

YOU BE THE JUDGE - SENTENCING SCENARIO

R v James Jackson

The following exercise can be used with classes considering some of the issues that surround sentencing. It is best as a group activity.

Students should read the information about the case and answer the questions selected by the teacher throughout the document. This can be done through a class discussion, small group discussion, or independent writing.

Students may find the following resources useful when working through this activity (both available through the ACT Courts website Education page:

- Fact sheet: How do the Courts in the ACT choose a sentence?
- Fact sheet: Sentencing options in the ACT

This sentencing scenario is based on a real case, however, many details in this activity have been changed or fictionalised for the purposes of supporting student learning.

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R v James Jackson

The charge

Mr James Jackson has pleaded guilty to the offence of manslaughter.

Manslaughter is where a person commits an unlawful and dangerous act that causes the death of another person. It is an offence under s 15(2) of the *Crimes Act 1900* (ACT).

Manslaughter is distinct from murder in that the person who did not intend to cause the death of the person.

The maximum penalty for this offence is 20 years' imprisonment. James Jackson is being sentenced in the ACT Supreme Court.

Questions:

1. What is manslaughter?
2. What is the maximum penalty for manslaughter?
3. The maximum penalty for manslaughter is 20 years' imprisonment and the maximum penalty for murder is imprisonment for life. Do you think this is appropriate? Why?

Sentencing options

The sentencing options open to the judge are:

- A term of imprisonment (maximum: 20 years)
- A term of imprisonment, to be served by way of an intensive corrections order in the community (maximum: 20 years)
- A term of imprisonment, to be suspended either wholly or partially, with the offender to enter into a good behaviour bond (maximum: 20 years)



The agreed facts

On Sunday May 30, 2021 the victim, Mr Steve Wasaki was at the Kingston Hotel. He arrived at the hotel at around 5pm. He was alone. He had been drinking for most of the afternoon.

At around 6pm the offender, Mr James Jackson, arrived at the Kingston Hotel with his wife and daughter. They sat down to have a pub meal. While they were there Mr Wasaki approached the offender and his family. They did not know each other.

Mr Wasaki spoke directly to the adults and the offender's daughter. At one stage he said to the offender's daughter "You're a good girl. Look at your eyes. Perfect eyes. And oh, those lips, perfect lips. That nose. Beautiful nose." Mr Wasaki touched the offender's daughter's face and said "But I can tell the one thing I hate about you, I hate your nostrils." The offender's wife told Mr Wasaki that was a "weird" thing to say, and asked Mr Wasaki to leave them alone. At that the offender, his wife and daughter left the restaurant.

The offender, his wife and his daughter arrived home a little after 8pm. When they arrived home the offender's wife criticised him for not standing up to Mr Wasaki. The offender left his home, got in his car, and drove the short distance back to the Kingston Hotel. He parked his car and entered the hotel. Mr Wasaki was at the bar. The offender ran at Mr Wasaki and tackled him to the ground. He then struck him in the head several times, then got up and left.

The force of the assault left Mr Wasaki unconscious. Hotel staff commenced CPR and an ambulance was called. Paramedics were unable to revive Mr Wasaki, and he was pronounced dead at 9.42pm.

The cause of death was a traumatic haemorrhage (bleed) at the back of the head. The pathologist who examined Mr Wasaki stated that the cause of death was very unusual. The pathologist could not determine whether it was the fall or the punches that caused the haemorrhage.

Questions:

1. In three sentences or less, recount the facts of the case OR create a simple timeline of the facts of the case.
2. What did the pathologist say about how Mr Wasaki died?
3. What is your initial response to the agreed facts? What do you think about Mr Jackson and Mr Wasaki's actions? Who is responsible for what happened?
4. After reading the agreed facts, what sentence would you impose and why?

The prosecution's sentencing submissions

Mr Wasaki was 44 years of age when he died. He had a wife, three stepchildren and a son. Several Victim Impact Statements have been submitted by Mr Wasaki's family:

Mr Wasaki's wife described her husband as "the warmest, most gentle, loving and caring man" and said "he was my soulmate." She said "my husband was a person who wouldn't have harmed anyone. He was loved by everyone, including his children who miss him desperately."

Mr Wasaki's stepdaughter said "he was such a hard worker, usually seven days a week, 10-12 hours a day. He wore his body out to provide a good life for us"

Mr Jackson's moral culpability (wrongfulness) is high. He left the hotel, went home, and then drove back to the hotel intent on seeking revenge. He had time for calm reflection and he still chose to return to the hotel. This was not a split-second reaction, but a pre-meditated attack motivated by wounded pride.

The seriousness of Mr Jackson's offending is at the medium level for manslaughter. The offender had plenty of time to think about his actions and made an active choice to return to the hotel and assault Mr Wasaki. The attack was from behind, it was brutal and included targeting Mr Wasaki's head. Mr Jackson did not attempt to talk to Mr Wasaki before attacking him.

Mr Jackson should be punished in order to show others that this behavior is not acceptable. If Mr Jackson is given a light sentence, then other people in the community will not be deterred from doing something similar.

Even if Mr Jackson is of good character, his deliberate and violent actions caused the death of another person. His sentence must reflect the seriousness of this offending.

Questions:



1. Who wrote victim impact statements? What do you think the purpose of a victim impact statement is?
2. What does 'moral culpability' mean? Why does the prosecution say Mr Jackson's moral culpability is high?
3. Do you think that if Mr Jackson receives a harsher sentence more people in the community will not do the same thing as he did?
4. After reading prosecution's case, what sentence would you impose now? If you have changed it, why? If you haven't changed it, why not?

The defence's sentencing submissions

Mr James Jackson is a man of good character who has made a terrible mistake.

Mr Jackson had a positive upbringing with a supportive family. He completed Year 12 and then an apprenticeship in carpentry. His wife describes him as “an honest, reliable, and hard-working builder” with strong morals. She said he is devoted to his family.

He is remorseful (sorry) for his actions. He pleaded guilty to manslaughter early in proceedings. He has said “I accept full responsibility” for Mr Wasaki’s death and that there are “no excuses for what I did.”

Mr Jackson does not have a criminal record and is highly unlikely to reoffend. His chances of rehabilitation are strong and there is no need for the sentence to be harsher in order to stop him offending again.

The moral culpability of Mr Jackson’s offending is low. He was provoked by Mr Wasaki’s highly inappropriate comments about his daughter. He never intended to seriously harm or kill Mr Wasaki. He did not return to the pub to seek revenge but to hold Mr Wasaki to account for what he said.

The seriousness of Mr Jackson’s offending is low. He pushed Mr Wasaki off his chair and punched him two to three times in the head. His actions were not seriously violent, and the entire incident occurred in just under 5 seconds. The pathologist said that Mr Wasaki’s death was incredibly unlucky, and this must be reflected in the sentence.

Questions:

1. Identify some of the key differences between the prosecution’s characterisation of the offending and the defence’s characterisation of the offending.
2. Do you think it is important to consider Mr Jackson’s personal circumstances and upbringing? Does this make him more or less morally culpable for what he did?
3. After reading defence’s submissions, what sentence would you impose now? If you have changed it, why? If you haven’t changed it, why not?



Extension - sentencing discount for a plea of guilty

An offender might be entitled to a discount on their sentence if they plead guilty. The reasons for a discount are:

- The offender has taken responsibility for their actions and shown remorse by pleading guilty
- The community is spared the expense of a contested trial
- Witnesses are spared the trauma of being required to give evidence

There is no specific formula for the discount to be applied in a case. The judge will hear arguments from both the prosecution and defence about whether there should be a discount, and how substantial it should be. The earlier a defendant pleads guilty, the greater the discount will be. This means that a person who enters a plea of guilty at the first reasonable opportunity will receive a higher discount than someone who pleads guilty the day before the trial.

The discount applies to the length of the sentence decided by the judge and reduces the sentence:

$$\text{Sentence} \times \% \text{ reduction} = \text{sentence imposed}$$

For example, James Smith is charged with burglary. The maximum sentence for the offence is 20 years' imprisonment. Mr Smith pleads guilty the fourth time the matter is in court. The judge finds that a sentence of 5 years of imprisonment is appropriate, and that a 25% discount should be applied because of Mr Smith's early plea of guilty. The sentence is reduced to 3 years and 9 months imprisonment:

$$5 \text{ years (60 months)} \times 0.25 = 3.75 \text{ years (40 months)}$$

After you have determined the appropriate sentence for James Jackson, consider whether a discount should be applied, and if so, what the discount should be.

The prosecution's submissions:

- The offender pleaded guilty early in proceedings. A discount should be applied.
- The prosecution's position is that a discount of 20% should apply. This reflects the discount that has been given in similar cases.

The defence's submissions:

- A discount of 30% should be applied. This reflects the offender's willingness to take responsibility for his actions and his remorse for the consequences of his actions.
- A discount of 30% is also appropriate because Mr Jackson indicated at the earliest opportunity that he would be prepared to plead guilty to manslaughter. This meant that the prosecution did not have to spend significant resources preparing the case against Mr Jackson and no witnesses had to prepare to give evidence in court.
- It also meant that Mr Wasaki's family and friends knew early that they would not have to go through a trial.

Once you decide on the discount, apply it to the sentence you decided upon and determine the sentence to be imposed.

The judge's decision

This activity is adapted from the sentencing remarks of Elkaim J in the case of *R v Kourpanidis* [2021] ACTSC 112

In *R v Kourpanidis*, Elkaim J sentenced the offender to 10 years' imprisonment.

Elkaim J made the following findings:

In pleading guilty, the offender has shown remorse for his actions. He has taken responsibility for the consequences of his offending.

The offender's actions were of medium seriousness. It was a short but vicious attack that resulted in a death of a man. The offender targeted the victim's head. It is not uncommon for a person to be seriously injured, sometimes killed, as a result of a single punch.

The offender's moral culpability is at a medium level. The attack did not occur immediately after the touching of the offender's daughter, and the offender had enough time for reflection before driving back to the hotel.

There must be an element of general deterrence. The public must know that unjustified attacks can have severe consequences for which punishment will follow.

Elkaim J found that a discount of 25% on the sentence was appropriate due to Mr Kourpanidis's early plea of guilty. This reduced the sentence to 7 years and 6 months. Elkaim J set a non-parole period of 3 years and 9 months.

