



New South Wales
Supreme Court

CITATION : **Regina v Hawkins [2001] NSWSC 420**
FILE NUMBER(S) : SC 70074/00
HEARING DATE(S) : 10/05/01;11/05/01;14/05/01;15/05/01
JUDGMENT DATE : 24 May 2001
PARTIES : Regina v David John Hawkins
JUDGMENT OF : O'Keefe J

LOWER COURT JURISDICTION : Local Court
LOWER COURT FILE NUMBER(S) :
LOWER COURT JUDICIAL OFFICER : Magistrate - A Murray
COUNSEL : Mr Paul Lynch - Crown
Mr Ian Barker QC - Prisoner
SOLICITORS : Director of Public Prosecutions
Sydney - Crown

CATCHWORDS : Legal Aid New South Wales - Prisoner
Sentence - Manslaughter - Diminished responsibility - Effects of
prescribed drug - Extraordinary circumstances - Act out of
character - Immediate confession - Plea of guilty - Criteria for
sentencing -

LEGISLATION CITED : Crimes (sentencing Procedure) Act 1999 (Ss.22;23(1)(2);24
(a);44(2);50(1))

CASES CITED : R v Hill (1980-1981) 3 ACrim.R 397
R v Low (1991-1992) 57 A Crim.R 8
R v Dodd (1991-1992) 57 A Crim. R 349
R v Blacklidge (NSWCCA) 12 December 1995 (unreported)
Regina v Thomson; Regina v Houlton (2000) 49 NSWLR 383

DECISION : Sentence to imprisonment for three years commencing on 1
August 1999 and concluding on 31 July 2001; Non-parole period
set as two years from 1 August 1999 expiring on 31 July 2001;
Order the release of the prisoner on parole at the end of the non-
parole period.

**IN THE SUPREME COURT
OF NEW SOUTH WALES
CRIMINAL DIVISION**

O'KEEFE J

Thursday, 24 May 2001

No: 70074/00 - REGINA v DAVID JOHN HAWKINS

SENTENCE

1 HIS HONOUR:

INTRODUCTION

2 David John Hawkins (the prisoner) was indicted for murdering Margaret Wilhelmina Hawkins at Tumbarumba on 1 August 1999. He pleaded not guilty to her murder but guilty to her manslaughter on the grounds of diminished responsibility. The Crown accepted such plea in satisfaction of the indictment. As a consequence it falls to the court to sentence the prisoner.

BACKGROUND

3 The prisoner was born on the Channel Island of Guernsey on 10 February 1925. He was the youngest of ten children but despite there being such a large family their circumstances were reasonably comfortable. His father was a good and hardworking man. He was emotionally distant and could display temper at times but there is no suggestion that he was ever violent. The prisoner was close to his mother whom he described as "a nice easy-going woman". She was occupied full time in looking after the family. She did this well and whilst the children did not want for anything, they were not spoilt.

4 The prisoner appears to have had a childhood in which there was no significant abuse, neglect or trauma, except that in June 1940 the island was occupied by the military forces of the German Third Reich. This continued until the cessation of hostilities in Europe in May 1945. However, except for the island being bombed variously by the Americans, the British and the Germans, the prisoner was not exposed to violence nor was he at any time exposed to the sight of violent death. On one occasion he was interrogated by the Gestapo, but he did not see that as a traumatic experience since it was common for the inhabitants of Guernsey during the German occupation.

5 At the end of the war, when he was aged 20, the prisoner joined the Royal Engineers as a motor mechanic, having completed his apprenticeship the previous year. In the course of his Army service he travelled to the Middle East and spent time in Egypt and Palestine, being present when the British mandate over Palestine came to an end and Israel was declared to be a separate nation state. Notwithstanding the turbulence that preceded and surrounded the formation of the State of Israel, the prisoner was not involved in armed combat and although he saw military action and its effects

he says he was "never affected profoundly" by the experience.

6 Later in his military service the prisoner was transferred to Turkey. There he met a German national who was a children's nurse employed by the wife of his superior officer. He proposed. She accepted and they were married on 7 April, 1951 in Turkey, where the first of their children was born.

7 In 1953 the prisoner and his family returned to Guernsey where another daughter was born in 1957. He remained there with his family for some years, but finding life on the small Channel Island disappointing the family migrated to Australia in March 1961.

8 The prisoner resumed his trade as a motor mechanic in Australia. He was good at his work. He enjoyed it, was conscientious about it and although he had a few jobs during his working life, was never out of a job. His last employer was Prospect County Council. He was employed there for some 15 years progressing to a supervisor and finally to Depot Manager of the Windsor Depot of the Council. He was well regarded by his employers and continued to be so up to the time of his retirement in 1988.

9 The domestic situation of the prisoner was good. He described it in his evidence as "very good, very good relationship we had" and although there were domestic disagreements at times they were "minor things. There was never anything serious.". His older daughter described the relationship between her father and mother as loving and caring. In her statement she said:

"Mum and dad's relationship was that they were very content with each other they told each other everything, and were happy with each others company. Mum would often say 'dad and I only need each other we don't need anyone else.'"

In the evidence she gave she described the relationship as "pretty perfect".

10 She said that her father had never offered any violence whatsoever to her mother and except for the occasional smacking of the children when they were naughty, never hit or ill-treated them.

11 In summary, he was a good father, a steady worker and an excellent provider. At no time was he in trouble with the law. His was a blameless record.

12 His daughters grew to maturity. The older of them married and moved to Tumbarumba to where the prisoner, his wife and younger daughter moved in 1991. Although the prisoner and his wife had initially intended to move from the city to the South Coast, they went to Tumbarumba so that they could be near their grandchildren to whom they were both closely attached and to whom Mrs Hawkins was devoted.

13 In Tumbarumba the prisoner and his wife lived on a 14 acre hobby farm situated some three kilometres north of the town. The prisoner busied himself around the farm and with its machinery. His wife occupied herself with keeping the house and other domestic duties as well as spending a good deal of time with the grandchildren. It was a happy and tranquil home. The younger daughter readily found employment in the orchards in and around the area and in the fullness of time married a local.

14 The tranquillity of the Hawkins' home was shattered by the sudden and untimely death of the

younger daughter from breast cancer in December 1995 , within about three years of her marriage. In addition, the older daughter and her family moved from Tumbarumba to Wagga Wagga for business reasons. As a consequence the prisoner and his wife decided to sell up their home and farm and move to Bateman's Bay. The decision proved to be easier to make than to implement. The property took some four years to sell and when it finally sold the stress involved in effecting the sale and getting ready to move proved to be high, especially for the prisoner because of his personality and tendencies.

15 The prisoner was by nature quite obsessional and perfectionistic, however these characteristics were not at a level that impaired his ability to work. He had experienced depression many years before the date of his wife's death. This progressed to a stage that he found it necessary to see a psychiatrist. He did this in Blacktown in the early 1970's and was later treated on and off with antidepressants by his general practitioners. Although there were periods when he was without depression, the problem was recurrent and manifest itself in his feelings and by middle and terminal insomnia. Another feature of his depression was loss of interest and motivation. Following his retirement he experienced classic symptoms of depression namely , going to sleep without difficulty then waking during the night and being unable to return to sleep, feeling depressed and not wanting to get out of bed of a morning, but improving during the course of the day. These manifestations were accompanied by a loss of energy in association with agitation and restlessness and a concern that things were going to go badly for him.

16 Ultimately in 1996 he attended a doctor and was given an antidepressant, Zoloft. He took this on one occasion only. The effect on him was adverse in that he felt as if he was walking two feet above the ground. As a consequence he did not persist with it. Following the decision to sell the house and farm his depression deepened. After the sale had been effected, that is approximately a month before the date of death of his wife, he became even more deeply depressed and anxious. He felt that he would never complete all the tasks that needed to be completed before the property was vacated. His sleeping problems became worse still once the contracts for sale had been exchanged and this problem further intensified as the date for completion, namely 2 September 1999, drew closer.

17 By 31 July 1999 his depression and anxiety had progressed to a stage that he felt he had to have medical assistance. He attended the surgery of Dr Harbinson of Tumbarumba. The history taken by Dr Harbinson at that time is significant. The prisoner said, "I am shot to pieces, I can't cope". He dreaded facing the day. The doctor recorded that the actual words of the prisoner included: " I just can't face the day". He also said that he had a complete loss of confidence, but once he got going he tended to improve. Dr Harbinson was then of the opinion that the prisoner needed treatment and even wondered if he was potentially suicidal. The doctor said that this was "just a sense", but that "it was the kind of consultation which left you a bit worried with a sense of unease about (the prisoner)". He prescribed a course of Zoloft commencing with a dose of 50 milligrams per day. Notwithstanding the history he gave the prisoner presented as having "very controlled outward behaviour". This is consistent with the demeanour of the prisoner in court, in the course of his videoed record of interview and as observed by the psychiatrist who treated him in prison.

18 I have detailed the life history and other evidence concerning the background of the prisoner because it demonstrates the prisoner to be a person who came from a stable family, was a good husband, a good father, a good provider, a good worker and a good law abiding citizen. Furthermore, all the indications were that he would remain so.

FACTS RELATING TO THE DEATH OF MRS HAWKINS

19 Following the visit to Dr Harbinson on 31 July 1999 the prisoner had his prescription for Zoloft made up at a local pharmacy. He and his wife had lunch and he then set about further tasks connected with their forthcoming move. At about 6 p.m., having played cards with his wife for about an hour, they had a meal and watched television or a video until 11 p.m. or a little later. The prisoner says, and I accept his evidence, that there were no arguments, no tensions, that things were quite normal in the household.

20 The prisoner and his wife went to bed somewhere around midnight. They shared a bed, and in accordance with his common practice the prisoner read to his wife until she went to sleep. He then went to sleep too. However, he woke around 2 to 3 a.m. worrying about the impending move. He could not go back to sleep and actually began crying. He decided to take a Zoloft tablet and, although his wife sought to dissuade him, he did so. Far from assuaging his sleeplessness the Zoloft appears to have exacerbated it. In his record of interview the prisoner said:

"I was that bad that night. I had taken Panadol. I couldn't sleep. I was panicking. I just was, I couldn't, I couldn't, I couldn't function, so I took one (Zoloft tablet) ...

And I went back to bed and waited and waited. It had no effect. It had no effect and I, I don't know, I must have taken more."

21 Although he does not remember doing so, it is clear from police evidence that between about 2 to 3 a.m. and the time at which he and the deceased rose, he took another four Zoloft tablets. This means that he had ingested a dose of 250 milligrams of Zoloft in a period of some four to five hours.

22 The evidence indicates that Mrs Hawkins got up around 7 o'clock in the morning of 1 August, 1999 and decided to make a cup of tea for herself and the prisoner. Tumberumba is a cold place in the winter months and the wood fire which heated the Hawkins' home had gone out. Mrs Hawkins said that she would get wood to start it up, but the prisoner said that he would get up and get it, because he thought that carting in the wood for the fire would be too much for his wife. He then got up in order to get wood with which to light the fire.

23 The prisoner gave evidence that he recalled seeing steam rising from the jug and that as he was moving to get the wood his wife was coming towards him. They met in a doorway. There was no argument. The evidence of the prisoner is:

"I just went absolutely berserk. I can remember shouting and screaming ... I was berserk, I went absolutely berserk. I have never done it before"

24 He then just took his wife by the neck and strangled her. He said that it was all over very quickly. However, it would seem likely that there was a struggle, because of damage done to the bi-fold doors where the strangling occurred, blood found at the scene and minor injuries to both hands of the prisoner. Furthermore, the autopsy report from the Institute of Forensic Medicine revealed superficial injuries to the left forearm of the deceased and to the third and fourth fingernails which are suggestive of an attempt to free herself from the grip of her throat by the prisoner.

After she was dead he adjusted the position of her body as it lay on the floor, covered her with a

blanket and then set out to implement his decision to put an end to his own life, by gassing himself in the car.

25 He wrote a suicide note. But, consistent with his obsessional personality, he decided that he should first make arrangements for the family dog. He did this and having done so set about obtaining the materials with which to kill himself, namely a length of hose and cloth that could ensure that the hose could be plugged into the exhaust pipe of the family car. Because of the cold he found that the water in the hose at the house was frozen so he drove to town to get a hose at the hardware store. He did so and set out to implement his decision to end his life. However, before so doing he rang the police emergency number and asked for Tumbarumba police. When asked by the operator what the problem was, he said : "I have killed my wife". When the operator asked him what he had said, he repeated "I have killed my wife". When asked where this had happened, he replied, "I don't know, I will give you my address". He duly gave his name and address and informed the operator where his wife's body was. When asked by the operator what had happened he said:

"Look I don't know. I got tablets from the doctor yesterday and I think they were too strong. I went, I went absolutely wild. I don't know I was mad. I can't say any more ... I have got to go."

When asked why he said:

"I am heading out and I am going to get rid of myself."

The operator said that someone would come to help him, to which he replied:

"Nobody, nobody can help me now. Nobody can help me now."

He terminated the call quite abruptly having said:

"Look I've got to go. I'm shaking here. I can't wait. I can't stop."

26 During the conversation he became increasingly agitated, as the tape of it clearly records.

27 He left the town, parked in a place off the road and took the steps necessary to gas himself in the car, but aborted the process because he wanted to confess and because of his concern about the effect that the loss of a mother and father on the same day would have on his older daughter, who had already lost her sister in tragic circumstances. He drove to Tumut Police Station, but then decided to give himself up at his local police station at Tumbarumba rather than at Tumut. Whilst driving to Tumbarumba Police Station he was sighted by police in a vehicle on the road and was pulled up. He got out of the car and told the police that he was the man they were looking for. He was thereupon conveyed to Tumut Police Station where he made a statement which was recorded electronically and videoed. In his record of interview the prisoner made a full confession. He did not seek to excuse what he had done, any more than he was able to explain it. He said :

"She's done so much for me that woman. I feel that ashamed of what I have done. I can't even

believe its happened because she was the most kindest loving person that you would ever meet. And I don't know what I have done to the rest of my family. I can't meet them. I don't want to. I don't want to meet them."

28 Later he described his own impressions and re-actions saying that he knew he was putting his hands around his wife's throat but did not see her face. He said:

"I was looking at my wife but I wasn't seeing her face."

29 What he saw was his own face. It appeared red and bloated with his hair standing on end.

30 The prisoner gave evidence. He presented as a person deeply affected by what he had done. Whilst he was matter-of-fact in giving his evidence, he was somewhat flat of affect. He was very controlled, indeed over-controlled, having regard to the circumstances. He did not display emotion rather he presented as a man who was sad and bewildered, unable to explain why he had committed the crime to which he had pleaded guilty. His self-accusation was quiet, but complete. He appeared genuinely remorseful. He said that he loved his wife and still did, that their relationship was good and close and that even now his wife was constantly on his mind. I formed the view that the prisoner attempted to tell the truth and succeeded in doing so. I also formed the view that he was genuinely and deeply affected by the events of 1 August, 1999 for which he was responsible.

31 The act of the prisoner in strangling his wife was totally out of character. Although he was a perfectionist and at times became angry when mistakes were made, particularly his own, that anger had always been verbal and essentially directed at his own acts or failures, when they fell short of the excessively high standards he set for himself. The circumstances preceding, surrounding and subsequent to the death of the deceased are indicative of agitation, aggression, hallucination and panic, accompanied by a degree of confusion. Although agitation, depression and panic had been experienced by the prisoner previously, the other reactions referred to had not been experienced by him before.

32 The court is therefore left with a death which occurred in circumstances which are most extraordinary and was inflicted by a person for whom acts of violence were totally out of character. Furthermore, he is unable to explain why he killed his spouse of nearly 50 years. To him it is incomprehensible that he would have done such a thing. Some factor external to the prisoner needs to be looked for.

33 One does not need to look far to find that external factor, the drug Zoloft.

ZOLOFT

34 Zoloft is the trade or brand name of an antidepressant medication, the essential chemical in which is sertraline. Whilst the recommended initial dose is 50 milligrams, the medical evidence suggests that 25 milligrams is a safer initial dose, particularly for elderly people. The effective drug in Zoloft is capable of causing sleeplessness, agitation, confusion, hallucination and psychosis. Furthermore, because responses to antidepressants can be idiosyncratic the effect of a given dose on one particular individual may be more profound than on another or even on a statistically "average" person.

35 The Australian Department of Health and Aged Care (the Department) maintains an Adverse Drug Reaction System. In it the Department records instances of adverse reactions reported to it in relation to particular drugs. There is no obligation on medical practitioners, pharmacists or suppliers to advise the Department of adverse reactions. As a consequence the numbers recorded in the Adverse Drug Reaction System do not represent the totality of the cases of adverse reaction which occur in Australia. However, the numbers are useful and such as to raise a warning of particular adverse effects that may be experienced.

36 In the Department's Adverse Drug Reaction System, sertraline has been recorded as the *sole drug* implicated in:

- 20 cases of aggression
- 319 cases of agitation
- 63 cases of confusion
- 8 cases of delirium
- 5 cases of delusion
- 43 cases of hallucination
- 34 cases of manic reaction
- 18 cases of psychosis.

37 Although these numbers may be regarded as a source of concern, it should be remembered that Zoloft is widely and commonly prescribed in Australia and elsewhere in the world. However, the amount of Zoloft taken by the prisoner, namely 250 milligrams, is not a fatal dose. Indeed people who have taken up to 6 grams of Zoloft have recovered from such an overdose. Moreover, the usual therapy with Zoloft is to commence with a lower dose and gradually increase it by weekly or other increments up to 200 milligrams. A dose of this size is only administered after the patient has been on the lower doses for a period, during which the body becomes accustomed to the drug and a degree of tolerance is built up.

38 The figures in the Department's Adverse Drug Reaction System are consonant with the views expressed by Dr David Healy of the University of Wales College of Medicine. In his report Dr Healy confirms that Zoloft can cause agitation and a certain amount of disinhibition so that some individuals engage in aggressive or dangerous behaviours without due regard for the consequences and in a manner that is out of character for them. Behaviour of such a kind is sometimes described in terms "that suggest manic or psychotic reactions". Zoloft can also lead to suicide. In this regard it should be noted that when medically examined shortly after his arrest the prisoner was found to be "acutely suicidal".

39 The manifestations of aggression, agitation, confusion and hallucination experienced by the prisoner are thus readily able to be explained by reference to the Zoloft which he had ingested in the early hours of 1 August, 1999.

40 The psychiatric condition of the prisoner at the time of the killing has been variously described by the medical practitioners whose reports have been tendered and who have given evidence.

41 Dr Jonathan Carne, a Consultant Forensic Psychiatrist, describes the condition of the prisoner at the time he attacked his wife as a state which was formerly described as "toxic delirium". He was of opinion that the factors affecting the prisoner at the time he killed his wife were agitated depression, exacerbated by akathisia and delirium or psychosis which involved, amongst other things, his hallucinating. These disorders were a consequence of an underlying condition of depression and the effects on the prisoner of the dose of Zoloft which he had taken to relieve his

symptoms of sleeplessness, agitation and depression.

42 Dr William Lucas, a Forensic Psychiatrist who specialises in criminal cases, expressed the view that the prisoner was suffering from "a major depressive episode "which amounted to an abnormality of mind" at the time he killed his wife and that this "impaired his capacity to understand events ... and he was unable to control himself". His opinion was that in view of the dose of Zoloft taken by the prisoner:

"... there is a probability that his anxiety and agitation was exacerbated by a drug known to produce this side effect. Any exacerbation of the already severe symptoms of agitation and anxiety would probably reduce his capacity to control his actions."

43 Dr David Healy was of the opinion that because of the antecedent history of the prisoner there had to be "some unusual factor operative in his case." He described that factor in the following terms:

"The unusual factor in my opinion was the fact that he was taking Zoloft at the time and this produced a strange and unusual state of mind in him involving akathisia and possibly also emotional blunting and psychotic decompensation and this led directly to his behaviour on ... August 1st 1999. In my opinion had he not been taking Zoloft the events of that night would not have happened. The temporal association between his intake of Zoloft and these events and the congruence of this time frame with the time frame reported in the literature argue strongly for an SSRI (Selective Serotonin Re-uptake Inhibitor) induced problem."

44 Akathisia (or turmoil) is a state of agitation which, when drug induced, is marked, may be associated with panic and an awareness of strange and unusual impulses that the affected individual does not ordinarily have.

45 Dr Healy's views as to the effects of Zoloft have particular weight since his doctoral thesis was based on research on the serotonin transporter system and the role of serotonin in depression and suicide. In this regard it should be noted that Zoloft is a serotonin re-uptake inhibitor. His interest in serotonin re-uptake inhibitors has been on-going. Furthermore, he has carried out research and clinical work on existing and novel psycho-pharmacological drugs and is an author in the field of psycho-pharmacology. His opinion is also supported by an assessment of suicidal acts of patients on sertraline prepared in response to an inquiry from the Irish Medicines' Board in 1999, and by a study in healthy volunteers conducted in the College of Medicine in the University of Wales using a dose of only 50 mgs of Zoloft. Two subjects with no prior history of mental or psychiatric problems and no current problems became suicidal and aggressive on such a dose of Zoloft. This was said by Dr Healy to be:

"significant in that it demonstrates that such problems can occur in an entirely normal individual."

46 In addition, he analysed the results of the clinical and company trials conducted in relation to serotonin re-uptake inhibitors, which include Zoloft. He said that "the results show a consistent pattern of drug-induced conditions variously described as agitation - anxiety - nervousness - hyperkinesia - tremor". Those results are supportive of his conclusion that "suicidality/homicidality can

arise as a consequence of the drug ...". Regrettably very few of the studies have been published so the attention of the wider academic community has been effectively diverted from the problem.

47 Dr Rosalie Wilcox, who is a General and Forensic Psychiatrist, assessed the prisoner shortly after his confinement at Long Bay Correctional Centre where he was housed in the Psychiatric Hospital. She assessed him thereafter on a regular basis and has treated him, successfully it would appear, so as to come to terms with what he had done and in relation to his depression. She endeavoured to understand and provide some explanation for the actions of the prisoner in strangling his wife. This act she described as "totally unpredictable and totally out of character". Her assessment of him in her report of 15 November, 1999 was that he was suffering from:

"major depression with melancholic features, obsessive compulsive disorder (mild) in association with a personality characterised by high trait anxiety and obsessional traits".

48 Because of what Dr Wilcox described as "the bizarre nature of his offence" he was closely observed. However, there was no indication that he had been or was psychotic. Furthermore, at no time did he express or exhibit that he had experienced any delusions.

49 With treatment over time his depression eased, his panic attacks settled and his presentation reflected his grieving for his wife and former life, rather than disease of the mind.

50 Dr Wilcox's opinion in relation to the state of the prisoner at the time he killed his wife was that he was "in a highly aroused state", that he "may have had a brief period of dissociation" and that he was suffering from "an abnormality of the mind, specifically a depressive illness".

51 In her oral testimony Dr Wilcox said that the personality of the prisoner was "compliant and perfectionistic" and that "he is not a rule breaker". She was questioned about the "highly aroused state" referred to in her report :

"Q ... Accepting that he took 250 milligrams of this drug, do you accept that the ingestion of the drug probably materially contributed to the hallucination he described of seeing his own face?"

A. I would say that that could be a high probability, yes.

Q. When you say his level of arousal may have increased, is that said upon the premise that you know that that drug may increase agitation, and if one accepts that he took five tablets it is likely that it did?"

A. Yes, it could be likely."

52 The Crown caused the prisoner to be examined by Dr Olav Nielssen, Forensic Psychiatrist. He diagnosed the prisoner as being subject to a major depressive illness and expressed the opinion that "his impairment is at the more severe end of the scale and I believe he would easily meet the test for the defence (of diminished responsibility)." He recognised the effects of the amount of Zoloft ingested by the prisoner as being a factor which operated in combination with the effects of a severe depressive illness and his underlying personality to produce an abnormal state of mind with substantial effect on his judgment and his capacity for self control.

53 From the foregoing it can be seen that the medical evidence strongly supports a conclusion that, but for the effects of the 250 milligrams of Zoloft he had taken, it is wholly unlikely that the prisoner would have committed the crime to which he has pleaded guilty. Furthermore, it is common ground that his having done such an act is quite foreign to his former life history, his personality and psychological make up. It was also wholly inconsistent with his love for his marriage partner of nearly fifty years.

APPLICABLE LAW

54 In **R v Hill** (1980-1981) 3 ACrimR 397 Street CJ pointed out the difficulty that is posed for a court in relation to the imposition of a sentence for the crime of manslaughter. He said:

"It has been said that manslaughter, perhaps, beyond any other crime is protean. The circumstances leading to the felonious taking of human life being regarded as manslaughter rather than murder can vary infinitely, and it is not always easy to determine in any given case what should be done in the matter of sentence." (supra at 402)

55 When determining the appropriate sentence in a case of manslaughter there are competing considerations. On the one hand is the fact that there has been a felonious taking of human life. The felonious taking of human life is recognised both by the legislature and the community as a serious crime. That recognition must be addressed in the sentence imposed. On the other hand is the factual context and circumstances of the crime, which may significantly reduce the blameworthiness of the perpetrator. Furthermore, although the circumstances will usually be tragic for the victim and the family of the victim, the same may be true for the perpetrator. The difficulty which courts must come to grips with is a balancing of the demands of the criminal justice system and community expectations in relation to protecting the lives of members of the community and punishing a person who takes a life feloniously, against the subjective circumstances of the person responsible for the taking of the life in the particular case.

56 In **R v Hill** (supra) a conviction for murder was set aside as unsound and unsafe, a conviction for manslaughter substituted by the Court of Criminal Appeal, and a sentence of 4½ years penal servitude with a non-parole period of 1 year imposed. That sentence was imposed in a case in which the prisoner had shot her de facto in the head three times.

57 In **R v Low** (1991-92) 57 A Crim R 8 the prisoner had been charged with murder but was convicted of manslaughter. The trial judge had not imposed a goal sentence but had given the prisoner the benefit of a three year bond based on his assessment that the accused had acted whilst in a state of diminished responsibility. The circumstances of the case were that the prisoner claimed to have been struck on the head with a hammer by his bride-to-be. He claimed he had then taken the hammer from his alleged assailant and had struck her on the head with it on a number of occasions, fracturing her skull and causing terminal brain damage. In lieu of the bond the Court of Criminal Appeal imposed a minimum term of two years imprisonment with an additional term of two years.

58 The Court pointed out that diminished responsibility may occur in a wide variety of circumstances but whatever the circumstances a finding of diminished responsibility or a plea on that basis does "not deny the legal responsibility of the person concerned for the criminal acts" the

legislation requires that such criminal acts must still "be seen as an unlawful homicide" (supra at 18).

59 In **R v Dodd** (1991-1992) 57 A Crim R 349 a person who had killed a young woman some ten years in the past confessed his crime and pleaded guilty to a charge of manslaughter. The trial judge sentenced him to three years periodic detention against which the Crown appealed on the ground that it was excessively lenient. The Court of Criminal Appeal set the sentence aside and substituted a fixed term of imprisonment for three years. In the course of its decision the Court of Criminal Appeal said:

"There ought to be a reasonable proportionality between a sentence and the circumstances of the crime, and we consider that it is always important in seeking to determine the sentence appropriate to a particular crime to have regard to the gravity of the offence viewed objectively, for without this assessment the other factors requiring consideration in order to arrive at the proper sentence to be imposed cannot properly be given their place. Each crime ... has its own objective gravity meriting at the most a sentence proportionate to that gravity, the maximum sentence fixed by the legislature defining the limits of sentence for cases in the most grave category. The relative importance of the objective facts and subjective features of a case will vary ... Even so, there is sometimes a risk that attention to persuasive subjective considerations may cause inadequate weight to be given to the objective circumstances of the case." (supra at 354)

60 In **R v Blackledge** (NSWCCA) 12 December 1995 (unreported) the Crown appealed against a sentence consisting of a minimum term of two years and an additional term of three years in a case of manslaughter on the ground of diminished responsibility. The diminished responsibility arose out of the fact that the prisoner acted under the delusion, associated with cerebral arterio sclerosis, that his wife was having an affair with the victim whom he deliberately shot, having first gone home and selected for that purpose a .303 rifle from amongst his collection of weapons. The evidence indicated that the prisoner would have killed the victim and done so deliberately if his wife had in fact been having an affair with the victim and that he had expressed to the police the hope that he had killed the victim. The Court stressed that in a case of diminished responsibility:

"The abnormality of mind substantially impairs the offender's mental responsibility for his or her act but it does not negate such responsibility. The reduction in the capacity for self control which results from the abnormality of mind diminishes the responsibility, but does not excuse the act." (at 3)

61 In upholding the appeal by the Crown the Court substituted a minimum term of four years imprisonment with an additional term of four years.

62 The *Crimes (Sentencing Procedure) Act 1999* makes provision for the imposition of a lesser penalty than would otherwise have been imposed in the event that a prisoner has pleaded guilty (s.22) and in determining the extent to which the penalty should be less the court is required to have regard to the time at which such plea has been entered. In **Regina v Thomson; Regina v Houlton** (2000) 49 NSWLR 383 a Court of Criminal Appeal specially constituted to promulgate a guideline judgment with respect to the discount to be given as a result of a plea of guilty to State offences generally, determined that the earlier a plea of guilty is entered the more beneficial is it for the legal justice system and, as a consequences for the prisoner. In this respect it was said that:

"Where the prisoner's own disclosure or confession is the basis of (a) strong Crown case, this should be taken into account with respect to the utilitarian benefit. Indeed such conduct should be regarded as the earliest possible timing for such a plea." (at 417 para 139)

The Court also said that :

"The utilitarian value of a plea to the criminal justice system should generally be ass