

*Tritton v The Queen; Birchall v The Queen* [2012] NTCCA 12

PARTIES: TRITTON, Floyd  
v  
THE QUEEN  
and  
BIRCHALL, Paul Stephen  
v  
THE QUEEN

TITLE OF COURT: COURT OF CRIMINAL APPEAL OF  
THE NORTHERN TERRITORY

JURISDICTION: CRIMINAL APPEAL FROM THE  
SUPREME COURT EXERCISING  
TERRITORY JURISDICTION

FILE NO: CA 15 of 2011 (21005618) &  
CA 19 of 2011 (21005617)

DELIVERED: 11 JULY 2012

HEARING DATES: 29 MAY 2012

JUDGMENT OF: MILDREN ACJ, KELLY &  
BLOKLAND JJ

APPEAL FROM: SOUTHWOOD & BARR JJ

*Police Administration Act* s 137

*R v Haji-Noor* [2007] NTCCA 7; *R v Nadich* [2012] NTCCA 4; *R v Tait and Bartley* (1979) 46 FLR 386, followed.

**REPRESENTATION:**

*Counsel for Tritton:*

Appellant: J Tippet QC  
Respondent: MJ McColm

*Solicitors for Tritton:*

Appellant: Maleys Barristers & Solicitors  
Respondent: Office of the Director of Public Prosecutions

*Counsel for Birchall:*

Appellant: I Read  
Respondent: MJ McColm

*Solicitors for Birchall:*

Appellant: NT Legal Aid Commission  
Respondent: Office of the Director of Public Prosecutions

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IN THE COURT OF CRIMINAL APPEAL  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Tritton v The Queen; Birchall v The Queen* [2012] NTCCA 12  
No. CA 15 of 2011 (21005618) and  
No. CA 19 of 2011 (21005617)

BETWEEN:

**FLOYD TRITTON**  
Appellant

AND:

**THE QUEEN**  
Respondent

AND BETWEEN:

**PAUL STEPHEN BIRCHALL**  
Appellant

AND:

**THE QUEEN**  
Respondent

CORAM: MILREN ACJ, KELLY & BLOKLAND JJ

REASONS FOR JUDGMENT

(Delivered 11 July 2012)

**MILDREN ACJ:**

[1] I agree with Kelly J.

**KELLY J:**

[2] On Saturday 13 February 2010, V (the victim of the offence of intentionally causing serious harm to which both appellants, Tritton and Birchall, later

pleaded guilty) had been staying with Birchall for two or three weeks, sleeping on his couch. They had known each other for about 4 years. V suffered from various psychiatric disorders and had been diagnosed, amongst other things, as having bipolar disorder. He had met both Birchall and Tritton through the Mental Health Association of Australia in the course of his treatment.

- [3] On that day, and into the night, Birchall, Tritton, V, and two others were at Birchall's unit smoking cannabis, drinking bourbon and singing Karaoke.
- [4] At about 1:00 a.m. on Sunday 14 February, Birchall took the keys to a car, owned by one of the others present, who by that time was asleep in Birchall's lounge room. Birchall and Tritton told V and B (a woman with whom Tritton had a relationship) that they would go for a drive. They took with them in the car a 30cm kitchen knife and a 30cm yellow handled club hammer. There was some discussion about breaking into something.
- [5] Birchall and Tritton, V and B left in the car. V sat in the front passenger seat and Tritton and B were in the back.
- [6] Birchall drove the car to the car park at Simpson's Gap National Park, arriving at around 2:30 a.m. There were no other vehicles in the area. They all got out and Birchall locked the car.
- [7] Unbeknown to V, Birchall and Tritton took the kitchen knife and club hammer with them when they got out of the car.

- [8] Birchall and Tritton invited V to walk with them to the dry river bed 30 metres away from the car park. Birchall had told the victim that he wanted to show him something near the river. B remained near the car.
- [9] The three men made their way down to the river bed. Tritton sat down near a tree, V sat down a few metres away from Tritton, and Birchall was walking around, talking.
- [10] Then Birchall came up behind V and struck him on the right side of the head, just behind his ear with the hammer. The blow was hard and caused V to fall forward, but he sat back up again. He felt dizzy and when he put his hand up to his head he felt some bleeding.
- [11] Birchall then hit V with the hammer again. The second blow hit the hand he was holding up to his head. V was in pain and was dizzy. Birchall and Tritton accused him of something but he was vague about what they said. He did not understand why he was being hit.
- [12] One of them then pulled V down onto his back. Then Tritton stood over him while Birchall held his hands over V's mouth. V struggled against his being held down.
- [13] Tritton then cut V across the throat and stabbed him in the chest on the right side above the nipple. These injuries caused V serious harm and to lose consciousness.

[14] Birchall and Tritton returned to the car and drove off back to Birchall's flat where they cleaned the weapons, changed their blood spattered clothing and washed the clothes in an effort to conceal their crime.

[15] Birchall said to B, "Everything you've seen or heard at Simpson's Gap stays there. If you tell anyone the same thing will happen to you and more." B was frightened and feared she might also be harmed.

[16] Meanwhile V recovered consciousness and made his way to the Ranger's residence and sought help. An ambulance was called and V was taken to Alice Springs Hospital.

[17] He was later transferred to Adelaide Hospital for treatment of his injuries which included:

- (1) right temporo-parietal depressed skull fracture and contre-coup 2mm subdural haematoma (ie an injury to the opposite side of the brain to the fracture caused by the force of the blow);
- (2) superficial left neck laceration breaching the muscle at the front of the neck and throat (ie a long ugly open cut to the left side of his throat);
- (3) a penetrating right chest wound, with moderate right sided heamo-pneumothorax (ie a punctured lung giving rise to air and blood in the pleural space in the chest cavity), with multiple lung contusions;
- (4) a right 4<sup>th</sup> metacarpal fracture (ie a fracture of the metacarpal bone in the hand);

(5) complex facial fractures: a fracture involving both left anterior and lateral maxillary bone; left zygomatic fracture (slight depression); and a left orbital floor fracture.

These injuries amounted to serious harm. V remained in Adelaide Hospital receiving treatment until 3 March 2010.

[18] On Sunday 14 February 2010 police arrested Birchall and Tritton and held them pursuant to s 137 of the *Police Administration Act*.

[19] On Monday 15 February 2010 Birchall participated in an electronically recorded interview with police. He made no admissions to the offences, and denied the allegations of stabbing and/or hitting V with a hammer.

[20] Tritton declined to participate in an interview.

[21] Police executed a search warrant at Birchall's flat and recovered the knife and hammer that had been used to assault V.

[22] Both Birchall and Tritton later pleaded guilty to intentionally causing serious harm to V.

[23] On 25 August 2011, Southwood J sentenced Tritton to a term of imprisonment for 16 years with a non-parole period of 12 years. In doing so, he noted that Tritton had had a significantly disturbed childhood and adolescence, having been in 12 foster homes from the age of three until he left the system at about age 17, and that during that time he had suffered significant physical, mental and sexual abuse. His Honour also noted that

although he had been in trouble for a number of offences, beginning at the age of 13 or 14, he had not previously been convicted of a crime of violence. He remarked that the motive for the attack was unclear and noted the contents of a psychiatric report which had been tendered which reported that there was no indication that Tritton had been suffering from any severe mental illness at the time of the attack which would have provided him with a defence of mental impairment. He also noted that the psychiatric report stated that Tritton suffered from a severe mixed personality disorder with borderline and anti-social features as a result of his deprived and abusive upbringing. This personality disorder is characterised by chronic depression alternating with rage, disturbance of self-image and identity and judgment. The report also noted that Tritton had a clear history of significant substance abuse. These factors combined led the psychiatrist to conclude that Tritton was at high risk of re-offending. The sentencing judge concluded that Tritton's prospects of rehabilitation were not good. He said this about the offending and the relevant sentencing principles.

“The offending is extremely serious offending. The offender's crime is in the upper range of such crimes. The crime was premeditated. It involved some planning. The offenders drove the victim to a remote location some distance out of Alice Springs. Both offenders were armed with dangerous weapons. The attack upon the victim was a cruel and vicious attack. The victim was incapable of defending himself, and after the attack, he was callously left at a remote location without any assistance.

The attack upon the victim was utterly disproportionate to whatever was the offender's motive. The victim suffered serious harm, and it is most fortunate that he was not more seriously injured and did not die as a result of the attack upon him.

The primary sentencing goal is protection of the community. The offender must be severely punished, and he and others must be discouraged from committing the same or similar crimes in the future. There is little by way of mitigation. By his plea, the offender has accepted responsibility for his conduct, and he has expressed some sorrow to Mr Allen who gave evidence, and who gave evidence that he was the offender's mentor for a period of time when the offender was a teenager.

In my opinion, the offender's prospects of rehabilitation are not good. As a result of the offender's plea of guilty, I have reduced the sentence that I otherwise would have imposed on him by 20 percent."

[24] On 30 November 2011, Barr J sentenced Birchall to a term of imprisonment for 16 years with a non-parole period of 9 years.

[25] In doing so, his Honour noted a history of childhood bullying and social isolation leading to Birchall running away from home as a teenager and living rough on the streets for a time. During this period he experimented with amphetamines, marijuana and morphine and was sexually assaulted a number of times. Barr J noted that in his middle to late teens Birchall began using marijuana and made several attempts on his own life, and that as an adult too, his life was "fractured and aimless" and characterised by substance abuse and suicide attempts.

[26] Barr J made the following remarks about the offence.

"On my assessment your conduct involved premeditation, planning, deception of the victim, brutal violence and very significant cruelty as you attacked the victim in concert with your co-offender.

It then involved further cruelty and lack of compassion when you abandoned the victim in such a remote location and drove away leaving him to his fate.

Clearly you engaged in a joint criminal enterprise with your co-offender, but your personal role was by no means a secondary role. You initiated the surprise attack when you struck two hammer blows to the victim's head and held the victim down to enable your co-offender to cut the victim's throat and stab him in the chest.

Your counsel suggested in his submissions that it is difficult to say when the intent to cause serious harm was actually formed. That may be true, but these facts in combination: firstly your inviting the victim to go with you for a drive, secondly your being armed with the implements ultimately used to inflict serious harm on the victim, the club hammer and the knife; and thirdly your driving to the remote location at Simpsons Gap, and it would seem driving directly there, strongly suggest that the intent to cause serious harm had been formed prior to your leaving your flat in the early morning of 14 February.

You have not given any explanation for your offending.

...

There is no or insufficient evidence in your case to enable any finding to be made as to your reasons or motive for your participation in the violence committed on the victim. The absence of a motive – any motive at all, remains a very troubling aspect in your sentencing.

...

“... I conclude that your assistance to the authorities in the investigation of your offending was minimal; moreover it would seem that your plea of guilty and your indication of a plea of guilty came at a relatively late stage.”

[27] Barr J also characterised the offending as at the high end of seriousness. He then referred to the decision of the Court of Criminal Appeal in *R v Haji-Noor*<sup>1</sup> which he described as “an arguably comparable attack upon a victim

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<sup>1</sup> [2007] NTCCA 7.

which was characterised by Angel J as unprovoked, premeditated, protracted, cowardly and vicious, carried out with great deliberation and ferocity in the dead of night with a baseball bat upon the unarmed victim, offending which was not mitigated by any extenuating circumstances and where general deterrence, public condemnation and stern punishment were significant sentencing requirements.” He noted that in *Haji-Noor* Angel J had expressed the view that the offence warranted a head sentence in the order of 15 years.

[28] Barr J then referred to the parity principle and considered various matters relevant to the application of that principle to sentencing Birchall, given the sentence passed upon Tritton by Southwood J. He said:

“My assessment of the admitted facts leads me to conclude that there was practically no difference in criminality or moral culpability between your conduct and that of your co-offender.

....

“... I do not find any basis for distinguishing your offending conduct from that of your co-offender; further, like the judge who sentenced Mr Tritton, I am unable to make any finding as to your motive.”

[29] His Honour then went on to consider “the subjective differences, if any, between the personal antecedents and prior criminal record of the two offenders”. He concluded:

“There are obvious differences in the criminal records of each of Mr Tritton and yourself, Mr Birchall, but it is significant that both of you have in common a history of damaged lives, drug or substance abuse, psychiatric illness and that, prior to offending in 2010, neither of you had committed crimes of violence, let alone crimes of serious violence.

The significant differences in my assessment are that firstly, you Mr Birchall do not have convictions for dishonesty and secondly, you Mr Birchall do not have, or at least there is no evidence that you have, a potentially dangerous disorder of the kind that Mr Tritton unfortunately has.

These matters could have a direct bearing on your prospects for rehabilitation, Mr Birchall but you will no doubt be assessed by qualified health practitioners from time to time during the period of your imprisonment, and your actual rehabilitation as well as prospects for further rehabilitation will be assessed by the parole board at the appropriate time.”

[30] He concluded that he should impose the same head sentence as had been imposed on Tritton, but a lesser non-parole period of 9 years.

[31] Tritton and Birchall have both appealed against the sentences imposed on the ground that they are manifestly excessive.

### **Birchall’s appeal**

[32] In addition to arguing that the sentence was manifestly excessive, Birchall contended that the learned trial judge had erred in determining the head sentence by not taking into account the distinguishing subjective factors relating to rehabilitation, specific deterrence and protection of the community which were properly used to fix a disparate minimum term.

[33] In my view, the sentencing judge did not commit this error. In considering both the head sentence and the non-parole period in the context of the parity principle, he specifically considered both the objective seriousness of the offending and moral culpability of the offenders, as well as “the subjective differences, if any, between the personal antecedents and prior criminal record of the two offenders”. In relation to both, he stated explicitly:

“The relevant sentencing principles for me are likewise the protection of the community, specific and general deterrence, also denunciation and condign punishment.”

[34] The mere fact that Barr J imposed the same head sentence upon Birchall as Southwood J had upon Tritton, but fixed a different non-parole period, does not mean that he did not consider all relevant factors in relation to both exercises. The different factors can, and often do, carry different weights in determining an appropriate head sentence and fixing an appropriate non-parole period. In fixing the non-parole period, his Honour said:

“In my assessment justice requires that you must serve nine years having regard to all the circumstances of your offending. I therefore order that you not be eligible to be released on parole until you have served nine years of your sentence.”

[35] I can discern no error of principle in the learned sentencing judge’s approach. In my view this ground of appeal fails.

[36] The “manifestly excessive” ground of appeal will be considered in relation to both offenders together.

**Birchall’s and Tritton’s appeals: Were the sentences manifestly excessive?**

[37] As explained above, in my view there was no error in the approach adopted by Barr J in determining that the head sentence imposed on Birchall should be the same as that imposed on Tritton. The question then is whether the sentence imposed on Tritton was manifestly excessive in the circumstances.

[38] An appellate Court does not interfere with the sentence imposed merely because it is of the view that the sentence is insufficient or excessive. It

interferes only if it can be shown that a sentencing judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The error may appear in what the sentencing judge said in the proceedings, or the sentence itself may be so excessive or inadequate as to manifest such error.<sup>2</sup> The presumption is that there is no error.

[39] The maximum penalty for the offence to which both appellants pleaded guilty is imprisonment for life.

[40] In sentencing Birchall, Barr J adopted as his starting point a sentence of imprisonment for 20 years and allowed a discount of 20% for the plea of guilty. Southwood J also specified that he had applied a discount of 20% in sentencing Tritton to 16 years imprisonment.

[41] Both sentencing judges clearly considered this offending to be towards the more serious end of the scale for offences of this kind - in my view correctly so. The attack and the injuries he sustained have had devastating long term consequences for V, described in detail in the sentencing remarks of Barr J in sentencing Birchall. He needed two operations to repair the skull fracture and stitch the neck laceration. He had a metal plate surgically inserted into his skull. At the time of sentencing he was still suffering constant severe pain in both. He had an unsightly scar on his throat which made him very self conscious and was still suffering from severe psychological and

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<sup>2</sup> *R v Tait and Bartley* (1979) 46 FLR 386 at 388.

emotional problems including flash backs and nightmares. As Barr J noted in his sentencing remarks, V was a young man who already had significant psychiatric problems before the attack and was vulnerable to further mental injury.

[42] Moreover, the crime involved premeditation, planning, deception, and very significant cruelty. It was a seemingly motiveless act of extreme violence committed on a vulnerable individual who had no opportunity to defend himself, and it was made worse by the callousness with which Tritton and Birchall left V alone in the creek bed in the middle of the night, away from any apparently available source of assistance. It is very fortunate that he managed to regain consciousness and walk a number of kilometres to the ranger's residence in the dark.

[43] This Court was referred to two earlier cases of intentionally causing serious harm considered by the Court of Criminal Appeal, in both of which the sentence given was found to have been manifestly inadequate: *R v Nadich*<sup>3</sup> and *R v Haji-Noor*.

[44] Haji-Noor pleaded guilty to intentionally causing grievous harm to a male victim, aggravated assault on a female victim, and unlawful possession of cannabis in a public place. He was initially sentenced to seven years and six months imprisonment for intentionally causing grievous harm, with the sentences for the other charges to be served concurrently. The sentencing

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<sup>3</sup> [2012] NTCCA 4.

judge fixed a non-parole period of three years and nine months. The sentencing judge also ordered the restoration of a 15 month suspended sentence and directed that three months of the sentence of seven years and six months be served concurrently with the restored sentence of 15 months. The net effect was a head sentence of eight years and six months and a non-parole period of five years.

[45] The 15 month suspended sentence had been imposed by the Court of Summary Jurisdiction for a series of offences against the same female victim following the breakdown of their relationship. Haji-Noor had also been convicted of offences of violence against her during the currency of that relationship. There had been a history of anger and jealousy leading to verbal abuse, vicious threats, including death threats (sometimes with weapons), and assaults, as well as malicious damage to her property.

[46] The intentional grievous harm and aggravated assault charges to which he had pleaded guilty related to assaults he committed after seeing his ex-partner in a night club dancing with her new fiancé. Haji-Noor created a scene and was evicted from the nightclub following which he yelled out, “I am going to kill them”.

[47] Later that night he went to the home of the victims, armed himself with a wooden baseball bat and waited for them to return. There followed a vicious assault during which he repeatedly hit the male victim on the head

with the baseball bat yelling, “I am going to kill you, you are a fucking dead man”.

[48] When the male victim got on to his hands and knees Haji-Noor held the bat above his head with both hands and brought the bat down on to the man’s head with all his force. The male victim was losing a large amount of blood and was making gurgling sounds as he lay on the ground.

[49] Haji-Noor also hit the female victim on the back and foot with the baseball bat. He only desisted from his attack on the man when a neighbour physically intervened and the female victim produced a knife.

[50] The female victim suffered cuts and grazes to her inner arms, bruising to her lower back and swelling and bruising to her right ankle.

[51] The consequences to the male victim were horrendous. He suffered extremely serious head injuries. Because of the swelling of the brain caused by the blows to his head it was necessary to remove a significant portion of his skull. He was placed on life support and put in to a drug induced coma. This was followed by further surgery to replace portions of his skull with titanium plates.

[52] He was left with serious long term disabilities including no feeling on the right of his skull and only partial movement to the right side of his face, the risk of seizures, lack of strength and mobility in his left hand - and the prospect that he might never regain full function of that hand. He could no

longer play contact sport. He had been a successful baseball player and was no longer able to play. His career in the armed forces was jeopardised and he suffered significant financial losses. The emotional effects of the attack were also severe.

[53] The crime was pre-meditated and intentional and Haji-Noor displayed no hint of remorse. There were no mitigating circumstances to the crimes and nothing in his personal circumstances that was capable of attracting significant mitigation in the face of the seriousness of his criminal conduct. The sentencing Judge said he was not persuaded that Haji-Noor was motivated to rehabilitate.

[54] The Crown successfully appealed against Haji-Noor's sentence on the ground that it was manifestly inadequate. Angel J (with whom Mildren and Riley JJ agreed on these issues) said<sup>4</sup>:

“In my opinion the sentence of seven years and six months imprisonment with respect to the intentionally causing grievous harm charge was manifestly inadequate, particularly given the maximum penalty for that offence is life imprisonment; cf *Markarian v R* (2005) 79 ALJR 1048 at 1056 [30][31]. The attack upon the male victim was unprovoked, premeditated, protracted, cowardly and vicious. It was carried out with great deliberation and ferocity and in the dead of night with a baseball bat upon an unarmed victim. The respondent only ceased bashing the victim after a neighbour had intervened and when confronted with a knife. The offending was unmitigated by any extenuating circumstances. The respondent felled the victim twice by multiple blows to the head with a baseball bat. When the male victim, vulnerable and defenceless, got on his hands and knees the respondent clubbed the victim on the back of the head with his full force. It is only by great good fortune that the victim did not die.

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<sup>4</sup> At paragraphs [32] and [33].

By any measure this was a very serious offence. General deterrence, public condemnation and stern punishment were significant sentencing requirements. There was nothing in the circumstances of the offence or the offender to suggest, let alone justify, any exercise of clemency. In my opinion although no specific error is alleged or shown the sentence of seven years and six months for that offending is unreasonable and plainly unjust and therefore manifestly inadequate: *Markarian v R*, supra, at 1055 [25].”

[55] In re-sentencing Haji-Noor, Angel J said that the offence of intentionally causing grievous harm warranted a head sentence in the order of 15 years imprisonment. However, it was increased to 12 years only because it was a Crown Appeal. The other aspects of the sentence were not disturbed.

Angel J also said<sup>5</sup>:

“The circumstances of the respondent’s offending and prior record would ordinarily attract a non-parole period of greater than fifty percent of the aggregate head sentence but bearing in mind this is a Crown appeal I would limit the non-parole period to fifty percent of the head sentence.”

[56] Nadich also pleaded guilty to intentionally causing serious harm. One night in May 2010 Nadich and two others drove to a spot in the bush near Alice Springs. Nadich was in the back seat, “high” on crystal methamphetamine. They had a single barrel 12 gauge shotgun and Winchester Super X shells with them.

[57] The victim and his partner were in the area when Nadich and the others arrived. Their plan was to have a meal and to camp out for the night. They were having a quiet drink and listening to music.

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<sup>5</sup> At paragraph [70].

[58] The victim approached the driver's side of the car Nadich was in and asked what was going on. The conversation became a little heated. One of the occupants of the car made a rude remark; one of the others started to apologise and the victim turned to walk back to his car. He was about two or three metres away, with his back turned to them when Nadich aimed the shotgun at him from the back seat of the car and pulled the trigger. The victim was hit in the back of his left shoulder and the upper region of his left arm. The driver of the car Nadich was in panicked and drove off quickly, hitting the victim on the hip as he passed.

[59] The victim had numerous shotgun pellets in his left arm and chest close to his heart. He sustained extensive injuries to his chest and upper left arm from the shotgun blast, including a broken humerus. He also received a fractured pelvis when the car hit him. He required extensive reconstructive surgery including plates to fix the broken humerus, removal of shotgun pellets from his chest near the heart and extensive and painful skin grafts. He was left with permanent scarring and nerve damage to his left arm and hand and both feet. He was in constant pain for 12 months.

[60] The victim was unable to continue working as a diesel mechanic, a trade in which he had been employed for over 20 years. He could not work at all for five months and was unable to keep up with his mortgage payments. He was forced to sell all of his assets and spend all of his savings. He suffered from severe anxiety, stress and depression. His sporting and leisure

activities were severely curtailed. The victim's partner also suffered emotional trauma and depression.

[61] Nadich committed the offence within 15 days after being released from prison on suspended sentence for drug charges, and he was affected by consumption of methamphetamine at the time.

[62] The sentencing judge sentenced Nadich to 6 years imprisonment for intentionally causing serious harm (7 ½ years reduced by 20% for the guilty plea), restored the suspended sentence, ordered six months of the restored sentence to be served cumulatively, bringing the total sentence to imprisonment for 6 years and 6 months, and fixed a non-parole period of 3 years and 3 months.

[63] On appeal by the Crown, this was held to be manifestly inadequate. On resentencing Nadich, Southwood J (with whom Riley CJ agreed on this point) adopted a starting point of imprisonment for 12 years and reduced that by just over 20% for the guilty plea to 9 years and 6 months. He ordered that six months of the restored sentence be served cumulatively bringing the total to 10 years and imposed a non-parole period of 7 years,

[64] There is no tariff for offences of intentionally causing serious harm, any more than for manslaughter, as the circumstances of both the offence and the offender vary almost infinitely. Nevertheless, the decisions of this Court in *Haji-Noor* and *Nadich* provide some guidance as to the range, and by the standards set in those cases, having regard to the relative seriousness of the

offending and the consequences to the victims in those cases and in the ones under consideration on this appeal, I am of the view that a starting point of imprisonment for 20 years, reduced to 16 for the guilty plea, is manifestly excessive in both cases.

[65] Turning to re-sentence, I consider that, in the case of Tritton, after allowing a reduction of approximately 20% for the plea of guilty, the appropriate penalty would be imprisonment for 14 years. I agree with Barr J that there is nothing in either the circumstances of the offending or the subjective circumstances of the offenders which would warrant fixing a different head sentence as between Tritton and Birchall, and, in my view, the appropriate head sentence for Birchall is likewise imprisonment for 14 years, In both cases I would fix a non-parole period of 8 years.

**BLOKLAND J:**

[66] I agree with Kelly J.

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