

Case No. CR-17-02197

DIRECTOR OF PUBLIC PROSECUTIONS

v

PASQUALE LANCIANA

JUDGE: O'Connell
WHERE HELD: Melbourne
DATE OF HEARING: 26–30 April, 3–31 May 2021, 9 August 2021
DATE OF SENTENCE: 3 September 2021
CASE MAY BE CITED AS: DPP v LANCIANA
MEDIUM NEUTRAL CITATION: [2021] VCC 1252

REASONS FOR SENTENCE

Subject: CRIMINAL LAW
Catchwords: Sentence after trial; Armed robbery and false imprisonment; Armoured van stopped at fake 'road works' site to facilitate robbery of \$2.32 million in cash; Guards restrained in handcuffs at gunpoint; Offender convicted 27 years after offence; No money recovered; Highly organised and sophisticated offending; Significant victim impact; Objective gravity of offending in the most serious category; Additional charges of money laundering of proceeds of armed robbery through property purchase and cash exchanges at banks; General deterrence paramount sentencing purpose; Totality, partial cumulation of sentences.

Legislation Cited: *Sentencing Act 1991* (Vic)
Cases Cited: *DPP v Anile* [2020] VCC 82; *R v Verdins* (2007) 16 VR 269; *Stalio v The Queen* (2012) 46 VR 426; *Carter v The Queen* (2018) 272 A Crim R 170; *DPP v Dagleish* (2017) 262 CLR 428; *DPP v Walker & Dargan* [2019] VSCA 137; *R v Zakaria* (1984) 12 A Crim R 386; *R v Barci & Asling* (1994) 76 A Crim R 103; *R v Bouchard* (1996) 84 A Crim R 499; *The Queen v Hynson* (Victorian Court of Appeal, 4 December 1995, Unrep.); *The Queen v Parker* (County Court of Victoria, Byrne J, 21 March 1995, Unrep.); *The Queen v Crupi* (County Court of Victoria, Byrne J, 29 November 1994, Unrep.); *R v Crupi* (1995) 86 A Crim R 229; *The Queen v Rich* (County Court of Victoria, Byrne J, 31 October 1995, Unrep.); *R v King & Los* (1993) 66 A Crim R 74; *Johnson v The Queen* [2011] VSCA 348; *Murrell v The Queen*; *DPP v Murrell* [2014] VSCA 337; *Konamala v The Queen* [2016] VSCA 48; *Binse v The Queen* [2016] VSCA 145; *R v Rich* [2009] VSC 515; *Lord v The Queen* [2018] VSCA 52

Sentence: Total effective sentence of 14 years imprisonment with a non-parole period of 10 years

APPEARANCES:

Counsel

Solicitors

For the DPP

Mr J. Shaw with
Ms J. Poole

Office of Public Prosecutions

For the Accused

Ms N. Karapanagiotidis
with Ms K. Blair

Stary Norton Halphen

HIS HONOUR:

Introduction

- 1 Pasquale Lanciana, on 31 May 2021, a jury, by a majority of 11 of 12, found you guilty of armed robbery, false imprisonment and seven charges of money laundering.
- 2 It is my task now to sentence you for that offending.

Charge 1 – Armed robbery

Charge 2 – False imprisonment

- 3 At about 10.15 on the morning of 22 June 1994, an Armaguard van, which had been loaded with two sealed crates containing \$2.32 million in cash, left the Reserve Bank in Collins St Melbourne destined for the Armaguard depot in Carrum Downs. Michael West was driving the van and next to him sat the crew leader, Robert Brewer. The 'escort', John Johnston, sat in the rear of the van.
- 4 At about the same time the armoured van departed the Reserve Bank, a group of five men dressed as road workers were setting about placing witches hats and road signs at what was to become a fake road works site on Harcourt Parade, Richmond, just at the entrance to the South Eastern Freeway. The 'road workers' were wearing white hard hats, orange/yellow vests, goggles and khaki overalls.
- 5 As the Armaguard van turned into Harcourt Parade and approached the entrance to the freeway, Robert Brewer described what happened next:

"I was seated in the front passenger seat and the three of us were chatting to each other and I had the run book on my lap. Ahead of us the traffic had slowed as it often does as we are about to merge with the freeway. I think that we actually stopped for a moment and then again moved off with the traffic at a slow speed. It was about now that I recall seeing a yellow "slow" sign that I think was being held by a "road worker". This sign was like a "lolly pop" sign that often has another direction such as "stop" on the reverse side. This road worker was standing to [the] left of us in front and I recall seeing another worker opposite him further on who was bending down looking at the road holding onto a piece of machinery. As we drew closer I don't recall seeing the man on the left again but my attention was on the man using the machinery. It appeared to me to be some sort of angle grinder and I noticed a cloud of dust coming up off the road [as] he used it. I expected to see a hose and a

lot of water around him as there normally is where concrete or tar is being cut but there was none. At this point he was about 10 feet away from the front of the truck to our right and as I watched him our truck came to a stop. I don't know why as I wasn't watching in front of us at this time.

Within a second of us stopping I heard a noise at the rear of the van and I looked around and there was a man already in the van standing close to where John sits behind Mike.

This man was holding a silver coloured revolver in, I think his left hand. I noticed that he had a bushy moustache, possibly ginger in colour. He yelled, "All of you into the back and face the floor facing the front. Do as we tell you and you won't be hurt, we don't want to hurt you." I think that another man had also got into the truck by this time but my vision of the back of the truck was blocked...."¹

- 6 The use of the stop/slow sign to stop the van appeared routine, just as it was intended. The noise of the concrete saw nearby was clearly designed to distract the guards' attention; it also achieved its purpose. Behind the van, another offender manoeuvred his Bedford truck so as to block the view of cars stopped behind the Armaguard van.
- 7 Under cover of that Bedford truck, two offenders, one brandishing a firearm, then gained entry to the back door of the van using a custom-made brass key. Once the offenders were inside, the guards were restrained with handcuffs whilst plastic bags with holes that enabled breathing were placed over their heads. One of the offenders then drove the van to nearby Walnut Street, where the \$2.32 million in cash was removed and placed in a white van. The 'road workers' then disappeared, leaving the three guards restrained in the back of the van.
- 8 To this day, much as to how this armed robbery was carried out remains unknown. The money has never been recovered. Although the brass key that enabled instant access to the rear of the van was accidentally dropped and left inside the van, how that key was made, or obtained, has never been satisfactorily explained.
- 9 A good deal of the evidence at trial canvassed various suspects and 'persons of interest' who may have had a hand in organising or carrying out the robbery, but

¹ Statement of Robert Brewer (now deceased) 22 June 1994. By agreement between the parties, this statement, and those of Michael West and John Johnston, were read to the jury and became part of the evidence at trial.

ultimately that evidence provided little in the way of definitive answers, save that the jury were satisfied beyond reasonable doubt that you were involved.

10 Crucial to that finding was the evidence of Witness O. She gave evidence that when her son was an infant in August 1994, she went with you to some city bank branches, where you asked her to exchange some cash for different denominations. That episode was the subject of money laundering Charges 4, 5 and 6, to which I will return.

11 Witness O said that some months afterwards, you had a conversation with her in Nelson Place, Williamstown. The context of that conversation related to a bank photograph of Witness O conducting the transaction the subject of Charge 6, that had recently been published in the media. During that conversation you told her that the money she had exchanged on your behalf in the city had been stolen in “the Richmond robbery” and that you had been involved in that robbery with others.

12 The jury also heard that nearly 20 years later, on 30 July 2014, Witness O, who by that stage had commenced co-operating with police, had a conversation with you which she secretly recorded. In that recording you were heard to say “...I didn’t do the robbery... I just organised it, I didn’t do it”.²

13 Consistent with the admissions you made to Witness O, the prosecution case was put on the basis that you were involved in the planning and organisation of the robbery and/or participated in the robbery. According to the jury’s verdict, you must have at least planned and organised this armed robbery. That is the basis upon which you will be sentenced.

Charge 3 – Money laundering

14 About six weeks after the armed robbery, on 9 August 1994, a solicitor acting on your behalf, John Anile, purchased a vacant block of land located off Kororoit Creek Road, Williamstown (‘the KCR transaction’). The contract of sale recorded

² Transcript of recorded conversation between Witness O and Pasquale Lanciana, 30 July 2014.

the purchase price as \$555,000 with a deposit of \$5,000 paid with the balance of \$550,000 to be paid one year later.

- 15 The vendors, Loukis and Michael Georgiou, had purchased that property five years before at the price of \$740,000. They gave evidence that the actual sale price, negotiated on your behalf by Mr Anile, was \$955,000, and that \$400,000 of that price was to be paid in cash instalments over the following year.
- 16 It was alleged by the prosecution at trial that Mr Anile offered the vendors the \$400,000 cash component in the negotiated sale price, and did not include that amount in the sale price documented in the contract, in order to assist you to launder cash that was derived from your involvement in the armed robbery.
- 17 Settlement of the purchase occurred 11 months later, on about 4 July 1995.
- 18 The prosecution also alleged that you arranged for the payment of the \$400,000 cash, at least \$250,000 of which you delivered personally to the vendors, and that that money, or some of it, came from your share of the proceeds of the armed robbery.
- 19 A document of 7 April 2015 which you had authored to assist John Anile was tendered in evidence by the prosecutor. It stated in part:
 - “4. John's view was that the land was worth at or about the Value Generals assessment for land tax which I recall was about \$590,000.00 and he was going to see what could be negotiated. In the end the property was purchased for \$555,000.00.
 5. John was more concerned with the terms over and above the purchase price and I was able to raise \$200,000 from family friends and my own resources.
 6. I believed that the Vendors were very keen to sell as the property had been on the market for a long time and the soil test showed that it was going to be almost impossible to build on it as it was an old "tip".
 7. The deal that was done contained a 12 month settlement and we could do what we wanted with the land once the deposit of \$5000 was paid, and we would be able to use the subdivided land increase in price to pay the balance prior to settlement of the Purchase Price to the Vendor or the buyers of our subdivided lots would pay out the Vendors 12 months later which is fact occurred.
 8. I recall giving the \$200,000.00 to John a week or so after he had negotiated the Purchase in a bag and he went to the Vendors house and completed the deal by

signing the Contract and handing over the money. The money was made up of all sorts of denominations. I did not go to the Vendors house.

9. I recall that he returned with an acknowledgement signed by one or more of the Vendors however after 20 or more years I cannot locate it.”³

20 By its verdict the jury must have rejected that version of events.

21 Although there were some unsatisfactory aspects of the evidence given by Loukis and Michael Georgiou, I am satisfied that the jury’s verdict reflects the following:

- that the purchase price of the KCR property was \$955,000;
- that \$400,000 was paid in cash as part of that purchase price;
- that you personally delivered at least \$50,000 of that cash; and
- that the \$400,000 cash, or some of it, came from your share of the proceeds of the armed robbery.

22 You will be sentenced in respect of Charge 3 on that basis.

23 On 11 February 2020, Mr Anile pleaded guilty to the same charge for his involvement in the KCR transaction. He was sentenced to 3 years and 8 months imprisonment and a non-parole period of 21 months was fixed.⁴ I must take that sentence into account in formulating the sentence to be imposed on you in respect of Charge 3.

Charges 4–9 – Money laundering

24 On 19 August 1994, Witness O attended at your behest at the National Australia Bank branch at 271 Collins Street, Melbourne. You instructed her to exchange \$4,000 worth of \$20 notes for \$50 and \$100 notes. The transaction was caught on CCTV. You can also be seen through glass doors on that footage, waiting outside at the entrance to the bank (Charge 6).

³ Statement of Pasquale Lanciana, 7 April 2015 (Exhibit J at Trial).

⁴ *DPP v Anile* [2020] VCC 82 (“Anile”).

- 25 The serial numbers of some of the notes exchanged by Witness O coincided with sub-packs of new notes issued to the Reserve Bank at Melbourne about two weeks before the armed robbery. The prosecution case was that those notes were likely to have been on the Armaguard van at the time of the armed robbery.
- 26 Witness O said in her evidence that she believed she also attended at “two or three” other bank branches that day. The evidence revealed that very similar transactions, involving similar serial numbered \$20 notes exchanged for higher denominations, were negotiated at the St George Bank branch in Swanston Street (Charge 4) and the Commonwealth Bank branch in Elizabeth Street (Charge 5) that same day.
- 27 On 22 August 1994, similar exchanges were negotiated by a male at the Westpac Bank branch in William Street (Charge 7), an ANZ bank branch in Bourke Street (Charge 8) and the National Australia Bank branch in Bourke Street (Charge 9). In all, \$18,000 was exchanged.
- 28 The prosecution case was that you conducted all six of these transactions, either on your own account or through Witness O, and that the \$18,000, or some of it, came from the money stolen in the armed robbery. By exchanging those notes you engaged in money laundering.
- 29 The jury’s verdicts of guilty in respect of each of Charges 4–9 reflect their acceptance of the prosecution case. You will be sentenced on that basis.

Procedural history

- 30 For the next 20 years you appear to have avoided suspicion as to your involvement. However, in 2014 you became aware of police interest in you, and in discussions with Witness O you speculated about the progress of the police investigation. That was the context in which you made the admission to having “just organised” the armed robbery.

- 31 You were not charged until 18 November 2016. You were remanded in custody at that time.
- 32 Between 16–26 October 2017, a contested committal hearing was held at the Melbourne Magistrates Court.
- 33 On 27 May 2019, your first trial in this Court commenced after lengthy pre-trial argument. The jury retired to consider its verdict on 26 June 2019 but after five days of deliberation the jury was discharged because it was unable to reach a verdict.
- 34 You were granted conditional bail on 3 July 2019.
- 35 The second trial was listed to commence on 20 April 2020 but was adjourned due to the pandemic.
- 36 On 27 April 2021, your second trial commenced. The jury retired to commence its deliberations on 21 May 2021 and returned its verdicts on 31 May 2021. You were remanded back into custody on that day.

Victim impact

- 37 The planning and sophistication of this armed robbery might lend itself to comparisons to Hollywood movies, but, as the victim impact statements demonstrate, the reality is quite different. Michael West, Robert Brewer, John Johnston, and each of their families suffered immeasurably for their involvement in, or connection with, this armed robbery.
- 38 It is to be recalled that the three men in the van that day were threatened at gunpoint, placed in handcuffs and made to lie down in the back of the van with plastic bags over their heads while the money was stolen. In his statement to police that afternoon, John Johnston described what happened in this way:

“Suddenly one of the back rear doors of the Armaguard truck flew open. I turned in the direction of the rear of the truck and I saw a bloke inside the truck who quickly came upon me and he thrust a .38 calibre revolver into my face. He said to me “don’t fucken move, this is a robbery” or words similar. He further said, “just do as you’re

told and no one will be hurt". He then grabbed me by my left shoulder and forced me to lay face down on the floor of the truck. He then grabbed my arms forcing them behind my back and he placed handcuffs on my wrists. This bloke told the other Armaguard blokes, Bob and 'Gasper', to come over the back and they had to step over me and he made them lay down on the floor. He also handcuffed them however I did not see this as I was told not to look in their direction but to look away. I could hear them being handcuffed.

This male then said he had plastic bags with holes in them and one was placed over my head. It was a green coloured garbage type bag.... The truck was driven for a few minutes which felt like about five minutes and was then stopped at a location I was not aware of. I was then grabbed hold of and told to get on my feet but I could not do this and I was dragged up. As this happened I heard and felt my .357 Ruger revolver fall out of my holster onto the trucks floor.

I was then taken over to one of the trucks rear corners and sat down and handcuffed to Bob and 'Gasper' all with our backs to one another. I still had the plastic bag on my head and could not see anything. I then heard the rear door of the truck open and heard the crates containing the money off loaded from the rear of the truck. The rear door of the truck was then closed and I heard a vehicle driving away from the rear of the truck.

... When he thrust the .38 calibre revolver into my face I feared for my life and I did as I was told. No person had permission to treat me in this manner."⁵

39 The driver, Michael West, gave a similar description:

"I was extremely scared and feared for my life throughout this ordeal. I followed the orders for fear of my mates as well... After the incident was over I felt angry, disappointed in myself and helpless".⁶

40 Whilst Robert Brewer did not specifically comment on how he felt during the robbery, it is reasonable to infer that he would have experienced similar feelings. I will proceed on the basis that this was a humiliating and distressing experience for each of them.

41 Those three men have since passed away, but they were not the only victims.

42 The *Sentencing Act 1991* ('the Act') defines a victim as including a person who has "suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence".

43 Such persons include those close to the primary victims, such as family members. Sections 8L and 8K of the Act enable victims to make statements describing the

⁵ Statement of John Johnston, 22 June 1994.

⁶ Statement of Michael West, 22 June 1994.

impact suffered as a direct result of the offending “for the purpose of assisting the court in determining sentence”.

44 In this case seven victim impacts statements were tendered from members of the families of the three guards. They were:

- Craig West (son of Michael West);
- Jayne Humbert (sister of Michael West);
- Susan Brewer (daughter of Robert Brewer);
- Elizabeth Brewer (daughter of Robert Brewer);
- Deb Carey (daughter of John Johnston);
- Matthew Johnston (son of John Johnston); and
- Olga Johnston (wife of John Johnston).

45 Of those seven victims, Craig West requested that his statement be read aloud by the prosecutor during the plea hearing. Mr West, who was eight years of age at the time of the offence, described how he witnessed the personal deterioration of his father in the years that followed. His father became hypervigilant, paranoid and displayed symptoms that suggested he had been severely traumatised, for example, waking in the night screaming and hiding behind furniture, crying, “don’t shoot, don’t shoot...”. That sort of behaviour and the marked changes to his personality left a lasting impression on his young children. Mr West’s father’s condition was made worse by the physical and verbal abuse he endured at his workplace because of the lingering suspicion that he or the other guards were somehow involved in the robbery.

46 The families of Robert Brewer and John Johnston tell strikingly similar stories. Their father’s, or husband’s, trauma persisted in subsequent years, testing and

straining what had been close, loving relationships. As one victim put it simply, “It changed him and ruined our family”.

47 I am conscious that not all of the matters canvassed in the victim impact statements could be said to have been incurred as a direct result of the offence. It is, I think, important to take a practical approach to the content of such statements, and I have done so.

48 Ultimately, it is sufficient to say that this offence had a marked effect on these men and on those close to them. That impact is an important consideration to be weighed in the formulation of sentence.

Personal circumstances

49 You were born on 6 June 1957 and you are now 64 years of age. At the time of the commission of this offence you were 37.

50 Your parents migrated to Australia in the late 1940s from Calabria, Italy. Your father was the first to come to Australia. He worked in a number of jobs in order to save the funds to enable your mother and two older siblings to migrate. For most of his working life your father worked at an abattoir where he eventually became foreman in the boneyard. He passed away in 1988 after a long illness.

51 Your mother worked in the home, caring for you and your seven siblings. She is now 97 years of age and lives semi-independently. A report from a Dr Borozdina of 2 August 2021 confirms that your mother suffers from a number of chronic health conditions, that her hearing and sight is impaired and that she does not speak English.⁷ Since your release in July of 2019 up until the verdict in this case, you have lived with her and assisted in her care.

52 In a helpful personal reference, your eldest brother described the pivotal role you played as the third-oldest child in supporting and caring for the other members of your family, particularly your mother. Your family was never well-off but remained

⁷ Letter of Dr Angelika Borozdina, 2 August 2021 (Exhibit 2 on the Plea).

very close. One of your sisters passed away after a battle with cancer and another sister was placed in care at a young age because of her severe disabilities. You are said to be very close to your older brother and your four younger brothers and are very much engaged with their children and other extended family.

53 You attended secondary school at Footscray Technical School and Maribyrnong High School but did not fare well. You describe yourself as generally misbehaving and failing to apply yourself to your studies such that you could not complete year 12.

54 I was told that after leaving school you “fell in with the wrong crowd” for a period of time and got into trouble in Adelaide. Your criminal history shows that in 1976, when you were 19 years of age, you were convicted of robbery with violence and sentenced to 15 months imprisonment which was suspended for 2 years on the condition that you enter into a bond in the sum \$100. On the plea, I was not told what the circumstances relating to that incident involved, but your counsel described it as a wake-up call, after which you returned to school and completed year 12.

55 Soon afterwards, you enrolled in a nursing course but did not qualify. You then opened a pizza business in Prahran known as Mr Natural Pizza which for a period of time was reasonably successful. You married your first wife in about 1982 and there is one child of that relationship, a son who now lives in New York. In 1984, your wife was murdered during a burglary. You told your assessing psychologist that you returned home to find your wife deceased and that you were traumatised by the experience – all the more so because you were initially suspected of having killed your wife, which disrupted the grieving process.

56 You returned to live with your parents who assisted you in the care of your then young son.

- 57 In 1991, you married your second wife and there are three children of that relationship, a son and two daughters, all now in their 20s. Counsel emphasised the strength of the relationship you have with each of your adult children, particularly your eldest daughter who has suffered from a number of mental health problems.
- 58 When you were last imprisoned she reacted quite badly, and I accept that your fears as to how she will fare whilst you are in custody will weigh on you heavily.
- 59 During the 1990s, you did some work in security and property development. You were said to have lost all of your assets in prolonged and stressful civil litigation with a former business partner.
- 60 You have limited previous convictions. Aside from the matter in South Australia, you were involved in an assault matter and the making of a false report to police, which were dealt with when you were 19 and 24 respectively. They attracted small fines and I do not see those matters as influential in this sentencing exercise.
- 61 There are some subsequent offences which may have some relevance to your prospects for rehabilitation. For reasons that are not apparent, you were convicted of six separate charges of shop theft between 2002 and 2012. Of more substance, about 14 months after you committed this offending you were convicted of trafficking in cannabis and theft of electricity arising from hydroponic cultivation of cannabis, for which you were sentenced to a total effective term of imprisonment of 34 months with a non-parole period of 14 months. Despite those matters, it appears that you have not offended at all since 2012.
- 62 You have had a lifelong interest in boxing and training. You started learning to box at a young age along with your brothers and eventually turned professional in kickboxing, in which you won a number of championship titles. In more recent years, you have trained and taught many people at the FightFit Boxing Centre in South Melbourne.

63 Quite a number of the personal references tendered on your behalf speak to the way in which you have been able to positively impact on the young people you have taken under your wing to train and mentor. In one reference, a former correctional officer described the role you took on in the Young Offenders Unit at Port Phillip Prison during your last time on remand. You trained and mentored many of the youths housed in that unit, gaining the respect of both staff and inmates.

64 That material is to your credit. I accept that you have made a real difference to the lives of quite a number of young people in helping them develop the direction and self-discipline they had otherwise been lacking. Although you now fall to be sentenced for having committed what are very serious offences, I appreciate that character is not one-dimensional, and the positive contribution you have made to the lives of others will still count in your favour.

65 The balance of the 20 personal references tendered on your behalf attest to a dedicated, disciplined and generous person who has earned widespread respect. Those testimonials were not challenged by the Crown and I accept their tenor. They will likewise be taken into account in your favour.

66 You were assessed by a forensic psychologist for the purposes of your plea hearing. Ms Carla Ferrari provided a report as to your mental health of 3 August 2021.⁸ On the basis of the history you provided and the psychometric testing she conducted, Ms Ferrari diagnosed you with post-traumatic stress disorder and a recurrent major depressive disorder, "...both of which appear to have onset following the murder of [your] first wife in the 1980s".⁹

67 Ms Ferrari stated:

"...in the custodial setting, his symptoms are likely to worsen and his ability to regulate his emotions, when combined with the volatile prison environment and his

⁸ Report of psychologist Carla Ferrari, 3 August 2021 (Exhibit 1 on the Plea).

⁹ Ibid [73].

comorbid PTSD diagnosis, is likely to be compromised. This also increases his risk of impulsive, disproportionate responses if his PTSD is triggered.”¹⁰

68 Ms Ferrari thought that your symptoms had worsened over the last several years in the context of being remanded in custody between 2016 and 2019 and have been further exacerbated by your return to custody in May 2021 following the verdict. It was suggested that imprisonment would likely weigh more heavily on you than a person without your psychological disorders. Ms Ferrari stated:

“It is my professional opinion that Mr Lanciana is at a high risk of further deterioration of his already fragile mental state; returning to the community for two years after an extensive remand only to be reincarcerated after a re-trial of the same matter, has undoubtedly caused him intense re-traumatisation on a number of accounts and compromised the progress he had made during his time back in the community. His symptoms are unlikely to dissipate in custody as the lack of control, helplessness, and hopelessness over his situation and the wellbeing of his mother and daughter in particular will continue to weigh heavily on him, as will the volatility of the prison environment trigger his untreated symptoms”.¹¹

Defence submissions

69 Your counsel, Ms Karapanagiotidis, who appeared both at trial and on the plea with Ms Blair, submitted that because the prosecution had put its case to the jury on the basis that you had either directly participated in the offending or that you were involved in its planning and/or organisation, it cannot be known on what basis the jury determined how you were involved. It was argued there was no rational basis upon which a sentencing judge could determine if you actually carried out the offence or organised it, or did both. It followed that there was an insufficient basis on which to conclude that you played a central or significant role in the offending. It was conceivable that your role could have been quite minor.

70 As to the charge of false imprisonment, it was submitted that the sentence imposed in respect of that matter should be served concurrently with the sentence imposed for the armed robbery because there was such a substantial overlap between the two offences.

¹⁰ Ibid [76].

¹¹ Ibid [79].

71 As to Charge 3, involving the money laundering through the KCR transaction, it was submitted that it was not open to make findings as to:

- the purchase price of the property;
- the direct contribution you made to the purchase price; or
- how much of the money was derived from the proceeds of the armed robbery.

72 That was so because the prosecution had put its case on the basis that only some of the money need be derived from the proceeds of the armed robbery to make out the offence. It was submitted that the jury could have been satisfied as to only \$50,000 being derived from the armed robbery, because that amount was admitted by you to have been transacted in cash.

73 With respect to the bank transactions (Charges 4–9), again it was submitted that what was derived from the armed robbery may have only been a small part of what was actually transacted.

74 It was further submitted that the application of the principle of totality in sentencing required that the money laundering sentences be substantially concurrent with the sentence imposed on the armed robbery.

75 As to other matters in mitigation, Ms Karapanagiotidis submitted that the significant delay between the time at which an offender is interviewed and trial should mitigate significantly. In your case, you were first interviewed in 2016 (although you were aware the police were investigating you from 2014) and ultimately convicted in 2021 – on any view, that was a very significant delay.

76 You have been and will continue to be subject to the restrictive prison regime in place to deal with the pandemic. That means you cannot have contact visits with your family and must spend long hours in lockdown which, it was argued, you would feel more acutely because of your fragile psychological health.

77 It was not contended that separation from your elderly mother was so exceptional as to permit hardship to her mitigating your sentence. Nonetheless, the anxiety that that separation has produced in you is a matter that can properly be taken into account in your favour.

78 As to your psychological condition, it was submitted that two principles taken from the decision in *Verdins*¹² were engaged. The first was that your sentence will weigh more heavily upon you than a person who is not afflicted with the disorders diagnosed by Ms Ferrari.

79 The second was that there was a serious risk that your imprisonment would significantly and adversely impact on your mental health. Both of those principles should operate to mitigate your sentence.

80 Finally, it was submitted that you have “very good prospects of rehabilitation”, principally because over the last 27 or so years you have shown yourself to be a stable and productive member of the community, your subsequent criminal history is limited, you have no drug or alcohol issues, you have extensive family support, and Ms Ferrari assessed the risk of future offending as “low”.

Prosecution submissions

81 Mr Shaw, for the prosecution, contended that this armed robbery should be characterised as “very high level offending”. That was so by reason of a combination of factors such as the degree of sophistication and planning, the fact that it occurred in company, the fact that a very large amount of money (\$2,320,000) was stolen, none of which was recovered, the brazen nature of the offending, and the significant impact on multiple victims.

82 Your role in respect of Charges 1 and 2, it was submitted, must have been significant.

¹² *R v Verdins* (2007) 16 VR 269; 276 at [32].

- 83 The same features were said to aggravate the second charge of false imprisonment, although Mr Shaw accepted in discussion on the plea that care was required to ensure that the sentence in respect of Charge 2 avoided double punishment.
- 84 He submitted that the money laundering charges associated with the KCR property should be characterised as “mid-range offending”, having regard to its sophistication, the large amount of money involved, and its purpose, which was to conceal your involvement in the armed robbery and launder the proceeds.
- 85 The money laundering offences associated with exchanging cash at bank branches in central Melbourne were submitted to fall at “the lower end of gravity”, although that offending was nevertheless aggravated by its purpose and the fact that you were alleged to have forced Witness O to conduct her transactions.
- 86 It was submitted that the sentencing purposes of just punishment and denunciation require emphasis, albeit that general deterrence should be the paramount sentencing purpose.

Sentencing practice and comparative cases

- 87 The maximum penalty for armed robbery is now 25 years imprisonment. It was 20 years imprisonment at the time this offence was committed.
- 88 Section 5(2)(b) of the Act requires that I take into account, as one of many factors, “current sentencing practice”. The different maximum penalty that now applies qualifies the extent to which I can do so.
- 89 The concept of equal justice requires that I should also have regard to sentencing practices at the time of the offence if it can be demonstrated that those practices required a materially lesser sentence at that time.¹³ Your counsel did not contend that sentencing practices in 1994 were materially less.

¹³ *Stalio v The Queen* (2012) 46 VR 426, 432 [9], [11]; *Carter v The Queen* (2018) 272 A Crim R 170, 182 [57].

90 I have reviewed a number of decisions involving armed robberies at the higher end of the range of seriousness.¹⁴ The guidance provided by comparative cases is generally as to the application of legal principle, not mathematical equivalence. However, past decisions may be used to discern a sentencing range so as to promote consistency in sentencing, bearing in mind that sentencing practice cannot govern or control the sentence imposed.¹⁵

91 In the cases to which I have had regard, I did not detect a materially lesser sentencing range around the time of the commission of the offence as compared to current practice.¹⁶ That is particularly so when allowance is made for the different maximum penalties and what was then s 10 of the Act relating to the abolition of remissions.

92 In the circumstances of this sentencing exercise, I found the comparative cases to be of very limited utility.

Findings

93 This was a criminal enterprise that required meticulous planning, preparation and military style precision. According to the verdict of the jury, you organised and/or participated in that criminal enterprise. Involvement in that kind of criminality must inevitably be met with stern punishment.

94 I accept the prosecutor's submission that the offending is aggravated by:

- the overall sophistication and planning involved;

¹⁴ *R v Zakaria* (1984) 12 A Crim R 386; *R v Barci & Asling* (1994) 76 A Crim R 103; *R v Bouchard* (1996) 84 A Crim R 499; *The Queen v Hynson* (Victorian Court of Appeal, Winneke P, Vincent AJA and McDonald AJA, 4 December 1995, Unrep.); *The Queen v Parker* (County Court of Victoria, Byrne J, 21 March 1995, Unrep.); *The Queen v Crupi* (County Court of Victoria, Byrne J, 29 November 1994, Unrep.); *R v Crupi* (1995) 86 A Crim R 229 (conviction appeal); *The Queen v Rich* (County Court of Victoria, Byrne J, 31 October 1995, Unrep.); *R v King & Los* (1993) 66 A Crim R 74; *Johnson v The Queen* [2011] VSCA 348; *Murrell v The Queen*; *DPP v Murrell* [2014] VSCA 337; *Konamala v The Queen* [2016] VSCA 48; *Binse v The Queen* [2016] VSCA 145; *R v Rich* [2009] VSC 515; *DPP v Walker & Dargan* [2019] VSCA 137.

¹⁵ *DPP v Dagleish* (2017) 262 CLR 428, 434 [9]; *DPP v Walker & Dargan* [2019] VSCA 137, [81]–[82].

¹⁶ In *Lord v The Queen* [2018] VSCA 52, the adequacy of sentencing practice for armed robbery was called into question: [11] per Maxwell P and Beach JA.

- the fact that these offences were carried out by a number of people acting as an organised unit;
- the fact that they involved an elaborate ruse to gain access to the van;
- the fact that a handgun was pointed at the guards to disarm and restrain them;
- the fact that the large sum of money stolen was never recovered;
- the fact that the offending left a lasting impact on the victims; and
- its sheer brazenness.

95 It is unquestionably a most serious example of the offence of armed robbery.

96 Because of the manner in which the Crown put its case to the jury, there remains some uncertainty as to the precise role you played in the commission of this offence. Nevertheless, I am satisfied that your role must have been significant. That is so for three reasons.

97 First, the evidence led at trial showed that five people combined to carry out this offence on 22 June 1994. Each one of those participants described by the witnesses played a demonstrably significant role. It is conceivable, though unlikely, that there were other participants unseen by the witnesses, assisting in other ways, but I regard the implicit suggestion that you might have been one of those unseen participants playing some lesser role as unrealistic, if not fanciful. This was an enterprise where all participants combined to play their part to bring about its success. I am satisfied that the witness accounts demonstrate that each part played was important to the overall object of the offence.

98 Second, the words you used when speaking with Witness O in the recorded conversation of 30 July 2014 – “...I didn’t do the robbery... I just organised it, I

didn't do it"¹⁷ – plainly contradict the argument that you may have only contributed to the planning of the enterprise in some small way. I regard the suggestion that you could have simply provided a pair of gloves or made some similarly minor contribution as also being fanciful. If it be true that you “just organised it”, then the conclusion that you played a significant role in planning the enterprise would seem unassailable.

99 Third, the timing of the KCR transaction, occurring as it did just weeks after the armed robbery, and the large amount of cash involved is completely inconsistent with the assertion that your role in the armed robbery may not have been significant. I appreciate that the prosecution put its case on the basis that all, or some, of the cash was derived from the proceeds of the armed robbery. However, in the document of 7 April 2015¹⁸ which you authored, you admitted to contributing \$200,000 in cash to the purchase. Moreover, at trial no issue was taken with the evidence that you provided \$50,000 in cash to Michael Georgiou in a briefcase as part payment for the KCR property. On any view, you were dealing in large amounts of cash very shortly after the commission of the armed robbery. All of this is consistent with having played a significant role.

100 It follows that you will be sentenced on the basis that you played a significant, though unspecified, role in the commission of Charges 1 and 2, which at least involved you organising those offences.

101 The overlap in the aggravating features between the charges of armed robbery and false imprisonment is such that it is appropriate, in my view, to impose a wholly concurrent sentence on Charge 2 to ensure that you are not doubly punished. The money laundering charges, however, merit some cumulation, involving as they do related but distinct criminality. The extent of cumulation will be moderated by the operation of the principle of totality.

¹⁷ Transcript of recorded conversation between Witness O and Pasquale Lanciana, 30 July 2014 (Exhibit U on the Trial).

¹⁸ Statement of Pasquale Lanciana, 7 April 2015 (Exhibit J on the Trial).

- 102 As I have indicated, I must take into account the sentence imposed on Mr Anile in respect of Charge 3. I note that Mr Anile's status as a solicitor is a substantial distinguishing feature, although he, unlike you, ultimately pleaded guilty to that offence.¹⁹ Nevertheless, I regard Charge 3 as a serious example of the offence of money laundering – much less so the exchanges of cash at the bank branches.
- 103 For completeness, I should indicate that I am by no means satisfied that Witness O was 'forced' to conduct the transactions the subject of Charges 4, 5 and 6. She may have felt under some pressure to do so, but I am not prepared to find that such pressure as may have been operating on her mind aggravates the offending.
- 104 I do accept that there are matters personal to you which mitigate your position. Your work in training and mentoring young people who have been at risk is commendable. Likewise, your engagement with your now adult children and your elderly mother shows a side of your character which is far from anti-social. I also accept that the enforced separation from those loved ones will weigh heavily on you.
- 105 I assess your prospects for rehabilitation as fairly reasonable given your advancing age, the fact you have no alcohol or drug problems, the positive direction your life has taken in work and in training young people, the fact that your subsequent offending has been negligible over the last 20 years or more, and that you remain very much engaged with your family.
- 106 That said, I need to make clear that because of the seriousness of this offending, the emphasis I can place on rehabilitation as a sentencing purpose must cede to a much greater emphasis on more retributive sentencing purposes, in particular general deterrence, denunciation, and the need to impose just punishment.

¹⁹ At the time of sentencing Mr Anile, a declaration was made pursuant to s 6AAA of the *Sentencing Act 1991* (Vic) that he would have been sentenced to 5 years imprisonment with a non-parole period of 3 years, but for his plea of guilty: *Anile* [119].

- 107 I appreciate that delay can have a debilitating effect on an accused person and is generally recognised to mitigate in two potential ways.
- 108 The first relates to the uncertainty hanging over a person's head for a lengthy period of time and the anxiety that generates. That is a particularly apposite consideration in your case because of the delay from charge to trial (nearly two and half years) as well as the delay caused by the first trial ending in no verdict and the pandemic (about two years). I do not think that the delay between you first learning of police interest in you in 2014 and charge in 2016 mitigates in your particular circumstances. Nevertheless, the overall delay of four and half years or so certainly mitigates your position under the first limb.
- 109 The second means by which delay may mitigate is where an offender has shown progress to rehabilitation. It seems to me that that limb is also engaged in your favour, given your lack of offending in recent years, your engagement with your family, the work you did in the Young Offenders Unit at Port Phillip Prison whilst on remand and the work and training you performed once released.
- 110 Your sentence will be reduced because it has been attended by significant delay on the basis that both limbs of the applicable sentencing principle have been engaged.
- 111 The prosecutor did not challenge Ms Ferrari's opinion that your mental health is fragile by reason of what was said to be your post-traumatic stress disorder and major depressive disorder. Accordingly, you will be sentenced on the basis that imprisonment for you is likely to be more burdensome because you suffer from those conditions. Moreover, I find that in the setting of having to serve a further lengthy sentence there is a high risk of further deterioration of your mental health. This is all the more so because you will be subject to the very restrictive prison regime implemented to deal with the pandemic. Those matters will reduce the sentence otherwise imposed.

112 Returning now to the sentence that must be imposed, the prosecutor's submission that general deterrence is the paramount sentencing purpose must be accepted. This was an audacious armed robbery, the scale and sophistication of which was of the highest order. It follows that the sentence I must now impose on you should make plain to those who choose to engage in criminal enterprises of this nature that they should expect to forfeit their liberty for a very long time.

Sentence

113 Taking all relevant matters into account, you will be sentenced as follows:

114 On Charge 1, armed robbery, you will be convicted and sentenced to 12 years imprisonment.

115 On Charge 2, false imprisonment, you will be convicted and sentenced to 4 years imprisonment.

116 On Charge 3, money laundering, you will be convicted and sentenced to 4 years imprisonment.

117 On Charge 4, money laundering, you will be convicted and sentenced to 4 months imprisonment.

118 On Charge 5, money laundering, you will be convicted and sentenced to 4 months imprisonment.

119 On Charge 6, money laundering, you will be convicted and sentenced to 4 months imprisonment.

120 On Charge 7, money laundering, you will be convicted and sentenced to 4 months imprisonment.

121 On Charge 8, money laundering, you will be convicted and sentenced to 4 months imprisonment.

- 122 On Charge 9, money laundering, you will be convicted and sentenced to 4 months imprisonment.
- 123 I will order that 18 months of the sentence imposed on Charge 3 and 1 month of each of the sentences imposed on Charges 4–9 are to be served cumulatively upon the sentence imposed on Charge 1.
- 124 My intention in sentencing you is that all other sentences or part-sentences imposed on this day are to run concurrently with the sentence imposed on Charge 1, rendering a total effective sentence of 14 years. I will fix a non-parole period of 10 years.
- 125 I will declare pursuant to s 18 of the *Sentencing Act 1991* (Vic) that you have already served 1,054 days by way of pre-sentence detention, and I will cause that declaration to be noted in the records of the court.