



### Key Concepts

Aggravating factor, guilty plea discount, manifestly excessive sentence, manslaughter, mitigating factor, parole, pre-sentence custody, remorse, sentencing range, 'serious violent offence', 'starting point'.

## CASE IN FOCUS

### *R v Simpson* [2019] QCA 205

#### Case law summary

**Mr Simpson applied to the Queensland Court of Appeal (the Court) for leave to appeal against his sentence. He had pleaded guilty in March 2019 to manslaughter. He admitted that he had abandoned his two-year-old son, Baden, in 2007. Baden's body has never been found. [2]**

#### The facts

Mr Simpson, who had a legal duty to protect his 2-year-old son, drove him to a deserted park near the Logan River at dusk, about 50 metres from a boat ramp. He spoke to Baden for 15 minutes or more and said he was sorry before driving away, leaving the toddler behind. It was accepted that Baden died sometime after this. [9]–[11] Mr Simpson had previously shown neglect, detachment and animosity in parenting Baden. [43], [12]–[14]

For the next 10 years, Mr Simpson lied to authorities about where Baden was, and referred to him in a way that showed 'hostility and malice' towards him. In 2017, he was forced to give evidence about Baden's whereabouts at a Crime and Corruption Commission hearing. [15]–[17]

He was then arrested and agreed to an interview with police. He admitted he had abandoned Baden. He said he hoped someone would find him and look after him, that 'everything got too much' and he was 'tired of caring for him'.

He did not instead surrender Baden to the Department of Child Safety because he was afraid his other children would also be removed from his care. [18]

#### The sentence

Mr Simpson was sentenced by the Supreme Court of Queensland to 12 years' imprisonment. The law requires that he cannot apply for parole until he has served 80 per cent (9.6 years) of his sentence — legislation states that the manslaughter was automatically a 'serious violent offence' because the sentence was for '10 or more years'. [4]–[5]

Before his sentence date, Mr Simpson served 721 days (nearly two years) in pre-sentence custody. This was declared as time served as part of the 12-year sentence. [4]–[5]

#### About the offender

**Mr Simpson was 39 when he committed the manslaughter offence and 51 when he was sentenced.**

**He had an extensive criminal history, with offending dating back to 1985. The manslaughter breached two suspended sentences imposed for unrelated offences, which were activated to run alongside the 12-year sentence. [19], [5]**

**He had a disadvantaged background and history of substance abuse, which were accepted by the sentencing judge as helping to explain his poor parenting skills. These factors were treated as mitigating. [23]**



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#### Why the sentence was appealed

His reason for appealing (or his 'ground of appeal') was that the sentence was manifestly excessive because he had not used violence or caused prolonged neglect or suffering to Baden. He argued that other appeal cases about sentences for similar offending showed his 12-year sentence went beyond an established range of eight to 10 years' imprisonment. [28]–[29] The Court rejected this. [58]

Mr Simpson pointed out that the sentencing judge had not identified a 'starting point' for a head sentence, before discounts were made for his confession and plea of guilty. The judge had given a discount for the utility of the guilty plea in avoiding a lengthy trial.

However, as there had been no remorse demonstrated, there was no discount for remorse. In fact, Mr Simpson had shown a selfish desire to escape justice. [24]–[25], [32] Mr Simpson argued that the judge must have started at a head sentence of 14 or 15 years, which would be higher than similar cases, to work down to 12 years. [33]

He asked the Court of Appeal to substitute a sentence of nine years' imprisonment, with or without a serious violent offence declaration (if the sentence is under 10 years, the court can choose whether this applies or not – it is not automatic). [28]–[34]

#### What the prosecution said at the appeal

Responding to the application for leave to appeal, the Director of Public Prosecutions (DPP) noted that Mr Simpson had not identified any specific error made by the sentencing judge.

The DPP pointed to case law that explains when an appeal court can intervene in an appeal against a sentence said to be manifestly excessive or inadequate. The appeal court must conclude that the sentencing court misapplied a principle, by looking at all of the relevant sentencing factors. This can include how much the sentence differs from sentences in comparable cases. [35]–[36]

#### What the court decided

The Court refused leave to appeal, which means the sentence originally imposed was unchanged.

The Court agreed that there was no misapplication of principle. [61] The offending was an extremely serious case of manslaughter [59], even though there had been no physical violence. [41]–[42]

#### Why this case is of interest

The Court examined five other cases of child homicide that the lawyers for the parties had presented. It concluded there was no established sentencing range of eight to 10 years' imprisonment for manslaughter of an infant. [58]

It also noted a High Court case that stated a well-established principle, that sentencing is not an exercise in addition and subtraction. [59]

This means that the sentencing judge does not have to identify a particular number of years as a starting point for the sentence, and then take off periods of time for the plea of guilty and other mitigating circumstances, to work down to the 12 years that was imposed. [60]

Mr Simpson could still apply for leave to appeal in the High Court of Australia.

**NOTE: This summary is an incomplete summary of the Court's reasons and is not legal advice. It includes explanations of legal concepts used that are not necessarily set out in the judgment. It is not approved by, or affiliated with, Queensland Courts and is not to be regarded as a substitute for the Court of Appeal's judgment.**

*Numbers in square brackets refer to paragraph numbers in the judgment.*

#### You might also be interested in

The Council reported on its review of *Sentencing for offences arising from the death of a child* in 2018.

It recommended that changes be made to legislation to make clear that in sentencing for an offence resulting in the death of a child under 12 years, a court must treat the defencelessness of the child and their vulnerability as an aggravating factor (meaning the offence is to be treated as more serious than if these factors aren't present).

This new aggravating factor is reflected in section 9(9B) of the *Penalties and Sentences Act 1992* (Qld) which applies to people sentenced on or after 7 May 2019 (Mr Simpson was sentenced prior to this date).



**For information of a general nature about appeals and sentencing see our *Queensland Sentencing Guide*.**