



New South Wales Supreme Court

CITATION : R v CAMPBELL [2010] NSWSC 995

HEARING DATE(S) : 13, 14, 15, 16, 19, 20, 21, 22, 27, 28, 29 April,
3, 5, 6, 10, 11, 12, 13, 14, 17, 18 May 2010
22 July 2010
22 July 2010

JUDGMENT DATE : 3 September 2010

JUDGMENT OF : Latham J

DECISION : Desmond Campbell, you are convicted of the murder of Janet Campbell. I sentence you to a non parole period of 24 years, to date from 10 May 2010, expiring 9 May 2034, with a balance of term of 9 years, expiring 9 May 2043. You are eligible for release to parole on 10 May 2034

CATCHWORDS : CRIMINAL LAW-sentence-relevant factors-nature and circumstances of offence-financial gain-premeditation-objective gravity below worst case but above mid-range-nature and circumstances of offender-no special circumstances

LEGISLATION CITED : Crimes (Sentencing Procedure) Act 1999

CASES CITED : R v Coulter [2005] NSWSC 101
R v Gonzales [2004] NSWSC 822
R v Walsh [2009] NSWSC 764
R v Mill (1988) 166 CLR 59
R v King (1997 – 1998) 99 A Crim R 288

PARTIES : Regina
Desmond Campbell - Offender

FILE NUMBER(S) : SC 2009/207160

COUNSEL : M Tedeschi QC / S Herbert - (Regina)
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M Bowe Solicitors (Offender)

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION**

LATHAM J

3 SEPTEMBER 2010

2009/207160 R v DESMOND CAMPBELL

SENTENCE

1 HER HONOUR : The offender was found guilty after trial on 18 May 2010 of the murder of Janet Campbell, his wife of 6 months on 24 March 2005. The offence carries a maximum penalty of life imprisonment. In the event that a determinate sentence is imposed, a standard non parole period of 20 years applies. The imposition of the standard non parole period applies to offences falling within the mid range of objective gravity for offences of this type.

2 The maximum penalty is mandated where the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence : s 61(1) *Crimes (Sentencing Procedure) Act* 1999. The Crown does not contend that this case meets that description. I agree with that submission, although there can be no doubt that the circumstances under which Janet Campbell met her death demonstrate the offender's sustained callousness towards her, for nothing more than monetary gain. His level of culpability is unquestionably of a high order. However, it falls short of the extreme culpability of the type that has attracted life sentences in the past : see *R v Coulter* [2005] NSWSC 101 ; *R v Gonzales* [2004] NSWSC 822 ; *R v Walsh* [2009] NSWSC 764.

3 Accordingly, it is incumbent on the Court to determine where in the spectrum of objective seriousness this offence lies. The following description of the circumstances surrounding the offence is derived from the evidence at trial, very little of which was in dispute. The jury's verdict reflects a finding that the history of the offender's relationship with Janet Campbell was critical to the central determination in the trial, that is, that the offender pushed his wife from the top of a sheer 50m cliff south of Burning Palms in the Royal National Park, resulting in her death on a rock platform below.

4 Janet was 49 years old when she died. Up until a week before her death she had lived in Deniliquin all of her life, near to family members with whom she was very close. Her first husband, Frank Fiscaro, had died in 1997 leaving her two farming properties and she was rumoured to be a wealthy woman. She was not athletic, did not participate in any regular form of exercise, had never been camping and had a strong fear of heights.

5 The offender was posted by his employer, the NSW Ambulance Service, to Deniliquin in 2000. He and Janet met at about that time through work at the Deniliquin hospital. The offender was in a relationship with another woman, June Ingham. That relationship ended acrimoniously in 2003 with Ms Ingham commencing legal proceedings to recover the sum of \$40,000, being monies she had invested in a property purchased in the offender's name.

6 Janet and the offender commenced a sexual relationship in about mid-2003. In September 2003 the offender also commenced a sexual relationship with Gorica Velicanski, which he maintained throughout the following 18 months. At about the same time, the offender contacted a wedding celebrant to discuss his plans to marry Janet in November of that year. The offender later cancelled the wedding.

7 On 10 September 2003 the proceedings brought by Ms Ingham were settled with the offender agreeing to pay the sum of \$9000 by 12 April 2004. That sum was received by Ms Ingham on 28 January 2004.

8 Janet did not disclose her relationship with the offender to members of her family until mid-March 2004 and later that month she announced that they were engaged. A wedding was planned for 13 April 2004. However, members of her family were aware of rumours that the offender pursued women for their money. They counselled Janet against marrying the offender in such haste. The wedding planned for 13 April 2004 was subsequently

cancelled.

9 The offender's professed love for Janet cannot be reconciled with the comments he made to others about her. The offender told his sister-in-law that there was a woman at the hospital, who was "stalking" him, that she was very wealthy but "pig ugly" and he did not know if he could bring himself to "shag her". He also made distasteful and derogatory comments about her to two former work colleagues, Colin Sander and Robert Crampton.

10 On 1 April 2004, Janet advanced the sum of \$2500 to the offender. Around this time the offender recommenced a sexual relationship with Lynda Rodgers, a woman with whom he had been intimate some twenty years earlier.

11 On 7 June 2004 Janet advanced the sum of \$23,000 to the offender, having been told by him that he wished to pay off a loan on a property he owned in Bendigo, Victoria, where his parents lived. The offender's parents in fact owned their own home with no mortgage. The monies were instead paid into the offender's Visa and American Express accounts. Janet also believed that she had received an engagement present from the offender's parents and had spoken to them on the telephone. The evidence of the offender's parents was that they had never spoken to or met her. Having regard to this evidence, there is some force in the Crown's submission that the offender never intended that Janet would meet his parents. It is however difficult to determine to the requisite standard that, as early as June 2004, the offender was planning to kill his future wife.

12 On 9 August 2004 Janet executed a will leaving her entire estate to her son, Stephen Fisicaro, and appointing him executor of her estate.

13 The offender eventually married Janet at Echuca, Victoria on 17 September 2004. Neither of them told their respective families and they did not co-habit following the wedding. A week later, Janet executed a new will, leaving her estate equally to her son and the offender, after the payment of \$100,000 to her son.

14 In mid October 2004, Janet and the offender agreed to buy a house in Station Street, Otford for \$660,000 as tenants in common (despite the offender initially suggesting that the property be purchased as joint tenants). In early November 2004, Janet paid the deposit of \$64,350 and in late November 2004 she paid \$25,164 in stamp duty.

15 At the time of the purchase of the property, the offender owned a car and had money deposited in a superannuation scheme. He did not own any real estate. He was approximately \$33,000 in debt.

16 In November 2004 the offender told Janet that he was going to visit his brother who was in a coma. That was a lie of such grand proportions that it tends to confirm the offender's resolve never to introduce his wife to any member of his family. In fact, the offender went to visit Ms Velicanski, to whom he was growing increasingly close.

17 On 29 November 2004, Janet sold her Deniliquin property and transferred the proceeds of \$255,037 into the offender's NAB account. On the same day the offender transferred \$3801.73 into his Visa account and \$4352.05 to pay out a personal loan.

18 On settlement of the property on 7 December 2004, \$158,879 was provided from the balance of the proceeds of sale of the Deniliquin property towards the purchase price. The balance comprised the deposit and a NAB mortgage in the sum of \$440,000. The following day the offender deposited \$70,000 into the mortgage account (reducing the balance to \$370,000), thereby leaving about \$27,000 of Janet's money in his own account. He also transferred \$5200 into his Visa account giving him a credit balance of more than \$5100.

19 Not only did the offender fail to make any financial contribution towards the purchase of the property, he lied about its ownership and financing, telling his close friend, John Thompson, that he had bought the property in his own name and that his parents helped him with the purchase.

20 The offender immediately started living at Otford, while Janet remained in Deniliquin. Shortly after Christmas 2004, Ms Velicanski stayed with the offender whilst the offender's brother and sister-in-law were there. He did not disclose his marriage to any of them. There is every reason to believe that the offender's family would never have learnt of his marriage, were it not for Janet's death and the fact that it was widely reported by the media.

21 On 28 January 2005 the offender bought a cheap tent and two sleeping bags. In a conversation with police after Janet's death, the offender claimed that he had bought the tent because he had plans to go camping with Mr Thompson.

22 On 23 February 2005, the offender purchased an EPIRB (an Emergency Position-Indicating Radio Beacon). It does not allow communication but emits a signal, which may then be detected by the aid of satellites and transmitted to a central emergency response centre in Canberra. A series of calculations permit the location of the device to be determined. The device is primarily used for maritime purposes. It is less suited to land based activities, where mobile phones or radio communication provide for a quicker response in an emergency. The

offender's purchase of the EPIRB, ostensibly for trail bike riding, and his decision to take it on an overnight camping trip in an area well-serviced by mobile telephony, was, to say the least, inconsistent with the training he would have received in the army, if not in the police force.

23 On 21 February 2005 Janet transferred \$50,000 from her account into the mortgage, thereby reducing the balance to approximately \$324,000.

24 Ms Velicanski stayed with the offender in Otford a number of times in March 2005 when the offender told her falsely that he was going camping with Mr Thompson and then had to attend a course in Goulburn from 21 March 2005. The offender claimed that attendance at the course would prevent any contact with her during this period. Ms Velicanski understood that at the conclusion of the training course he would be free to resume contact with her.

25 Another woman, Janet Aldred, with whom the offender had an intermittent sexual relationship, also spent a few nights with the accused at Otford in early March 2005.

26 On 9 March 2005 the offender paid \$19,370 into his account representing the refund of stamp duty from his employer, the NSW Ambulance Service (from whom he could claim the costs associated with purchasing the property). He subsequently made a payment of more than \$1000 to his American Express card on 7 March 2006 and a payment to his Visa account of \$6500 on 9 March 2005.

27 On 18 March 2005, Janet moved from Deniliquin to Otford. She informed her family the day before she left that she and the offender were married.

28 On the morning of 24 March 2005, the day of her death, Janet spoke to her mother on the telephone and told her they were going camping about 5kms from their home. Janet understood that there were toilets and barbecues there. The offender had previously spoken to her about camping in the Royal National Park.

29 According to his police interview, the offender stated that they left their car at the Otford Lookout and walked along the cliff top track to the junction with the coastal track and then along the coastal track. The offender indicated that he was intending to camp at Burning Palms or Palm Jungle but Janet's complaints of fatigue changed those plans. They set up the tent at about 2pm on a sloping, tussocky site, about 14 m from the cliff edge, surrounded by stunted trees and other vegetation.

30 According to the offender's account to police, at some time after 7pm but before 8pm, Janet left the tent to go to the toilet. Between 5 and 15 seconds later he heard a sigh. He called out but received no reply. He went to the edge of the cliff but could not see her. He fetched his backpack and went north along the cliff tops until he came to the Figure Eight Gully and with the aid of a rope which he had with him he managed to climb down towards the base of the cliffs and then walked back along the rock platform where he found Janet.

31 The offender said that he tried resuscitation although he knew she was dead. He moved the body so that it would not be washed away by the waves breaking around them. He activated the EPIRB some time between 7.25 and 7.35pm. The position of the EPIRB was not ascertained until 9pm and the first paramedic arrived at the scene at about 10pm.

32 A shoe print identified on the very edge of the cliff on a slope of about 26 degrees was consistent with one of Janet's shoes. There was damage to a shrub immediately adjacent to the shoe imprint consistent with her attempts to save herself from falling to her death. The imprint established that Janet was upright immediately before leaving the cliff edge.

33 Clearly, the jury rejected the offender's account of Janet's death. Not only was the accused's behaviour over the course of their relationship, and his comments to others about her, completely inconsistent with his statement to his father shortly after Janet's death that he had lost "the love of his life", but his conduct in the days immediately following Janet's death cannot in any way be reconciled with that of a grieving husband.

34 On 29 March 2005, the first business day after Janet's death, the offender telephoned Ms Velicanski and arranged to go on holiday with her to Townsville. He booked airline tickets and accommodation. The offender also consulted a solicitor in relation to the deceased's will.

35 The offender spent from 1 to 4 April 2005 with Ms Velicanski in Townsville. According to her, he showed no signs of grief or distress. On 9 or 10 April 2005 he proposed to her. He did not attend Janet's funeral on 5 April 2005. On that day, he paid \$79.95 to the RSVP dating website and sent messages to a number of female members.

36 Between 29 April and 13 May 2005, the offender transferred a total of \$70,000 from the home loan account into his personal account. This represented a re-appropriation of the money paid from the balance of the proceeds of sale of the deceased's Deniliquin property into the loan account on 8 December 2004. The offender made no home loan repayments after Janet's death.

37 In May 2006 the offender sold the Otford property and acquired the benefit of his half share. The evidence at trial established that the offender received the benefit of \$255,202.00 during Janet's lifetime and approximately \$340,000 after her death.

38 It would be accurate, but not sufficient, to say simply that the offender took the life of an outgoing, generous, warm-hearted and somewhat naïve, middle-aged country woman, as soon as it became clear that he had obtained as much financial advantage as he could from the relationship. Such a statement fails to capture the offender's capacity for deception, duplicity, manipulation and cruelty, all of which is demonstrated by the foregoing details of his conduct during his relationship with Janet. I hasten to add that no part of this sentencing exercise is concerned with punishing the offender for philandering, or for what might be seen by the community as immoral conduct towards women. However, in so far as the offender's conduct throws light on his state of mind and his intentions towards Janet, it is relevant to an assessment of the objective gravity of the offence.

39 Janet's death must have been truly awful. The position of the shoeprint at the edge of the cliff and the broken branch adjacent to that print suggests that she was conscious and aware of her fate for some short period of time before she fell. In those moments, the magnitude of her mistake in believing that marriage to the offender opened a fresh chapter in her life must have come home to her. She died in a strange place, far from her family, her friends and her community.

40 The degree to which the offender planned the offence cannot be determined with any precision. The Crown's submission was that the offender was planning on killing Janet even prior to their marriage. I do not agree with this submission. I have no doubt that the offender set about stripping Janet of her assets almost as soon as he met her, but that plan did not necessarily entail murder. The offender had previously benefited from his relationship with June Ingham, yet there is nothing to suggest that he thought it necessary to go further than simply terminating the relationship with her. Granted, the offender did not marry Ms Ingham and she was hardly in a position to pursue him from another jurisdiction.

41 I am of the view that the offender began planning the offence in December 2004. Following the purchase of the Otford property and Ms Velicanski's visit after Christmas, it became clear to the offender that he could not live with Janet, that he wanted the property as a future home for himself and Ms Velicanski, and that it was becoming increasingly difficult to keep his two lives separate, one that included Janet and the other that did not. Certainly, by the time the offender purchased the EPIRB and camping equipment, he had formulated a plan whereby Janet would die in seemingly accidental circumstances. The offender's choice of the camping spot could only have been made against the background of his knowledge of the coastline, the walking track and the available camping facilities. He chose the most sheer and prominent cliff on that section of the coastline.

42 More importantly, the offender was physically fit and was to some extent trained in survival skills. It is in this context that the use of the EPIRB takes on some significance. The offender must have been aware that a response to the signal would take some time. In the unlikely event that Janet did not die almost immediately from the fall, there was almost no prospect that she could survive her injuries after two and a half hours.

43 Taking all of these objective circumstances into account, I would assess the offence as well above the mid range of seriousness for offences of murder. Notwithstanding the commission of the offence for financial gain and the extensive pre-meditation, I do not regard the offence as so serious that it justifies an assessment just below the worst case category. The objective gravity of the offence warrants a non parole period in the order of 25 years. The question then arises whether the offender's subjective circumstances call for an amelioration of that penalty.

44 The offender was born in the United Kingdom and migrated to Australia as an infant with his family. One of the offender's older brothers was killed in a motor vehicle accident shortly after the family's arrival in Australia but apart from that the offender had a trouble free upbringing, although he received little emotional support from his parents with no outward displays of affection.

45 Following a dispute with his brother in 1994, the offender moved to the UK. He had little contact with his family for approximately ten years but contact was re-established in 2004. Since then the offender has maintained close contact with them and they are supportive of him.

46 The offender enlisted in the army at the completion of his secondary education in 1980 and rose to the rank of lieutenant after five years. He then left to join the Victorian police force where he served for nine years. In 1994 the offender resigned after being charged with an assault matter.

47 Whilst in the UK the offender gained employment as a constable with Surrey police. He remained in that position for three years, during which time he met Ms Ingham, before resigning and returning to Australia. The offender then joined the NSW Ambulance Service in 1999 and completed a degree in Paramedic Science in 2003. He remained employed by the NSW Ambulance Service until his conviction.

48 The offender has been married four times, Janet being his third wife. He has a daughter, who is 20 years old,

with his first wife but has had no contact with her since 2001. He has two children, aged four and three years, with his current wife Melissa, whom he married in January 2006 and who remains supportive of the offender.

49 The offender has refused to discuss the offence and maintains that he is innocent. However, he told the Probation and Parole officer (report dated 15 July 2010) that he and Janet had been friends since 2000 and that he was “depressed” after her death and used alcohol and valium to self-medicate his grief. I have already indicated in these remarks that the objective circumstances do not support the offender’s explanation for his depression.

50 Documents produced under subpoena by the NSW Department of Corrective Services, and tendered by the offender, refer to his depressed and emotive state since coming into custody. There are also references to his “very calm, emotionally detached, controlled presentation”. His depression, such as it is, appears to derive from the fact of his incarceration and his separation from his wife and children. He has been seen by a psychiatrist and is not considered at risk of self harm.

51 The offender has some relatively minor previous convictions of careless driving, wilfully damaging property and unlawful assault in 1993. He is otherwise of good character. However, given the nature of the offence, I would not place significant weight on this aspect of the offender’s subjective circumstances.

52 Despite the offender being placed in the Special Management Unit at MRRC for some period of time after his conviction, apparently due to the “high profile” nature of his offence, there is no reliable evidence before me to suggest that he will serve his sentence in a form of protection that will restrict his access to prison services and facilities, or make his incarceration relevantly more onerous than any other offender convicted of murder.

53 The offender’s counsel submitted that the delay between the offence and the charging of his client in September 2009 should be reflected in the sentence to be imposed. That submission derives from decisions of this Court recognising that, where an offender is kept in a state of suspension and distress for an inordinate period of time before knowing the sentence that will be imposed, there should be some mitigation of the sentence that is otherwise appropriate : see *R v Mill* (1988) 166 CLR 59 ; *R v King* (1997 – 1998) 99 A Crim R 288.

54 Here, the delay was a product of the steps taken by the offender to disguise his offence as an accident. It was only after a lengthy and meticulous investigation, and consideration by a coroner in mid 2007, that the impression sought to be created by the offender was dispelled. It would defy common sense to give the offender a benefit on the basis that he successfully escaped detection and punishment for a number of years.

55 That said, I acknowledge that since the commission of the offence, the offender has advanced his prospects of rehabilitation, in large part due to the fact that his most recent marriage appears stable. He continues to protest his innocence, which he is entitled to do, but the consequence of that position is that there is no remorse or contrition that can count in his favour.

56 There is very little in the offender’s subjective circumstances that operates to modify the sentence that is appropriate to the objective gravity of the offence. There is also no basis upon which I should, in my view, find special circumstances. The fact that this is the offender’s first time in custody is not persuasive. The principles of retribution, punishment, and general deterrence call for the imposition of a lengthy determinate sentence, which of necessity will provide a relatively lengthy period of supervision on parole. A significant factor in the sentence is the recognition of the deliberate taking of a human life, a life that was deeply connected to a loving extended family, all of whom continue to suffer her loss.

57 Accordingly, I propose to sentence the offender as follows :-

Desmond Campbell, you are convicted of the murder of Janet Campbell. I sentence you to a non parole period of 24 years, to date from 10 May 2010, expiring 9 May 2034, with a balance of term of 9 years, expiring 9 May 2043. You are eligible for release to parole on 10 May 2034.

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