

NEW SOUTH WALES SUPREME COURT

CITATION: Regina v Gonzales [2004] NSWSC 822

CURRENT JURISDICTION:

FILE NUMBER(S): 70068/03

HEARING DATE(S): 27/08/04

JUDGMENT DATE: 17/09/2004

PARTIES:  
Regina v Sef Gonzales

JUDGMENT OF: James J

LOWER COURT JURISDICTION: Not Applicable

LOWER COURT FILE NUMBER(S): Not Applicable

LOWER COURT JUDICIAL OFFICER: Not Applicable

COUNSEL:  
M Tedeschi QC/S Huggett - Crown  
W Terracine SC/P Massey - Prisoner

SOLICITORS:  
Ms F Rowbotham - Crown  
P Townsend - Prisoner

CATCHWORDS:

ACTS CITED:  
Crimes Act  
Crimes (Sentencing Procedure) Act

DECISION:  
Three sentences of life imprisonment commencing on 13 June 2002

JUDGMENT:

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

**COMMON LAW DIVISION**

**JAMES J**

**Friday 17 September 2004**

**70068/03 REGINA v SEF GONZALES**

**REMARKS ON SENTENCE**

1 **HIS HONOUR:** On 20 May 2004 at the conclusion of a trial at which I presided the jury found the prisoner Sef Gonzales guilty of the three counts of murder with which he had been charged, that on 10 July 2001 at North Ryde he had murdered Clodine Gonzales, Mary Loiva Josephine Gonzales and Teddy Gonzales. Clodine Gonzales was the prisoner's sister and his only sibling. She had had her eighteenth birthday on 9 July 2001, the day before the murders. Mary Loiva Josephine Gonzales was the prisoner's mother and Teddy Gonzales was the prisoner's father.

2 After the jury returned their verdicts of guilty on 20 May 2004, I was informed by the Crown prosecutor and counsel for the prisoner at the trial that 27 August would be a date suitable to the parties for the hearing of the proceedings on sentence. I was informed that an adjournment of that length would enable certain evidence including a pre-sentence report about the prisoner to be obtained. I stood over the proceedings on sentence to 27 August.

3 The hearing of the proceedings on sentence took place on 27 August. In the proceedings on sentence the Crown tendered and I admitted into evidence a criminal history of the prisoner which showed that prior to the three convictions for murder he had had no criminal convictions and a pre-sentence report dated 25 August 2004 prepared by Ms Karen Langdon the Unit Leader of the Parole Unit at the Silverwater Correctional Centre.

4 At the hearing of the proceedings on sentence I received victim impact statements by Emily Luna a sister of Mrs Mary Gonzales, Annie Paraan another sister of Mrs Mary Gonzales and Amelita Claridades the mother of Mrs Mary Gonzales. A representative of these members of a primary victim's immediate family read out these victim impact statements to the Court. I do not doubt that the murders of Mrs Gonzales and the other two victims have had a severe impact on these family members. However, in accordance with a line of authorities including **R v Previtera** (1997) 94 A Crim R 76, I do not consider it appropriate that I should take these victim impact statements into consideration in determining the punishment which should be imposed on the prisoner.

5 The prisoner gave evidence at the hearing of the proceedings on sentence. He said that, contrary to his own wishes, he had been placed in protective custody, as a result of an assessment made by the Correctional authorities. In his evidence he maintained his innocence of the crimes of which he had been found guilty. He said that he would not plead guilty to offences which he had not committed in order to make other people happy, notwithstanding that he had been told that, if he pleaded guilty and showed remorse, he might receive lesser sentences.

6 In the proceedings on sentence counsel for the prisoner tendered and I admitted a report about the prisoner by a psychiatrist Professor David M Greenberg, who had conducted a psychiatric assessment of the prisoner on 5 August and 8 August.

7 Later in these remarks on sentence I will make further reference to some of the evidence admitted at the hearing of the proceedings on sentence.

8 On 27 August after the taking of evidence and the making of submissions had been completed, I reserved my decision on what sentences should be imposed on the prisoner.

## FINDINGS OF FACT

### Principles

9 It is necessary for me to make findings of fact about the objective facts of the offences and about the subjective circumstances of the prisoner. In making these findings of fact I have applied the principles stated in such authorities as **The Queen v Olbrich** (1999) 199 CLR 270 especially at 280-281 (24-27) per Gleeson CJ, Gaudron, Hayne and Callinan JJ, **Weininger v The Queen** (2003) 77 ALJR 872 especially at 876 (18-19) per Gleeson CJ, McHugh, Gummow and Hayne JJ and **R v Isaacs** (1997) 41 NSWLR 374 at 377-378 per curiam. These principles include that the facts I find must be consistent with the jury's verdicts of guilty on the three charges of murder, notwithstanding that the prisoner continues to maintain his innocence on all three charges, and that I cannot find facts which would be adverse to the interests of the prisoner unless those facts have been established beyond reasonable doubt but I can find facts which would be favourable to the prisoner if they are proved on the balance of probabilities.

10 A very large amount of evidence was adduced at the trial and I will not in these remarks on sentence endeavour to state all of the facts which I am satisfied are established, to the requisite standard of proof, by that evidence and which might have some relevance, direct or indirect, in the sentencing of the prisoner. I have endeavoured to take all such facts into account.

### **Background and Events of 10 July 2001**

11 In early July 2001 the prisoner was living with his parents and his sister in the family home at 6 Collins Street, North Ryde. The prisoner's father was a solicitor, who conducted a legal practice at Blacktown. The prisoner's mother worked as an office manager in her husband's legal practice. The prisoner was a university student taking legal subjects in a Bachelor of Arts degree course at Macquarie University.

12 The prisoner's sister Clodine was a high school student, generally living and attending school in Melbourne. Her parents had disapproved of a boy in Sydney with whom she had formed a relationship and had sent her to live with one of Mrs Gonzales' sisters in Melbourne. However, in early July 2001 Clodine was spending school holidays with her parents and brother in Sydney. She was due to return to Melbourne soon after 10 July.

13 On 10 July 2001 Mr Gonzales and Mrs Gonzales went to work at Mr Gonzales' legal practice in Blacktown. They travelled to Blacktown in separate vehicles. Clodine remained at home.

14 On the morning of 10 July 2001 the prisoner went to Macquarie University and then returned home. He then travelled in his own car, which had been a gift to him from his parents, to his father's office at Blacktown. He arrived at his father's office about 1 o'clock in the afternoon.

15 At his father's office the prisoner attempted to fix one of the office computers which was not functioning properly and he made some telephone calls for the purposes of the legal practice.

16 The prisoner left his father's office at some time between 3 o'clock and 4 o'clock in the afternoon and drove in his car to the home at North Ryde. It took him about thirty to forty minutes to travel in his car from the office at Blacktown to the home at North Ryde. On arriving home he parked his car in an open carport at the front of the house.

17 The prisoner had arrived home by the time (which was some time between 4.15 and 4.30) that Mariella Pavone, a client of Mr Gonzales, deposited some documents in the letterbox at the front of the house and observed the prisoner's car in the open carport.

18 The records for the use of Clodine Gonzales' mobile telephone show that a text message using the mobile telephone was sent at 4.04 pm on 10 July 2001 and Clodine was then still alive.

19 At approximately 4.30 pm the prisoner entered Clodine's bedroom, where she was studying. The prisoner was armed with a baseball bat or a bat similar to a baseball bat and with one or two kitchen knives which the prisoner had taken from a knife block in the kitchen of the house. These two knives were the longest knives in the set of knives in the block.

20 Inside Clodine's bedroom the prisoner, not necessarily in this order, compressed Clodine's neck endeavouring to strangle her, struck her at least six separate blows to the head with the bat and stabbed her many times with one or both of the knives. He inflicted five major stab wounds to Clodine's neck and two major stab wounds to her chest or abdomen. The cause of Clodine's death was the combined effect of the compression of her neck, the blunt force head injuries and the abdominal stab wounds. After killing Clodine the prisoner remained in the house.



21 A few minutes after 6 pm the prisoner's aunt Emily Luna came to 6 Collins Street. She saw the prisoner's car parked in the carport. She rang the front doorbell of the house but no one answered and she left. Although no one answered the front doorbell, the prisoner was still inside the house.

22 Mrs Gonzales left her husband's office at about ten to five in the afternoon, with an employee named Patricia Tonel. Shortly afterwards Mrs Gonzales parted company with Patricia Tonel. Mrs Gonzales then drove home to 6 Collins Street in her car, arriving home at about half past five. She entered the house.

23 Very shortly after Mrs Gonzales entered the house the prisoner attacked her with one of the kitchen knives, while Mrs Gonzales was in the living/dining room of the house. The prisoner inflicted multiple stab wounds and cuts to Mrs Gonzales' face, neck, chest and abdomen. Mrs Gonzales' windpipe was completely transected, that is the upper half of the windpipe was completely severed from the lower half.

24 That Mrs Gonzales was attacked very shortly after entering the house is shown by inter alia the circumstances that she was still wearing the shoes she had worn to work and her handbag was found on the floor close to her body. Mrs Gonzales' usual practice when she arrived home was to take off the shoes she had been wearing outside the house and put them in a shoe cupboard and to put her handbag in one or other of two special places.

25 Mr Gonzales left the office at Blacktown at some time after his wife. Records of the use of his mobile telephone show that at 6.23 Mr Gonzales made a call on the mobile telephone to the landline at 6 Collins Street. This call was not answered.

26 Mr Gonzales drove to his home, arriving at about 6.50 pm. He entered the house. Very shortly after entering the house the prisoner attacked Mr Gonzales with one of the kitchen knives, while Mr Gonzales was still close to the front door. The prisoner inflicted multiple stab wounds to Mr Gonzales' neck, chest, back and abdomen. One of the stab wounds penetrated his right lung, another penetrated his heart and another partially severed his spinal cord. Vastly more force was used by the prisoner than was necessary to kill Mr Gonzales. That Mr Gonzales was attacked shortly after entering the house is shown by inter alia the place in the house where he was attacked and the circumstances that he was still wearing the clothes and shoes he had worn to work and his briefcase was found on the floor near his body.

27 At some time on the evening of 10 July 2001 the prisoner spray painted on a wall of the combined family room/kitchen in the house the words "Fuck off Asians KKK".

28 After killing the three victims the prisoner disposed of the knife or knives he had used in stabbing the victims, the bat he had used in striking Clodine and the shoes and clothing he had been wearing at the time of committing the murders. The shoes and clothing had become blood stained. None of these items have ever been found.

29 On the previous night, that is the night of 9 July 2001 the prisoner had made arrangements with a friend Sam Dacillo, who lived nearby, that they would meet at 8 o'clock on the evening of 10 July at Sam Dacillo's house and go out together for the evening. On 10 July the prisoner, after committing the murders, went to Sam Dacillo's house, arriving there at about 8 pm. The prisoner and Sam Dacillo, who, of course, knew nothing about the murders and was told nothing about the murders by the prisoner, went together, in the prisoner's car, to the City. They went to Planet Hollywood in George Street and then to a nearby video games centre. Later in the evening the prisoner drove back to North Ryde. He dropped Sam Dacillo off at Sam Dacillo's home at about 11.30 and then drove to 6 Collins Street.

30 At some time after arriving at his home the prisoner made an emergency telephone call to the Ambulance Service. A tape recording of the emergency telephone call was played at the trial. The precise time of the telephone call was not fixed by any evidence at the trial. In the emergency telephone call the

prisoner told the operator of the Service that someone had shot his parents and that there was a lot of blood. In the telephone call the prisoner sounded distraught.

31 At about 11.30 in the evening of 10 July a neighbour John Atamian, who lived at 7 Collins Street, that is opposite 6 Collins Street, was woken by the sound of the prisoner banging on the wall of Mr Atamian's bedroom. Mr Atamian went outside and the prisoner told him that all of the prisoner's family had been killed. Mr Atamian declined to enter the house at 6 Collins Street. Another neighbour Shane Hanley, who was watching television, heard someone calling for help and went outside. The prisoner told Mr Hanley that his family had been shot and that they were all dead. The prisoner appeared to Mr Hanley to be distraught. The prisoner and Mr Hanley entered the house at 6 Collins Street. Mr Hanley saw the dead bodies of Mr Gonzales and Mrs Gonzales. The prisoner straddled the dead bodies of each of his parents, calling out "Papa Papa" or "Mummy Mummy". He gave the appearance of being overwhelmed with grief.

32 Ambulance officers and police subsequently arrived at the house.

### **Motive**

33 I have already noted that the prisoner was a university student at Macquarie University, taking law subjects in a Bachelor of Arts course. The prisoner was performing poorly in his university studies. The prisoner's student records at both Macquarie University and the University of New South Wales, which he had attended in 1999 and 2000, show that he frequently missed sitting for exams and completing assignments. The excuse usually provided on behalf of the prisoner was that he had been suffering from some temporary respiratory tract infection or some other medical condition. On 4 July 2001, having missed sitting for exams in two of his subjects, he made a request to Macquarie University for special consideration.

34 The prisoner's parents, who were ambitious for their children and who had had hopes of the prisoner becoming a doctor or a lawyer, were disappointed by his poor performance at university. They had also discovered that the prisoner had actually falsified documents showing his university results. The prisoner's parents warned the prisoner that, if he did not do well in the next university semester, his car, to which he was very attached, would be taken away from him.

35 At the time of their deaths Mr and Mrs Gonzales owned property in Australia and the Philippines worth about one and a half million Australian dollars. The consequence of the wills made by Mr and Mrs Gonzales and their deaths and the death of their only other child Clodine would be that the prisoner would succeed to all of his parents' property, unless, of course, he was disqualified from succeeding by reason of it being established that he had killed his parents and sister.

36 On Friday 13 July 2001, that is just three days after the murders, the prisoner attended the office of Mr Stafford, his father's accountant, and made enquiries about a self-managed superannuation fund through which Mr Gonzales had conducted some of his financial affairs.

37 In October 2001 the prisoner went to the premises of a luxury car dealer in Chatswood and made enquiries about the purchase of a Lexus motor vehicle at a cost of over \$170,000. He told the sales consultant that he would finance the purchase with funds coming from an inheritance. He also told the sales consultant that he had previously paid a deposit on a Porsche at about the same cost but had decided not to proceed with the purchase of the Porsche.

38 I find that the motives for the prisoner committing the murders were that he was fearful that, because of his poor performance in his university studies, his parents might take his car away

from him and might withdraw other privileges which had been granted to him and that he wished to succeed, without delay and as sole heir, to his parents' property.

## Poison

39 At the trial evidence was admitted, without objection, which, if accepted, would show that the prisoner had intended to kill his parents by poisoning them and had actually administered poison to his mother. I have decided that I should accept this evidence and make findings of fact on the basis of this evidence.

40 Beginning in February 2001 and continuing into June and July 2001 the prisoner made computer searches on the Internet concerning poisons and particularly poisonous plants and especially extremely lethal poisons made from the seeds of two particular plants. An order was made before the trial commenced forbidding publication of the names of these plants and I will not state the names of these plants in these remarks on sentence. The prisoner made enquires by email to suppliers of these plants both in Australia and overseas.

41 On Sunday 24 June 2001 the prisoner sent an order form by express post to an Australian supplier of seeds of one of the plants. On Monday 25 June the prisoner noticed on the supplier's website that the supplier was on annual leave. On 25 June the prisoner sent an email to the supplier, saying that he had ordered the seeds "as a gift for my mother's sixtieth birthday this week-end, she has been looking for those particular seeds ever since she saw them in Florida last year" and asking the supplier to make an exception and supply the seeds the prisoner had ordered, notwithstanding that the supplier was on annual leave. I note in passing that the prisoner's mother was forty-three, and not sixty, years old and that she had not travelled to Florida the previous year.

42 Further emails were exchanged between the prisoner and the supplier. The supplier dispatched the seeds the prisoner had ordered and informed the prisoner that the seeds should arrive on Friday 29 June. The prisoner received the seeds he had ordered on or about 29 June.

43 On Sunday 1 July Mrs Gonzales complained of feeling unwell. On Tuesday 3 July she was admitted to the Adventist Hospital at Wahroonga, where she remained overnight. She was discharged from the Adventist Hospital the following afternoon.

44 The doctor who treated Mrs Gonzales at the Adventist Hospital noted that Mrs Gonzales gave a history of three days of worsening abdominal pain and diarrhoea. Mrs Gonzales herself attributed her condition to something she had eaten or drunk at a restaurant on the night of Saturday 30 June. The doctor who treated Mrs Gonzales at the Adventist Hospital formed the opinion that Mrs Gonzales was suffering from colitis, that is an inflammation of the bowel, which might have been caused by food poisoning. Understandably, the doctor did not consider the possibility that Mrs Gonzales had been poisoned by a rare poison extracted from the seeds of a plant. The results of tests which were performed at the Adventist Hospital on Mrs Gonzales blood, faeces and urine were in fact inconsistent with her condition being due to food poisoning.

45 On 2 July 2001 a well known food manufacturer received an anonymous letter stating that three of its products had been poisoned, that they were now on the shelves of supermarkets and "this is what you get for treating employees like garbage".

46 On July 2001 the Australian Federal Police and the Australian Quarantine Inspection Service received letters, which were in the same terms, purporting to be from "concerned employees" of the food company, stating that the employees had received anonymous communications to the effect that some of the company's products had been poisoned and that the employees had tried, unsuccessfully, to persuade the management of the food company to increase safety measures, to remove products from retail outlets and to warn the public.



47 I am satisfied, on the basis of evidence given by a computer expert who examined computers used by the prisoner and was able to retrieve traces of the letters and the evidence of a fingerprint expert who identified a fingerprint on the envelope in which the letter to the Australian Federal Police was enclosed as being a fingerprint of the prisoner, that the prisoner composed and sent all three letters, that is the letter to the food company and the letters to the Australian Federal Police and the Australian Quarantine Inspection Service.

48 After 10 July 2001 a cannister containing liquid was found by police in the prisoner's bedroom at 6 Collins Street. Attempts were made by police to have the liquid analysed. A laboratory in the United States reported that it had detected one of the two plant seed poisons in the liquid but that the testing the laboratory had carried out was not sufficiently reliable for court purposes.

49 A young woman with whom the prisoner formed a relationship in January 2002 gave evidence at the trial that the prisoner told her in January 2002 that he had researched a plant seed poison, that he had ordered some of the seeds, that he had used hot water to extract poison from the seeds and that he had kept the poison in his room, until it had been confiscated by the police.

50 I am satisfied to the requisite standard that Mrs Gonzales' illness was not due to food poisoning but was due to the administration to her by the prisoner of poison he had extracted from the seeds he had received from the supplier. I base this conclusion on inter alia the searches made by the prisoner about the two poisons, the statement in the prisoner's email to the supplier that he had ordered the seeds as a gift for his mother for the following week-end, the supply of seeds of one of the plants to the prisoner on or about Friday 29 June, Mrs Gonzales' illness commencing on 1 July, the inconsistency of the results of the tests performed on Mrs Gonzales at the Adventist Hospital with a diagnosis of food poisoning, the consistency of her symptoms and the results of the tests performed on her with poisoning by poison from seeds of one of the plants, the sending by the prisoner on or about 2 July of the letters to the food company, the Australian Federal Police and the Australian Quarantine Inspection Service alleging that products of the food company had been poisoned, the finding of the cannister of liquid in the prisoner's bedroom and the admissions made by the prisoner to the young woman in January 2002. The letters were sent by the prisoner to the food company, the Australian Federal Police and the Australian Quarantine Inspection Service with the intention of raising the possibility that Mrs Gonzales, if it was discovered she had been poisoned, had been poisoned by consuming one of the food company's products and of diverting any suspicion from the prisoner.

51 I reject a suggestion which was made at the trial that the prisoner made the Internet searches about poisons and ordered poisonous seeds, so that he could use the poisonous seeds to commit suicide.

52 The principal significance for sentencing purposes of the evidence about poison and the prisoner administering poison to his mother is that it shows that the prisoner had premeditated killing members of his family and that the intention to kill members of his family was not something that arose, unpremeditated and for the first time, on 10 July 2001. Before 10 July the prisoner had administered to his mother a poison which he believed would be lethal. That Mrs Gonzales did not die was probably because the prisoner's attempt to extract poison from the seeds was only partly successful.

### **False Alibis and False Trails**

53 At the trial the prisoner raised two alibis, both of which the jury must have rejected beyond reasonable doubt.

54 The first alibi was to the following effect. On the afternoon of 10 July 2001 the prisoner left his father's office at Blacktown at about 4.30. On the trip home the prisoner received a text message from Sam Dacillo that Sam Dacillo had a basketball game that evening and would be unable to meet the prisoner at 6 o'clock, as had previously been arranged between them. The prisoner arrived home at about 6 o'clock and

drove into the carport. However, he did not enter the house. While he was in the car in the carport, he received a call on his mobile telephone from Sam Dacillo. An arrangement was made between the prisoner and Sam Dacillo that they should meet at 8 o'clock. The prisoner decided that, before meeting Sam Dacillo at 8 o'clock, he would visit a friend Raf DeLeon, who lived at Kings Ridge near Blacktown. The prisoner drove to the Blacktown area but was unable to find Raf DeLeon's house. As time was passing, the prisoner abandoned the attempt to visit Raf DeLeon and drove back to North Ryde in order to keep his appointment with Sam Dacillo at 8 o'clock.

55 The first alibi was constructed by the prisoner so as to account for inter alia the presence of the prisoner's car in the carport shortly after 6 o'clock, the prisoner being aware that his aunt had come to the house shortly after 6 o'clock and would have seen the prisoner's car.

56 The first alibi was advanced in a statement the prisoner made to police on the night of 10-11 July 2001 and the prisoner maintained the first alibi on a number of subsequent occasions, including in an interview by police at 6 Collins Street on 16 July 2001 and in further interviews by the police on 1 August and 3 August, 2001.

57 In January 2002 the prisoner abandoned the first alibi. He had concluded that there were insuperable difficulties with the first alibi. The first alibi was inconsistent with the sighting of his car in the carport at 6 Collins Street by Mariella Pavone between 4.15 and 4.30 in the afternoon of 10 July. The first alibi was not corroborated by, and was inconsistent with, information supplied to the police by Sam Dacillo and records of the use of the mobile telephones of the prisoner and Sam Dacillo. At the trial the prisoner in giving evidence accepted that the first alibi was "a lot of lies".

58 In January 2002 the prisoner began constructing a second alibi. In an intercepted telephone conversation with a friend on 10 January 2002 the prisoner told the friend that the new alibi would have to be "solid", otherwise "it could blow in my face again". The second alibi was elaborated in a written statement by the prisoner dated 12 April 2002, which was provided to police on 22 May 2002. At the trial the prisoner gave evidence in chief in support of the second alibi.

59 The second alibi was to the following effect. On the afternoon of 10 July 2001 the prisoner left his father's office at Blacktown at some time before 4 o'clock. He arrived home, parked his car in the carport but did not go inside the house. He walked to a nearby service station in Wicks Road, North Ryde. After waiting a few minutes at the service station he caught a passing taxi and travelled in the taxi to Chatswood, where he alighted. He walked to the premises of a brothel at Chatswood. After waiting for a period of time inside the brothel he selected a prostitute, who he named, and had sex with her. Afterwards he walked to the railway station and caught a taxi back to his home. He did not enter the house. He got into his own car and drove his own car to Sam Dacillo's house.

60 The second alibi was constructed by the prisoner so as to account for inter alia the sightings of his car in the carport at the house by both Mariella Pavone and Emily Luna and to provide an explanation of how the prisoner's car, but not the prisoner himself, could have been at 6 Collins Street.

61 The second alibi was also constructed by the prisoner so that the alibi itself would provide an explanation of why he had not advanced the alibi earlier. The prisoner said that he had not told the truth earlier about his movements before meeting Sam Dacillo, because he was too embarrassed to reveal to members of his extended family that he had been with a prostitute on the night his parents were killed. The prisoner took steps to collect evidence which would support his second alibi, including pressuring the prostitute at the brothel to give false evidence to support the alibi and persuading a taxi driver who he met in Chatswood in January 2002 to make an untruthful statement, the terms of which were dictated by the prisoner, that the taxi driver recalled seeing the prisoner in the second week of July 2001, picking him up from a service station in Wicks Road, North Ryde and taking him to Chatswood Railway Station.

62 At the trial the second alibi was contradicted by evidence from the prostitute, evidence of records of the brothel which showed that the prostitute had not been at work at the brothel on 10 July 2001, evidence of the taxi driver and evidence of records of the driving by the taxi driver of his taxi on 10 July 2001.

63 Apart from raising the two false alibis, the prisoner laid many false trails, with the intention of misleading the police who were investigating the deaths of the members of his family and of diverting suspicion from himself.

64 These false trails included spray painting the words "Fuck off Asians KKK" on the wall in the house, which was intended by the prisoner to mislead the police into supposing that the members of the prisoner's family had been the victims of racist crimes; telling police that after he returned home on the night of 10 July 2001 he had seen and heard some intruder leaving the house; suggesting to police that members of his family had been killed at the instigation of a prominent Philippines businessman, who he named; telling police that he had received threatening emails; reporting to police that in the early hours of 30 May 2002 an attempt had been made to break into the unit in which he was living; and claiming that on 31 May 2002 he had been abducted and assaulted. All of these assertions made to police were false and knowingly false.

65 As the Crown accepted, the raising of false alibis and the laying of false trails with the intention of deceiving and misleading the police and the criminal justice system cannot be regarded as aggravating the objective criminality of the prisoner's offences. However, the raising of false alibis and the laying of false trails is relevant to whether any finding should be made in favour of the prisoner that he has shown contrition or that he has provided any assistance or co-operation and is also relevant to the prisoner's prospects of rehabilitation and to the need for personal deterrence and community protection.

#### **The Prisoner's Mental State**

66 As I have already noted, a report obtained by the prisoner's legal representatives from a psychiatrist Professor David M Greenberg was admitted into evidence in the proceedings on sentence. The report by Professor Greenberg was the only evidence from a psychiatrist or a psychologist in the trial or the proceedings on sentence.

67 In his report Professor Greenberg said that he was instructed to assume that the prisoner was guilty of the offences, "although he vehemently maintains that he is innocent". Professor Greenberg recorded the prisoner as saying to him:-

"I lied about one or two things to friends. I was put on trial for being a lousy person. I have deep remorse for people I lied to but (they) can't make me plead guilty to murder".

68 In his report Professor Greenberg said that he could not elicit any delusional beliefs in the prisoner and that he was unable to diagnose the prisoner as having any major psychiatric illness.

69 At page 6 of his report Professor Greenberg said:-

"...he reports that 6 months prior to his family's murders, he was feeling suicidal and depressed. He denies that during this six month period he stopped attending all his classes and interacting with his friends. He reports that at the time he still went out with his friends and dated the opposite sex. He also reports that he organised a commercial dance party as his own business enterprise for several hundred university students. During this period he denies any disturbance of



appetite or alteration of his weight. He did report some loss of energy and poor concentration. I am of the opinion that Mr Gonzales had a depressed mood during the time period surrounding the offences. I however could not make the diagnosis that just prior to his family's murders he was suffering from a major depressive disorder".

70 Also at page 6 of his report Professor Greenberg said:-

"There is insufficient evidence to diagnose Mr Gonzales as suffering from a personality disorder at this time".

71 At page 7 of his report Professor Greenberg referred to an incident in which the prisoner then aged ten was buried in building rubble, after an earthquake had demolished a hotel in the Philippines owned by his father, and was then rescued from the rubble by his father. Professor Greenberg expressed the opinion that directly after this traumatic event the prisoner might have qualified for a diagnosis of post traumatic stress disorder but that the prisoner had denied to Professor Greenberg that he had had any symptoms of post traumatic stress disorder just before the murders or subsequently.

72 In his report Professor Greenberg referred to the deterioration in the prisoner's academic performance in his last year of high school and at university and to his suffering "flu-like" somatic illnesses. Professor Greenberg offered some possible explanations, including that the prisoner has some undiagnosed medical condition, that he has what Professor Greenberg described as "an undifferentiated somatoform disorder" and that he has incipient schizophrenia. It is apparent from Professor Greenberg's report that each of these explanations was considered by Professor Greenberg to be no more than a possibility and in his report Professor Greenberg recorded some reasons for rejecting each of these explanations. For example, with regard to possible incipient schizophrenia, Professor Greenberg said that the prisoner had had no acute psychotic symptoms suggestive of a schizophrenic illness and that there was no family history of mental illness and his conclusion was merely "the possibility of incipient schizophrenia cannot be totally excluded".

73 In the conclusion to his report Professor Greenberg said that "Mr Gonzales maintains his innocence and denies that he is in denial about his involvement in the deaths of his family".

74 Having had regard to Professor Greenberg's report, I do not make any finding that at the time of committing the murders the prisoner had any delusional beliefs or suffered from any psychiatric illness or personality disorder or from post traumatic stress disorder or from some, as yet undiagnosed, mental condition or any undifferentiated somatoform disorder or incipient schizophrenia. Having regard to the matters referred to by Professor Greenberg in the part of his report which I have quoted, I do not accept that the prisoner seriously contemplated suicide or that he was seriously depressed in the period leading up to the murders.

75 I find that at the time of committing the murders the prisoner was not suffering from any mental illness or any mental disorder or any mental abnormality which might, to some degree, mitigate his objective criminality.

#### **Subjective Circumstances**

76 I have already referred to some of the subjective circumstances of the prisoner.

77 He was born in the Philippines on 16 September 1980. He was accordingly twenty years old, approaching twenty-one, at the time of committing the offences.



78 The author of the pre-sentence report states in the report:-

“Discussions with the offender, his friends (support persons) and an aunt indicate Mr Gonzales was raised in a loving, stable environment by parents who were focussed on providing their children with a secure future. Mr Gonzales described his parents as strict and devout and reported that, whilst his parents’ expectations of his behaviour and academic performance were high, he considered those expectations were not unreasonable. He further stated that, in retrospect, he believed his expectations of himself and the need to please or impress others caused him considerable stress.”

79 When the prisoner was ten years old the incident occurred which I have already referred to, in which the prisoner was buried in rubble from an earthquake in the Philippines and was rescued from the rubble by his father.

80 The family migrated to Australia when the prisoner was eleven years old. Other members of his extended family had already migrated or subsequently migrated to Australia. In Australia Mr Teddy Gonzales qualified as a lawyer and established his own legal practice.

81 The prisoner went to high school in Australia. He obtained his Higher School Certificate but his results were not nearly good enough to gain admission to university faculties of medicine or law.

82 The prisoner attended the University of New South Wales in 1999 and the first half of 2000 as a student in the faculty of Science taking medical subjects. He was not a medical student but, if he had done particularly well in the science course he was taking, he might have gained admission to the faculty of Medicine at the University and this was his objective. The prisoner performed poorly in his science course.

83 In mid 2000 the prisoner transferred to Macquarie University. He enrolled in a non-award programme taking legal subjects. In 2001 he became enrolled in a Bachelor of Arts degree programme, taking law subjects. If he had done particularly well in his Arts course he might have gained admission to the faculty of Law at Macquarie University and this was his objective. The prisoner did not sit for or failed a number of exams at Macquarie University. Professor Greenberg recorded in his report that the prisoner told him that “during periods of exams or tests he always got sick”.

84 The prisoner provided medical certificates to both Universities, usually stating that the prisoner was suffering from a temporary upper respiratory tract infection.

85 For three to four years down to July 2001 the prisoner worked part-time as a para-legal in his father’s legal practice. In the months before he was arrested he worked as a general hand in a small suburban business.

86 As noted earlier, the prisoner has no previous criminal convictions.

87 Prior to 10 July 2001 the prisoner had not sought or received any psychiatric or psychological assessment or treatment. For six months after the deaths he regularly saw a grief counsellor who was introduced to him by the police.

88 The prisoner was arrested on 13 June 2002 and charged with the murders. The investigating police had long suspected the prisoner of having committed the murders but had given the prisoner the opportunity of submitting to them his second alibi. I will make the sentences I impose commence from 13 June 2002.

89 The pre-sentence report states that the prisoner's behaviour since he has been in custody has been described by Correctional staff as "polite and unproblematic". He was employed as a sweeper at the Silverwater Correctional Centre between June 2002 and May 2004. However, after the jury returned their verdicts of guilty, he was placed on strict protection due to concerns held about his safety in prison.

90 The author of the pre-sentence report concludes:-

"Mr Gonzales presents as a quiet person eager to engage in discussion surrounding the offences. However, it would appear he does so with the expressed intention of arguing his innocence and to avoid taking responsibility for the offences. He expressed feelings of sadness and grief in relation to the death of his parents and sister, and of betrayal in relation to the withdrawal of support from his extended family and friends".

91 I will make further findings about the subjective circumstances of the prisoner later in these remarks.

### SUBMISSIONS OF THE PARTIES

92 The Crown submitted, in effect, that the murders committed by the prisoner were objectively heinous, that they fell within the worst class of cases of murder at common law and also fell within s 61(1) of the *Crimes (Sentencing Procedure) Act*, that there was no circumstance mitigating the objective criminality of the offences and that, with the possible exception of the prisoner's youth, there was no subjective feature which would mitigate the penalties which should be imposed. Consequently, subject possibly to the prisoner's youth, maximum sentences of life imprisonment should be imposed.

93 In support of these submissions the Crown said inter alia that the prisoner had committed three murders; that the victims were the prisoner's parents and sister; that there had been a high degree of brutality or violence in the commission of the murders; that the murders had been premeditated and planned; that, although the murders had been committed in one criminal episode, there had been distinct intervals of time between the commission of the first and second murders and the commission of the second and third murders; that the prisoner had made searches about poisons and had obtained poisonous seeds with the intention of poisoning his parents and had administered poison to his mother; that he had gone out with Sam Dacillo on the evening of 10 July as part of a plan to create an alibi for himself for at least the time he was with Sam Dacillo and that his going out with Sam Dacillo, so soon after he had committed the murders, demonstrated his callousness; that he had acted out of the base motives of ridding himself of threats to his way of life and of obtaining an inheritance from his parents; that he had raised false alibis and laid false trails with the intention of misleading police; that he had not pleaded guilty; that he had not shown any contrition; that he had not provided any assistance to law enforcement authorities, indeed, quite the contrary; that he did not have any excuse of having had a deprived background or upbringing; and that he did not suffer from any mental condition which might have mitigated his criminality.

94 The Crown submitted that the only matter which might possibly mitigate the penalties which should be imposed was the prisoner's young age. However, the Crown submitted, the present offences were so heinous that the young age of the prisoner should not result in any mitigation of penalty. The Crown referred to **R v Valera** [2002] NSWCCA 50, where sentences of life imprisonment were imposed on an offender who was only nineteen years old when he committed two murders and the prisoner's appeal against sentence was dismissed by the Court of Criminal Appeal.

95 Counsel for the prisoner did not dispute most of the Crown's submissions. However, he pointed to the prisoner's young age, submitted that I could not find the prisoner had no prospects of rehabilitation and pointed out that the prisoner had been placed on strict protection. Counsel for the prisoner pointed to some cases where determinate, and not life, sentences had been imposed, while acknowledging that other cases

could only be instances in the range of sentences and that no other case was similar on its facts to the present case.

### The Law to be Applied

96 I have taken into account the provisions of s 19A of the *Crimes Act* and ss 3A, 21, 21A and 61 of the *Crimes (Sentencing Procedure) Act* and other relevant statutory provisions and the principles stated in such cases as **R v Harris** (2000) 50 NSWLR 409 and **R v Merritt** [2004] NSWCCA 19.

97 In **Harris** the Court of Criminal Appeal held (at 424 (90)) that the common law concerning the worst category of cases of murder has not been abrogated by s 61 of the *Crimes (Sentencing Procedure) Act*, although it was not clear to the Court that the determination of whether a case falls within the worst category of cases of murder at common law is any different from a determination of whether a case falls within s 61(1) of the *Crimes (Sentencing Procedure) Act*.

98 As regards the worst category of cases of murder at common law a passage in the judgment of Badgery-Parker J in **R v Twala** (unreported Court of Criminal Appeal 4 November 1994) has frequently been applied. At page 7 of his judgment his Honour said:-

“In order to characterise any case as being in the worst case category, it must be possible to point to particular features which are of very great heinousness and it must be possible to postulate the absence of facts mitigating the seriousness of the crime (as distinct from subjective features mitigating the penalty to be imposed).”

99 In **R v Arthurell** (unreported Hunt CJ at CL 3 October 1997) the then Chief Judge at Common Law said at page 11:-

“The adjective ‘heinous’ which gives the noun ‘heinousness’ its meaning has been variously defined as meaning atrocious, detestable, hateful, odious, gravely reprehensible and extremely wicked... the test to be satisfied is thus a substantial one”.

100 Section 61(1) of the *Crimes (Sentencing Procedure) Act* provides:-

“The court is to impose a sentence of imprisonment for life on a person who is convicted of murder if the court is satisfied that 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”.

101 The burden of proof is on the Crown to prove beyond reasonable doubt that a case falls within s 61(1) of the *Crimes (Sentencing Procedure) Act* (**Merritt** at 35). The focus of s 61(1) is on the level of culpability in the commission of the offence (**Merritt** at 57). In **Merritt** it was held that on the proper interpretation of s 61(1) a life sentence is required, if the Court is satisfied that the level of culpability is so extreme that the community interest in the combined effect of such of the four factors, retribution, punishment, community protection and deterrence, as are applicable can only be met by a life sentence, even if one or more of the factors would not of itself be sufficient or is inapplicable. Even if the Court is satisfied that a case falls within s 61(1), the Court, by reason of s 61(3) and s 21 of the Act, still has a

discretion to impose a lesser sentence, where the offender's subjective circumstances justify a lesser sentence than one of life imprisonment.

102 Both in determining whether a case falls within the worst category of cases of murder at common law and whether a case falls within s 61(1) of the *Crimes (Sentencing Procedure) Act*, the Court can take into account that the offender has been convicted of multiple murders (**Merritt** at 40).

103 In **Merritt** the Chief Judge at Common Law observed that a review he had conducted of some of the cases in which life sentences had been imposed showed that those cases "were either wholly or, in the main, cases of extreme violence, where the offender's psychiatric or emotional state either did not contribute to the offence or had very limited significance or where his or her future dangerousness to the community was demonstrably evident".



## DECISION

104 I have already made findings about the objective facts of the offences. These objective facts include the following:-

105 The prisoner committed three murders, killing his parents and his sister by assaulting them at close quarters. He had an intention to kill each of the victims. He killed the victims by stabbing them with a knife or, in the case of Clodine, striking her with a bat and strangling her, as well as stabbing her with a knife. There was a high degree of violence in all of the murders.

106 The killings were premeditated, the prisoner having had it in mind to kill his parents from the time he began researching poisons on the Internet some months before 10 July 2001. The prisoner gave poison to his mother about ten days before 10 July 2001, intending to kill her.

107 Although all three victims were killed in the course of one criminal episode, there were distinct intervals of time of an hour or more between the killing of Clodine and the killing of Mrs Gonzales and then between the killing of Mrs Gonzales and the killing of Mr Gonzales. The offences were not committed in one, uninterrupted, outburst of criminal conduct.

108 The motives for the killings were to prevent his parents withdrawing privileges they had extended to him and to obtain his parent's wealth, without delay and as their sole heir.

109 The prisoner was not at the time of committing the offences suffering from any mental illness or mental disorder or any mental state which would mitigate the criminality of his conduct.

110 I consider that the murders show features of very great heinousness and that there are no facts mitigating the objective seriousness of the murders and hence the murders fall within the worst category of cases of murder at common law.

111 I am also satisfied that the level of culpability in the commission of the offences is so extreme that the case falls within s 61(1) of the *Crimes (Sentencing Procedure) Act*.

112 It is, however, necessary for me to determine whether there are subjective features which at common law would mitigate the penalties to be imposed or which would result in my exercising in favour of the prisoner the discretion, which is preserved by s 61(3), to impose lesser sentences than life sentences.

113 I have already made findings about the subjective circumstances of the prisoner. In particular, I have noted that the prisoner did not plead guilty, that he did not provide any assistance to the authorities and, on the contrary, persistently endeavoured to mislead them, and that he has not shown any contrition.

114 I do not make any finding that the prisoner has no prospects of rehabilitation. However, I consider that there is a risk of the prisoner re-offending and that there is a risk of future dangerousness. I base this conclusion on the following matters among others:- The objective facts of the offences; that the prisoner pleaded not guilty; that more than three years after having committed the offences the prisoner continues to maintain his innocence and has not demonstrated any insight into the enormity of the offences he committed or any acceptance of responsibility for the offences; and the high degree of unscrupulousness and duplicity shown by the prisoner in the raising of the false alibis and the laying of the false trails.

115 I take into account the prisoner's young age at the time of committing the offences. He was twenty years old, approaching his twenty-first birthday, and he was in his third year as a university student. I also

take into account the other subjective matters urged by his counsel. However, the conclusion I have reached is that the objective facts of the offences and the subjective circumstances of the prisoner are such that I should impose sentences of life imprisonment for the murders.

116 On the three charges of murder I sentence the prisoner to concurrent sentences of imprisonment for life, each to date from 13 June 2002.

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