

DIRECTOR OF PUBLIC PROSECUTIONS	
v	
ROBERT DONALD WILLIAM FARQUHARSON	

<u>JUDGE:</u>	CUMMINS J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	26 October 2007
<u>DATE OF SENTENCE:</u>	16 November 2007
<u>CASE MAY BE CITED AS:</u>	DPP v Farquharson (sentence)
<u>MEDIUM NEUTRAL CITATION:</u>	[2007] VSC 469 First revision 19/11/07

Criminal law and procedure - murder - sentence - jury trial - murder by father of his three young children - rights of children - protection of children - duties of parents - life sentences imposed with no minimum term.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Director	Mr J Rapke QC Ms A Forrester	Office of Public Prosecutions
For the Accused	Mr P Morrissey Mr C Mylonas	Victoria Legal Aid

HIS HONOUR:

Mr Farquharson, you may remain seated.

One of the functions of the law is to protect the weak from the strong. That is so in elements of commercial law, in constitutional law, in substantive law generally, and

in procedural law. Nowhere is it more so than in criminal law. And in criminal law nowhere is it more so than in the protection of children.

Children are precious and are vulnerable. They are entitled to love, to care, to health, to education, to security and to safety. Most of all they are entitled to life.

Parents of children have correlative duties to the rights of their children. Parents have a duty to nurture with love and care, to provide, as best they are able and with the help of the State, health and education for their children, and hopefully to give their children happiness. Most fundamentally of all, parents have a duty to protect their children.

The criminal law is not coextensive with parental duty. The criminal law should not overreach itself. Much parental duty is at a higher level than the reach of the criminal law. Much State function – the provision of education, of health care, of social welfare – is at a higher level than the reach of the criminal law. The criminal law is concerned with the bedrock of society – safety. Where the criminal law and the duty of parents coalesce is at the base – the duty to protect children. If the law fails there, the law fails. If the law is inadequate there, the law is inadequate. The protective mantle of the criminal law applies especially to children.

The protection of the law arrives too late for these three children. However, punishment of the offender is justified; and hopefully deterrence of others will flow from that punishment. That is the operational premise upon which the principle of general deterrence is founded.

Mr Farquharson, you have been found guilty by a jury of the murder of your three sons, Jai aged 10 years, Tyler aged 7 years and Bailey aged 2 years. As the learned Director has stated, you wiped out your entire family in one act. Only the two parents remained: you, because you had always intended to save yourself; and their mother, because you intended her to live a life of suffering.

You had a burning resentment that you were financing your estranged wife's new life. She

had the better house; the better car; the children – all financially provided or supported by you; and now she had a new relationship. You said to a friend, Mr Gregory King, “Nobody does that to me and gets away with it.” From that personal and financial genesis you formed a dark contemplation. Three months before you took your children’s lives on 4 September 2005, you spoke of your dark contemplation to Mr King outside a fish and chip shop in Winchelsea. You said that there would be an accident involving a dam where you survived and the children did not. It would be on a special day, like Father’s Day, so that you would be the last one to have them and that she would remember it for the rest of her life. Mr King, a decent man, did not believe you; because such a dark contemplation is almost inconceivable to a decent person. But that year it came to pass. There was an accident involving a dam where you survived and the children did not; and for which your estranged wife will suffer for the rest of her life. On Father’s Day.

On Sunday 4 September 2005 in your 1989 Holden VN Commodore sedan you were driving your three children back to their mother’s house in Winchelsea. Jai was in the front passenger seat; Tyler and Bailey in the rear, Bailey in a child’s seat. All were restrained by seatbelts. Seven kilometres north of Winchelsea your vehicle traversed a railway overpass. The dam was on your right. As you approached the dam you steered the vehicle off the road at a steady speed, avoided the trunk of a tree near the water’s edge, and drove the vehicle into the dam. The vehicle travelled 28 metres across the dam and sank 7 metres to its floor. You extricated yourself from the vehicle, rose to the surface, swam to the shore and left your three children to drown. As you intended. When, hours later, a brave police diver found the children, Jai was partly out of the vehicle and the two younger children still in the rear. The seat belts which had been restraining the children as your vehicle drove along the Princes Highway all were unbuckled. Each child was dead. Although your vehicle had been driven along the Princes Highway with its headlights on, when found its headlights had been turned off. Although as part of your coughing story you said to the police that you had turned on the heater in the vehicle, when found its heater

was off. The ignition also had been turned off.

Your conduct beside the dam demonstrated your self-centredness. Two young men came across the scene. They offered to dive into the dark and still water to try and save the children. You said it was too late. They offered a mobile telephone for you to ring 000. You refused and asked to be driven to your estranged wife's house so that you could tell her what had happened. When the distraught mother returned to the dam with you, you did not join any of the desperate attempts to find the children. The partner of your estranged wife, Mr Stephen Moules, a brave and good man, repeatedly dived into the dark waters to seek to find the children. You, their father, simply watched him; and when he emerged you asked him for some cigarettes for yourself. When you were being cared for in an ambulance at the scene, a police officer quietly asked a paramedic whether there was any chance of you being breathalysed. You overheard the conversation and stated in a loud voice that you had no problems with being breathalysed and were eager to do so. Although you were affected by the enormity of what you had done and by the extreme cold of the water of the dam, you were alert to your own interests. You showed a continuing alertness to your own interests, particularly revealed by your question to investigating officers at the Geelong Hospital shortly afterwards: "... what's the likely scenario for me?" You did not ask one question about the children.

You said to persons at the scene, and later to investigating police, that while driving along the Highway you had a coughing fit, blacked out and woke up in the dam. This was a false story; easy to say but demonstrably untrue.

You did not give evidence at your trial, which is your right.

This brief narrative is a necessary consequence of the jury's verdicts and of the evidence at trial proved beyond reasonable doubt. I consider Mr Gregory King was a truthful and accurate witness and that the substance of his evidence was established beyond reasonable doubt. He was a person himself in suffering because of the terrible knowledge that had been imparted to him by you and which, very understandably,

at the time he did not believe. His suffering at work the week after the deaths of the children, and his actions later on two occasions going to you with covert tape recording, are strongly supportive of his truthfulness. The sustained manipulation by you of him as revealed by those tape recordings bespeaks your self-interest. Of the medical witnesses called as to the medical unlikelihood of the occurrence of cough syncope, I was especially impressed with the evidence of Associate Professor Naughton of the Alfred Hospital. He was a witness of great insight and capacity. I find the evidence of the social worker called on your behalf of lesser utility, principally because it was predicated upon the truthfulness of your account and which the jury rejected, and also because its analysis of fight, flight or surrender I regret to say I consider was superficial.

I commend the police who attended the scene, the ambulance and service personnel, the major collision investigation unit including Detective Sergeant Glen Urquhart and the investigating police, including the informant Detective Sergeant Gerard Clanchy, for their work under very difficult conditions. I also commend the good persons of Winchelsea and surrounding areas who selflessly sought to help on this terrible night.

I pay tribute to the application and conscientiousness of the jury. The jury of citizens, randomly brought together to form the tribunal of fact, laboured long and hard. They are a credit to the community from which they come. The law is in the community's debt for time and again providing conscientious, responsible and hard working persons to form the tribunal of fact in criminal trials.

I take into account in sentencing you, Mr Farquharson, that you are now 38 years of age, that you have no prior convictions, that you have otherwise led a good life, that you had suffered over time from a moderate depressive illness for which you were receiving continuing medication but which illness at the time of the offence was improving, and all the other matters helpfully urged on your behalf by your counsel. You were not significantly depressed and in the words of your psychologist you were "progressing quite well". I take into account the evidence of Mrs C F Ross,

your eldest sister, called on the plea. Mrs Ross is a good person, as indeed all your family are. You had love for your children; but it was displaced by vindictiveness towards your estranged wife, which led you to these crimes. I do not find that you had a fixed intention over months to kill your children. But you contemplated it over months. And on the road back to Winchelsea on Father's Day you finally decided to fulfil your contemplation. These were not spontaneous crimes, or crimes occasioned by a temporary or momentary lapse of self-restraint or surge of emotion.

It does not avail you that the three children died by one single act. It was your intention to kill them together, and by one act to kill them all.

You have no remorse for these crimes, although you regret their consequences for you.

In sentencing you I take into account as the primary factors, punishment of you for these crimes and the deterrence of others. I have regard also to considerations of denunciation and of reformation. Specific deterrence has little part. You have served 105 days in pre-sentence detention.

You breached in the most profound way the trust which the law, and your children, placed in you as their father. The appropriate sentence on each count is life imprisonment. On each count of murder - of Jai, of Tyler, and of Bailey - I sentence you to life imprisonment.

The question arises whether it is appropriate to set a minimum term of imprisonment whereafter you would be eligible to be granted parole.

It is a most exceptional course not to set a minimum term. That is for the good reason that wherever possible the law should hold out hope to people. It is wrong in itself, and no service to the community, to crush people. Further, in your case you had led an otherwise good life and had suffered from moderate depression which was improving. However there are seven countervailing factors. First, you killed your own children, who put their trust in you and which trust you abused. Second, you killed three children. Third, you were in total control of the children. There was no

other adult present who could help them. Fourth, they were totally dependent upon you for their safety. They were not in a position to help themselves. Fifth, these were crimes you had contemplated over significant time. They were not committed in a momentary lapse of self-restraint or surge of emotion. Sixth, your purpose was to inflict punishment upon their mother, your estranged wife. Seventh, it was a necessary part of your intention to kill all three children. This is not a case where one or more children were caught up in a fixed intention as to another. Your purpose was to ensure all three were killed, so that their mother was left with no consolation. And that is what you did.

In all the circumstances, it is not appropriate to set a minimum term of imprisonment after which you would be eligible for parole. I do not set any minimum term.

Mr Farquharson, for the murder of each of your three children you are sentenced to life imprisonment.

Mr Farquharson may be removed.
