PARTIES:	R
	v
	SPICER, John Robert TARTAGLIA, Antonio FOTIADES, Steven Antony LILLIEBRIDGE, Steven John LILLIEBRIDGE, David
TITLE OF COURT:	COURT OF CRIMINAL APPEAL (NT)
JURISDICTION:	APPEAL from SUPREME COURT
FILE NOS:	CA 14 and 15 of 1993 CA 16 of 1993 CA 12 and 13 of 1993
DELIVERED:	Darwin 7 April 1994
HEARING DATES:	3-4 March 1994
JUDGMENT OF:	Angel, Priestley and Gray JJ

CATCHWORDS:

Appeal - Criminal Law - Crown appeal against sentences imposed for aggravated armed robbery - Whether sentences should be increased in these matters and whether a "bench mark" for this type of offence should be set - Use to be made of sentencing statistics - Whether "clear pattern" emerges -

Jabaltjari (1989) 64 NTR 1, followed

Sentencing - Aggravated armed robbery - Seriousness of offence - Less room for subjective factors such as youth of offender - Prior convictions an aggravating factor - Role of Court of Criminal Appeal in resentencing -

Pham and Ly (1991) 55 A Crim R CCA(NSW) 11 November 1993, followed.

Williscroft [1975] VR 292, followed.

Spiero (1979) 22 SASR 543, followed.

Zakaria (1984) 12 A Crim R 386, followed.

Hawkins (1933) 67 A Crim R 64, followed.

Criminal law and procedure - Sentencing - Armed robbery - relevant sentencing principles -

Veen v The Queen [No 2] 1988 164 CLR 465, followed.

Ireland (1981) 49 NTR 10, followed.

Lowe v R (1984) 154 CLR 606, followed.

Raggett, Douglas and Miller (1990) 50 A Crim R 41, followed.

REPRESENTATION:

Counsel:

Appellant: L Flanagan QC and C Cato

Respondents: M Weinberg QC and S Cox for Spicer, Tartaglia, Steven and David Lilliebridge

M David QC for Fotiades

Solicitors:

Appellant: Director of Public Prosecutions

Respondents: NT Legal Aid Commission for Spicer, Tartaglia, Steven and David Lilliebridge

Withnall Cavanagh for Fotiades

Judgment category classification: A

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

CA 14 and 15 of 1993

ON APPEAL FROM THOMAS J
SCC No 54 and 53 of 1993

BETWEEN:

THE QUEEN
Appellant

AND:

JOHN ROBERT SPICER
ANTONIO TARTAGLIA
Respondents

AND:

CA 16 of 1993

ON APPEAL FROM THOMAS J
SCC No 52 of 1993

BETWEEN:

THE QUEEN
Appellant

AND:

STEVEN ANTONY FOTIADES
Respondent

AND:

CA 12 and 13 of 1993

ON APPEAL FROM THOMAS J
SCC Nos 78 and 77 of 1993

BETWEEN:

THE QUEEN
Appellant

AND:

STEVEN JOHN LILLIEBRIDGE
DAVID LILLIEBRIDGE
Respondents

CORAM: ANGEL, PRIESTLEY and GRAY JJ

REASONS FOR JUDGMENT

(Delivered 7 April 1994)

ANGEL J: These Crown appeals from sentences imposed for aggravated armed robbery were heard together.

On 30 July 1993 the respondents Tartaglia and Spicer pleaded guilty to a charge for that on 8 February 1993 at Darwin in the Northern Territory of Australia they stole about $19,000 in cash, the property of Leo Venturin and Patricia Venturin, and at the time of so doing they threatened to use violence to the said Leo Venturin and the said Patricia Venturin in order to obtain the said cash, and that the said robbery involved the following circumstances of aggravation: first, that John Robert Spicer was armed with a firearm, namely a sawn-off 20 gauge double-barrelled shotgun; secondly, that Antonio Tartaglia was armed with a firearm, namely a sawn-off .22 calibre rifle, and with an offensive weapon, namely a knife; and thirdly, that they both were in company with each other, contrary to s211(1) and (2) of the Criminal Code.

On 9 August 1993 Tartaglia was sentenced to six years imprisonment with a non-parole period of two years six months, and Spicer was sentenced to five years and six months imprisonment with a non-parole period of two years.

On 20 August 1993, the respondent Fotiades pleaded guilty to a charge for that on 8 February 1993 at Darwin in the Northern Territory of Australia he aided John Robert Spicer and Antonio Tartaglia, to commit the aggravated armed robbery previously referred to, contrary to s211(1) and (2) of the Criminal Code. On 25 August 1993, Fotiades was sentenced to three years imprisonment with a non-parole period of nine months.

On 30 July 1993, the respondents Steven and David Lilliebridge pleaded guilty to a charge for that on 27 February 1993 at Darwin in the Northern Territory of Australia they robbed Robert Hamood of $29,736 in cash being the property of Nightcliff Newsagency Pty Limited, and jewellery to the value of $2,835 being the property of Robert Hamood and Leona Bastion with the following circumstances of aggravation: first, that Steven Lilliebridge was armed with a firearm, namely a sawn-off 12 gauge shotgun and, secondly, that David Lilliebridge was armed with a firearm, namely a sawn-off .22 calibre rifle, contrary to s211(1) and (2) of the Criminal Code. On 9 August 1993, each was sentenced to six years imprisonment with a non-parole period of two years and six months.

In each appeal the Crown complains that the sentences were manifestly inadequate.

In the appeals in respect of the respondents Tartaglia and Steven Lilliebridge, both of whom had prior convictions, inter alia, for stealing and house breaking, the Crown says the learned sentencing Judge erred in her use of the respondents' prior record of convictions. In particular it was said she failed to properly apply *Veen (No. 2)* (1988) 164 CLR 465 at 477, 478.

In approaching these appeals certain general principles must be borne in mind. Being Crown appeals there is a strong presumption that the sentences imposed are correct, and that the sentences should stand unless some error is clearly identified or the sentences are shown to be clearly and obviously (and not just arguably) inadequate, *Anzac* (1989) 50 NTR 6 at 11; *R v Tate and Bartley* (1979) 24 ALR 473 at 470.

Armed robbery is a major crime for which the maximum penalty is life imprisonment and time and again courts have emphasised that severe punishment is required for those who commit armed robbery and that it is a crime where there is less room for subjective factors to be considered in mitigation because the principal sentencing considerations are retribution and personal and general deterrence, see eg *Williscroft* [1975] VR 292, *Spiero* (1979) 22 SASR 543, *Zakaria* (1984) 12 A Crim R 386.

As regards sentencing the respondents Tartaglia and Spicer the learned sentencing Judge said as follows.

> "The two accused persons, Mr John Robert Spicer and Mr Antonio Tartaglia have each pleaded guilty to a charge that on 8 February 1993 at Darwin in the Northern Territory of Australia, they stole about $19,000 in cash, the property of Leo Venturin and Patricia Venturin, and at the time of so doing threatened to use violence to the said Leo Venturin and the said Patricia Venturin in order to obtain the said cash.
>
> There were circumstances of aggravation, being one, that John Robert Spicer was armed with a firearm, namely a sawnoff 20 gauge double-barrel shotgun; two, that Antonio Tartaglia was armed with a firearm, namely a sawnoff .22 calibre rifle and with an offensive weapon, namely a knife; and three, that John Robert Spicer and Antonio Tartaglia were in company with each other. That's contrary to the provisions of section 211(1) and (2) of the Criminal Code.
>
> The facts that are agreed between the Crown and counsel for the accused as being the facts in support of the charge are as follows: some time prior to 8 February 1993, the accused John Robert Spicer and Antonio Tartaglia, together with another man Steven Antony Fotiades, decided to commit a robbery. On 4 February 1993 Mr Spicer and Mr Tartaglia obtained a 20 gauge double-barrel shotgun, a .22 calibre rifle was also obtained, and both weapons were shortened by sawing off the barrels. Ammunition, balaclavas and gloves were also purchased.
>
> At about 9 pm, one of the three men telephoned the home of Leo and Patricia Venturin at 9 Manoora Street, Larrakeyah, claiming to be a friend of their son, and inquiring after his whereabouts.
>
> Shortly before 10.30 pm on 8 February 1993, Spicer and Tartaglia and Fotiades drove to an area near Manoora Street, Larrakeyah; the vehicle was driven by Fotiades. At about 10.30 pm, Spicer and Tartaglia entered Leo and Patricia Venturin's residence at 9 Manoora Street, Larrakeyah. Spicer and Tartaglia were disguised with balaclavas and wearing gloves. Spicer was carrying a sawnoff 20 gauge double-barrel shotgun; Tartaglia was carrying a sawnoff .22 calibre rifle and was also in possession of a knife. Both the firearms were loaded.
>
> Mr Venturin was seated on a chair in the lounge room of the house; Mrs Venturin was in a bathroom preparing for bed. Mr Spicer said to Mr Venturin, 'this is a hold-up;

go to the safe' and also told Mr Venturin to get up. Mr Spicer asked, 'where is the safe?' Mr Tartaglia, carrying the .22 went into the bathroom and brought out Mrs Venturin.

Mr Spicer pushed Mr Venturin in the back with his gun, forcing him into a room in the house where a safe was situated covered with material. One of the two accused told Mr Venturin to open the safe after one of the accused had removed the cover. Mr Venturin knelt down and attempted to do so but had difficulty opening it without his glasses.

Mr Tartaglia said, 'we're not fucking around, we will kill you.' Mr Tartaglia had a small penknife and he stood behind Mrs Venturin, flicked the knife open and held it across her throat with his arms around her neck and told Mr Venturin to hurry up. Mr Venturin then told Mrs Venturin to open the safe.

Mrs Venturin knelt down and attempted to open the safe. Mr Tartaglia was shouting and threatening to kill them and he also made a threat to shoot Mrs Venturin's 'grandmother', presumably a reference to a female relative who lived downstairs.

Mrs Venturin eventually opened the safe and pulled out a number of envelopes containing money totalling about $19,000 in cash. Mr Spicer placed the money in a bag. Both Mr and Mrs Venturin were then told to lie on the floor in another room. Mr Venturin did so and one of the accused started to tie his arms behind his back with plastic tape.

Mr Venturin then made noises which suggested he was having a heart attack. Mr Spicer expressed some concern.Mr Venturin was then untied. An attempt to tie Mrs Venturin did not proceed when she complained that her arms were sore. Mr Tartaglia and Mr Spicer then turned out the lights and left the house.

When Mrs Venturin attempted to ring the police, she found the phone line had been cut.

Spicer, Tartaglia and Fotiades then drove to a flat situated at the accommodation quarters of Darwin Hospital occupied by Fotiades. There the money was divided, Fotiades taking his share. The guns and clothing used in the robbery were left either in the flat or in Fotiades' car. The two accused and Fotiades then travelled to Darwin in a taxi.

Mr Tartaglia and Mr Spicer purchased a Toyota Dyna truck for $2000 in cash and travelled back to the flat where they loaded the truck before leaving Darwin.

At about 6 am on Tuesday 9 February 1993, Mr Spicer was arrested while driving the yellow Toyota truck near a roadblock north of Katherine. The car was found to contain $9760 and shotgun shells. Mr Spicer was arrested and interviewed on video; Spicer said that he and an associate, who[sic] he declined to name, had carried out the robbery.

Spicer said he had been carrying the sawnoff shotgun that the associate had, the .22, and that they had gone to the scene of the robbery in an unnamed associate's car, and the third associate who remained unnamed, had made the earlier phone call to the house.

Mr Spicer told the police that the clothing worn in the robbery and the guns were disposed of by an unnamed associate. Mr Spicer admitted that the firearm that he had used in the robbery was loaded; he was not sure if the associate's firearm had been loaded.

On 22 March 1993 after the committal proceedings had commenced, Mr Spicer was interviewed again at his own request by police. In this interview he told police that when he and Mr Tartaglia had entered the house, Steven Fotiades was downstairs keeping watch. He also told police that the phone call made to the house shortly before the robbery was made by Mr Fotiades, and that Fotiades had purchased the balaclavas and the bullets.

He further informed police that Fotiades was the person who had known about the safe in the Venturin's house and that Fotiades had been standing on the steps of the Venturin house shortly before the robbery. He told police that his reason for making this further statement was that he had seen Fotiades' statement to police and as far as he could see, they all did it together and if they were all going to go down the tube, they may as well all go together.

Mr Tartaglia was arrested in Katherine about 9.30 pm on 9 February 1993. When arrested he was in possession of $590. Later that evening he was interviewed by police at the Katherine Police Station. The interview was recorded on video and audio. During this interview Mr Tartaglia told police that the robbery had been carried out by himself and two unnamed associates. He said that one of the associates had telephoned the Venturin's home shortly before the robbery.

Tartaglia said that he, Mr Tartaglia, had driven the vehicle belonging to one of his associates.

He said that he then stood on the steps outside the house while the other two carried out the robbery. He also admitted that he'd been involved in modifying and loading the firearms prior to the robbery. He stated that he had not been armed during the robbery and that he knew the Venturins, having been to school with their son, and that he had driven the car back to the hospital after the robbery.

Later that evening, Mr Tartaglia told police that he wanted to change his story. In a second taped record of interview, he said that he was the person who had carried out the robbery carrying the .22 calibre rifle. He told police that Fotiades had been the driver and that Fotiades had made the telephone call before the robbery; he also said that nobody had stood outside the door while the robbery was being carried out.

In addition to the $590 found in his possession, Mr Tartaglia told police that out of his share he had paid $500 towards the purchase of the Toyota truck and had paid back a debt of $2000. He claimed that the other associate had been given $5000.

On 22 March 1993 after committal proceedings had commenced, Mr Tartaglia contacted police and was interviewed again at his own request. In this tape-recorded interview he informed police that on the Saturday prior to the robbery, Mr Fotiades had approached him and Mr Spicer and told them about the safe in a house at Larrakeyah.

Mr Tartaglia claimed that Fotiades had brought the balaclavas and bullets from a shop in town and that Fotiades stood at the bottom of the stairs, keeping a lookout, while he and Spicer went inside the house. He further told police that Fotiades had loaded their guns at the Casino beach together with he and Mr Spicer.

Mr Tartaglia told police that he was mentioning these matters now because he had read Mr Fotiades' statement to police and seen that Fotiades had told police that he, Mr Fotiades, knew nothing about the gun until after the robbery had been committed.

That concludes the facts that are found in support of the charge to which the two accused have entered a plea of guilty.

Mr Spicer is now 22 years of age; I've had the opportunity of reading an antecedent report concerning Mr Spicer and

I've also read an antecedent report concerning Mr Tartaglia and those antecedent reports have been tendered as exhibits.

Mr Tartaglia is 20 years of age. I have read a report dated 15 July 1993 by consultant psychiatrist Lester Walton concerning Mr Tartaglia.
Mr Tartaglia has a record of prior convictions for unlawful entry and stealing. He was convicted by the court for such offences on 13 March 1991, 14 August 1991, and 3 October 1991.

On 1 October 1992 Mr Tartaglia was convicted of an offence of stealing and sentenced to three months' imprisonment; he was also sentenced for breach of bond and sentenced to a further two months' imprisonment. Mr Tartaglia has no convictions for offences of violence and his offending appears to be related to his drug-taking habit.

Mr Spicer has no prior convictions for offences of dishonesty and has never previously served a term of imprisonment. Mr Spicer has been convicted of minor traffic offences and one offence of possess cannabis.

I have had an opportunity to read references provided on behalf of John Robert Spicer; Mr Spicer has a good work history and an offer of employment when he is released from prison.

As far as the offence itself is concerned, it is a very serious offence; it is an offence that carries life imprisonment as a maximum penalty.

Both accused invaded a private home with a sawnoff shotgun and a sawnoff .22 calibre rifle. The firearms were loaded. In addition Mr Tartaglia was in possession of a knife. It was a premeditated act with a degree of planning and preparation involved in the execution of the robbery. The victims of the robbery were personally threatened and placed in an extremely terrifying and distressing situation.

The accused did display some humanity; Mr Venturin was untied when Mr Spicer became concerned as to Mr Venturin's state of health; threats and an attempt to tie up Mrs Venturin were abandoned when she complained of sore arms. Whilst I give the accused some credit for this consideration to their victims, it cannot really detract from the fact that it was the accused who were the cause of the terror and distress.

Mr Wild, counsel for the Crown, has submitted that on his instructions, there has been no ongoing impact as far as the victims are concerned, and they seem to have recovered

well from the ordeal. This is probably due to their own strength and stoicism rather than anything for which the accused can take credit.

I do have regard to the fact that both the accused entered a plea of guilty to the charge at the earliest opportunity and both accused spared the victims from the ordeal of giving evidence at the committal hearing and in a trial before this court.

Mr Blakely has seen fit to come to court to give evidence on behalf of Mr Antonio Tartaglia; Mr Blakely testified to the fact that he had employed Mr Tartaglia in Mr Blakely's ice manufacturing business. He had found Mr Tartaglia to be a good worker who had never let the company down. Mr Tartaglia had been involved in all facets of the production and delivery of ice. Mr Blakely considered Antonio Tartaglia was somewhat immature for his age, but stated he would be prepared to give him another chance of employment.

From evidence given by Mr Blakely and from submissions made on behalf of each of the accused, it is obvious that although they have been the cause of considerable distress and shame to their families that in fact their families and friends are ready to give them every support and assistance. Both men would appear to have definite prospects of employment on their release from gaol.

I have been referred to a summary of sentences for armed robbery imposed by this court between January of 1990 and June 1993. In particular I have read the decision of Asche CJ dated 19 August 1992 in matter number 193 of 1991, R v Anthony Francis Wade. I understand Mr Wade has sought leave to appeal in respect of that sentence.

I've read the decision of Mildren J delivered on 27 April 1993 in the matter of R v Yvette Lewfatt, matter number 40 of 1992; I'm informed the Crown have lodged an appeal in respect of that sentence.

In the matter of R v Mark Andrew Widdison, number 2 of 1993, a decision of Kearney J delivered on 15 June 1993, and in the matter of R v Lewfatt, a decision of Mildren J that I've referred to above, reference is made by the respective judge as to incidents of armed robbery in recent months and trends in sentencing.

Both these decisions were delivered after the commission of this particular offence with which I am dealing, and whilst the accused in this particular matter before me were in remand waiting for their matter to be dealt with by this court. For that reason I do not consider it would be fair to the present accused to rely on comments made by

judges in respect of matters decided after the present accused had committed their offences.

On the day that I heard a plea of guilty in this matter, I also heard pleas of guilty in matters of R v David and Stephen Lilliebridge who were also charged with offences of armed robbery. Adding the two armed robberies to the summary sheet that I have been given of sentences for this offence in the last four years, it would indicate an increase of armed robberies dealt with by the Supreme Court to date in 1993 over those dealt with in 1992.

In the summary of sentences provides[sic] to me, four offences of armed robbery were dealt with in 1992. In 1993 to date including the two matters I have just referred to, there are a total of six armed robberies dealt with by the Supreme Court. I contrast this with the total number of armed robberies dealt with in 1991 which was seven. In 1990, 12 such offences were dealt with by this court.

If these statistics are correct, and they have apparently been accepted by both the Crown and counsel for the accused as being accurate, then I am not able to find a marked increase in the incidence of armed robbery. The summary sheet was put forward; in the circumstances I think it should be given an exhibit number and I have marked it exhibit 3.

EXHIBIT 3 Summary sheet of sentences for armed robbery

HER HONOUR: It may well be that the more accurate picture as to armed robberies is as referred to by Mildren J in the matter of R v Lewfatt which was based on statistics compiled by Detective Fry as to the number of reported cases of armed robbery involving use of a weapon since 1 June 1992. I note that they were reported cases rather than cases that have actually been dealt with by the court.

These statistics prepared by Detective Fry show a total of 19 reported armed robberies between 1 June 1992 and 29 March 1993 and in referring to those statistics, I am referring to the chart that was prepared by His Honour Mildren J on page 3 of his reasons for judgment delivered 27 April 1993 in the matter of R v Lewfatt.

The latter chart would indicate the incidence of armed robbery is a significant problem and that this court should be considering an increase in penalty for the offence. I agree with the submission of counsel for Mr Tartaglia that based on the decisions of Breed v Pryce and Claire v Brough that it is not appropriate for this court to make a sudden increase in penalty without due warning.

I have read and considered a number of other decisions relevant to the offence - perhaps I should say in fact dealing with an offence of armed robbery; they are decisions of R v David Michael Roper, a decision of Angel J, number 23 of 1990 delivered on 19 July 1990; matter of R v Macskimmon, number 197 of 1991, a decision of Nader J delivered on 5 March 1992; decision of R v Wiggins, number 141 of 1991; a decision of R v McMahon, Harman and McMahon, numbers 51 to 53 of 1990, a decision of Martin J delivered on 22 July 1990; matter of R v Molliner (1984) FLR at 508; R v Valentini (1980) FLR at 416; R v Doherty & Others (1986) 8 CAR at 493; R v Peters, Milton and Callicazaros, Supreme Court of the Northern Territory number 163, 164 and 168 of 1991, a decision of Martin J dated 7 November 1991.

I have noted the range of sentences imposed by this court and set out in the summary of sentences for armed robbery that I previously referred to, being exhibit 3.

In the present matter before me, both offenders were equally culpable in the commission of the offence; there is however a distinction in respect of their prior history. Mr Spicer has no relevant prior convictions and Mr Tartaglia, while having no prior convictions for offences of violence, has numerous convictions for offences of unlawful entry and stealing. This does not mean that Mr Tartaglia should be punished again for his prior convictions; it does mean that Mr Spicer should be given credit for his previous good record. For that reason the sentence imposed in respect of Mr Tartaglia is higher than the sentence imposed on Mr Spicer.

Both men are young; I take their ages into account in sentencing. They are 20 and 22 respectively. Both have good prospects of becoming useful citizens on their release from gaol; both have support from their families and both have prospects of employment when they are released. Both have demonstrated a good capacity for work.

In respect of Mr Tartaglia, the sentence I impose is a sentence of six years' imprisonment with a non-parole period of two years and six months.

In respect of Mr Spicer, the sentence I impose is a sentence of five years and six months' imprisonment with a non-parole period of two years.

I will date those sentences to commence from the date when each of the accused was taken into custody, but I do need to verify exactly what that date was.

MR CROWE: Your Honour, I believe that both accused, both prisoners have been on remand since 9 February.

MR GLASGOW: Yes, that's the correct position.

HER HONOUR: Yes. I confirm then that the sentences are to commence from 9 February 1993. Yes, thank you."

As regards sentencing the respondent Fotiades, the learned sentencing Judge said, inter alia, as follows.

"Mr Fotiades did not participate to the same degree in the preparation for the offence.

Certainly it is a serious offence to have driven Mr Spicer and Mr Tartaglia to the scene of the crime, waited for them and then driven them away and disposed of the guns and the clothing, knowing that Mr Spicer and Mr Tartaglia were going to commit a robbery with force and violence. However, Mr Fotiades did not participate in the acts of violence himself.

There is no reason to conclude that it was he who led the others by driving them to Larrakeyah and then organising that they take the risks and enter the house and carry out an armed robbery.

Evidence was given to the effect that Mr Fotiades is a young man who is easily led and somewhat immature. I accept the evidence given by Mr Frank Fotiades concerning his son. Being easily led and immature does not of course in any way excuse Mr Fotiades for becoming involved in an offence of this magnitude. However, it does make it less likely that he would be the leader of the enterprise, using Mr Spicer and Mr Tartaglia for his own purposes.

On the evidence before the court, Mr Fotiades received a considerably smaller share of the proceeds of the offence than either Mr Spicer or Mr Tartaglia. There is evidence, in the form of a statutory declaration of Mr Bonson, that it was Mr Spicer and Mr Tartaglia who arranged to borrow the shotgun and Mr Tartaglia who boasted of the offence stating that Steven Fotiades was to be the driver.

I accept that Mr Fotiades was not the planner and instigator of the offence. He did not share equally in the proceeds, he did not go into the house of Mr and Mrs Venturin and commit any act of violence. I also accept that Steven Fotiades is remorseful for his part in the whole incident, perhaps particularly because of the

obvious distress his actions have caused his father and members of his own family.

A number of references have been tendered from persons who think highly of Steven Fotiades, including a reference from an employer who, knowing about this matter, is nevertheless prepared to employ Steven Fotiades again at a future time.

Mr Fotiades obviously has a supporting family. He pleaded guilty to the offence and the plea of guilty means the victims of the offence are spared the ordeal of giving evidence at a trial.

I have read the authority put forward in the matter of Lowe v R (1984) 154 CLR 606 and I quote the following passage from the decision of Gibbs CJ at 609:

> The true position, in my opinion, may be briefly stated as follows. It is obviously desirable that persons who have been parties to the commission of the same offence should, if other things are equal, receive the same sentence. But other things are not always equal and such matters as the age, background, previous criminal history and general character of the offender and the part which he or she played in the commission of the offence have to be taken into account.

That's the end of the quote from that authority. With regard to this matter, I consider the culpability of Mr Fotiades in the commission of the offence was not as great as either Mr Spicer or Mr Tartaglia. It is certainly greater than the part played by Mr Chan. Mr Fotiades was 19 years of age at the time of committing the offence and is before the court without any prior convictions at all.

I adopt the principle expressed in Principles of Sentencing by D.A. Thomas at page 64 and I quote from that page:

> Where two or more offenders are concerned in the same offence or series of offences, a proper relationship should be established between the sentences passed on each offender."

As I have previously said, aggravated armed robbery is a major crime carrying a maximum penalty of life imprisonment. By any measure the armed robbery of the Venturins was a very grave

crime demonstrating a high degree of criminality on the part of its participants. It was pre-meditated and carefully and professionally planned. The Venturins were specifically targeted in the expectation of large monetary gain. Steps were taken in advance to prevent identification of the participants, to carry out the execution of the robbery and to make good an escape and to avoid apprehension. Disguises and weapons and ammunition were obtained. The crime was committed in company. It was committed at night. Balaclavas and gloves to avoid finger prints were used. A sawn-off shot gun and a sawn-off rifle and a knife were used. The firearms were loaded. The firearms were pointed directly at the Venturins and accompanied by threats to kill. A substantial sum of money was taken. Menacing and violent conduct was employed almost throughout the incident. Mrs Venturin had a knife held across her throat. The means of escape was pre-planned. Telephone wires were cut. The robbery was carried out in a private house. It involved the violation of the security of the Venturin's home and of their personal security within their home. The crime could have been worse, it is true, but this robbery was of the worst kind. It called for heavy penalties.

In this case I think the sentences imposed by the learned sentencing Judge were so disproportionate to the sentences which the crimes required as to indicate error in principle. I think the sentences imposed were manifestly inadequate. I think the head sentences and the non-parole periods were disproportionate to the gravity of these crimes and the maximum penalty therefor,

fully recognising, as we must, that the fixing of and relationship between the head sentence and non-parole period in any given case is to be determined in the exercise of a wide discretion, *Lowe* (1984) 154 CLR 606, *Power* (1974) 131 CLR 623 at 627-629, *Ragget, Douglas and Miller* (1990) 50 A Crim R 41, *Bugmy* (1990) 169 CLR 525 at 536-538. I am of the view the learned sentencing Judge should have taken Tartaglia's criminal record into greater account in fixing an appropriate head sentence and non-parole period. The law is now clear that a criminal history is not only relevant to a claim for leniency but is also relevant to the fixing of head sentences and non parole periods, *Veen (No. 2)* (1988) 164 CLR 465 at 477-478; *Hillsey* (1992) 105 ALR 560; *Mulholland* (1991) 1 NTLR 1. I am also of the view that the non-parole periods in particular were so grossly inadequate as to, of themselves, vitiate the whole sentencing process such as to justify re-sentencing. I am of the view that the conclusion is inescapable that the learned sentencing Judge took too much account of subjective factors, particularly the youth of the respondents. It is well settled that young persons who commit serious armed robberies, despite their youth, are in the absence of exceptional circumstances to be severely punished, see eg *Pham and Ly* (1991) 55 A Cr R 128 at 135. There are no exceptional subjective factors here which justify retribution and deterrence taking a secondary or equal role in sentencing the respondents Tartaglia, Spicer and Fotiades for these crimes. That is not to say subjective factors are altogether irrelevant. As Hunt CJ at CL (Allen and Loveday JJ agreeing)

said in *Vu* CCA(NSW) 11 November 1993 (unreported) at 4, citing *Pham*, supra, with approval:

> "If young people of twenty years of age want to commit crimes of this serious nature, and to act in an adult way in doing so, then they will be punished as adults with much less weight being given than would usually be given to their youth".

See also *Hawkins* (1993) 67 A Crim R 64 at 66.

The learned sentencing Judge in the course of her sentencing remarks made reference to other sentences of Judges of this court in cases of armed robbery and submissions about a need to increase penalties for armed robbery, and before us the Crown submitted this Court should set a bench mark for this type of offence. I respectfully agree with Priestley J that no clear pattern of sentencing for armed robbery emerges from the past cases to which Thomas J and this Court were referred. I derive no real assistance from them. As might be expected, each materially differs from the present cases in some respects relevant to sentencing. I think the learned sentencing Judge paid perhaps too much attention to other cases, no doubt because of the emphasis given to them by counsel before her. I do not wish to say anything about the prevalence or otherwise of the crime of armed robbery in Darwin. There is no evidence that armed robberies of the gravity of these offences are prevalent in Darwin. For the reasons given by the members of this Court in *Jabaltjari* (1989) 64 NTR 1 at 16, 17, 24, 25, 32, it is to be reaffirmed that each case is to be decided on its own facts and that the task of the sentencing judge in each case is to impose

a penalty within the statutory maximum prescribed for the offence which befits the circumstances of the offence and the offender. It is to be emphasised that there are no prior cases of armed robbery in the Northern Territory, at least to which our attention has been drawn, which are in material respects the same as the present offences, and that lone knifepoint robberies from tills during daylight hours have attracted sentences up to six years imprisonment. The present sentences are, on their face, manifestly disproportionate to the sentences in such cases, for the present robbery is of a far graver kind. In *Halse* (1985) 38 SASR 594 at 596, King CJ commented that breaking and entering a shop is 'somewhat less serious' than breaking and entering a house; see, too, per White J at 596, 597. Here, other things being equal, armed robbery in a dwelling house is more serious than in shop premises. I deliberately do not say 'somewhat' more serious, for it is to be noticed that s213(1) and (6) of the Criminal Code provides:

> "(1) Any person who unlawfully enters a building with intent to commit any offence therein is guilty of an offence.
>
> ...
>
> (6) If he commits an offence defined by this section when armed with a firearm or any other dangerous or offensive weapon, he is liable to imprisonment for 20 years; if the building is a dwelling-house he is liable to imprisonment for life."

I would allow the appeals against the sentences imposed upon the respondents Tartaglia, Spicer and Fotiades, quash the sentences and impose new sentences.

In respect of the respondent Tartaglia, it was he who knew the Venturins' son and the presence of the safe. He was a major participant in the planning and execution of the robbery. He had only been released from prison a short time before the robbery. He had prior offences of house breaking and stealing. For him, although at first instance he deserved more, I would propose a sentence of 8 years imprisonment with a non-parole period of 4 years, bearing in mind that in re-sentencing it is appropriate to impose a lesser sentence than that appropriate at first instance: *Ragget, Douglas and Miller*, supra, at 44. Time already served should count.

In respect of the respondent John Robert Spicer, he also was a major participant in the planning and execution of the crime. He has no previous convictions for dishonesty. He has never been in prison before. It was he who was concerned at Mr Venturin's state of health during the robbery. He deserves a lesser sentence than Tartaglia. Bearing in mind the sentencing considerations applicable to re-sentencing after successful Crown appeals previously referred to, I propose a sentence of 7 years imprisonment with a non-parole period of 3 years for Spicer, time already served to count.

In respect of the respondent Steven Antony Fotiades, he did not instigate or carry out the robbery; he did not acquire the weapons. He played a lesser part in its planning. He drove the others to and from the scene, kept watch during the robbery

and disposed of the disguises and weapons and ammunition after the robbery. He knew the robbery was to be carried out with loaded weapons. His share of the proceeds was significantly less. He had no relevant prior convictions and was led by the others. He deserves a lesser sentence than Tartaglia or Spicer. In his case I would re-sentence him to a term of 4 years imprisonment with a non-parole period of 18 months, time already served to count.

As regards the respondents Lilliebridge, the learned sentencing Judge said as follows.

> "David Lilliebridge and Steven John Lilliebridge have both pleaded guilty to a charge that on 27 February 1993 at Darwin in the Northern Territory of Australia they robbed Robert Hamood of $29,736 in cash, being the property of Nightcliff Newsagency Proprietary Limited, and jewellery to the value of $2835, being the property of Robert Hamood and Leona Bastion, and that the said robbery involved the following circumstances of aggravation: one, that Steven John Lilliebridge was armed with a firearm, namely a sawn-off 12 gauge shotgun and, two, that David Lilliebridge was armed with a firearm, namely a sawn-off .22 calibre rifle and, three, that they were both in company with each other contrary to the provisions of section 211(1) and (2) of the Criminal Code.
>
> In pleading guilty to that charge, the accused have accepted the facts put forward by the Crown in support of the charge and I read those. Those facts are as follows: David Lilliebridge is aged 30 and was born on 27 November 1962. His brother Steven is aged 22 and was born on 4 November 1970. At the time of the offence they lived at separate residences in Duke Street, Stuart Park. About two weeks prior to 27 February '93, David Lilliebridge decided to commit an armed robbery. He then approached his brother, Steven, who agreed to take part in the enterprise.
>
> Some days later it was decided that the Nightcliff Newsagency, which incorporates a Tattslotto agency, would be an appropriate target and on Tuesday, 23 February '93, the two visited the premises and familiarised themselves

with the layout. They then returned to David Lilliebridge's residence and more detailed planning followed. Gloves and pantyhose to cover their faces were obtained and on the night of Friday, 26 February '93, the two prisoners broke into the shed of a relative, Robert William John Lilliebridge, of 4 Mackay Place, Millner, and stole one 12 gauge shotgun and a .22 calibre rifle. Ammunition suitable for each weapon was also taken.

The following day, Saturday, 27 February,
David Lilliebridge cut down the barrels and stocks of both weapons. The discarded pieces of their guns were later recovered by police at the back of his residence. At about 5 pm on 27 February, Steven went to his brother David's residence and the final preparations were made.

At around 5.45 pm David produced some amphetamine, a dangerous drug specified in schedule 2 of the Misuse of Drugs Act, and injected both himself and his brother before they travelled to the crime location in Steven's girlfriend's car. The two parked in Camphor Street close to the Nightcliff Sports Club as it was determined there were a lot of motor vehicles in the vicinity. The two then walked to the Nightcliff Shopping Centre and from there made their way to the rear of the newsagency, and then went into a small outhouse located at the back of the premises. This is used for rolling newspapers and contains a toilet and wash basin. They then changed into their disguises and waited for staff to leave through the back door.

At approximately 6.30 pm two staff members, Lynette Bastion and Leona Bastion, made their way to the rear of the shop, opened the back door and were about to leave when the two prisoners barged in and pointed their guns at them. Robert Hamood, a co-owner of the store, described the incident in the following way: 'The first one pointed a shotgun at my face while the second pointed his gun at the girls. They started to shout: "Drop to the ground. This is a hold-up. Don't do anything stupid or we'll kill you". They repeated continuously, "Don't look at our faces". I saw that the girls dropped to their knees and then lay flat on the ground. I dropped to my knees and the first one said to me, "Open the safe. Did you activate the alarm?". I said, "No, I didn't have time". He said something like: "You'd better be telling the truth". As he was doing this I felt the shotgun barrel at my right temple. It seemed that only one of them was doing the talking. He kept repeating, "Don't look at our faces". As he was doing this the second one was taping the girls. I saw that he was using packaging tape to tape up their wrists and feet'.

The witness, Leona Bastion, the co-manager of the agency, described the incident in similar terms and stated, 'They never talked to each other, just ordering us, "Don't look at us or we'll shoot", and generally words to that effect'. The witness Lynette Bastion, the sister of Leona, was visiting from Adelaide and was working temporarily in the newsagency; her recollection is as follows: 'They rushed at me and had the guns, the shotguns, pointed at me. One of them said, "Get in and lay down and don't look or I'll shoot you"'. She added, 'I was absolutely terrified. I was too scared to look at all. I thought if I did and they saw me they would hit me over the head or shoot me. I really thought they were going to get what they wanted from us and then shoot us. I was absolutely terrified for my life'.

Both Steven and David are adamant that at no time did either of them threaten to shoot or kill Leona Bastion, Lynette Bastion or Robert Hamood. Steven Lilliebridge in his record of interview states that the words spoken were, 'Get down on the floor. Don't say anything. Be quiet. Don't look and no-one will get hurt'. The record of interview, tape 2, page 1. Whilst this account also accords with David Lilliebridge's recollection, both accused concede all victims were terrified by the event.

During the taping of Lynette her head was lifted by one of the accused and it dropped on to the ground. At this time she sustained a bruise. After Mr Hamood had opened the safe he was also made to lie on the floor with his hands behind his back and his feet together. He was then also taped up by one of the prisoners whilst the other rifled through the safe. The two accused then left the safe area and returned to the back room where they changed.

They then made their getaway by walking down the back lane. As they were doing so Robert Hamood managed to free himself with the assistance of a Stanley knife and commenced pursuit of the accused. He saw them standing at the gates at the rear of the premises and Steven Lilliebridge immediately decamped; however, Mr Hamood was able to catch up with David and a struggle commenced. This lasted for several minutes and during this time both Mr Hamood and David Lilliebridge were throwing punches, kicking and wrestling on the ground.

After some time Mr Hamood became apprehensive that Steven Lilliebridge would return with the gun so he let David go. David then fled leaving behind his bag with the firearms and disguises in it. David Lilliebridge was arrested a short time later at Sandlewood Street by general duties police officers who had been alerted to keep a lookout. He was then taken to Berrimah Police Complex and $1050 was located in his underpants. He was

subsequently interviewed at length and made full admissions to the robbery.

Following his departure from the scene Steven returned to his vehicle and then drove back to his Stuart Park flat, leaving David to be apprehended. He informed his girlfriend, Michelle Campbell, what had occurred and decided to hide part of the proceeds of the crime.

He was then driven by his girlfriend along Tiger Brennan Drive until the area some 200 metres from Hook Road was reached. She turned off the main road onto a dirt track and shortly after stopped the vehicle. Steven got out and hid the money in scrub. He then returned to his flat to Stuart Park, en route jettisoning his running shoes and T-shirt in the mangroves.

Steven was apprehended later that evening by police and after initial brief denials co-operated fully with the police. Steven subsequently took police to the scene where part of the money had been hidden and the sum of $23,405 was recovered from there.

During the robbery Steven used a sawn-off shotgun. This had a cartridge positioned in the breach, though the gun was not cocked. David was in possession of the sawn-off .22 rifle when committing the offence. At the time the weapon was loaded. The magazine containing approximately 8 bullets was in place, the bolt action had not been operated and no ammunition had reached the chamber. The weapon was not cocked.

In his record of interview, Steven was asked about the effect of amphetamine on his state of mind and he replied: 'Made me feel really confident. I don't know - confident and a bit exhilarated. Adrenalin was pumping.' He was then asked: 'Did you know what you were doing at the time?' and he replied: 'In a way, yes. In another way, no. It was sort of uncontrollable because of the speed.' He was then asked: 'Do you remember everything that happened?' and he answered: 'Just about, yeah, but there was moments when everything happened so fast I sort of don't remember.'

David Lilliebridge was asked in his record of interview relating to him about whether or not he could recall conversations which he had with police and he replied: 'A bit hazy. No, I don't remember a lot of the finer details. I just remember basically the run of events. I was under the influence of speed at the time so I was a bit hyped up.'

The total amount of cash taken was $29,756. The net loss was $4781. Also taken was a gold watch, two necklaces and

a gold ingot. The watch was recovered but the other items were not. These were the subject of insurance settlement in the sum of $2835 and the Crown have sought restitution of the sum of $2629.55 on behalf of one of the two insurers to cover the net cash losses.

I refer firstly to the application for restitution in the sum of $2629.55. Both Steven Lilliebridge and David Lilliebridge have indicated through their counsel that they have no knowledge of the outstanding money, and all jewellery and everything they had taken was handed over to police. Without further proof from the Crown, I'm not prepared to make a finding that the money and jewellery that has not been accounted for is either in the possession of one or other of the accused, or they know of its whereabouts.

It was a rather amateurish and bungled robbery, particularly in the accuseds' effort to decamp the premises. There may be a number of explanations for the shortfall between the amount of money and jewellery that was stolen, and the amount recovered. A very substantial portion of the money and jewellery taken has been recovered, and in the circumstances I do not propose to make any order for restitution.

The other area of dispute between the Crown and the defence relates to what words were spoken by the accused at the time of the robbery. The accused deny that they threatened to shoot or kill any of the victims. Although I give the accused the benefit of the doubt as to whether such words were uttered, I do not attach any significance to this difference in their version of events. The accused were armed with a shotgun and a rifle, they pointed the weapons at their victims and menaced the victims into submission, enabling the accused to take money and jewellery from the safe.

Their actions spoke louder than any words that may have been uttered. The accused agree that the victims were terrified by the event. The motive and intent of the accused, the possibility of something worse happening to the victims, whether by accident or deliberately, must have been perfectly clear, even if the accused did not make any verbal threats to shoot or to kill.

The offence of armed robbery is serious. It carries a maximum of life imprisonment. I accept that both the accused are extremely remorseful for their actions and that both are now well aware of the effect of their actions on their victims, upon themselves and upon their own families and friends. I have read the references put forward on behalf of both David and Steven Lilliebridge. I read a copy of the letter forwarded by David and Steven

to the Nightcliff Newsagency. I accept that this letter is a genuine expression of their remorse.

The crime could not be described as a crime of impulse. There was a degree of planning and preparation for the offence, although the way in which it was carried out indicates the planning and preparation was far from thorough. Both David and Steven were in fact quite stupid in the way in which they went about the commission of the crime. This may be partly explained by the injection of speed to each of them shortly before the offence, apparently for the purpose of bolstering their courage. Both accused did, however, terrify their victims into submission and both used a degree of violence that brings this offence into the more serious category.

Steven Lilliebridge is 22 years of age. He is before the court with convictions for offences of unlawful entry and stealing imposed by the court on 20 April 1989 and 14 December 1989. Steven was sentenced on 14 December 1989 to 13 months imprisonment with a non-parole period of 10 months. At the time of committing this offence he had been 21 months without conviction, an improvement on his prior history.

He has a girlfriend for whom he obviously has a very strong attachment and his girlfriend has indicated her support for him and has stood by him during this very difficult time. I accept that Steven had been trying very hard to obtain employment over a period of some months and his efforts met with little success. No doubt this was very demoralising for him and I accept this made him vulnerable to a suggestion that could have resulted in obtaining some easy money. I accept Steven now appreciates the enormity of what he did and that whatever problems he may face in his own life is not a reason for him to commit a crime and inflict terror on other persons and rob them of their property.

I accept the evidence given by Mrs Diane Lilliebridge Langeder, the mother of David and Steven. I accept what a shock to her this whole incident has been and that such an act of violence is out of character for both young men. Mrs Langeder has indicated her continued support for her sons. I accept she is prepared to do whatever she possibly can to assist them, both whilst they are in gaol and on their release.

I accept her evidence as to the difficulties experienced by Steven in his teenage years. I realise this is not put forward to excuse his actions but rather to explain how this situation could have ever come about. I also accept the evidence of Diane Sachs as to how Steven had behaved

towards her. Obviously Mrs Sachs also is most supportive of Steven.

David Lilliebridge is 30 years of age. He is before the court without any prior convictions relevant to this matter. I understand the only matters on his record are minor traffic convictions. I accept Mrs Diane Langeder's evidence concerning David, that he is not a person given to violence and this crime on his part appears to be a very uncharacteristic act. David Lilliebridge has had many years of good employment but he also at the time was unemployed and concerned as to his inability to obtain employment in Darwin. David also has formed an association with a young woman who has given him every support and assistance following the incident for which he is now before the court.

I have been referred to a number of decisions which I have read. I have also made reference to a summary of sentences imposed by this court between 30 January 1990 and 21 June 1993. I have read the decision of R v Lewfatt, matter number 40 of '92, a decision of Mildren J given on 2 April 1993. I note this decision was given some six weeks after the commission of the offence which I am presently dealing with. I don't consider the comments made by Mildren J can in all fairness be applied to these accused.

I would, however, indicate my support in principle for the statement made by Mildren J, 'A demonstrated incidence' - I'll start that again:

A demonstrated increase in the incidence of armed robbery is a matter for this court to be sufficiently concerned to give due consideration to increasing penalties after due warning has been given.

I have read and considered the matter of R v Scott McMahon, David Harman and Brett McMahon, number 51 to 53 of 1990, a decision of Martin J as he then was, delivered on 25 July 1990.

McMahon and Harman also faced and were dealt with on other charges; the highest sentence in those matters was seven years in prison with a non-parole period of three years. Whilst those persons faced other charges in addition to armed robbery, I consider that the actual degree of violence exercised by David and Steven Lilliebridge was greater than in the matter that I have just referred to.

I am aware that the Crown have not made any allegation of permanent or serious injury to the victims of David and Steven Lilliebridge's crime. However, it no doubt was, and I accept, in fact a very terrifying and distressing

experience for Mr Hamood and the employees of his newsagency who became victims of this attack.

I adopt with respect the remarks of His Honour Martin J as he then was in the matter of R v McMahon and Harman, and I quote from page 77 of that judgment where His Honour stated:

> I'm not convinced that the gravity of the robbery is diminished much because you and your brother entered a post office rather than going into a domestic dwelling. The elements to the offence are the same and I fail to see how people going about their lawful business in a post office should feel much less threatened by two masked men, one brandishing a shotgun and the other a knife, than if such an occurrence should happen whilst they were in their home.

That is the end of the quote.

In the matter with which I am dealing, I consider the persons working at the Nightcliff Newsagency are entitled to carry on their employment at their place of work without being subject to the fear and indignity that was imposed by the two accused.

I inevitably make a comparison between this matter and the matter of R v John Robert Spicer and Antonio Tartaglia, matters number 53 and 54 of 1993, pleas of guilty to which were made on the same day as the court dealt with this matter. If armed robbery in a private dwelling is more serious than in a newsagency, the distinction would be diminished between these two matters by the fact that David and Steven Lilliebridge exercised a greater degree of violence than the matter of Spicer and Tartaglia.

I have also read the decision in the matter of R v Russell Manser and Brett Langford, number 68 of 1991, a decision of Mildren J delivered 28 August 1991. Both Manser and Langford were sentenced for other offences and given a total sentence each of nine years' imprisonment with a five year non-parole period. Both Mr Manser and Mr Langford were escapees from gaol in New South Wales where they were both serving substantial periods of imprisonment.

I have considered whether I should make a distinction on sentence between the accused to allow for the fact that David Lilliebridge must have every credit extended to him for his previous good record.

Steven Lilliebridge is not in that position. It is not right to penalise Steven again for his prior convictions;

it just means that I can't take his prior record into account as a mitigating factor as I do with David Lilliebridge.

In my opinion, the distinction between the prior records of the two men is balanced by the fact that it was clearly David Lilliebridge's idea to commit the offence and he must have known how vulnerable Steven was to such a suggestion. David is 30 years of age; Steven is a somewhat immature 22 year old. The difference in their ages is quite significant.

I realise Steven doesn't resile from his own responsibility for the offence and doesn't seek to blame David. However, on the objective facts I find David more culpable in the planning of the offence. For those reasons I intend to impose exactly the same sentence in respect of both David and Steven.

David Lilliebridge is convicted and sentenced to six years' imprisonment with a non-parole period of two years and six months. Steven Lilliebridge is sentenced to six years' imprisonment with a non-parole period of two years and six months.

I will date both sentences from the day that both the accused were taken into custody. I understand that was 27 February 1993, but I'll just ask counsel to confirm that date.

MR DAVIES: It was the date that the offence was committed, Your Honour, which would be on the indictments. I'm just looking for that now; yes, 27 February, that's correct, thank you.

HER HONOUR: Thank you. The sentences then are dated from 27 February 1993. Yes, thank you, and I will adjourn the court."

The learned sentencing Judge said that the respondents Lilliebridge terrified their victims into submission and used a degree of violence "that brings this offence into the more serious category." This robbery, too, was of the worst kind. I can not agree with the learned sentencing Judge that "It was a rather amateurish and bungled robbery ..." It was pre-meditated and carefully planned. The premises were 'cased' on a day prior

to the robbery and the layout thereof familiarised. Balaclavas were worn; the get-away car was carefully positioned; sawn-off weapons and ammunition were obtained and made ready. The robbery took place near closing time which was calculated to reward the biggest return. The sawn-off shotgun and rifle were loaded at the time of the robbery. This is a significant aggravating circumstance; it demonstrates increased criminality on the part of the participants, an added determination on their part and introduced a danger of harm to others in the event of a deliberate or accidental discharge. The brothers' taking of drugs increased the risk of harm to others through use of the loaded weapons. The robbery was carried out in company. Both accused pointed the loaded weapons at staff in the store. Employees were taped up with the intention of enabling a good escape and a significant amount of money was taken as well as jewellery. I think the Crown was correct in submitting that this was a very serious example of the crime of aggravated armed robbery. With respect, I can not agree with the learned sentencing Judge when she said:

> "There was a degree of planning and preparation for the offence, although the way in which it was carried out indicates the planning and preparation was far from thorough. Both David and Steven were in fact quite stupid in the way in which they went about the commission of the crime. This may be partly explained by the injection of speed to each of them shortly before the offence, apparently for the purpose of bolstering their courage."

The planning and execution of this robbery indicates a high degree of criminality. The fact that it ultimately proved unsuccessful and that David Lilliebridge did not make good his

escape and that the brothers did not avoid apprehension is, in my view, really not to the point. I think, with respect, that the learned sentencing Judge underestimated the gravity of this crime and gave undue weight to subjective factors. I am also of the view that the learned sentencing Judge erred when she said that, "it is not right to penalise Steven again for his prior convictions; it just means that I cannot take his prior record into account as a mitigating factor as I do for David Lilliebridge." Notwithstanding all these matters, however, and bearing in mind this Court's role in re-sentencing if it were to interfere, upon reflection I have reached the conclusion that no manifest injustice would be done if the appeals against the Lilliebridge sentences are dismissed in the exercise of this Court's residual discretion to do so; see *Holder v Johnston* [1983] 3 NSWLR 245 at 255-256; (1983) 13 A Cr R 375 at 384-385, per Street CJ. Accordingly, I would dismiss the appeals with respect to the Lilliebridge brothers. In so doing, I would add that these sentences can not be regarded as any sort of precedent or guide as to the disposition of future cases of armed robbery of the same or similar gravity in Darwin. In my opinion, future armed robbers like the Lilliebridges can expect much heavier sentences.

PRIESTLEY J:

The facts of these Crown appeals against sentence are fully set out in Angel J's reasons.

The way in which such appeals should be treated in courts of criminal appeal has been authoritatively explained in many decisions. Recently in this court, the decisions were analysed and discussed by Kearney J in *Raggett, Douglas and Miller* (1990) 50 A Crim R 41. I will not go over the ground again, but simply refer to some of the statements most useful for present purposes from the authorities he collected. One which Kearney J used as a guide was what Muirhead AJ said in *Ireland* (1987) 49 NTR 10; 29 A Crim R 353:

> "It is also trite law that an appellate court will not increase a sentence merely because its members believe they would have imposed a more severe sentence. The judicial discretion upon sentence is a wide one and rightly so. What must be established, before an appeal based on inadequacy of sentences allowed, is not that it is lower than average, or merciful, but plainly wrong upon established principles. In determining such an appeal an appellate court must, in the ordinary case, keep an eye on the statute, the circumstances of the offence, the prevalence of the offence, and the background and character of the offender. In assessing the last mentioned consideration, the trial judge has a tremendous advantage, ... " (at 27; 370)

The circumstances in which an appellate court may conclude that a sentence is manifestly inadequate have also been frequently discussed. Kearney J cited *Cranssen* (1936) 55 CLR 509 and *House* (1936) 55 CLR 499 in this respect. In *Cranssen* it was said:

> "... it is not necessary that some definite or specific error should be assigned. The nature of the sentence itself, when considered in relation to the offence and the circumstances of the case, may be

> such as to afford convincing evidence that in some way the exercise of the discretion has been unsound." (at 520 per Dixon, Evatt and McTiernan JJ)
>
> In *House* it was put this way:
>
> "It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law opposes in the court of first instance." (at 505 per Dixon, Evatt and McTiernan JJ)
>
> Kearney J's own statement of the position was:
>
> "In general, then, to establish the existence of the necessary (unidentified) error the Crown must show that the sentences are not just arguably inadequate but so very obviously inadequate that they are unreasonable or plainly unjust." (at 47)

In the *Raggett* etc cases Kearney J thought the facts demonstrated the sentences had been manifestly inadequate and proposed they be increased. Martin J expressed general agreement with Kearney J as to the law to be applied and agreed with his proposed orders. Angel J confined his agreement to the orders proposed by Kearney J.

It seems to me that the principal question in each of the cases now before the court is whether the sentences were manifestly inadequate. Before stating my opinion on these matters I will deal with another question which was argued, which was said to be a question of sentencing principle, but which to my mind is, in the circumstances, of subsidiary importance.

This question was whether in the cases of Mr Tartaglia and Mr Steven Lilliebridge, each of whom had previous criminal convictions, the sentencing judge had shown she had not properly

taken into account those prior convictions by what she said in the following passages:

> "Mr Tartaglia, while having no prior convictions for offences of violence, has numerous convictions for offences of unlawful entry and stealing. This does not mean that Mr Tartaglia should be punished again for his prior convictions; it does mean that Mr Spicer should be given credit for his previous good record. For that reason the sentence imposed in respect of Mr Tartaglia is higher than the sentence imposed on Mr Spicer."

and

> "I have considered whether I should make a distinction on sentence between the accused to allow for the fact that David Lilliebridge must have every credit extended to him for his previous good record.
>
> Steven Lilliebridge is not in that position. It is not right to penalise Steven again for his prior convictions; it just means that I can't take his prior record into account as a mitigating factor as I do with David Lilliebridge.
>
> In my opinion, the distinction between the prior records of the two men is balanced by the fact that it was clearly David Lilliebridge's idea to commit the offence ... "

It was argued for the Crown that the above passages showed that Thomas J had not given any or sufficient weight to the prior relevant offences of Mr Tartaglia and Mr Steven Lilliebridge in deciding on their sentences and was thus not complying with what she was required to do as explained in *Veen v The Queen [No 2]* (1988) 164 CLR 465. The relevant passage is in the joint reasons of Mason CJ, Brennan, Dawson and Toohey JJ and says:

> "... the antecedent criminal history of an offender is a factor which may be taken into account in determining the sentence to be imposed, but it cannot be given such weight as to lead to the imposition of a penalty which is disproportionate to the gravity of the instant offence. To do so would be to impose a

> fresh penalty for past offences ... the antecedent criminal history is relevant, however, to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, retribution, deterrence and protection of society may all indicate that a more severe penalty is warranted. It is legitimate to take account of the antecedent criminal history when it illuminates the moral culpability of the offender in the instant case or shows his dangerous propensity or shows a need to impose condign punishment to deter the offender and other offenders from committing further offences of a like kind." (at 477-8)

As is made plain by the observations which follow the part of the passage I have quoted, the point of the passage was to deny the proposition that a prisoner's antecedent criminal history was relevant only to considerations of leniency. That proposition was firmly put to rest. The passage thus has the affirmative effect of emphasising that antecedent criminal history is relevant, for the purposes specified in the passage, in arriving at the appropriate sentence and that there is no error involved in taking the antecedent criminal history into account for those purposes. At the same time, the passage also seems to me to make it clear that it is not always obligatory, because of the previous history, to impose a sentence more severe than would otherwise have been the case. The overall effect of the passage in my opinion, is to leave to the sentencing judge the decision, in any particular case, whether that previous history should be taken into account, and if so, what weight should be given to it, in sentencing an offender.

In the cases of Mr Tartaglia and Mr Steven Lilliebridge, the way the sentencing judge expressed herself in dealing with this aspect raises the possibility that she took their antecedent criminal histories into account only in regard to their claims for leniency. As I understand what the majority of the High Court said in *Veen [No 2]* it would have been a mistake if she thought the only purpose for which she could use the previous criminal histories was to consider the extent to which leniency might be extended to the offenders, but it would not have been a mistake if, recognising that the histories were relevant and could be taken into account, she gave no greater weight to them in the particular circumstances of the cases than indicated in the passages I have reproduced from her reasons.

It seems to me that there is room for reading what the sentencing judge said in either of the ways I have mentioned. The fact that she said in both cases that it would not be right to penalise the offender again for the prior convictions suggests to me that she had the relevant passage in *Veen [No 2]* in mind in imposing the sentences, because that consideration is there mentioned in very similar words.

On reading the whole of her reasons for sentence in regard to the two armed robberies, and bearing in mind the very detailed submissions that appear to have been made to her and her own thorough consideration of them, I am not persuaded that she made the error submitted by the Crown.

Should my reading of her reasons be wrong in this respect, it nevertheless is significant to my mind that in her

consideration of the circumstances of the various offenders, account was taken, in a significant way, of the prior convictions of the two offenders in question.

On either way of looking at the matter, it seems to me, as I said earlier, that the principal question in all the cases is whether the sentences were manifestly inadequate.

As is apparent from what is reproduced in Angel J's reasons, there was before Thomas J a considerable amount of material relating to past sentences upon persons convicted of armed robbery in the Northern Territory. Thomas J gave what appears to me to have been proper consideration to this material. In saying that, I have in mind the words of Mason J in *Lowe v The Queen* (1984) 154 CLR 606:

> "Just as consistency in punishment - a reflection of the notion of equal justice - is a fundamental element in any rational and fair system of criminal justice, so inconsistency in punishment, because it is regarded as a badge of unfairness and unequal treatment under the law, is calculated to lead to an erosion of public confidence in the integrity of the administration of justice. It is for this reason that the avoidance and elimination of unjustifiable discrepancy in sentencing is a matter of abiding importance to the administration of justice and to the community." (at 610-611)

Although Mason J's observations were made in a case concerning discrepancy in sentencing of co-offenders, he made it clear, I think, that his remarks had a broader operation. I would think it is relatively obvious that the same factors he referred to in regard to the sentencing of co-offenders must operate, although perhaps not so obviously, in regard to sentences imposed upon persons committing separate crimes of a generally similar kind.

The thought behind what he said seems to be much the same as that expressed by Jacobs J in *Griffiths* (1977) 137 CLR 293 at 326:

> "Disparity of sentencing standards is a very serious deficiency in a system; it is the task of a court of criminal appeal to minimise disparities of sentencing standards yet still recognise that perfect uniformity cannot be attained and that a fair margin of discretion must be left to the sentencing judge."

It is of course much more difficult to avoid apparent inconsistency in punishment in regard to a large number of particular types of offence than it is in the case of co-offenders in the one offence. In regard to armed robbery, for example, the two words describing the offence encompass situations ranging from those of the worst kind to those which, although still grave as any armed robbery must be, can, in their practical effect, be much less serious. As well as this width of range in the circumstances of the offence, there is an equally wide range in the circumstances of the people who commit the offences. The number of variables from case to case means that the sentences imposed vary from non-custodial sentences at the bottom end of the scale and heavy sentences of imprisonment at the other.

Where the population in a particular jurisdiction is sufficiently large to give rise to a great many offences of a particular kind, such as armed robbery, it is possible to see in the mass of sentences over a number of years patterns emerging in regard to different types of offence within the class and also in regard, to some extent at least, to different types of offender. Once such patterns emerge, then courts will ordinarily

be guided by them in sentencing, and in doing so, the considerations mentioned by Mason J in *Lowe* and Jacobs J in *Griffiths* will be fulfilled. Still, even in regard to offences as to which such patterns are recognisable, courts can do no more than use them as a guide, because the starting point and governing factor in every case must be the particular facts of that case, and frequently such facts will be sufficiently far out of any usual pattern as to require a sentence more lenient or more severe than the usually recognisable range provides for.

On the basis of the sentences for armed robbery which were drawn to the attention of Thomas J and this court, I do not think it is possible to say that any very clear pattern can be found in the Northern Territory accumulation of armed robbery sentences. This view is supported, it seems to me, by the table at the end of these reasons in which I have attempted to put in chronological order the armed robbery sentences brought to the court's attention, under headings showing only some very basic information. If, for example, armed robbery in company were taken as a distinct category, the table gives (possibly) thirteen examples over an approximate fourteen year period. When the details, not shown in the table, of those thirteen robberies begin to be examined, the cases all start to look so very different from one another that any attempt to use them as the basis for generalising would in my view be misguided. It would seem that Darwin does not fall into the class of large metropolis, or the Northern Territory into the class of jurisdiction, which breeds armed robberies in sufficient numbers

for the kind of sentencing pattern I have mentioned to emerge with any clarity.

The one way in which the figures collected in the table may be of assistance to this court in the present cases is that they indicate the range of sentences imposed in regard to the diverse happenings which have been dealt with under the description "armed robbery". There are a good many sentences at what strikes me as the low end of what would be expected, not many at the high end, two of ten years, and none above that. When the list of things which Mr Duffy, the earlier of the two ten year men, did for which he was sentenced on 21 May 1987 to ten years, (which was the upshot of a number of concurrent sentences), his criminality can be seen to be of a very marked degree. The case of the other man sentenced to ten years, Mr Wade, (19 August 1992) was quite unusual. An application by Mr Wade for leave to appeal against that sentence was argued in this court immediately after the cases presently being discussed and what I think about it appears in my reasons in that case.

I mentioned that a number of the sentences in the table struck me as being on the low side. I need to say two further things about that impression. One is that I find it hard to pinpoint any reason for this reaction on my part, beyond the feeling that an offence for which the maximum punishment is life imprisonment should have drawn more sentences around the ten year mark or above than the table shows. The other thing, which tells against my first reaction, is that the sentences all reflect the considered decisions of trial judges of the Supreme

Court of the Northern Territory dealing at first hand with the Territory's crimes and offenders. It seems to me that due regard must be paid to those judges' knowledge and experience of the conditions they were observing first hand and working with from day to day. It is not sensible for an appellate court to start its consideration of the work of sentencing judges over a period of years with any other assumption than that they are likely to have been well advised and reasonable in their sentencing practices, and in adapting them to the circumstances they encountered.

With these various considerations in mind, I come to the question whether in the case of Mr Tartaglia the sentence imposed on him was "not just arguably inadequate but so very obviously inadequate" as to be "unreasonable or plainly unjust", adopting Kearney J's words from *Raggett* at 47. I adopt Angel J's description, without repeating it, of the gravity of Mr Tartaglia's crime. Bearing in mind the statutory maximum and the higher sentences that appear in the table, the sentence on him seems to me to be low, and lower than I think most judges would have imposed. However, I do not think that the sentence was so very obviously inadequate as to be unreasonable or plainly unjust. To adopt phrases from another case cited by Kearney J in *Raggett*, namely *Anzac* (1987) 50 NTR 6, I do not think

> "the sentence grossly departs from what [I perceive] to be the range of permissible sentences for comparable cases." (at 11)

I have reached this conclusion while keeping two negative things in mind about the table: one is that what appears in it makes an

inadequate basis for any generalisation except a cautious one about range; the other is that I am aware only of a few cases which could be called roughly comparable to the present one; but, while keeping those negatives in mind, I have taken into account the sentences in those few roughly comparable cases and the fact that of the heaviest sentences in the table were the two for ten years earlier mentioned; I have taken them into account because they supply some background for assessing an appropriate sentence in the present case; the background is inadequate, but it is all that is available. Finally of course, and as earlier indicated, most importantly, I have considered the circumstances of the crime and of Mr Tartaglia.

When in Mr Tartaglia's case it is borne in mind that armed with a loaded weapon, disguised, in company with another disguised man armed with a loaded weapon, he assaulted private citizens in their own home and robbed them, I think a sentence of eight years would have been perfectly reasonable. I do not however think it follows from that that the sentence imposed by Thomas J should be classed as unreasonable or plainly unjust. This seems to me to be a case where the fact that the members of this court may believe they would have imposed a more severe sentence is not a sufficient reason for interfering with the discretion exercised by the sentencing judge.

For the reasons given by Thomas J I think the criminality of Mr Spicer was marginally less than that of Mr Tartaglia, and again, although I think it would have been reasonable to sentence Mr Spicer more severely I do not think the sentence

imposed upon him falls into the class of the unreasonable or the unjust.

Similarly with Mr Fotiades. In his case I should make it clear that my conclusion is based on the statement of facts presented to Thomas J in Mr Fotiades' separate sentencing hearing. That statement did not contain a number of damaging facts asserted against him elsewhere by Messrs Tartaglia and Spicer. Had those allegations been established against Mr Fotiades I think there would have been a much stronger case for regarding the sentence upon him as manifestly inadequate. However, the Crown did not seek to establish in Mr Fotiades' sentencing proceedings the version of the facts alleged against him by the other two which would have made the case against him much more serious. Thomas J could not, as the Crown presented the case against Mr Fotiades, take into account the more serious version of the facts, and rightly did not do so. On the facts she was properly entitled to take into account, I do not think, bearing in mind the history of sentencing in the jurisdiction, as shown in the table, imperfect guide though it be, that the sentence was manifestly inadequate.

The reasons I have given in regard to Messrs Spicer and Tartaglia apply equally to the sentences imposed upon Mr D. Lilliebridge and Mr S. Lilliebridge. In each case I think the sentence was lower than most judges would be likely to have imposed but I see no error in Thomas J's approach to the task of sentencing and I do not think that the outcome can be correctly

described as manifestly inadequate in the sense described in the cases.

I would dismiss each of these Crown appeals.

ARMED ROBBERY

Number	Supreme Court Number	Name	Type	Date of Sentence	Sentence	Notes
1	309/80 311-312/80	Valentini Garvie	Food Bar at Service Station	4. 7.80	2 yrs suspended GBB	Appeal dismissed (1980) 48 FLR
2		Pesti	Car	Mentioned by Judge in Da Costa (No 8 below)	5 yrs, NPP 2.5	
3	93-5/84 96-8/84	Davies Aden	Veterinary Clinic	13.06.84	4.5 yrs, NPP 1.5 4.5 yrs, NPP 1.5	
4	167/83	Molina Co-offender	Supermarket	24.08.84	5 yrs suspended GBB 8 yrs, NPP	Appeal dismissed (1984) 2 FCR 508
5	171-173/84	Clowes	Supermarket	18.10.84	5 yrs, NPP 1.5	
6	150-151/85	Winter	Service Station	18. 7.85	6 yrs, NPP 2.5	
7	334/85	Boyd	Blg Co Payroll	12.11.85	5 yrs, NPP 2.5	
8	239-40/86	Da Costa	Service Station	2. 9.86	4 yrs, NPP 1.5	

9	385/86	Perkins	Restaurant	10.11.86	4 yrs, condit release after 12 months. Sentence reduced from 6 yrs, NPP 2.5 yrs, accused to give evidence against co-offender.	
10	2/93	Duffy Sheehan	Casino	21. 5.87	10 yrs, NPP 4.5 4 yrs, NPP 1.5	Concurrent with many others
11	4/88	Peters	Bank	20. 7.88	Bond without sentence (schizophrenic)	
12	188-9/88	Armstrong McLean	Service Station	5. 6.89	4.5 yrs, NPP 2 5 yrs, NPP 2yrs 3m	
13	90/89	Garden	Shop	19. 7.89	9 mths - released forthwith	
14	158/89	Lethborg	Supermarket	30. 1.90	6 yrs, NPP 2	
15		Price	Dwelling House	10. 5.90	8 yrs, NPP 3.5	Part of 11 yrs total for a number of offences, 3.5 NPP for the lot
16		Ella	Motel rooms	25. 6.90	3.5 yrs, NPP 1	

17	143/89 141/89 142/89 144/89	Rosas Macaw M. Lui T. Lui	Service Station	12. 7.90	7 yrs, NPP 3.5 18 m rel after 4m 2 yrs, NPP 9 m 1 yr, NPP 6 m	
18	23/90	Roper	Dwelling House	19. 7.90	8 yrs, NPP 3	Same robbery as Price (No 15 above) with fewer further offences
19	51/89 52/89 53/89	S. McMahon Harmon B. McMahon	Post Office	25. 7.90	7 yrs, NPP 3 4 yrs, NPP 1.5 5 yrs, NPP 2	
20	94/90	O'Neil	Bank	7. 9.90	3 yrs, NPP 1.25	
21	115/90	Belpario	Service Station	14.11.90	2.5 yrs, NPP 1.25	
22	79/90	Espie		19.11.90	5 yrs, NPP 2	
22	93/90	Cumayi		19.11.90	2 yrs, NPP 1	
23	1/90 35/90	Brister	Takeaway Store	12. 3.91	4 yrs susp HDO 8 m	
24	3/91	Wells	Bank	15. 3.91	4 yrs, NPP 2	

25	16/91	Burke	Service Station	15. 3.91	3 yrs, NPP 1	
26	28/91	Gittins	Takeaway Store	25. 3.91	2.5 yrs, NPP 1.25	
27		C. Brister		25. 3.91	2yrs 2m, NPP 3 m	
28	57/91 58/91	Parnell Daly	Supermarket	15. 5.91	5 yrs, NPP 2 2 yrs, release after 4.5 m	
29	141/91	Wiggins	Bank	28. 5.91	7 yrs, NPP 3	
30	69/91	Langford Manser	Bank	28. 8.91	9 yrs, NPP 5 9 yrs, NPP 5	
31	163/91 164/91 165/91	Peters Callicazaros Milton	Youth refuge	3.12.91	1 yr suspended 1 yr suspended 3 yrs, NPP 1.5	
32	197/91	MacSkimin	Service Station	5. 3.92	4 yrs x 2, conc, NPP 2	
33	223/91	Moores	Smith Street Mall	18. 5.92	3 yrs, NPP 9m then GBB	
34	39/92	Tsaknis	Service Station	12. 8.92	4 yrs, NPP 1.5	
35	193/91	Wade	Taxi	19. 8.92	(10 yrs) 2 yrs conc, NPP 4	

36	40/92	Lewfatt	Shop in Mall	2. 4.93	3 yrs susp HDO 9m then GBB 3 yrs	
37	23/93 25/93	Schmidt Walker	Bus stop	8. 4.93	3.5 yrs NPP 15 m 6 yrs, NPP 2	
38	2/93 3/93	Widdison Reinders	Taxi	21. 6.93 14. 5.93	5 yrs, NPP 2.5 3 yrs, NPP 2	In addition to this Reinders was sentenced to serve the remainder of sentences he was serving when paroled on 12 October 1992.

GRAY AJ:

I have had the advantage of reading in draft the reasons for judgment of Angel J and Priestley J. The relevant facts and the learned trial Judge's sentencing remarks are to be found in the judgment of Angel J.

Angel J has concluded that sentencing error has been shown in the cases of Tartaglia, Spicer and Fotiades; whereas Priestley J considers that the orders made fell within the learned trial Judge's sentencing discretion.

In this highly subjective area, I have concluded that the opinion of Angel J is to be preferred.

In the case of Tartaglia I consider that the learned trial Judge did not give sufficient weight to Tartaglia's criminal record and, in the result, passed a manifestly inadequate sentence.

Tartaglia was twenty years old at the time of the crime. Over the previous two years he had suffered twelve convictions for unlawful entry and twelve convictions for stealing. He had also breached a bond. He was released from prison less than one month before committing the present offence.

The learned trial Judge, in her reasons for sentence said this of Tartaglia's prior convictions:

> "In the present matter before me, both offenders were equally culpable in the commission of the offence; there is however a distinction in respect of their prior history. Mr Spicer has no relevant prior convictions and Mr Tartaglia, while having no prior convictions for offences of violence, has numerous convictions for offences of unlawful entry and stealing. This does not mean that Mr Tartaglia should be punished again for his prior convictions; it does mean that Mr Spicer should be given credit for his previous good record. For that reason the sentence imposed in respect of Mr Tartaglia is higher than the sentence imposed on Mr Spicer."

Those remarks make it clear that the learned trial Judge did not treat Tartaglia's prior convictions as an aggravating factor. This, I think, was a mistake. I consider that the proper inference to be drawn from Tartaglia's record is that, from the age of eighteen, he became an habitual housebreaker.

The commission of the present crime within a few weeks of his most recent release from prison showed a continuing attitude of disobedience to the law. In my opinion, Tartaglia's criminal record demonstrated a marked propensity for serious crime and required a sentence which reflected more fully the elements of retribution, deterrence and protection of the community.

See the passage from *Veen v The Queen [No 2]* (1988) 164 CLR 465 at pp477-8 set out in the judgment of Priestley J.

As to the general circumstances of the present crime I adopt the description in the judgment of Angel J which amply demonstrates that this was an armed robbery in the upper range of seriousness and the full culpability of each participant.

I have considered the sentences imposed in other Northern Territory armed robbery cases since 1980, a Schedule of which is annexed to Priestley J's judgment.

The smallness of the sample and the brevity of each description makes any sensible comparison very difficult. There are many factors which can influence a sentence which do not show up on such a record. For example, the Court was told that one or both of Langford and Manser (No 30 on the Annexure) were escapees with long uncompleted sentences to serve in New South Wales. This no doubt was reflected in reduced sentences being imposed in the Northern Territory.

Apart from receiving an impression that the sentences are generally lower than might be expected, I do not think that anything really helpful can be derived from the list.

I consider that a head sentence of ten years would have been an appropriate sentence for Tartaglia but I accept that a lesser sentence should now be substituted for the reasons given by Angel J. I am now prepared to adopt the sentence he proposes of eight years with a non-parole period of four years.

As to the other two men, I accept the reasoning of the learned trial Judge for distinguishing them from Tartaglia and from each other. But because of my opinion that Tartaglia's

sentence miscarried, I consider that the sentences of Spicer and Fotiades are inadequate and must be increased to maintain an appropriate degree of parity between co-offenders. I am content to adopt the sentences proposed by Angel J. Those sentences are in the case of Spicer, seven years with a non-parole period of three years and, in the case of Fotiades, four years with a minimum term of eighteen months.

In relation to the Lilliebridge appeals, I consider that the learned trial Judge undervalued the significance of Stephen Lilliebridge's prior convictions but not to the same extent as in the case of Tartaglia. The criminal history of Stephen Lilliebridge ceased nearly two years prior to this offence. This makes the inference of continuing disobedience to the law and propensity much more doubtful.

Upon the whole of the circumstances I am not persuaded that appealable error has been shown in the Lilliebridge cases. Although I think the sentences were lenient, I agree with my brethren that those appeals should be dismissed.
