SUPREME COURT OF QUEENSLAND

CITATION:	*R v Rajek* [2024] QSC 63
PARTIES:	**The King** **v** **Anthony Daniel Rajek** (Defendant)
FILE NO/S:	137/23
DIVISION:	Trial Division
PROCEEDING:	Sentence
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	16 February 2024
DELIVERED AT:	Brisbane
HEARING DATE:	16 February 2024
JUDGE:	Callaghan J
ORDER:	**1. Order that the defendant be convicted and imprisoned for a period of 13 years and six months.** **2. Order that the offence be declared a serious violent offence pursuant to s 161B of the *Penalties and Sentences Act 1992* (Qld).** **3. Order that the period served between 16 January 2022 and 15 February 2024, that being a period of 761 days, to be time served under the sentence.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – ACTS INTENDED TO CAUSE OR CAUSING DANGER TO LIFE OR BODILY HARM OR SERIOUS INJURY – SENTENCE – where the defendant was charged with attempted murder – where the defendant had pleaded guilty to alternative charge of wounding with intent to cause grievous bodily harm – where the jury convicted the defendant of attempted murder – where the offence was committed with no previous interaction with victim – where the offender had suffered some childhood trauma– where the offender was not diagnosed with any mental illness – where the offender was not intoxicated at the time of offending – interaction of serious violent offences scheme with other sentencing principles

COUNSEL: D. Kovac for the Prosecution
N. Brown for the Defence

SOLICITORS: Office of the Director of Public Prosecutions, for the Prosecution
Lewis Hunter of Guest Lawyers for the Defence

[1] Mr Rajek, this will take a while so you can stay seated for the moment. I will tell you when you can stand up.

[2] In January 2022, you were still just 21 years of age. You were gainfully employed; in fact, working two jobs. You had good relations with your colleagues. To them and to the rest of the world you no doubt presented as an industrious and law-abiding young man, but there was a hidden side to your existence. Your work was tiring so you were using cocaine and methamphetamine. Having lived with your grandmother for most of your life, you had just leased and moved into an apartment in the Brisbane CBD. It was barely furnished. The impression is that you were leading an unusual and spartan existence.

[3] At some stage you acquired the fearsome knife which is exhibit 5. Shortly after 3:20 am on 16 January you emerged from that apartment armed with that knife. Notwithstanding its size, you were able to conceal it. A facemask of a kind that is admittedly common these days concealed your identity. However, your movements were captured on video cameras that record activity on the city streets. You made your way to perhaps the most central and continuously populated area of the city, where the Queen Street and Albert Street malls intersect. There was apparent purpose to your movement.

[4] As you moved into Albert Street you cast your eyes towards a man who would become your victim. He was a man with complex mental health needs. He was living at Coorparoo but coming into the city at night to sleep in that particular doorway in that particular street. He did that because, in a grotesque irony, he felt safe there. Haunted by a belief that every dusk saw the mobilisation of some who were on a mission to kill him, he sought the safety he thought would be provided by security cameras, proximity to a police beat and the presence of many who patronised nearby fast-food restaurants 24 hours a day.

[5] There had been no previous interaction between the two of you. It took only that brief glance for you to decide that he was your target. You then executed what has the appearance of a tactical manoeuvre. You walked on at the same steady pace. You then looped around to approach your victim a second time. In a deliberate and calculated fashion you raised your knife and plunged it into your victim's neck. You withdrew the knife and left the scene, walking with the same steady gait and apparently deliberate purpose. About eight minutes later you were back in your apartment. At no stage in the entire episode did you appear to be concerned about anyone or anything. There was nothing awkward or uncoordinated about your actions. There was no other act of violence, nor any unusual behaviour of a kind that might have drawn attention to yourself.

[6] The police investigation was prompt and efficient. They are to be commended for it. It meant that they entered your apartment at about 10.24 am on that same day. Although, as I have said, your apartment was barely furnished, it was not untidy. There was nothing to suggest that you were dysfunctional. There was blood on your hoodie but the knife had been washed. Apart from the presence of one empty cocktail glass, there was no indication as to the recent use of drugs or alcohol. Your communications with police were coherent and responsive. Nothing said by you or observed by police suggests that you were either intoxicated or delusional.

[7] It can be inferred in all those circumstances that you were perfectly capable of forming an intention. The jury's verdict confirms that the only rational inference to be drawn is that you intended to cause the death of your victim. Although coldblooded, your action was swift and it is not possible to conclude that this intention existed for any longer than the period between the sighting of your victim and your use of the blade.

[8] That intention, however, was frustrated. As it happens, by pure chance, the knife grazed your victim's collarbone and its initial trajectory was deflected. That is not something that could have been foreseen, but it does mean that you are not being sentenced for the offence of murder. Even so, the injury was life-threatening and caused much pain and trauma. In spite of that, your victim managed to stagger to a nearby restaurant and prompt first aid enabled his survival. The initiative of those who cared for him is to be admired.

[9] Although it seems a complete physical recovery has been made, your actions continue to have an impact both for the injured man and his family. Indeed, that impact accumulates. I have paid close attention to the contents of exhibit 10 and to exhibit 3, the statement from the victim's father. That document is all the more compelling because it contains a wish of peace and goodwill for your family. That is no doubt welcome in circumstances where your family has stood by you and I have observed and continue to observe the support that they have given you by their presence throughout these proceedings.

[10] They are no doubt bewildered about this incident and I share their bewilderment. That is why I requested the reports which have been supplied by Dr Wolfenden. They are thorough and helpful and consolidate a lot of relevant material, all of which has been read and considered by me. I will not attempt to summarise in these remarks all that is contained in that material or in the tendered material, but some of Dr Wolfenden's observations and conclusions should be noted.

[11] At the outset, although it is not possible to discern any formal thought disorder, it should be recorded that in your dealings with health professionals you have been an inconsistent and, therefore, unreliable historian. This no doubt made it difficult for the doctor to reach any sort of diagnosis and your varying accounts have the capacity to confuse this sentencing process. Nevertheless, some conclusions have been reached.

[12] It can be accepted that you have for some time reported being spoken to by "voices" and you claim to have heard these at the time you committed the offence. Indeed, you have claimed that you heard threats coming from your silent victim. In spite of these claims, you cannot be diagnosed with any psychotic disorder of the kind that might see you, following your release from prison, regulated under any sort of mental health regime. You can be diagnosed as having a personality disorder and as someone who is suffering from a chronic post-traumatic stress disorder. This is as a result of things that happened to you at the age of seven, and I am also of the view that there must inevitably have been some effect from abuse that you suffered when you were even younger. It is likely to be such trauma rather than any sort of psychotic disorder which is the source of the "auditory disturbances": that is, the "voices".

[13] I am prepared to accept that the trauma you suffered whilst young has over the years prompted you to self-medicate. You have used and abused alcohol, cocaine and amphetamines. In the result you now have multiple substance abuse disorders. You are likely to have been in the throes of a drug-induced psychosis when you committed the only other offences on your criminal history. Those occurred in 2019. They involved the use of a knife and some aggressive behaviour.

[14] After being charged and pleading guilty, you were placed on a good behaviour bond. There is a temptation to make a link between your behaviour on that occasion and this offence. However, I am unable in the circumstances to draw any firm conclusions about anything concerning that incident and will, in effect, disregard it for the purposes of the sentence that I impose.

[15] On that note, I should also mention that there is in the materials reference to your selling of drugs. For current purposes I find that can have no relevance and I disregard it completely.

[16] Indeed, it is not open to reach any firm conclusion about the relevance of drugs or intoxication to your offending. I have already noted there is nothing about your behaviour before, during or after the offence that suggests you were affected by any substance to any great degree. Claims you have made about the consumption of large quantities of alcohol and drugs in the hours prior to the offence have been inconsistent and should be regarded as unreliable. I will proceed on the basis of Dr Wolfenden's conclusion that it is likely intoxication contributed to your actions "to some extent" but it is impossible to say much more than that.

[17] So this offence cannot be explained by reference to a thought disorder, nor to intoxication. Although your behaviour displays some features such as lack of empathy, you cannot formally be diagnosed as a psychopath. I am left with a situation in which, as expressed by the doctor, the forces which led you to commit this offence "remain poorly understood".

[18] I do proceed on the basis that to the very limited extent that they can be understood it is possible to identify paths to rehabilitation. That is, if the forces that trace to your personality disorder contributed to your offending, it should be accepted that there is the possibility of treatment for that disorder by way of psychological

therapy and behaviour management strategies. Some psychotropic medications may also assist. If it is the case that your post-traumatic stress disorder contributed to your offending, it can be accepted that this disorder, too, may be addressed by pharmacological treatments and psychological therapy and your substance abuse disorders can be tackled by the completion of suitable programmes.

[19] It is relevant that Dr Wolfenden has noted that your scores on clinical and risk scales have improved since you were first taken into custody. There is in that information at least some sort of hope for you. However, that improvement has come about, of course, because of the structure and rules that are imposed on you in prison. It will be different once you are released. You do not present as someone who can be regulated pursuant to mental health laws. Structure and rules could only be incorporated into your life by way of the parole regime. Conversely, in the absence of any meaningful explanation for this horrific offence, the open inference is that your unsupervised presence in the community is a frightening prospect. You have shown that you can present to the world in a fashion that is at worst neutral and unassuming. Without stepping out of that character, you can perform a cruel and bloodthirsty action, and even having committed such an extraordinary act of violence you have demonstrated an ability to continue about your business in a completely unremarkable fashion. Someone who has for no easily understood reason behaved in this way, even once, should be thought of as a threat to the community for the indefinite future.

[20] There is, in a circumstance such as this only one form of sentence that is truly appropriate and that would be just in all the circumstances. It is a sentence that would see you incarcerated for a substantial period of time in order to punish you and to denounce your conduct. It is a sentence that carries with it the prospect of a much, much longer period of imprisonment if you do not engage with the sorts of treatment and programmes that might address the underlying causes of your behaviour. And it is a sentence that would see you under supervision in the community for a lengthy period in order to ensure that such rehabilitation as can be achieved in custody is consolidated.

[21] If the safety of the community is truly a primary concern of the authorities, then the appropriate sentence is one that would ensure your supervision on parole, if not for

life, then at least until you are of an age when it can be thought that you are no longer the danger that you have shown that you can be.

[22] I cannot impose that sentence.

[23] The *Penalties and Sentences Act 1992* (Qld) makes some assertions about the sentence that I should impose. It tells me that I must have regard primarily to the risk of physical harm to members of the community and the need to protect them from that risk. It also calls for sentences that will help an offender to be rehabilitated. However, another part of that Act has the effect of reducing these worthy aspirations to what are, in the circumstances of a case such as this, meaningless platitudes. I cannot, as the law currently stands, impose the sentence that is demanded by the circumstances of this case.

[24] Instead I must impose a sentence that is distorted by the "serious violent offences scheme" incorporated into the *Penalties and Sentences Act 1992* (Qld). Under that scheme, I shall choose a number which will be the total amount of imprisonment to which you will ever be exposed. Whatever number is chosen, you will be required to spend 80 per cent of that period in prison and a maximum of 20 per cent under the sort of supervision that will be so important in your case.

[25] So whatever number I choose, and even though community protection is best achieved by your rehabilitation, you will have only limited incentive to engage in that process whilst in custody. Once released, you will be under supervision for a period which will necessarily be inadequate. There is, it should be noted, clear evidence that spending time supervised on parole reduces an offender's risk of reoffending, and high-risk offenders such as yourself are particularly likely to benefit from long periods of supervision. Especially is this so in the case of someone like you who is still so very young and who does not have a criminal history that suggests an entrenched pattern of criminal behaviour. It will not be possible for me to give effect to the conclusions reached by such evidence. And, of course, after that number is up the state will be unable to take any steps to ameliorate the risk that I find you to represent.

[26] It is surely lamentable that one part of a statute prevents the Courts from doing that which is commanded by another part of the same statute. The intractability of this situation must bring the administration of justice into disrepute.

[27] It does not have to be like this, and none of what I have said is the idiosyncratic view of a single judge. Rather, it is the learned and logical view expressed at length by the independent and eminent members of the Sentencing Advisory Council.

[28] In May 2022 the Council published its 322-page report to which there were 111 pages of appendices. It is a profound document, but I would respectfully suggest that anyone who wished to be enlightened about the problem I have identified really need go no further than to read the 20-page executive summary and recommendations.

[29] The reasoning is detailed and transparent. As a method by which alterations to the law might be made, adoption of recommendations made by a body such as the Council must rank amongst the more respectable. And let this point be made clearest of all. If the report is read and understood, it cannot even be suggested that the adoption of the recommendations might represent some "softening" of approaches to sentencing. Indeed, one recommendation is for an expansion of the opportunity for judges to make declarations about "serious offences" and not just serious violent offences. And if the recommendations were adopted, there would be nothing to prevent "80 per cent" declarations from being made in appropriate cases.

[30] But the point raised by your case, Mr Rajek, is that if the recommendations of the Council were adopted, it would also open the way for much longer head sentences to be imposed. That is what I would do in this case if I could. I would impose on you a much longer head sentence than the one that I am going to. By so doing, I could ensure that as a serious offender you would remain after your release subject to the strictures of parole for a much, much longer period than will be the case under the sentence that I shall impose. For the reasons I have identified, that would be particularly appropriate in your case because you have mental health needs which fall short of those that are addressed by the public health system and it has been shown that your risk can reduce if you are subject to structure and control.

[31] However, as the law stands, you will be required to serve at least 80 per cent of the sentence I impose. If I simply increased the length of that sentence, if, for example, I sentenced you to life imprisonment, then yes, you would remain under supervision following your release but you would also certainly become institutionalised and any hopes of rehabilitation would be extinguished. Reoffending would inevitably follow. Such a sentence would also, as a matter of certainty, be held by the Court of Appeal to be manifestly excessive.

[32] The challenge then is to fix upon a term of imprisonment which attempts to meet the other demands of the Act. As I have indicated, I do not believe it is actually possible in the circumstances of your particular case to fashion a sentence that is just in all the circumstances. However, I must attempt to do so and in arriving at the applicable number I have had regard to all of the other provisions to which the *Penalties and Sentences Act 1992* (Qld) directs my attention and to all of the authorities to which I have been referred. I have read all of them and, indeed, have some considerable familiarity with many. None of those cases is quite like yours.

[33] Could you stand up now, please? I have already described the circumstances of your offending. They are different from those that were present in any of the other cases to which I have been referred. I take into account the fact that the physical harm caused by your attack does not appear to have been as devastating as it was in many cases of this kind. There were no repetitive acts and the relevant intention was not a longstanding one. There are other things that can be said in your favour. These include your youth and limited criminal history. You have shown, both in the community and in prison, that you are capable of gainful employment. You have the family support which I have already acknowledged.

[34] An attempt to ascertain your state of mind now as regards your offending is a confusing exercise. It can be said at least that you have the ability to express sentiments that may reflect some insight. In that context, you do get some credit for your plea of guilty to the alternative charge and, although it was no doubt on the basis of good advice from your lawyers, you get credit for the sensible and sensitive way in which the trial was run. I also accept that you could not have been made to engage in the sentencing process in the manner that you have.

[35] I take account of the fact that it seems likely that some of the forces that may have contributed to some extent to your offending trace to conditions which in turn source to events that occurred in your childhood and which were beyond your control. I proceed on the basis that those forces may be susceptible to treatment.

[36] Taking all of those matters into account, I will reduce the term of imprisonment that I would otherwise have imposed. The crude and simplistic structure of the SVO regime dictates the only way I can do that is to lower the number of years for which I will order you should be imprisoned.

[37] The ultimate conclusion is that for the offence of attempted murder you are convicted and sentenced to imprisonment for a period of 13 years and six months. Pursuant to section 161B of the *Penalties and Sentences Act 1992* (Qld), I declare the conviction to be a conviction of a serious violent offence. That will have the consequences that I have already identified. I declare the period between 16 January 2022 and 15 February 2024, that is to say a period of 761 days, to be time served under the sentence.