls for a strong condemnation of your actions, even though you were a child at the time.”

Was the sentencing judge correct in the conclusion that the murder was particularly heinous?

- [30] It was common ground on the hearing of the application in this Court that the standard of appellate review that applied to the declaration made pursuant to s 176(3)(b)(ii) of the Act was the correctness standard of appellate review: *R v HCZ* [2025] QCA 147 at [2] and [45]. There was no issue between the parties as to the authorities from this Court that apply to determining whether an offence is particularly heinous within the meaning of s 176(3)(b)(ii) of the Act. Relevant authorities and their application were referred to by Boddice JA (with whom Bond JA and Freeburn J agreed on this aspect) in *HCZ* at [46]-[49]. The approach required is to take account of all the circumstances which cover both the objective features of the offence under consideration and the subjective factors concerning the offender when the offence was committed, including those which caused the offender to commit the offence.
- [31] An example of this approach is *R v Maygar; ex parte A-G (Qld); R v WT; ex parte A-G (Qld)* [2007] QCA 310. The youth WT pleaded guilty to murder on the basis that he was compelled as a matter of law or that he honestly and reasonably believed that he was compelled to act in the way he did. Because of that circumstance and that WT had good reason to fear for his life, Keane JA considered (at [74]) that WT’s conduct was “understandable in human terms (even if it was not excusable under the law)” and that the sentencing judge was correct in concluding that WT’s offence should not be considered as a particularly heinous one.
- [32] Another example of this approach is *William* where the offender pleaded guilty to attempting to kill his mother. His mother was a drug addict and had provided him with cannabis every second day from the age of 12 years and introduced him to methylamphetamine at the age of 14 years which he began using every day. A few days before he turned 18 years, the offender was suffering from a substance-induced psychotic disorder and convinced himself that his mother was planning to kill him. He stabbed her multiple times. Taking into account the effect of the offender’s psychosis on his moral culpability and that it was the victim’s own actions that lead to that psychosis, it was held (at [32]) that the conclusion that it was a particularly heinous offence was not open. See also *R v YTZ; Ex parte Attorney-General (Qld); R v YTZ* [2023] QCA 87 at [38]-[42].
- [33] As the passage from the sentencing remarks set out above at [22] explained, the sentencing judge did take into account all the relevant circumstances but concluded

that, even having regard to the subjective features relevant to the offending, the applicant's frenzied stabbing of the deceased while he was on the ground and not defending himself for "a trifling provocation" was particularly heinous.

- [34] The applicant has failed to show that the subjective features that applied to him and to his offending when he did the act that resulted in the offence of murder precluded the characterisation of the offence as particularly heinous. There was no error in the sentencing judge's conclusion in that regard.

Did the sentencing judge fail to consider the applicant's steps towards rehabilitation?

- [35] The applicant was at the youth detention centre for about seven months and had only been at the adult prison for about one month before Dr Beech prepared his report. The presentence report prepared by the case worker appropriately attached Dr Beech's extensive report to the presentence report and made brief references to it rather than repeating the content from it. The presentence report did not dispute the information which Dr Beech recorded as provided to him by various agencies and departments or the opinions of Dr Beech.
- [36] It is implicit in the formulation of this ground that the applicant had, in fact, taken steps towards his rehabilitation by the time he was sentenced. This formulation is based on an interpretation of passages in the presentence report that is now relied on as inconsistent with the opinion expressed by Dr Beech about the applicant's rehabilitation. That was not how the matter was conducted before the sentencing judge. Dr Beech had relevant material provided by the Youth Justice Service and from the youth detention centre that supported Dr Beech's opinion that the applicant had not undertaken any substantial rehabilitation. What was significant in Dr Beech's report was that the applicant's prospects for rehabilitation were difficult to predict, because the applicant was "at a crossroads" as to whether he moved in the direction of rehabilitation or maintained his antisocial attitudes and conduct.
- [37] The sentencing judge expressly acknowledged considering the presentence report. The minimal details of the CHART and RAGE programs in the presentence report were, however, effectively displaced by Dr Beech's opinion about the stage of the applicant's rehabilitation which was expressly accepted by the sentencing judge.
- [38] There was no failure as asserted in ground 2.

Did the requirement for the applicant to serve 70 per cent of the sentence in detention make the sentence manifestly excessive?

- [39] As the applicant does not succeed on grounds 1 and 2, he does not challenge the sentence of detention of 12 years for count 1 but submits only that the requirement to serve 70 per cent of that sentence in detention makes the sentence manifestly excessive.
- [40] At the hearing of this application, the applicant relied on the outcome of *HCZ* in the Court of Appeal as supporting the conclusion that requiring the applicant to serve 70 per cent of the sentence made it manifestly excessive. (The appeal in this Court in *HCZ* was from the comparable sentence in *HST* that was relied on before the sentencing judge). It was submitted that the sentencing judge allowed the seriousness

of the offence to overwhelm the sentence and, had the mitigating features been given proper weight, a non-release period of 50 to 60 per cent should have been arrived at.

- [41] *HCZ* concerned the sentence of detention of 14 years imposed on *HCZ* for the offence of felony murder that was committed when he was aged 17 years and eight months. The sentencing judge in that case had concluded that special circumstances under s 227(2) of the Act did not exist to enable a reduction of up to 20 per cent of the default period of detention to be served before release. The majority on appeal to this Court in *HCZ* concluded that the period of detention before release should be reduced to 60 per cent of the period of detention. That decision was successfully appealed to the High Court: *The King v HCZ* [2026] HCA 24 and the sentence imposed at first instance was reinstated. It was common ground in the High Court (at [3]) that the applicable standard of appellate review of a decision under s 227(2) of the Act is the standard involving judicial restraint which restricts intervention by the appellate court to the five grounds set out in *House v The King* (1936) 55 CLR 499 at 505. The question considered by the High Court in *HCZ* (at [3]) was whether departure from the conclusion of the sentencing judge could be justified on a standard involving judicial restraint.

- [42] The High Court explained in *HCZ* at [32]-[33]:

“[32] The standard of appellate review implied by s 227(2) in the context of the provisions of the *Youth Justice Act* is the standard involving judicial restraint. The power conferred by s 227(2) arises only in the context of sentencing. Like many sentencing decisions to which the standard involving judicial restraint has historically been applied, the questions to be addressed under s 227(2) are concerned with open-ended evaluative criteria of what the court ‘considers’ special having regard to all the circumstances. The wide range of possible circumstances means that ‘each individual case’ will have a ‘unique combination of circumstances’ (*R v KAL* [2013] QCA 317 at [32]). The example of ‘parity’ in s 227(2) does not limit those criteria but instead illustrates that the criteria are not limited even to the circumstances of the child being sentenced.

- [33] Further, the application of the open-ended evaluative criteria to the wide range of possible circumstances under s 227(2) is integrated with a consideration of a broad range of periods expressed as a percentage of the relevant period of detention imposed. As Crowley J has put the point, it could be said that (*R v SET* [2025] QCA 232 at [80]):

‘a finding of special circumstances is so intimately connected to the [decision as to the percentage of the period to be served], and so dependent upon the court’s consideration and weighing of the same factors, that it is properly to be considered as part of the [decision as to the percentage of the period to be served].’” (*footnotes inserted*)

- [43] The High Court concluded in *HCZ* at [37] that the decision in respect of special circumstances tolerated a range of outcomes on the facts and there was nothing about

the factors “of HCZ’s early pleas of guilty, his deprived upbringing, and the positive signs of his ability to rehabilitate that means that it was unreasonable or plainly unjust for the sentencing judge not to reach a conclusion of special circumstances, particularly in light of the seriousness of the offence of murder and the age of HCZ”.

- [44] As ground 2 has been determined against the applicant, the submission on behalf of the applicant that the sentencing judge failed to consider his steps towards rehabilitation also has no relevance to ground 3.
- [45] It is understandable that the applicant does not seek to show manifest excess in the sentence imposed by reference to the period of detention of 12 years. It compares favourably to the head sentence of 14 years imposed at first instance in *HCZ* for the felony murder by an offender who had a lengthy criminal history as a juvenile offender from a deprived background but who also pleaded guilty. As explained by the High Court in *HCZ* at [15], the threshold question under s 227(2) is whether special circumstances exist and, if so, the question becomes what period of detention between 50 per cent and 70 per cent the offender should serve before being released.
- [46] It is apparent from the sentencing remarks that the applicant was given credit for his very early guilty plea in fixing the period of detention rather than the proportion to be served in custody. There is otherwise no omission from the factors considered by the sentencing judge for the purpose of the decision under s 227(2) of the Act. Similar to the observation made by the High Court in *HCZ* at [37], there is nothing about the factors relied on by the applicant at the sentencing to demonstrate special circumstances in light of the seriousness of the offence committed by the applicant and his age of 17 years and eight months when he stabbed his friend to show that it was “unreasonable or plainly unjust” for the sentencing judge not to find special circumstances.
- [47] The applicant also fails on ground 3.

Order

- [48] The order which should be made is: Application for leave to appeal against sentence refused.
- [49] **BRADLEY JA:** I agree with the reasons of Mullins P and with the further reasons of Doyle JA in dismissing the application.
- [50] **DOYLE JA:** I have had the benefit of reading in draft the reasons of Mullins P which set out the evidence and the primary judge’s sentencing remarks as well as the grounds for this application and appeal. I agree with the President’s reasons and the order her Honour proposes.
- [51] I would add the following brief reasons for dismissing ground 1 of the appeal (the contention that the sentencing judge erred in concluding that this was a particularly heinous offence).
- [52] The knife employed by the applicant is described in the statement of facts as a 15 centimetre hunting knife. The autopsy report makes clear this is the blade length (the total length is 28.5 cm). It had a serrated non-cutting edge towards the hilt guard. The autopsy report identified three principal stab wounds: they had a length ranging between 55 mm and 80 mm and the depth of one of them was said to be 100 mm.

The depth of the other two was not measurable due to the abdominal surgery conducted to try to save the victim's life. There were other less severe wounds also reported.

- [53] After some interlude to which I need not refer, the applicant walked away before he was subsequently intercepted by police.
- [54] The statement of facts records that when interviewed the applicant stated:
 - (a) He chased and stabbed the deceased because he had broken his phone (used for trafficking weed);
 - (b) That he (the deceased) deserved that shit; that he (the applicant) should have done it earlier; and that it felt good and he hoped the deceased had learnt his lesson;
 - (c) He added that he did not "give a fuck" if he died because he (the deceased) was disrespecting him.
- [55] The deceased died from his injuries in hospital on 18 June 2024.
- [56] The focus of the first ground of appeal is whether the offence can be said to be "a particularly heinous offence having regard to all the circumstances" within the meaning of section 176 of the *Youth Justice Act*.
- [57] Clearly some comparison is called for. But one particularly heinous offence does not cease to be so because other offences are also particularly heinous albeit each has its own features.
- [58] In my view the offending here is properly called a particularly heinous offence. Two friends (roughly the same age, but one not yet 18) are out walking in public place. After twice pushing the deceased to the ground and punching him for allegedly 'disrespecting' the applicant, a hunting knife is three times pushed into the abdomen of the man on the ground intending at least to cause him grievous bodily harm. The applicant shortly thereafter declares he believes the deceased deserved it and that in effect he did not care if he died.
- [59] The evident purpose of s 176(3) is to isolate out from the body of offences those which by their character (or all other circumstances) stand apart so as to warrant a term of greater than 10 years and up to life in prison. As I have mentioned, in my view the conduct of one offender (considered in all the circumstances) can be said to be particularly heinous even if there are other particularly heinous offences committed by others. If other instances of friends violently attacking and stabbing each other to death in public places for trivial disrespect shown, and in circumstances comparable to the present were to occur, in my view each of them could still be identified as particularly heinous.