

DPP v Bakewell [2007] NTSC 51

PARTIES: THE DIRECTOR OF PUBLIC PROSECUTIONS

v

BAKEWELL, Jonathan Peter

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 8815904

DELIVERED: 16 October 2007

HEARING DATES: 11 October 2007

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

CRIMINAL LAW – Sentencing – Sentencing (Crime of Murder) Parole Reform Act 2003 (NT) - application by Director of Public Prosecutions pursuant to s 19(3) – provision for Supreme Court to revoke non-parole period and fix longer period or refuse to fix any period – application allowed - non-parole period revoked – fix longer non-parole period.

Sentencing (Crime of Murder) Parole Reform Act 2003 (NT)
Prisoners (Interstate Transfer) Act 1983 (NT)

REPRESENTATION:

Counsel:

Applicant: M Grant QC, S Brownhill
Respondent: M Hunter

Solicitors:

Applicant: Office of the Director of Public
Prosecutions
Respondent: Robert Welfare

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

DPP v Bakewell [2007] NTSC 51
No. 8815904

BETWEEN:

**THE DIRECTOR OF PUBLIC
PROSECUTIONS**
Applicant

AND:

BAKEWELL, Jonathan Peter
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 16 October 2007)

Introduction

- [1] This is an application under s 19 of the Sentencing (Crime of Murder) and Parole Reform Act (NT) (the Act). The application is made in the following circumstances.
- [2] On 10 May 1989 Jonathan Peter Bakewell pleaded guilty to the crime of unlawfully assaulting Ms Anne Marie Culleton with intent to have carnal knowledge of her and thereby had carnal knowledge of her. On 17 May 1989 a jury unanimously convicted Mr Bakewell of the murder of Ms Anne Maree Culleton.
- [3] On 26 May 1989 Kearney J sentenced Mr Bakewell to imprisonment for life for the crime of murder, to imprisonment for ten years for the crime of rape, to imprisonment for four years for the crime of unlawfully entering a dwelling house and to imprisonment for one year for the crime of stealing.

The court ordered that the sentences of imprisonment be served concurrently. Kearney J did not fix a non-parole period for the sentence of imprisonment for life for the crime of murder. He did not have power to do so.

- [4] On 11 February 2004 the Act commenced. Under s 18(a) of the Act the sentences of imprisonment for life of all prisoners serving sentences for a single conviction for the crime of murder were taken to include a non-parole period of 20 years imprisonment. The non-parole period of 20 years was subject to the Director of Public Prosecutions making an application to the court under s 19 of the Act for orders that the non-parole period of 20 years be revoked and either a longer non-parole period be fixed or the court refuse to fix a non-parole period.
- [5] As a result of the enactment of s 18 of the Act as at 11 February 2004 Mr Bakewell's sentence of imprisonment for life for the crime of murder was taken to include a non-parole period of 20 years.
- [6] On 25 June 2007 the Director of Public Prosecutions filed the application before the court. The Director seeks orders that the court revoke Mr Bakewell's non-parole period of 20 years and fix a longer non-parole period of 25 years.

The Respondent

- [7] Mr Bakewell was born in England in 1961. He is now 46 years of age. He was 26 years of age at the time he murdered Ms Culleton. He was adopted shortly after his birth. Following his adoption he came to Australia as a migrant. He lived in Melbourne for a short period of time before moving to Adelaide. He had an unhappy childhood.

- [8] Mr Bakewell attended primary and secondary school. He failed to complete the third grade of high school and he left school at the age of 15 years. He did not like school because he thought it was boring and hard. He had difficulty paying attention in class.
- [9] After leaving school Mr Bakewell found employment. He has worked as a labourer, a printer, a painter, building wheelchairs and working in factories. He had at least 10 different jobs before he was incarcerated. His painting job lasted for six years and his printing job lasted for four years. He was a reliable, dependable and hard working employee.
- [10] At the age of 15 years Mr Bakewell started to smoke cannabis. He used the drug until he was 26 years of age. He smoked to escape as well as to relax. He started drinking alcohol when he was 17 years of age. He abused alcohol badly. It interfered with his life. He got into trouble when he got drunk. He had lots of fights. Before his incarceration Mr Bakewell had numerous stays in detoxification centres as a result of his misuse of alcohol.
- [11] Mr Bakewell had a criminal record before he committed the crime of murder. When he was 18 years of age he was charged with robbery in Adelaide. He ran away, finally returning many years later when he surrendered himself to that charge.

The facts

- [12] The facts of Mr Bakewell's offending were as follows. Anne Marie Culleton was an attractive young woman. She met her death at Mr Bakewell's hands

in the very early hours of Tuesday 23 February 1988. At the time of her death she was 20 years of age. She had been living alone at flat number 1 at 123 Playford Street, Fannie Bay, for five and a half weeks.

[13] Mr Bakewell had been living with two others in flat 2 at 123 Playford Street, Fannie Bay, for a period of time. At 9.00 am on 22 February 1988 he vacated unit 2 because he could not afford to pay the rent. He returned alone to the flat late at night on the same day because he could find nowhere else to sleep on a bed.

[14] When Mr Bakewell returned to the flat Ms Culleton was asleep in the adjoining flat. Mr Bakewell was aware that she lived in that flat. He decided to have sexual intercourse with her and he broke into her flat by putting his shoulder to the locked back door until the door burst open. He broke into the flat intending to assault Ms Culleton and to forcibly have sexual intercourse with her.

[15] After Mr Bakewell broke into Ms Culleton's flat he went straight to the main bedroom. He found that Ms Culleton was awake and he attacked her. Ms Culleton got up from her bed and she screamed when he attacked her. Mr Bakewell struggled with Ms Culleton and he put his hand over her mouth to stifle her screams. He then dragged her to the second bedroom where he put her down on one of the single beds. Mr Bakewell then pulled her underpants off and he dropped off his own trousers.

[16] To stop Ms Culleton screaming Mr Bakewell had his hand over her mouth. However, she continued to scream and to resist Mr Bakewell by wriggling and slipping out from under him. As a result Mr Bakewell moved his hand to her throat and he squeezed her windpipe. At the same time he told her to shut up. Mr Bakewell let go of Ms Culleton's windpipe but she started to scream again. He reapplied the pressure to her windpipe with his hand until she was gasping for air. This went on three or four times as she continued to scream when he released the pressure on her windpipe. At the same time he was attempting to have sexual intercourse with her. He found that his penis was in her bottom. He then withdrew it. Ms Culleton continued to wriggle and scream. Mr Bakewell then tore off the corner of the sheet he was lying on and he tied it around her throat with a double knot. His intention in doing that was not to kill her or to do grievous harm. It was to stop her screaming so that he could safely continue with the act of unlawful sexual intercourse.

[17] The ligature applied to Ms Culleton's neck stopped her screaming. It also effectively stopped her resistance to Mr Bakewell because she could no longer breathe very well. She had to take long slow breaths. Her energies were directed to trying to breathe instead of resisting Mr Bakewell. Mr Bakewell observed Ms Culleton breathing in this fashion. He had sexual intercourse with her as she lay on the bed in that condition.

[18] After Mr Bakewell had ejaculated he got up from the bed. He left Ms Culleton there with the ligature tied around her neck. He then went out

into the kitchen and he drank some fruit juice from the refrigerator to quench his thirst. He saw Ms Culleton's handbag on the table. He went through it and removed all of the money that was in the handbag.

[19] Mr Bakewell then went back into the second bedroom. He found that Ms Culleton was no longer breathing. Her face was puffed and blue. He then tried without success to untie the knot in the piece of sheet which he had placed around her neck. Mr Bakewell then took a knife from the kitchen and he used it to cut the ligature free from Ms Culleton's neck. He pumped her chest about 10 times in an endeavour to get her breathing again. However, he was unsuccessful.

[20] Mr Bakewell realised that Ms Culleton was dead. He then panicked. He decided to conceal the fact that he had been present in Ms Culleton's flat by removing any signs which might identify his presence in the flat. To do that he wiped the knife which he had used and the door knobs and the light switch and any other thing that he thought he had touched in her flat. Mr Bakewell then put Ms Culleton's body into a sheet and he took her body into the shower receptacle in the bathroom. He turned the shower on, turning the shower onto the sheet for the purpose of removing fingerprints. He then wiped the floor of the flat with another sheet. After some final wiping he left the flat. Mr Bakewell got rid of the sheets which he had used to wipe up the flat and he went to a service station where he caught a taxi which drove him into Darwin city.

[21] On 26 February 1988 Mr Bakewell was questioned by police in Alice Springs. He made a full confession of his guilt.

The remarks of the sentencing judge

[22] When sentencing the offender Kearney J made the following remarks:

You displayed not a vestige of civilised humanity towards [Ms Culleton] when she was alive and you gained little credit in my eyes for your limited attempts to revive her later on.

Crimes such as the one you committed, Mr Bakewell, spread terror throughout the community, particularly amongst young women who live alone and who have to entrust their safety at night to the security of the locks of their doors. To such ordinary people, although you may not understand it, you are a figure of nightmare. They are entitled to look to the system of justice to protect them from such people as you and to demand a punishment which reflects their abhorrence of what you did.

In your case, the punishment laid down by law, is not a matter within my control, it is the punishment of imprisonment for life for the murder which you committed. I consider it is a punishment which in your case is fully warranted in every way and indeed represents the minimum punishment which a civilised society can rightly demand be imposed upon you.

In causing the death of this young woman you displayed such complete heartlessness and lack of any human compassion as to mark you out clearly from your fellow man. That you should be required by law to be condemned to prison for life reflects in part the community's horror at what you did and their legitimate and proper need that the risk which you present to the community be removed from the community for many years to come.

The punishment now inflicted upon you contains some small element of retribution for what you did, which society can properly demand be imposed on you both for her and for those people ... on whom you have brought untold grief.

As a person in prison for life, Mr Bakewell, you are not eligible to be considered for parole. You may, however, be considered for release at some future time if the executive decides that the prerogative of mercy should be extended to you. If and when that

matter arises for consideration, many years will have rolled past. People alive today and vitally affected by these elements may have joined your victim in her grave and be unable, effectively, to express their view about your release. The memory of the authorities who may consider the question of your release may have faded [it maybe] that they can only gain their knowledge from the written record.

I think it is therefore important to state, as I now do, that despite your limited prior criminal record I regard you at this time as a highly dangerous person who represents an extreme risk to the ordinary members of the community and, as such, you are a person unfit to live freely in society at least for many many years to come.

Whether you should ever be permitted to live again as an ordinary member of society is something cannot now at this time be determined.

Time in Prison in Darwin

- [23] The sentences of imprisonment imposed on Mr Bakewell were backdated to 27 February 1988 to reflect the time that he had spent in custody following his arrest after the death of Ms Culleton. Mr Bakewell remained in prison in Darwin until 15 April 2005. On that date Mr Bakewell was transferred from the Darwin Correctional Centre to Yatala Labour Prison in South Australia. He was transferred in the interests of his welfare under s 5 of the Prisoners (Interstate Transfer) Act (NT). He has remained in South Australia since 15 April 2005.
- [24] While in the Darwin Correctional Centre Mr Bakewell completed the following education modules: painting (Certificate II in Art and Craft), individual learning plan (Certificate I in Vocational Access), algebra (Certificate II in Introductory Vocational Education), decimal fractions percentage and ratio (Certificate II in Introductory Vocational Education), measurement (Certificate II in Introductory Vocation Education), accident action program and accident action.
- [25] While at the Darwin Correctional Centre Mr Bakewell completed the following rehabilitation programs: the Sex Offender Pilot program run by

Dr Sharon McCallum, the Brief Intervention/Alcohol Program, the Therapeutic Alcohol Program, Part A of the Brief Introduction, Cannabis Program, the Introduction to Alcohol Awareness Program – a motivational and preparatory program run by prisoner rehabilitation team, and the Cognitive Skills Program – a treatment program. He also received anger management counselling which was provided by Mr Ré Acacio, a forensic psychologist, over several years.

- [26] A report from Mr Ré Acacio is in evidence. Mr Bakewell told Mr Ré Acacio that he believes that he was responsible for the crimes that he committed. Mr Bakewell said that he could have avoided the crimes if only he had stopped taking drugs and alcohol. He could keep himself from committing crimes by complete abstinence from alcohol and other drugs and by staying in his present relationship and starting a business. He told the psychologist that he is absolutely regretful for his offending because he not only ended the life of the victim of his crimes but he also stuffed up the lives of many other people. Mr Bakewell said that it was not in his nature to make anyone a victim. He said that he continues to have a hard time living with what he did. He said that although he has had no contact with those related to his victim he feels strongly that what he has done must have made their worlds fall apart and devastated them. It was not a good thing for him to live with the memory of the harm that he has caused.
- [27] Mr Bakewell also reported to Mr Ré Acacio that being in prison for so long has been a learning process for him. He has not wasted his time in prison. Mr Bakewell strongly believes that there is no way he will ever come back to prison once he is released. He said that he could not turn back the clock and change what had happened or what brought him to prison. He could, however, change his future behaviour and has done some hard work to help him to do so. He had undertaken anger management counselling, assertive training skills, sexual offending treatment and so forth.

[28] In his report Mr Ré Acacio stated that Mr Bakewell underwent an HCR-20 test prior to being transferred to prison in South Australia. The results of that test reveal that he is a low risk. Mr Bakewell does not suffer from any major mental illness. He had in the past had a paranoid personality disorder but that was probably a reflection or reaction to being incarcerated. He was extremely suspicious and extremely anxious. Mr Ré Acacio is of the opinion that: Mr Bakewell has successfully overcome such matters; he has learnt to be assertive instead of being aggressive in situations where he previously would have over reacted with hostility; and he has taught himself to be adaptable in prison. Mr Ré Acacio strongly believes that Mr Bakewell would be able to transfer that capacity outside of the prison. In his opinion Mr Bakewell had and continues to be remorseful for his crimes. Mr Bakewell is cognitively and effectively able to express his empathy towards his victim. In Mr Ré Acacio's opinion this is a good sign and a good indication that the probability of Mr Bakewell re-offending has decreased.

Time in Prison in South Australia

[29] While in prison in South Australia Mr Bakewell has completed and or attended the following programs: Victim Awareness; Alcohol and Other Drugs – Relapse Program; the Sexual Behaviour Clinic; and Domestic Violence for Men. Mr Bakewell completed the Victim Awareness Program at Mobilong Prison. He attended the entire program. His participation and written work were of a good standard. He understood the concepts involved in the program. His victim impact statement and restitution plan were of an acceptable standard and every part of his plan ensured that others are safe.

[30] Mr Bakewell completed the Alcohol and Other Drugs – Relapse Program at Mobilong Prison. He attended all sessions of the program. He was open and honest in his participation and he understood the concepts in the program.

- [31] Mr Bakewell completed a further Alcohol and Other Drugs – Relapse Program at the Adelaide Pre-Release Centre. The facilitator of the program stated that Mr Bakewell participated in all sessions on a one to one basis. He participated actively, contributing in a mature and thoughtful way and was open to new ideas. Mr Bakewell noted that one of his risk factors for offending was alcohol.
- [32] Mr Bakewell was an active and willing participant in the Sexual Behaviour Clinic. He completed his homework and assigned projects. He asked appropriate questions and he was respectful of other participants. The records state that he participated appropriately within the small group, provided insightful responses and generated helpful discussion.
- [33] For the period that Mr Bakewell was at Yatala Labour Prison from 15 April 2005 to 1 June 2005 the prison records state that Mr Bakewell was always polite to officers and fellow prisoners and his cell was always in excellent order.
- [34] The prison records for Mr Bakewell’s attendance at Mobilong Prison from 1 June 2005 to 14 August 2006 state that Mr Bakewell secured employment in the bakery where he was considered a reliable and competent worker. He was afforded compassionate leave on six occasions to visit his ill father. Escorting officers stated that Mr Bakewell was always cooperative, courteous and grateful of the opportunity of spending time with his father.
- [35] On 26 May 2006 Mr Bakewell was transferred to the Murray Unit, presumably at the Mobilong Prison. A case note of that date states that he settled in well with the outside work gang. He is hard working and takes pride in whatever he is involved in. He is polite and shows initiative.
- [36] On 17 August 2006 Mr Bakewell was approved to commence work on the National Parks Program on a six month contract. Mr Bakewell completed the following courses: the Budgeting Course; a Quit Smoking Seminar; and

a Chainsaw Operator's Certificate Course. He was working towards a Certificate in Agriculture. While working on the National Parks Program Mr Bakewell received very good work reports. For example, on 5 February 2007 it was said that, "Mr Bakewell continues to work well within the group. He is a self starter and easily motivated. Mr Bakewell enjoys the hard work involved with using the chainsaw and welcomes the challenging work sites with enthusiasm. He is trusted to work with minimal supervision and he has been encouraged to take on more responsibility."

[37] On 2 April 2007 Mr Bakewell commenced outside employment at Ceiling Concepts in Windsor Garden. He worked Monday to Friday each week. A comment recorded in his file states that, "Mr Bakewell continues to like his job and sees it as a long term prospect." A character reference provided by the Managing Director of Ceiling Concepts Pty Ltd states that, "Since starting at our company as a trade assistant in early April Mr Bakewell has proved himself a capable, diligent and honest worker. His enthusiasm for the project on which he was employed was exceptional. His dedication to the tasks he was asked to perform was excellent. He is actively acquiring the tools of trade for his future in the industry and he got on very well with the other employees." Mr Vass stated that, "His actions and demeanour at work seemed to belie his previous offending. The company would be grateful for Mr Bakewell's return. He is a reliable and enthusiastic labourer. He is an asset. It would appear to us that the prison system has successfully rehabilitated Mr Bakewell. We fail to see how further correctional action would benefit either society or Mr Bakewell. He has a realistic chance of assimilating back into society."

[38] In a report dated 8 September 2007 Ms Nisyrios, a Senior Social Worker with the Department of Correctional Services in South Australia and Mr Michael Burvill, Manager of Rehabilitation Programs with the Department of Correctional Services in South Australia, stated as follows:

On 7 September 2007 Mr Bakewell successfully completed the last required component of the [Sexual Behaviour Clinic prison based] program; however he has continued attending the SBC program on a voluntary basis while remaining in the Yatala Labour Prison.

When Mr Bakewell attends the SBC Group he is an active participant. He has engaged in all modules, required, these being – the Risk Factors component; the Autobiography exercise; Cognitive Distortions and Emotion Management Strategies; Victim Empathy; Intimacy Relationships and Social Functioning; and, Healthy Sexual Functioning. Mr Bakewell continues to participate in group discussions in a respectful manner, and support other group members with their learning and development. He also effectively applies the program material to his own life, and has been successful in completing homework tasks efficiently and in a detailed manner, despite indicating at times that his potential medical condition of multiple sclerosis has negatively impacted on his ability to focus on written work. To his further credit, Mr Bakewell has demonstrated his capacity to reflect on past offending behaviour, and identify current risk factors, which he appears to continue to monitor effectively.

Conclusion

- [39] Mr Bakewell's offending was extremely serious. What he did was abhorrent. He broke into a young woman's flat at night while she was present in the dwelling with intention of having unlawful sexual intercourse with her without her consent and he forcibly had sexual intercourse with her in a manner that resulted in her death. Prior to her death Ms Culleton had to endure a cruel and terrifying ordeal. I find beyond reasonable doubt that the act or omission that caused Ms Culleton's death was part of a course of conduct by the prisoner that included conduct before the victim's death that would have constituted a sexual offence against the victim.
- [40] The objective seriousness of Mr Bakewell's offending is qualified by the facts that he did not intend to kill Ms Culleton and he tried to revive her. Nor did Mr Bakewell intend to cause grievous harm. The objective seriousness of the offending is also qualified by the facts that apart from the

piece of sheet no weapons were involved in the attack on Ms Culleton and the prisoner did not mutilate her body.

[41] On the subjective side the information before the court shows that Mr Bakewell has worked hard at attempting to reform himself while he has been in prison. He has been allowed into the community on conditional licence for extended periods and he has demonstrated that the prospects of him being successfully re-integrated into the community are good. Mr Bakewell admits that he is responsible for the crimes that he committed and he is remorseful for his crimes. He is cognitively and effectively able to express empathy towards his victim and the risk of his re-offending has been significantly reduced.

[42] But for s 19(3) of the Act I would have determined that a term of 20 years was the minimum term that justice required that Mr Bakewell must actually serve in prison. Having considered all of the objective and subjective factors referred to above and given what I consider to be appropriate weight to the sentencing purposes of punishment, denunciation and general and specific deterrence I would have determined that the relative seriousness of the crime of murder committed by Mr Bakewell was not such as to require a longer non-parole period than 20 years. Nor is the level of Mr Bakewell's culpability such as to require the court not to fix a non-parole period. Mr Bakewell did not intend to kill Ms Culleton nor did he intend to cause her grievous harm. He attempted to revive her and he has shown remorse for his crimes.

Orders

[43] In accordance with s 19(3) of the Act I make the following orders:

1. The parole period of 20 years which under s 18(a) of the Act is deemed to be part of Mr Bakewell's sentence of imprisonment for life for the crime of murder is revoked.

2. I fix a non-parole period of 25 years as part Mr Bakewell's sentence of imprisonment for life for the crime of murder. The non-parole period is backdated to 27 February 1988.

[44] Mr Bakewell shall become eligible for parole on 26 February 2013.
