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S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA313/2017  
[2018] NZCA 10**

BETWEEN	JADEN LEE STROOBANT Appellant
AND	THE QUEEN Respondent

Hearing:	5 October 2017
Court:	Asher, Brown and Collins JJ
Counsel:	E P Priest for Appellant J E L Carruthers for Respondent
Judgment:	12 February 2018 at 10.30 am

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**JUDGMENT OF THE COURT**

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**The appeal against sentence is dismissed.**

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**REASONS OF THE COURT**

(Given by Brown J)

[1] The appellant, Mr Stroobant, pleaded guilty to one charge of murder and two charges of sexual violation by unlawful sexual connection. On 26 May 2017 he was sentenced by Lang J on the murder charge to life imprisonment with a minimum non-parole period of 17 years.<sup>1</sup> On each charge of sexual violation he was sentenced to preventive detention with a minimum period of imprisonment of ten years. He

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<sup>1</sup> *R v Stroobant* [2017] NZHC 1122.

appeals against the sentence of preventive detention only, contending that it was manifestly excessive and that a finite term should have been imposed.

## **Background**

[2] On the morning of 15 January 2016 Mr Stroobant, who was then 19 years old, entered the property of the 69 year old female victim. After encountering the victim outside, he dragged her inside her house and punched her about the head and the face. She was knocked to the ground, where he struck and stomped on her face and head, causing extensive and ultimately fatal injuries. He then removed her trousers and underwear, and inserted an object into her vagina and anus with sufficient force to cause significant internal injuries.

[3] After the attack, Mr Stroobant went through the victim's belongings and collected an iPad, some Chinese currency and a gold watch. It appears that using a towel and dishwashing liquid he attempted to remove traces he may have left at the scene.

[4] When located the appellant denied any involvement in the offending. He continued to deny involvement until the morning of his trial at which point he entered guilty pleas to all three charges.

## **The High Court judgment**

[5] It was accepted by Mr Stroobant that s 104 of the Sentencing Act 2002 was engaged, mandating a minimum period of imprisonment of at least 17 years, as the murder involved both unlawful entry into a dwellinghouse and a vulnerable victim. Lang J considered that a minimum term starting point of 20 years' imprisonment was warranted.<sup>2</sup> A reduction of two years was allowed in consideration for Mr Stroobant's youth and his very troubled upbringing. A further discount of one year was allowed for the guilty plea, the Judge explaining:

[30] The material before me also calls into question the extent to which you have accepted responsibility for your offending. In particular, you now deny or say you cannot remember anything about the sexual offending and

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<sup>2</sup> At [20].

you do not want to discuss it. You have also said that you entered your pleas effectively to ensure that you did not have to undertake the rigours of a long trial. You have also said, I acknowledge, that you have entered guilty pleas because it was your fault. Nevertheless, I do not see a significant acceptance of responsibility for your offending. For that reason I give your guilty pleas less weight than they might otherwise have.

[6] On the sexual violation charges, the principal issue facing Lang J was whether to sentence Mr Stroobant to a finite term of imprisonment or to preventive detention.

[7] Before the Court can consider imposing preventive detention the statutory preconditions in s 87(2) of the Sentencing Act must be satisfied. These are as follows:

- (a) a person is convicted of a qualifying sexual or violent offence (as that term is defined in subsection (5)); and
- (b) the person was 18 years of age or over at the time of committing the offence; and
- (c) the court is satisfied that the person is likely to commit another qualifying sexual or violent offence if the person is released at the sentence expiry date (as specified in subpart 3 of Part 1 of the Parole Act 2002) of any sentence, other than a sentence under this section, that the court is able to impose.

[8] Once the preconditions are satisfied, the Court may impose a sentence of preventive detention.<sup>3</sup> When deciding whether to impose a sentence of preventive detention, s 87(4) of the Sentencing Act prescribes five matters that a judge must take into account:

- (4) When considering whether to impose a sentence of preventive detention, the court must take into account—
  - (a) any pattern of serious offending disclosed by the offender's history; and
  - (b) the seriousness of the harm to the community caused by the offending; and
  - (c) information indicating a tendency to commit serious offences in future; and

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<sup>3</sup> Sentencing Act 2002, s 87(3).

- (d) the absence of, or failure of, efforts by the offender to address the cause or causes of the offending; and
- (e) the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.

[9] Because of the principle in s 87(4)(e), Lang J had to first determine the appropriate finite sentence for the sexual violation charges if preventive detention was not imposed. Noting that the sexual offending was accompanied by extreme violence and involved a very vulnerable victim, the Judge considered the case would fall within Band 3 of *R v AM (CA27/2009)*,<sup>4</sup> which carries a starting point of between 12 and 18 years' imprisonment. The Judge would have selected a starting point of around 16 years' imprisonment, reducing the sentence to approximately 14 years' imprisonment after taking into account the guilty plea.<sup>5</sup> Lang J also considered that a minimum period of imprisonment of approximately 50 per cent would have been warranted.

[10] Lang J then proceeded to address the question of preventive detention. The first two prerequisites in s 87(2) were clearly satisfied, the only question was whether the Judge was satisfied Mr Stroobant was likely to commit another qualifying sexual or violent offence at the expiration of the finite term he would otherwise serve. Lang J turned to consider the five s 87(4) considerations.

[11] In respect of s 87(4)(a), while Mr Stroobant had several convictions for burglary, he had only one prior conviction for violent offending in relation to an assault of a police officer. As the Judge recognised, this was not the usual pattern for a person who was a candidate for preventive detention; in such circumstances the Court is confronted with previous convictions for significant sexual offending or significant violent offending.<sup>6</sup>

[12] Given his prior description of the effects of the offending for the victim's family and the wider community, the Judge considered that the s 87(4)(b) factor

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<sup>4</sup> *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

<sup>5</sup> *R v Stroobant*, above n 1, at [33].

<sup>6</sup> At [41].

really spoke for itself. He described Mr Stroobant's offending as of the gravest seriousness for the community.<sup>7</sup>

[13] The Judge proceeded to address in some detail the third s 87(4) matter, which involved consideration of psychiatric reports of Dr Brindley and Dr Goodwin, obtained pursuant to s 88 of the Sentencing Act, and Dr Immelmann, obtained by Mr Stroobant's counsel.<sup>8</sup> The Judge quoted extracts from each report, noting that all of the tests which they had undertaken indicated that Mr Stroobant had a high risk of both sexual and violent offending in the future. The Judge commented:

[52] One of the most salient features that flows from all of the reports, and in this I include Dr Immelmann's, is that you appear to have no empathy whatsoever with any of your victims. You have no insight into what you have done or the damage you have caused. You appear to have no interest in atoning for your conduct or rehabilitating yourself. It is clear that, during the time you were at Waimokoia School, an extraordinary amount of time was spent by experts in their field endeavouring to guide you back onto the social pathway. This appears to have done no good at all.

[14] Lang J unequivocally concluded that Mr Stroobant was at high risk of both violent and sexual offending on release from prison, and that the only way in which he would be able to deal with that was by intensive therapeutic intervention tackling the underlying causes his problems.<sup>9</sup>

[15] In considering s 87(4)(d), Lang J noted that Mr Stroobant had never been convicted of sexual offending and was therefore unsurprised that he had never had treatment in relation to this. However, he was satisfied that there had been a failure to engage with the degrees of help that had been offered to Mr Stroobant over the years by various agencies and institutions.<sup>10</sup> Mr Stroobant's track record to date did not indicate a willingness to engage with health professionals or other forms of rehabilitative assistance.

[16] Ultimately, Lang J considered s 87(2)(c) was satisfied. In standing back to consider whether to exercise the discretion to impose preventive detention, two

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<sup>7</sup> At [42].

<sup>8</sup> The Judge also noted that a fourth report had been filed by Mr Stroobant's counsel from a psychiatrist who specialises in the effect of alcohol and drugs, Dr Menkes, but did not detail any of the conclusions from this report.

<sup>9</sup> *R v Stroobant*, above n 1, at [59].

<sup>10</sup> At [60].

factors stood out. First, the purpose of preventive detention is to protect the community from those who pose an ongoing risk of serious offending; that purpose was engaged here. Second, a sentence of preventive detention can provide an incentive to offenders to engage in the rehabilitative process; this was a particularly important factor in Mr Stroobant's case. The only way to avoid the risk Mr Stroobant posed was by him accepting responsibility for what he had done and participating meaningfully in programmes whilst in prison.<sup>11</sup> This made a sentence of preventive detention appropriate.

### **Grounds of appeal**

[17] In support of the contention that a sentence of preventive detention was manifestly excessive, several specific grounds of error were raised by reference to the mandatory considerations in s 87(4), namely:

- (a) there was no pattern of serious offending disclosed by Mr Stroobant's history and the Court ought to have made a clear determination that the s 87(4)(a) factor was not established;
- (b) the Court's conclusion with reference to s 87(4)(c) that Mr Stroobant had a high risk of reoffending in the future was erroneous having regard to several factors, including the Court's alleged failure to take into account his rehabilitation prospects, the report of Dr Menkes concerning the implications of drug use and Mr Stroobant's guilty plea; and
- (c) the Court erred in finding an absence or failure of efforts by Mr Stroobant to address the cause or causes of his offending per s 87(4)(d).

[18] With reference to the proposition that a finite sentence should have been preferred in line with s 87(4)(e) of the Sentencing Act, Ms Priest also invited this Court to revisit the decision of *R v Mackrell*,<sup>12</sup> in which the ability to impose a

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<sup>11</sup> At [71].

<sup>12</sup> *R v Mackrell* (1998) 16 CRNZ 1 (CA).

sentence of preventive detention concurrently with a sentence of life imprisonment was confirmed. It was submitted that *Mackrell* should be reconsidered because it:

- (a) predates the enactment of the Sentencing Act, which widened the age of eligibility for preventive detention significantly;
- (b) predates the creation of extended supervision orders and public protection orders, which are other means of protecting the community from those who may commit serious sexual or violent crimes; and
- (c) predates the decision of *R v Churchward*,<sup>13</sup> which established the relevance of youth to criminal offending and rehabilitation.

[19] It was also submitted that, in exercising his discretion, Lang J should have considered the totality principle in the fact the sexual violation charges were already taken into account when setting the minimum non-parole period for murder, and taken into account the concurrent sentence of life imprisonment when assessing the need to impose a sentence of preventive detention

[20] We address each of Ms Priest's submissions in turn.

## **Discussion**

### *Section 87(4)(a) — a pattern of serious offending disclosed by the offender's history*

[21] Accepting that an offender's entire offending history should be taken into account in the context of s 87(4)(a), Ms Priest submitted that the Courts look for a pattern of offending, a propensity to act in a particular way, which clearly identifies a risk to the community going forward. Reliance was placed on observations in *R v Christy*<sup>14</sup> and *Wilson v R*,<sup>15</sup> in neither of which was a sentence of preventive detention imposed. Here, Mr Stroobant is a young man with only minor previous convictions, the most serious being burglary. Ms Priest submitted that the existence of some violence in his youth does not constitute serious offending, and the weight

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<sup>13</sup> *R v Churchward* [2011] NZCA 531, (2011) 25 CRNZ 446.

<sup>14</sup> *R v Christy* [2016] NZHC 2520.

<sup>15</sup> *Wilson v R* [2010] NZCA 360.

to be placed on that history must be limited given the lack of actual convictions. It is submitted that the Court ought to have made a clear finding that s 87(4)(a) was not established here.

[22] Mr Carruthers for the Crown agreed that Mr Stroobant does not have previous convictions for serious sexual or violent offending, but submitted there are numerous records of his having allegedly engaged in behaviour that would fit that description, citing instances referred to in the report of Dr Brindley. It is clear that the Court can take into account conduct beyond that for which an offender has been convicted.<sup>16</sup>

[23] We accept the point made by Mr Carruthers that the factors listed in s 87(4) are mandatory considerations, but they are not prerequisites. The prerequisites are contained in s 87(2) and significantly do not include prior commission of a serious sexual or violent offence. The lack of a clear pattern of the type of criminal offending engaged in does not preclude the imposition of a sentence of preventive detention; a propensity mix of dangerous behaviours may justify a protective sentencing response.<sup>17</sup> We consider that such a propensity for violent behaviour was established here for the reasons given by Lang J. We therefore reject the contention that there was error in not making an explicit determination of an absence of a pattern of serious offending.

*Section 87(4)(c) — information indicating a tendency to commit serious offences in future*

(a) *Failure to consider Mr Stroobant's age*

[24] Noting the minimum age of eligibility for preventive detention of 18 years, Ms Priest submitted that the Courts have expressed reluctance to impose a sentence on offenders just over the age threshold.<sup>18</sup> Citing this Court's decision in *R v Churchward*,<sup>19</sup> she submitted that when considering preventive detention, the impact of youth, both in lowering culpability in serious offending committed when the

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<sup>16</sup> *Lepper v R* [2016] NZCA 209 at [34].

<sup>17</sup> *R v Wilson* (2002) 19 CRNZ 555 (CA) at [23].

<sup>18</sup> Citing *R v Kale* (1993) 9 CRNZ 575 (CA) at 577.

<sup>19</sup> *R v Churchward*, above n 13, at [77]–[78].



offender was young and on a greater capacity for rehabilitation, is relevant. By reference to a table of all cases where preventive detention had been considered by the Courts for sexual violation over the past five years, it was submitted that youth was often a key factor where preventive detention was considered and declined. In Mr Stroobant's case, it is submitted the fact he was only 19 years old at the time of the offending meant his youth ought to have been taken into account by the Court in assessing his risk of reoffending, particularly in terms of his greater potential for maturity, insight and rehabilitation.

[25] In response, Mr Carruthers first made the point that this Court has said on numerous occasions that citation of the substantial volume of High Court sentencing decisions is generally of little assistance.<sup>20</sup> The table of cases put forward by Ms Priest was therefore submitted to be unhelpful.

[26] Second, Mr Carruthers submitted that youth is not invariably a mitigating feature. Indeed, it may fade into irrelevance in cases involving particularly grave offending and in which the protection of the public is a primary consideration.<sup>21</sup> Mr Stroobant's case was said to be such an example.

[27] We agree with the Crown submission. Although we agree that youth must be considered in assessing culpability, future risk of reoffending and prospects for successful rehabilitation, that is but one piece of information relevant to the assessment of a tendency to commit serious offences in the future. Lang J was plainly aware of Mr Stroobant's age,<sup>22</sup> as were the psychiatrists who assessed him, but all considered he was at high risk of reoffending and expressed little optimism as to the likelihood of this changing, without Mr Stroobant's active engagement, by virtue of the maturation process alone.

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<sup>20</sup> See *Harrison v R* [2011] NZCA 80 at [10]; *August v R* [2011] NZCA 91 at [29]; and *Maulolo v R* [2014] NZCA 439 at [15].

<sup>21</sup> *R v Churchward*, above n 13, at [84] and [90].

<sup>22</sup> *R v Stroobant*, above n 1, at [22]–[24], [43]–[51] and [64].

(b) *Failure to consider the evidence of methamphetamine use*

[28] While Lang J referenced the reports of three psychiatrists, Ms Priest submitted that there was a failure to consider the report of Dr Menkes, whose report stated that there is a link between methamphetamine use and risk taking, and a strong link between methamphetamine use and increased sexual interest, sexual risk taking and reckless or unsafe sexual behaviour.

[29] Noting that one of the key factors identified by Lang J was Mr Stroobant's failure to acknowledge his part in the sexual offending,<sup>23</sup> Ms Priest submitted that the Court failed to take into account the link between drug use, sleep deprivation and memory loss and taking responsibility for offending. She emphasised that the Court failed to consider Dr Menkes' report which was the only one to directly address this point.

[30] Mr Carruthers response was that the account of the offending which Mr Stroobant gave to Dr Menkes appears to have been considerably less extensive than the account he gave to the other health assessors. Indeed the account Mr Stroobant gave to the other health assessors strongly suggests that he remembers his offending but simply chooses not to acknowledge it. As Lang J observed in the course of the sentencing on the murder charge:

[26] Furthermore, it is difficult to know whether your version of what occurred here can be believed. The reports that I have received show that you provide varying accounts of different events in your life. You are apt to embellish matters, to fabricate events and to tell straight out lies. It is difficult to know whether your description of the last three days before this offending occurred is in fact accurate.

[31] In these circumstances, we agree that it is unsurprising that the report prepared by Dr Menkes features sparingly in the Judge's sentencing notes.<sup>24</sup> We therefore do not consider that, despite a failure to explicitly consider Mr Stroobant's young age or his substance abuse, Lang J erred in concluding that Mr Stroobant exhibited a tendency to commit serious offences in the future.

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<sup>23</sup> At [30].

<sup>24</sup> It is mentioned at [43] of Lang J's judgment, but no reliance was placed on its conclusions.

*Section 87(4)(d) — the absence of, or failure of, efforts by the offender to address the cause or causes of the offending*

[32] Dr Brindley expressed the view that Mr Stroobant had been afforded the opportunity to attend programmes to address his offending behaviour, but had been consistently non-compliant with remediation attempts and had failed to engage in a meaningful way. That view was attacked by Ms Priest as being both inaccurate and simplistic. She contended that Mr Stroobant had willingly completed rehabilitation programmes when living in a stable environment, referencing his periods at a residential boarding school when nine years old, a Youth Justice facility, and later in prison.

[33] Further, Ms Priest submitted that the guilty plea ought to be considered, in part, as an acceptance of his responsibility for the sexual violations and that he ought to be given the benefit of the doubt in his assertion that he has no recall of the sexual offending.

[34] The Crown's rejoinder was that there was ample material suggesting Mr Stroobant had either not engaged with or not benefitted from attempts made over the years to address the issues underlying his conduct.

[35] Lang J recognised the fact that Mr Stroobant had never been convicted previously of a sexual offence meant it was not surprising that treatment had not been offered to him in relation to sexual offending. However, his overwhelming impression from the evidence was that Mr Stroobant had not been properly willing to engage with offers of help from various agencies and institutions.<sup>25</sup>

[36] We do not consider that that conclusion was erroneous in the context of the evidence. While preventive detention is concerned with the offending the subject of the sentences, this factor focusses on any prior effort to address the cause(s) of that offending, a broader concept. All of the evidence before Lang J, and us, suggested that Mr Stroobant had failed to meaningfully engage with various attempts to address his antisocial behaviour and remains unmotivated to do so.

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<sup>25</sup> *R v Stroobant*, above n 1, at [60].

[37] Further, we do not consider that the guilty plea was pertinent under this head, particularly in circumstances where Mr Stroobant expressly disavowed any knowledge of the sexual offending.<sup>26</sup> Nor, given his assessment of Mr Stroobant's veracity, was the Judge obliged to give him the benefit of the doubt so far as his degree of recollection was concerned.

*Section 87(4)(e) — the principle that a lengthy determinate sentence is preferable*

[38] In reliance on the reasons set out at [18] above, Ms Priest invited a reconsideration of *Mackrell*. She submitted that those factors — particularly the extension of preventive detention to more offences and more offenders — have “changed the landscape”.

[39] In *Mackrell* this Court held that the imposition of a sentence of preventive detention was not wrong in principle simply because the offender is also convicted of murder and is therefore subject to a mandatory life sentence.<sup>27</sup> Reliance was first placed on the fact that the then applicable legislation, the Criminal Justice Act 1985, contemplated a combination of sentences:<sup>28</sup>

Section 13(6) of the Act provides that, where a Court imposes on an offender a sentence of preventive detention or a sentence of imprisonment, it may at the same time also impose on him or her any other kind of full-time custodial sentence (other than a sentence of corrective training) for any other offence. Much of Mr Hall's argument would apply with equal force to any concurrent sentence, including a concurrent sentence of preventive detention. Further, if Mr Hall were correct, it could also be argued that, where concurrent sentences of imprisonment are imposed in respect of multiple offences, only the longest term of imprisonment serves any effective purpose. Nonetheless, the Courts regularly sentence offenders upon each offence. Each offence requires the appropriate response even though the sentence may have no practical effect where it is of a lesser duration than the leading sentence.

[40] The Court also recognised that a sentencing Judge cannot know what the outcome of an appeal lodged against conviction will be, stating:<sup>29</sup>

It is always possible that an offender who has been convicted of both murder and sexual offences, as in this case, may successfully appeal against his

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<sup>26</sup> At [30].

<sup>27</sup> *R v Mackrell*, above n 12, at 8.

<sup>28</sup> At 8.

<sup>29</sup> At 8.

conviction for murder. In such a case, the mandatory life sentence will disappear. It would be clearly inappropriate in such circumstances for the offender to have been sentenced for the sexual offences on the basis that he was required to serve a life sentence for murder.

[41] We consider those considerations retain their force in the context of the Sentencing Act 2002. We also note that neither the absence of an indeterminate sentence, nor the practical futility in imposing a sentence of preventive detention are included in the statutory pre-requisites and mandatory considerations specified in s 87(2) and (4).

[42] While we acknowledge that *Mackrell* predated both the reduction in the eligible age for preventive detention and this Court's decision in *Churchward* in which the importance of considering the offender's age was discussed, the overriding duty on courts remains to fix the appropriate sentence for the particular offence at issue, irrespective of any other sentence (albeit subject to totality principles).<sup>30</sup> In the case of qualifying sexual or violent offences, that may be preventive detention where such a sentence is required to protect the safety of the community. Moreover, there is nothing in s 87 or the rest of the Sentencing Act that prohibits the imposition of two concurrent indeterminate sentences.

[43] We consider that none of factors advanced by Ms Priest detract from the rationale of the conclusion in *Mackrell*. Consistent with that view, on several occasions since the commencement of the Sentencing Act this Court has upheld an indeterminate sentence imposed concurrently with another indeterminate sentence.<sup>31</sup>

[44] Nor was there any error by Lang J in not taking into account the possibility of an extended supervision order (ESO) or a public protection order (PPO). As Mr Carruthers pointed out, an ESO can only be made in respect of a defendant who is not subject to an indeterminate sentence.<sup>32</sup> For the same reason, Mr Stroobant

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<sup>30</sup> *T (CA43/2013) v R* [2013] NZCA 497 at [26].

<sup>31</sup> *Baker v R* [2017] NZCA 404; and *Cameron v R* [2010] NZCA 411. See also *Wilson v R* [2010] NZCA 360 and *T (CA43/2013) v R*, above n 30, where, although preventive detention was not imposed, the jurisdiction to do so concurrently with another indeterminate sentence was recognised.

<sup>32</sup> Parole Act 2002, ss 107C(1)(a).

would not fall within any of the categories of person in respect of whom a PPO could be made.<sup>33</sup>

*The exercise of discretion*

[45] In submitting Lang J erred in exercising his discretion to impose preventive detention, Ms Priest contended that Lang J had failed to consider the totality of the sentence under s 85 of the Sentencing Act. She submitted the sentence of life imprisonment with a minimum period of imprisonment of 17 years was significant and a discrete uplift was given to reflect the sexual violations, meaning the sexual offending had been considered twice — both in setting the 17 year non-parole period for the murder charge and in the stand-alone assessment of preventive detention. Further, she submitted that the sentence of life imprisonment should have been taken into account when assessing the need for preventive detention in order to protect the community from Mr Stroobant’s risk of reoffending.

[46] In our view, that submission misconceives the nature and function of a sentence of preventive detention, which is not to punish an offender but to safeguard the community from that offender. In sentencing on the lead charge of murder, the Court was required to take into account the associated offending because the sentence for the associated offending will be served concurrently. In doing so, however, the Court does not foreclose the power to impose a sentence of preventive detention for the associated offending in an appropriate case; rather, there remains an obligation to fix the appropriate sentence for each offence committed.<sup>34</sup> For that same reason, we reject the submission that Lang J ought to have taken into account the sentence of life imprisonment in considering the necessity of a sentence of preventive detention.

[47] In oral argument, Ms Priest renewed the submission advanced in the High Court that a sentence of preventive detention would have a crushing effect on a person of Mr Stroobant’s age. While such a submission might carry weight were that the only sentence (although we do not necessarily consider it would tip the balance in favour of a finite sentence), it struggles to gain traction where an offender

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<sup>33</sup> Public Safety (Public Protection Orders) Act 2014, s 7.

<sup>34</sup> As discussed at [42] above.

is also sentenced to life imprisonment and will not be eligible for parole in any event for 17 years.

[48] A variation on this theme is the proposition that in practical terms a sentence of preventive detention will be of little moment given the fact that Mr Stroobant is already serving the indeterminate sentence of life imprisonment. The counter to that proposition was carefully explained by Lang J, whose view we endorse:<sup>35</sup>

[66] That is true in one sense, but it overlooks two factors. The first is this. A minimum term of imprisonment on a charge of murder is imposed, in the present context at least, to recognise the seriously aggravating features of the murder. A sentence of preventive detention is not imposed for that purpose. It is imposed to protect the community from persons who pose an ongoing risk of serious offending. Secondly, it is now well established, or well accepted, that a sentence of preventive detention can provide an incentive to offenders to engage in rehabilitative processes. I consider this to be a particularly important factor in the present case.

[67] If I was to impose a sentence of 14 years imprisonment on the sexual violation charges, that sentence would be served by you and would be over long before the minimum term I will impose in relation to the charge of murder. Your reaction thus far to the sexual charges has been to ignore them and push them to one side. You say you cannot remember it, and it is clear that you do not wish to talk about that aspect of your offending.

[68] If you were to receive a finite sentence, I have no doubt that you would never think about that aspect of your offending again. Instead, you would simply concentrate on completing the life sentence for murder. I consider you need an incentive to ensure you engage with the fact that this was serious sexual offending that could occur again in the future. If a sentence of preventive detention remains in effect beyond the minimum term imposed, it will be a constant reminder to you and to the parole authorities that this is an aspect of your offending that needs to be addressed.

[49] We consider that the present case has parallels with both *Antonievic v R*<sup>36</sup> and *Cameron v R*,<sup>37</sup> in which preventive detention was considered appropriate to ensure the offender accepted responsibility for, and gain insight into, their actions and to foster cooperation with treatment and rehabilitative efforts. Here, we note in particular the absence of insight on the part of Mr Stroobant into his sexual offending and his lack of empathy with his victims. We therefore consider that the sentence of preventive detention imposed by Lang J was the appropriate course in these circumstances.

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<sup>35</sup> *R v Stroobant*, above n 1.

<sup>36</sup> *Antonievic v R* [2017] NZCA 87.

<sup>37</sup> *Cameron v R*, above n 31.

## **Result**

[50] The appeal against sentence is dismissed.

Solicitors:

Blackstone Chambers, Auckland for Appellant

Crown Law Office, Wellington for Respondent