

SUPREME COURT OF QUEENSLAND

CITATION: *R v Ara* [2026] QCA 190

PARTIES: **R**
v
ARA, Bartholomew
(applicant)

FILE NO/S: CA No 159 of 2026
DC No 263 of 2026

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane – Date of Sentence: 5 and 10 June 2026 (Haddrick ADCJ)

DELIVERED ON: 29 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 9 September 2026

JUDGES: Mullins P, Thomson AJA, Davis J

ORDERS:

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. Sentences imposed by the sentencing judge on 5 and 10 June 2026 are varied in the following respects:**
 - a. The term of imprisonment imposed by the sentencing judge for each count identified in the first column is substituted by the corresponding term of imprisonment set out in the second column:**

Count	New Term of Imprisonment
1	1 month
2	5 years
4	3 years
5	5 years
6	18 months
7	3 years
8	1 month
9	3 years
10	6 years
11	18 months
12	2 years
13	5 years
14	18 months
15	1 year
16	5 years
17	5 years

18	6 years
19	3 years
21	3 years
22	5 years
23	18 months
24	2 years
25	2 years
27	3 years
28	6 years
29	8 years and 6 months
30	5 years
31	18 months
32	3 years

b. The parole eligibility date for all counts is fixed at 21 April 2028 in substitution for 22 October 2030.

4. The sentences of imprisonment imposed by the sentencing judge on counts 3, 20 and 26 and the presentence custody declaration made by the sentencing judge are confirmed.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to 32 offences committed over a 12-day ‘crime-spree’ including two armed robberies, in company, with personal violence and various burglaries, attempted burglaries, break and enters and stealing and unlawful use of motor vehicles – where the applicant was sentenced to nine and one-half years’ imprisonment with parole eligibility after serving six years in custody for one of the offences and lesser concurrent sentences for the other offences – where the applicant’s very early guilty pleas were not reflected in the sentence despite the sentencing judge acknowledging the guilty pleas as a significant mitigating factor – where there was no justification for the sentencing judge imposing a non-parole period past the mid-point – where the sentencing judge incorrectly applied the *Nagy* approach by attaching the head sentence to a charge of burglary and stealing when the applicant had committed the more serious offence of armed robbery, in company, with personal violence – where the structure of the sentence was unreasonable and plainly unjust in the circumstances

Criminal Code (Qld), s 9(2)(ca)

Bugmy v The Queen (2013) 249 CLR 571; [2013] HCA 37, cited

House v The King (1936) 55 CLR 499; [1936] HCA 40, cited *R v Blenkinsop*; *R v Blenkinsop* [2007] QCA 181, considered *R v Bowditch* (2014) 67 MVR 339; [2014] QCA 157,

considered

R v Braeckmans (2022) 10 QR 144; [\[2022\] QCA 25](#),

considered

R v Gwilliams & Fish [\[2010\] QCA 286](#), considered

R v Leu; *R v Togia* (2008) 186 A Crim R 240; [\[2008\]](#)

[QCA 201](#), considered

R v Mai [\[2010\] QCA 54](#), considered

R v Nagy [2004] 1 Qd R 63; [\[2003\] QCA 175](#), considered

R v Phillips [\[2008\] QCA 5](#), considered

COUNSEL: L D Reece KC, with T R Morgans, for the applicant
C M Cook for the respondent

SOLICITORS: Lumme & Associates for the applicant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **THE COURT:** The applicant was released from prison on 2 September 2024. He was 23 years old at that time. On 10 October 2024, the applicant commenced what the respondent has described as a ‘crime-spree’, which lasted 12 days. He ended up committing 32 offences, with 25 victims.
- [2] On 4 June 2026, the applicant pleaded guilty to the 32 offences. He was sentenced on 5 June 2026, after he had spent 591 days in custody. The sentencing judge imposed a total effective sentence of nine and one-half years for all the offences and ordered the applicant to be eligible for parole after six years from the date when he was first returned to custody on 22 October 2024. The sentencing judge did not separately specify the sentences for each offence, nor which sentence would be the head sentence. On 10 June 2026, the sentencing judge re-opened the sentence, specified a sentence in respect of each offence, and nominated the sentence for count 10 on the indictment as the sentence for which he imposed a term of nine and one-half years to reflect the applicant’s overall criminality for all offences. The sentences imposed for all offences were concurrent.
- [3] The sentencing judge imposed the sentences in a context where the prosecution had submitted that a total effective sentence of around eight years’ imprisonment would be appropriate, while the applicant’s counsel had submitted that seven years’ imprisonment was more appropriate.
- [4] The applicant seeks leave to appeal. Ultimately, the applicant presses only one ground of appeal, namely that the sentence was manifestly excessive in all the circumstances. There are five particulars provided for that ground. These particulars are that the sentencing judge:
- (a) identified a starting point for the offending conduct which significantly exceeded sentences imposed for like conduct;
 - (b) imposed a global head sentence on count 10 without stating the approach taken in order to reach that sentence;
 - (c) failed to adequately apply the totality principle to that global head sentence;
 - (d) failed to apply the principles relating to increasing non-parole periods;
 - (e) failed to give sufficient weight to the applicant’s early pleas of guilty.

Offending in October 2024

- [5] The description of offending by the applicant is taken from the agreed statement of facts prepared by the prosecution. It is convenient to summarise the offending by reference to the days on which it occurred.

Thursday 10 October 2024

- [6] **Count 1:** The applicant was the driver of a car which filled up at a petrol station in Woolloongabba. The passenger filled the car while the applicant remained as the driver. They dispensed 45.47 L of fuel, which was valued at \$87.72. They drove off without any attempt to pay for it. This was a charge for stealing contrary to s 398 of the *Criminal Code* (Qld). The sentencing judge imposed a sentence of **one year** for this offence.

Monday 14 October to Tuesday 15 October 2024

- [7] **Counts 2 and 3:** The applicant, in company with a co-offender, broke into a family house in Woolloongabba at around 8.53 pm. A man, who was a member of that household, walked into the living room, and observed the applicant and his co-offender present. One of the offenders picked up a pair of scissors on the kitchen bench and raised and pointed the scissors at the man who had entered. That offender said: “*Do you want to die today you fucking dog?*” The other offender approached the man who had entered and said “*Where is your fucking wallet?*”.
- [8] This man then led the offenders to his room and handed over his wallet, which contained \$200 in cash. The offenders searched the residence, where they took property belonging to the members of the household, including backpacks containing medicine, device chargers and prescription sunglasses; wallets with identification cards; a passport; luxury watches including an Omega Seamaster and a Rolex Explorer 2; various electronic devices, including an Apple MacBook Air and an Apple iPad Air; keys to a Volkswagen Golf car; and basketball and football trading cards.
- [9] Count 2 was burglary, by breaking, in company, contrary to s 419(1), (2), (3)(b)(iii) of the *Code*. Count 3 was armed robbery in company, contrary to s 409 and s 411(1), (2) of the *Code*. The applicant was sentenced to imprisonment for **six years** in respect of count 2 and imprisonment for **six years** in respect of count 3.
- [10] **Count 4:** The applicant and his co-offender then moved to another premises in Woolloongabba. Around 9.30 pm they entered the front yard through the front gate. They attempted to use an unknown tool to open the front door of the house but were unable to do so. They then proceeded to the rear of the house, where they climbed a parked utility vehicle to reach the second floor balcony. They again used an unknown tool to attempt to gain entry through the balcony door but were unable to do so. They left the premises. The applicant pleaded guilty to count 4 on the indictment which was attempted burglary in the night, in company, with property damage, contrary to s 419(1), (3)(a), (b)(iii), (iv), and s 535 of the *Code*. He was sentenced to a term of imprisonment for **four years**.
- [11] **Count 5:** After leaving the last premises, the applicant and his co-offender went to a further residence in Highgate Hill. At about 3.00 am, a female occupant of the house was woken up by the applicant and his co-offender, who unlocked the front

door and found her asleep in bed. Both the applicant and his co-offender were armed with knives, which had been taken from the kitchen of this house, and were wearing stockings over their heads. They demanded that the female occupant give them money, but she refused. The applicant and the co-offender took property including a laptop, headphones, and the keys to a Ford Focus vehicle, as well as the keys to a Ford Fiesta. The applicant and his co-offender fled the residence in the Ford Fiesta vehicle. The applicant pleaded guilty to burglary and stealing, contrary to s 419(5) of the *Code*. He was sentenced to **seven years'** imprisonment for this offence.

- [12] **Count 6:** This charge concerns driving away in the Ford Fiesta vehicle. The applicant was charged with the unlawful use of a motor vehicle, contrary to s 408A(1)(a) of the *Code*. He was sentenced to imprisonment for **three years**.

Tuesday 15 October to Wednesday 16 October 2024

- [13] **Count 7:** At around 10.52 pm, the applicant and a co-offender drove the Ford Fiesta, which was the subject of count 6, to a residence in West End. The applicant parked outside the residence, while the co-offender attempted to use a set of barbecue tongs from the outside kitchen at the residence to lever open a sliding door. He was unsuccessful in this endeavour. The co-offender returned to the car, and they drove away. The applicant pleaded guilty to attempted burglary in the night, with property damage, contrary to s 419(1), (3)(a), (b)(iv) and s 535 of the *Code*. He was sentenced to a term of imprisonment of **four years**.
- [14] **Count 8:** The applicant drove to a service station and filled the Ford Fiesta, which was the subject of count 6, with fuel valued at \$67.53. He then drove away without making any attempt to pay for the fuel. He was charged with stealing the fuel, contrary to s 398 of the *Code*. He received a sentence of imprisonment of **one year** for this offence.
- [15] **Count 9:** The applicant and his co-offender went to a property in East Brisbane. Between 1.30 am and 2.00 am, they entered the rear yard of the residential property. They attempted to enter the residence through all the doors but were unsuccessful. The applicant and his co-offender left the property by using a ladder to climb over the fence. The applicant pleaded guilty to attempted burglary in the night, contrary to s 419(1)(3)(a) and s 535 of the *Code*. He was sentenced to imprisonment of **four years**.
- [16] **Counts 10 and 11:** The applicant then went to a residential property in Hamilton. He arrived there at about 4.45 am. He entered the property through the large front gate at the driveway. He entered the home through the glass rear patio doors, using a crowbar to gain entry. The applicant removed a wallet and keys from a ceramic bowl on the kitchen bench before entering the bedroom of the 15 year old daughter living in the house. She woke up to find the applicant in her room. She said: "*please do not take anything, don't take my phone*". The applicant told her to "*shut the fuck up*". The applicant unplugged the phone, and took it, leaving the 15 year old daughter in her room. The applicant also stole wallets, credit cards, car keys for a Tesla, and a backpack containing school gear. The applicant then drove a Subaru Outback away from the property.
- [17] **Count 10** on the indictment was burglary and stealing, contrary to s 419(5) of the *Code*. The applicant received a sentence of imprisonment of **nine and one-half years**.

- [18] Count 11 concerned the unlawful use of a motor vehicle, contrary to s 408A(1)(a) of the *Code*. This concerned the Subaru Outback which was stolen by the applicant. He received a sentence of **three years'** imprisonment for this offence.
- [19] The complainant for counts 10 and 11 and her 15 year old daughter provided victim impact statements. The daughter was disadvantaged for the rest of the school term in losing her backpack with school gear. After the incident, the daughter was scared that an intruder would steal from them again, so she slept in the complainant's bedroom. The complainant also dealt with the significant emotional and psychological impact that the break-in caused to her daughter and the practical inconveniences that were caused in having to repair the house, replace locks, install other security measures and pay increases in home insurance premiums.

Friday 18 October 2024

- [20] **Count 12:** At about 7.42 am, the applicant entered a residence at Clayfield. He was seen by the resident on CCTV. The applicant entered an open carport and opened a white painted timber gate at the side of the dwelling. The resident shouted out at the applicant, and the applicant quickly left. The applicant received a term of imprisonment of **three years** for this offence. The charge was entering premises with intent to commit an indictable offence, contrary to s 421(1) of the *Code*.
- [21] **Counts 13 and 14:** At about 8.00 am, the applicant went to another residence at Clayfield. The woman who lived there had just returned from the gym, and had parked her Audi Q3 car in the carport and gone inside the house. The applicant followed her into the house, and stole the car keys which is the basis for count 13. This is a charge of burglary and stealing, contrary to s 419(5) of the *Code*. The applicant then ran outside and drove off in the Audi Q3. This is the basis of count 14, which is the unlawful use of a motor vehicle, contrary to s 408A(1)(a) of the *Code*. The applicant received a sentence of **seven years'** imprisonment in respect of count 13, and a sentence of **three years'** imprisonment in respect of count 14.
- [22] **Count 15:** The applicant pleaded guilty to receiving tainted property (on a date unknown), contrary to s 433(1) of the *Code*. This charge concerned stolen property left in the Subaru Outback which the applicant abandoned on 18 October 2024. The property consisted of a laptop bag with a laptop inside it, and a shoulder bag containing a purse, sunglasses, a MasterCard, an EFTPOS card, a New Zealand driver's license and two New Zealand passports. The applicant received a sentence of imprisonment of **two years** for this offence.
- [23] **Count 16:** At around 10.10 am, the applicant and a co-offender climbed onto the balcony of a residence in Annerley. They entered the residence through an open door, and confronted the woman who was living there. They stole her handbag. While this occurred, the woman's partner returned to the unit and confronted the co-offenders. The applicant and his co-offender jumped over the balcony and fled. This charge on the indictment was for burglary and stealing, contrary to s 419(5) of the *Code*. The applicant received a sentence of **seven years'** imprisonment.

Saturday 19 October 2024

- [24] **Count 17:** The applicant went to a residence in Tarragindi. The applicant entered the residence at about 1.00 pm, when the woman living there was having a nap. The

applicant went into the office and searched through drawers. The applicant stole a handbag, jewellery, a mobile phone, an iPad and car keys. The car keys were for a Kia Sportage SUV. He left the residence using this car. The applicant was charged with burglary and stealing, contrary to s 419(5) of the *Code*. He was sentenced to imprisonment for **six years** for this offence.

Sunday 20 October 2024

- [25] **Count 18:** At around 1.40 am, the applicant rammed the Ford Fiesta, which was the subject of count 6, into a Chemist Warehouse in Jindalee. The applicant and three co-offenders entered the Chemist Warehouse and stole 46 boxes and two bottles of fragrances, before leaving in the Ford Fiesta and another vehicle, the Volkswagen Golf (see counts 2 and 3 above). The applicant was charged with breaking and entering premises and stealing, contrary to s 421(2), (3) of the *Code*. He received a sentence of **seven years'** imprisonment.
- [26] **Count 19:** The Ford Fiesta, which was the subject of count 6, was set on fire and left to burn out on the Centenary Motorway. This occurred at around 1.56 am. The applicant pleaded guilty to a charge of arson, contrary to s 461(1)(b) of the *Code*. He received a term of imprisonment of **five years** for this offence.
- [27] **Counts 20 and 21:** The Kia Sportage SUV, which was taken in the course of count 17, was seen by police parked at a residence in Ellen Grove, behind a closed fence. Police parked in the driveway to block the vehicle from exiting. The applicant drove the SUV to crash through the fence and into the front bumper of the police vehicle, which caused damage. The applicant then reversed the SUV and drove forward again, crashing into the police vehicle for a second time, before trying to drive through the fence. Following this, the applicant fled on foot through the backyard. The applicant was charged with dangerous operation of a vehicle with two prior convictions, contrary to s 328A(1), (3)(b) of the *Code*. This was count 20. He received a sentence of imprisonment of **two years** for this offence. He was also charged with unlawfully using a motor vehicle with property damage, contrary to s 408A(1)(a); (4)(iv) of the *Code*. This was count 21. The sentencing judge imposed a sentence of imprisonment of **five years** for this offence.

Monday 21 October 2024

- [28] **Counts 22 and 23:** The applicant and a co-offender entered a residence at Coorparoo at around 5.30 am, by climbing up onto a first floor balcony, and entering through an unlocked sliding door. They stole the keys to a Ford Ranger Utility, and then drove off in that vehicle. The applicant pleaded guilty on count 22 to burglary and stealing, contrary to s 419(5) of the *Code*. He was sentenced to a term of imprisonment of **six years** for this offence. The applicant also pleaded guilty to count 23, which was the charge of unlawful use of a motor vehicle, contrary to s 408A(1)(a) of the *Code*. The applicant was sentenced to a term of imprisonment of **three years** on this count.

Tuesday 22 October 2024

- [29] **Counts 24 and 25:** Just after midnight on 22 October 2024, there were two cars in the garage of residential premises at Camp Hill. One of the complainants heard noises in the garage. The applicant was disturbed and ran out of the premises. It appears he had opened both the vehicles. The glovebox was open in one of the vehicles and the

applicant had left dirt and mud in the vehicle as well. Each of counts 24 and 25 charged the applicant with entering premises (the vehicle) with intent to commit an indictable offence, contrary to s 421(1) of the *Code*. The applicant was sentenced to a term of imprisonment of **three years** in respect of count 24, and **three years** in respect of count 25.

- [30] **Counts 26 and 27:** At around 12.30 am, the applicant and a co-offender climbed over a neighbouring fence into a residential property at Camp Hill. They attempted to enter the residence through a locked laundry room door, using a crowbar or similar tool. They then attempted to enter the vehicle of the resident, again using a crowbar or similar tool. The applicant was charged, on count 26, with attempted burglary in the night, while armed, in company, contrary to s 419(1), (3)(a), (3)(b)(ii), (b)(iii) and s 535 of the *Code*. He was sentenced to imprisonment of **four years** on this count. By count 27, the applicant was also charged with attempting to enter premises with intent to commit an indictable offence, contrary to s 421(1) and s 535 of the *Code*. He was sentenced to imprisonment of **five years** on this count.
- [31] **Counts 28 and 29:** At about 1.00 am, the applicant and a co-offender broke into another residence in Camp Hill, where a woman was living. She woke up when she heard her bedroom door creaking. She got up and opened the door, where she was confronted by the applicant and his co-offender. The applicant produced a machete knife and pointed it at the woman's chest. The co-offenders searched the woman's bedroom, stole her phone, her bag, and around \$400 in cash. They were going to steal her car keys, but she begged them to leave the car keys behind. They left without those keys. The applicant pleaded guilty to count 28, which was burglary, in the night, in company, contrary to s 419(1)(3)(a), (b)(iii) of the *Code*. He was sentenced to a term of imprisonment of **seven years** on this count. He also pleaded guilty to count 29, which was a charge of armed robbery, in company, with personal violence, contrary to s 409 and s 411(1) and (2) of the *Code*. The applicant received a term of imprisonment of **seven years** on this count.
- [32] **Counts 30 and 31:** At about 3.00 am, the applicant entered a residence at Murarrie through an unlocked rear door. The applicant stole the wallet and keys of the resident there, while he was sleeping. The applicant drove away in the resident's 2020 Nissan Patrol, with his co-offender. On count 30, the applicant was charged with burglary and stealing, contrary to s 419(5) of the *Code*. The applicant was sentenced to **six years'** imprisonment on this charge. On count 31, the applicant was charged with unlawful use of a motor vehicle, in the night, in company, contrary to s 408A(1)(a); (4)(a), (b)(iii) of the *Code*. He was sentenced to a term of **four years'** imprisonment on this count.
- [33] **Count 32:** At about 3.30 pm, the applicant arrived at an address in Kedron, in the Nissan Patrol which was the subject of count 31. He got out of the passenger seat of the vehicle, ran up the driveway with a crowbar in his left hand, and approached the front door. He attempted to gain entry using the crowbar but was ultimately unsuccessful. He was charged with attempted burglary, contrary to s 419(1) and s 535 of the *Code*. On his plea of guilty he received a sentence of **four years'** imprisonment.
- [34] Some general observations about the applicant's offending in October 2024 can be made.

- [35] First, there are a number of serious offences in which the applicant broke into the residential homes of people and confronted inhabitants in those homes while they were sleeping, or otherwise going about their business. This happened on four occasions (see the incidents subject to counts 2-3, 5, 10-11 and 28-29). It was only counts 3 and 29 that constituted armed robberies in company, with personal violence. The offences were otherwise generally burglaries, attempted burglaries, break and enters and stealing and unlawful use of motor vehicles. No physical harm was caused to any complainant.
- [36] Secondly, the applicant unlawfully used seven cars during the offences. These were a Volkswagen Golf (counts 2-3), a Ford Fiesta (count 6), a Subaru Outback (counts 10-11), an Audi Q3 (counts 13-14), a Kia Sportage (count 17), a Ford Ranger Utility (counts 22-23), and a Nissan Patrol (counts 30-31). These vehicles were used by the applicant to continue offending. He burnt out the Ford Fiesta (count 19). There was no gross or net value placed by the prosecution on the property stolen or damaged in the offending.
- [37] Thirdly, the applicant used the Ford Fiesta in a ram raid upon a Chemist Warehouse (count 18), and the Kia Sportage in damaging a police vehicle (counts 20-21).
- [38] The sentencing judge imposed a sentence of one year in respect of each of the two offences where the applicant stole fuel from a petrol station, without paying for it (counts 1 and 8). The amount of fuel which was taken was less than \$100 on each occasion. The sentence of imprisonment for one year on each of these counts is obviously manifestly excessive.

Other matters

- [39] The applicant's criminal history shows he had been dealt with for similar offences to the subject offences in the Magistrates Court on 1 October 2019, the District Court on 29 May 2020, and the Magistrates Court on 29 May 2021 and 18 March 2024. On 29 May 2020, the applicant was sentenced to two and one-half years' imprisonment for each of one count of enter dwelling with intent by break at night uses/threatens violence whilst armed and one count of attempted robbery – use/threaten violence, armed/pretends to be armed or in company and to lesser concurrent sentences for five summary offences. Apart from this attempted robbery, there were no armed robberies in the applicant's criminal history.
- [40] The sentencing judge had the remarks of Smith DCJ (as his Honour then was) made when the applicant was sentenced on 2 September 2024 for his role in a prison riot committed on 21 October 2021. He pleaded guilty to riot with circumstances of aggravation and was sentenced to imprisonment of 240 days which he had already served in presentence custody together with a probation order for 12 months. He was released on the day of sentence by which date all sentences of imprisonment had been fully served. It was an aggravating factor that the applicant committed the subject offences so soon after his release from prison and whilst under a probation order. According to the criminal history, the applicant committed a summary offence of trespass – unlawfully enter or remain in dwelling or yard on 5 September 2024, contravene direction or requirement police officer on the same date, and failure to appear in accordance with undertaking on 19 September 2024. He was dealt with for those offences on 24 September 2025 when convictions were recorded and he was not further punished.

- [41] For the hearing in this Court, the respondent analysed the applicant's custodial and criminal history and showed that since 3 June 2019, the applicant had spent only about 183 days in the community.
- [42] The applicant is a Torres Strait Islander who was drug addicted when he offended. He is functionally illiterate. The sentencing judge expressed cognisance of a mitigating factor that the applicant suffered from social disadvantage which was a reference to the brief submissions made by the applicant in reliance on *Bugmy v The Queen*.¹ This was not a submission that was pursued in this Court.
- [43] Before the sentencing judge, both the prosecutor and the applicant's counsel referred to the guilty pleas having been entered at the earliest opportunity. The prosecutor emphasised that the guilty pleas were entered at the committal hearing stage when the full brief of evidence for all charges was not complete. The prosecutor referred to the "significant mitigation" constituted by the early pleas and their utilitarian effect, the applicant's age and his indigenous heritage. (Although the prosecutor referred to the applicant's drug dependency in listing the mitigating factors, the fact that the applicant's drug addiction was an accepted cause of his offending is not a matter of mitigation. Instead, material or submissions before a sentencing judge which show the willingness of a drug addicted offender to engage in programs to deal with the addiction is relevant to the prospects for the offender's rehabilitation.)
- [44] Whilst on remand, the applicant had been on the Opioid Substitution Program for 14 months which was not disputed by the prosecutor.

The sentencing decision

- [45] The sentencing judge noted that the applicant had assisted in the administration of justice by entering the guilty pleas at the earliest occasion and would be given significant credit for those pleas. The sentencing judge inferred that many of the complainants would have suffered harm as a consequence of the offending.
- [46] The sentencing judge considered that general deterrence and specific deterrence must loom very large in the sentence and particularly specific deterrence. He also considered that denunciation was a very significant factor in exercising his sentencing discretion, and that, by reason of s 9(1)(e) of the *Penalties and Sentences Act 1992* (Qld) (Act), a consideration which loomed very large was to impose a sentence that would protect the Queensland community from the applicant.
- [47] The gravamen of the sentencing judge's reasoning process on 5 June 2026 is contained in the following passage:

"I am not satisfied that that I will have achieved the statutory command to try and balance those sentencing guidelines without a very lengthy period of time of both head sentence and actual custody. I have arrived at the conclusion that that in respect of the sentencing for all 32 offences, it would be nonsensical for me to go through and line by line identify – or count by count identify the length of time in respect of individual counts, given there are so many. There are 32 counts and twenty – 25 victims.

Ultimately, I have arrived at the conclusion that a period of a head sentence of nine and a-half years ought to be imposed today and I will

¹ (2013) 249 CLR 571.

be imposing that sentence. I have – I have arrived at the conclusion that the totality criminality of this offending warrants an imposition of a sentence in the vicinity of 10 years, but I am also conscious that at 10 years, the automatic operation serious violent offender provisions would lock in and apply. That would otherwise require Mr Ara to serve 80 per cent of that 10 years.

I am of the view that I am properly reflecting his plea – his early plea of guilty and the mitigatory factors in the sentence by avoiding sentencing him to a head sentence that would require him to be subject to a serious violent offender sentence, and that is why I – I consider that real and tangible discount from the intellectual starting point of 10 years down to five [*sic* nine] and a-half years as – as warranted in these circumstances.

I then, as part of the instinctive synthesis that I am required to undertake, ask myself the question, what should be the parole eligibility date, because he is going to be in prison for a period of greater than three years. The sheer totality of the offending, the sheer volume of offending conduct, the sheer number of victims, the sheer harm that he has caused to the people of Queensland, coupled with the disgraceful criminal history, I have arrived at the conclusion that the parole eligibility date ought to be set at the six-year mark of the sentencing, that is, six years from today's date. So the head sentence will be nine and a-half years and parole eligibility date will be set at the 5th of June six years from today's date."

- [48] When the matter was brought back before the sentencing judge on 10 June 2026, he imposed individual sentences for each of the counts. In respect of the sentence imposed for count 10, the sentencing judge said that:

"That is the count that I settle upon that I – consistent with my reasoning given on Friday, 5 June 2026, where I have increased that particular count to give effect to the total criminality involved in the offending by Mr Ara."

- [49] The sentencing judge noted that the reasons for each of the penalties was articulated by him on 5 June 2026, as well as the reasons for arriving at the totality of the sentence which he imposed, and why the parole eligibility date should begin six years after the applicant was taken into custody.

- [50] The sentencing judge explained in his sentencing remarks on 10 June 2026 that he had approached the sentencing consistent with ***R v Nagy***² and that he selected count 10 as the most serious of the counts on which he had uplifted the sentence to give effect to the totality of the criminality that spread across all 32 counts. He repeated his reasoning that he had arrived at the conclusion that the totality of the criminality ought to have seen a term of imprisonment in the 10 year vicinity and he had reduced that to nine and a-half years to take into account the early plea and the mitigatory factors and relieving the applicant of the automatic consequence of a declaration that he had been convicted of a serious violent offence and for that reason considered that achieving the sentencing purpose set out in s 9(1)(e) of the Act

² [2004] 1 Qd R 63.

would be achieved by the parole eligibility date being fixed after six years had been served in custody.

- [51] It can immediately be observed that the sentencing judge was mistaken about the effect of a sentence of 10 years for count 10 which was an offence of burglary and stealing charged under s 419(5) of the *Code*. That offence is not listed in schedule 1 to the Act and therefore could not be the subject of a mandatory serious violent offence declaration, if a sentence of 10 years had been imposed.³ Only counts 3 and 29 involved schedule 1 offences.

Ground of appeal

- [52] The applicant challenges the total effective sentence of nine and one-half years with parole eligibility after serving six years in custody as manifestly excessive. The applicant asserts that the sentencing judge must have erred in fixing the sentence, because the sentence is significantly harsher than it should have been had the sentencing discretion been correctly exercised.⁴
- [53] Notwithstanding that the particulars of aspects of the process of sentencing on which the applicant relies (set out at [4] above) suggest errors in the exercise of the sentencing discretion, the applicant frames the ground of appeal by reference to the result of the alleged errors, namely that the sentencing process produced a sentence which was, in fact, manifestly excessive.
- [54] This means that it is not necessary for the applicant to establish one or more of the particulars. Each particular is merely an explanation suggested by the applicant as to why the sentence was manifestly excessive.
- [55] Both parties had urged the sentencing judge to apply *Nagy* to impose a sentence on the most serious of the offences to reflect the overall criminality and to make all other sentences concurrent. It is apparent from the combination of the sentencing remarks on both 5 and 10 June 2026 that the sentencing judge adopted that approach. As McMurdo P observed in *R v Bowditch*⁵ imposing an increased head sentence on the most serious offence to reflect the totality of all the offending avoids unintended complications that may flow from the combination of cumulative sentences, tends to make the end result more easily comprehended, and is less prone to unintentionally offend the totality principle.
- [56] Many of the comparable authorities referred to by the parties before the sentencing judge and on the application to this Court are relevant to some, but not all, of the offences committed by the applicant. His criminality was in the combination of the offences committed over a relatively short period of 12 days. The parties also relied on some authorities in the vicinity of 30 years old where sentences were imposed before many of the current provisions in the Act were enacted in their current form. The most relevant of the authorities are analysed below.
- [57] Before the sentencing judge, the prosecutor relied on *R v Mai*.⁶ The offender who was 39 years old when sentenced committed 26 offences over a period of five months. All related to breaking and entering dwelling houses, in two cases with intent to

³ See s 161A(a) of the Act.

⁴ *House v The King* (1936) 55 CLR 499 at 505.

⁵ (2014) 67 MVR 339 at [2].

⁶ [2010] QCA 54.

commit an indictable offence, and in the remaining 24 cases, associated with stealing property from the dwelling. The offences were committed in daylight hours when the dwellings were unoccupied. The total estimated value of the property stolen and either damaged or not recovered was \$165,000. The offender pleaded guilty and had participated in a “drive around record of interview” in which he pointed out places where he committed offences. The offences were due to his drug addiction. He had been sentenced for similar offences only a month before the subject offences and had been released on parole on the day of that earlier sentence. His offending was in breach of parole and he was liable to serve the balance of that sentence which was about 17 months. The applicant had a substantial criminal history for similar types of offending. For the subject offences, he was sentenced to seven years’ imprisonment with an eligibility for parole date fixed some 25 months after the date of sentence. His application for leave to appeal against his sentence that was concerned with his parole eligibility date was unsuccessful.

- [58] One of the authorities referred to in *Mai* was *R v Phillips*.⁷ The offender pleaded guilty to an ex officio indictment to 19 counts of burglary and stealing, three counts of burglary by breaking, one count of burglary and five counts of stealing. On each of the burglary counts, he was sentenced to six years’ imprisonment. Three years’ imprisonment was imposed on each of the stealing counts. All sentences were concurrent. The offences breached an earlier sentence of three years’ imprisonment suspended after 12 months in respect of 17 counts of burglary and stealing. The balance of that sentence was ordered to be served concurrently. The offender was 26 years old with an extensive criminal history for like offending. The burglaries generally involved entry of unattended homes, usually by smashing a window, and theft of property such as jewellery, money, cameras, DVDs and compact discs. The value of the property stolen totalled \$72,798. There was evidence that linked the offender to some of the offences and he assisted police to clear up other break and enter offences by taking the police to the relevant premises. He had been addicted to heroin from the age of 14 years. Holmes JA (as her Honour then was) noted the applicant’s extensive cooperation and, if the offences had stood alone, the effective sentence of six years’ imprisonment may have been too severe but, as the activated suspended sentence which ordinarily would have been imposed cumulatively was ordered to be served concurrently, leave to appeal against sentence was refused.
- [59] The offending by the applicant was made more serious than the offending in *Mai* and *Phillips*, as the applicant’s offences included two armed robberies (counts 3 and 29). At least in the first of those armed robberies, the applicant and his co-offender did not take a weapon to the house, as the scissors were at the house, but the seriousness of his offending escalated with count 29 when the applicant had a machete knife which he pointed at the occupant of the house when she awoke to investigate the noise she heard.
- [60] Before the sentencing judge, the applicant had relied on *R v Gwilliams & Fish*.⁸ The offenders were charged jointly on a 17 count indictment to which the offender Gwilliams (who was 27 years old for most of the offending) pleaded guilty to 16 counts and the offender Fish pleaded guilty to nine counts. Fish also pleaded guilty to three counts on another indictment. They had both pleaded guilty to one count of armed robbery and two counts of armed robbery in company and a variety of other

⁷ [2008] QCA 5.

⁸ [2010] QCA 286.

offences that arose in connection with the break and enters and robberies of commercial premises. Gwilliams had a concerning criminal history that mainly comprised property offences and no prior offences of violence. Fish was 34 to 35 years old when he offended with a lengthy criminal history that did not include any offences of significant violence. They were each sentenced to eight years' imprisonment and a serious violence offence declaration was made in respect of each of them for the two counts of armed robbery in company and for the offender Fish for the armed robbery. They were unsuccessful in appealing the effective head sentence of eight years' imprisonment but successful in obtaining the removal of the serious violent offence declarations. That meant they would be eligible for parole after serving 50 per cent of the sentence.⁹

- [61] On this application, the applicant referred to *R v Braeckmans*.¹⁰ That involved sentencing an offender for two home invasions. In the first home invasion the offender caused several injuries, including a depressed skull fracture to one occupant. In the second home invasion, the appellant broke into a home to escape police who were chasing him, threatened to kill the 62 year old occupant, assaulted the occupant, and, when the occupant fled to his car, the offender pushed the occupant in the back causing him to collide with the driver's mirror and the occupant was unable to get back to his feet. The occupant suffered a broken hip and a compression fracture of the L1 spinal bone. The offender was 39 years old when he offended whilst on parole and had an extensive criminal history. His appeal succeeded and the head sentence for the second armed robbery in company was reduced from nine years to seven years' imprisonment and the serious violent offence declaration for that offence was set aside. His sentencing was complicated by the requirement for the sentence to be served cumulatively on the balance of the imprisonment the offender was liable to serve as a result of breaching his parole.
- [62] The respondent referred to *R v Blenkinsop*¹¹ which involved four men who carried out a single home invasion to attack someone who they thought was involved with paedophilia, and to steal a box of money. They found two people at the home, tied them up, and extensively threatened them. The complainants were not physically injured. Two of the offenders who were brothers applied to leave to appeal against sentence after pleading guilty to one count of burglary with a circumstance of aggravation, two counts of deprivation of liberty, one count of common assault and one count of stealing. One of the brothers who was 23 years old when he offended was unsuccessful in appealing against his sentence of imprisonment of five and one-half years with a recommendation for parole after two years on the burglary counts. He had served 10 months in custody on remand which was not declarable that made his head sentence effectively one of six years and four months' imprisonment. He also pleaded guilty to five counts of receiving and one of fraud on a separate indictment for which he was sentenced to lesser terms to be served concurrently. He also had a prior conviction for a robbery for which he was on a suspended sentence at the time of the home invasion. The group took three weapons with them, namely an Asian-style sword or long knife, a steak knife and a baseball bat. The fourth implement was found at the premises and was called a muddle stick. The brother whose application for leave to appeal against sentence was refused carried the sword and was the leader of the group.

⁹ See s 184(2) of the *Corrective Services Act 2006* (Qld).

¹⁰ (2022) 10 QR 144.

¹¹ [2007] QCA 181.

- [63] The respondent also referred to *R v Leu; R v Togia*,¹² which concerned a single targeted home invasion, where the home occupants were assaulted over a drug dispute. The offenders pleaded guilty to burglary by breaking, in the night, with violence, while armed, in company, with property damage; assault occasioning bodily harm, while armed, in company; common assault; and armed robbery in company with personal violence. The applicants were respectively aged 20 and 23 years when they offended. Each applicant for each of the burglary and armed robbery offences was sentenced to five years' imprisonment with parole eligibility after serving three years. The offender Leu had a vacuum cleaner pipe which he brought with him. The offender Togia had a wooden stake. They punched and kicked the complainant and Togia pushed the complainant's girlfriend out of the way. Togia struck the complainant on his face. The complainant sustained relatively minor injuries. Leu had a prior conviction for armed robbery in company with personal violence which was at the least serious end of that type of offending but was on probation and a community service order for that offence when he committed the subject offences. Togia had one prior entry in his criminal history when he had been fined for stealing. As no reasons had been given for postponing eligibility for parole beyond the mid-point of the sentence, the court re-sentenced on appeal. Leu was sentenced to an effective sentence of four and one-half years and ordered to be eligible for parole after serving 16 months. Togia's sentence was reduced due to the absence of any relevant prior criminal history to imprisonment for three and one-half years with parole eligibility after serving 12 months.
- [64] One matter advanced by the respondent to justify the conclusion that the applicant's sentence was not manifestly excessive was the effect on sentencing, from 1 November 2025, of the additional sentencing purpose inserted as paragraph (ca) in s 9(1) of the Act. This prescribes one of the purposes of sentencing as "to recognise the harm done by the offender to a victim of the offence".
- [65] It has always been a mandatory consideration for the court pursuant to s 9(2)(e) of the Act to have regard in sentencing an offender to any damage, injury or loss caused by the offender.
- [66] The Explanatory Note for the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025* that, when enacted, inserted paragraph (ca) explained that it was a recommendation of the Queensland Sentencing Advisory Council (QSAC) in its report *Sentencing of Sexual Assault and Rape: The Ripple Effect*. The Explanatory Note referred to the QSAC report recommendation at p 2:
- "The Bill amends section 9(1) of the PS Act to expand the purposes of sentencing to include recognition of the harm done by the offender to a victim of an offence as a sentencing purpose. Including harm to a victim as an express sentencing purpose aims to enhance visibility of the recognition of the harm to victims in the sentencing process and acknowledge the need to hold offenders accountable for the harm done to victims."
- [67] Recommendation 2 of the QSAC report acknowledges that when a court sentences a person, they have to consider the harm caused to a victim but, as it is not listed as a separate purpose of sentencing, the courts might focus less on victim harm when explaining the reasons for the sentence than if this were a sentencing purpose. That

¹² (2008) 186 A Crim R 240.

reflects the usual sentencing practice of most judges to list which of the sentencing purposes set out in s 9(1) of the Act are relevant for the sentencing. That would now give the option to the sentencing judge, where s 9(1)(ca) is applicable, to refer to that as one of the purposes of sentencing the particular offender, even though harm to a victim has always been a mandatory consideration. As the Explanatory Note stated, it should tend to enhance the visibility of that aspect of the sentencing by including it as one of the purposes of sentencing.

- [68] The insertion of this additional purpose is consistent with the existing purposes of deterrence, denunciation, and community protection which are respectively paragraphs (c), (d) and (e) of s 9(1) which were referred to by the sentencing judge. The need for the applicant's sentences to recognise the harm to his victims does not add anything in the context of the other purposes of sentencing that covered the existing mandatory consideration of recognition of the harm to victims.
- [69] The home invasion in *Braeckmans* was more serious than the two armed robberies committed by the applicant. The one home invasion in *Leu* and *Togia* was less serious than the two armed robberies committed by the applicant. Having regard to those authorities and also *Blenkinsop*, the two armed robberies committed by the applicant would have attracted imprisonment in the vicinity of five to six years for each offence had they been the only two counts for which the applicant was being sentenced on guilty pleas. The applicant's criminality is similar to that of the offender Gwilliams in *Gwilliams & Fish*. Even though Gwilliams pleaded guilty to three armed robberies, she committed less offences overall than the applicant.
- [70] The applicant's overall criminality meant that on the *Nagy* approach a sentence of six years for one of the armed robberies must be increased significantly. Appropriately in the circumstances, the sentencing judge recognised in the sentencing remarks that significant credit should be given to the applicant for his very early guilty pleas. As the analysis of the above authorities indicates, it is difficult to see how a head sentence of nine and one-half years' imprisonment to serve six years in actual custody before being eligible for parole reflects significant credit for those guilty pleas. Having regard to the applicant's significant cooperation with the administration of justice, that he had shown some prospects for rehabilitation by participating for a lengthy period in custody in a drug program, and his age and background, there was no justification for postponing the eligibility for parole past the mid-point of the sentence. Even though the applicant is not seeking to show specific error, the sentence as structured by the sentencing judge was manifestly excessive. It was "unreasonable or plainly unjust"¹³ in the circumstances.
- [71] Leave to appeal must be granted and the appeal allowed on the basis that the sentence was manifestly excessive. This requires the appellant to be resentenced. The sentence structure requires some revision, because the most serious offence was count 29, rather than count 10. (Count 29 involved armed robbery in company with personal violence, rather than burglary and stealing that constituted count 10.) The guilty pleas should be reflected in the effective sentence imposed for count 29. Further recognition for the other mitigating factors can be taken into account in slightly reducing the date for eligibility for parole from the mid-point of the sentence. The reduction should not be as low as one-third, because of the aggravating circumstance that the subject offences were committed so soon after the applicant's

¹³ *House v The King* at 505.

release from a long period in custody. All sentencing purposes will be addressed by a head sentence of eight and one-half years' imprisonment and with parole eligibility after approximately 40 per cent of that sentence has been served which will be after three and one-half years in custody.

- [72] The sentence for count 10 should be substituted with a sentence of six years. The sentence for count 29 should be substituted with a sentence of eight and one-half years. In view of the sentence of the most serious offence being eight and one-half years' imprisonment, most of the other sentences require adjustment downwards. Some anomalies also require correction such as the sentences for counts 1 and 8. Count 27 should have a lesser sentence than count 26, as count 27 is the less serious of the two offences. The re-sentencing can be effected by varying the sentences imposed by the sentencing judge.

Orders

- [73] The orders should be:

1. Leave to appeal granted.
2. Appeal allowed.
3. Sentences imposed by the sentencing judge on 5 and 10 June 2026 are varied in the following respects:
 - a. The term of imprisonment imposed by the sentencing judge for each count identified in the first column is substituted by the corresponding term of imprisonment set out in the second column:

Count	New Term of Imprisonment
1	1 month
2	5 years
4	3 years
5	5 years
6	18 months
7	3 years
8	1 month
9	3 years
10	6 years
11	18 months
12	2 years
13	5 years
14	18 months
15	1 year
16	5 years
17	5 years
18	6 years
19	3 years
21	3 years
22	5 years
23	18 months
24	2 years
25	2 years

27	3 years
28	6 years
29	8 years and 6 months
30	5 years
31	18 months
32	3 years

- b. The parole eligibility date for all counts is fixed at 21 April 2028 in substitution for 22 October 2030.
- 4. The sentences of imprisonment imposed by the sentencing judge on counts 3, 20 and 26 and the presentence custody declaration made by the sentencing judge are confirmed.