

## Murder: Constructive Murder

Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done ... in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years

**Maximum Penalty:** Life (s.19A (NSW) Crimes Act)

**Standard non-parole period** (offences committed on or after 1.2.2003)

20 years

25 years - Where the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work

**Standard non-parole period** (where conviction entered or plea of guilty made on or after 1.1.2008)

25 years - Where the victim a child under 18 years of age

|    | NAME<br>(age if known)   | PLEA | SENTENCE        | APPEAL | SUMMARY OF<br>RECORD                           | HOW KILLED                    | INVOLVEMENT & SUMMARY                                    |
|----|--|------|-----------------|--------|--|-------------------------------|--|
| 1. | PETRINOVIC<br>(39)<br><a href="#">[1999] NSWSC 1131</a><br>Greg James J<br><br><a href="#">[2001] NSWCCA 118</a> | PG   | MT 20y<br>AT 7y | AD     | in gaol most of<br>adult life -<br>multiple AR | Shooting<br><br>Felony murder | Shot customer in struggle during robbery of bottle shop. |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|    | NAME<br>(age if known)  | PLEA   | SENTENCE  | APPEAL        | SUMMARY OF<br>RECORD                              | HOW KILLED  | INVOLVEMENT & SUMMARY  |
|----|---|--|---|---------------|---|---|--|
| 2. | <p><b>MCNELLEE</b></p> <p><b>TUCKER</b><br/>(33)</p> <p><b>DALLEY</b><br/>(16)</p> <p><a href="#">[2000] NSWSC 1154</a><br/>Bell J</p> <p>(Dalley)<br/>(2002) 132 A Crim R<br/>169<br/><a href="#">[2002] NSWCCA 284</a></p> <p>Co-offender:<br/>BREWER</p> | <p>PG<br/>(25%)</p> <p>VG</p> <p>VG</p>                                    | <p>14y<br/>NPP 10y 6m</p> <p>13y<br/>NPP 9y</p> <p>10y<br/>NPP 6y</p> | Conviction AD | <p>minor</p> <p>nil</p> <p>nil</p>                | <p>Stabbing</p> <p>Common<br/>purpose<br/>robbery</p>                       | <p>Offenders involved in common purpose to rob victim of cannabis while armed with knives, mattock handle and machete - victim stabbed 21 times by fourth offender - all offenders played subsidiary role<br/>Good prospects of rehabilitation.</p>  |
| 3. | <p><b>LEWIS</b><br/>(62)<br/>NSWSC<br/>Ireland J<br/>9.6.2000</p> <p><a href="#">[2001] NSWCCA 448</a></p> <p>Co-offender: ROSE</p>   | <p>VG<br/>2 x murder</p>   | Life  | AD            | nil   | <p>Shooting and<br/>stabbing</p> <p>Intent to kill</p> <p>Felony murder</p> | <p>Participated in joint criminal enterprise with co-offender to kill offender's de facto partner – victim and employee killed by co-offender inside business premises - premises set on fire - contract killing - considerable planning - offender took active part by delivering de facto to her executioner - twice exhorted gunman to hurry - knowledge that victim's death would derive five children of their mother</p> |
| 4. | <p><b>PHUNG</b><br/>(17)<br/><a href="#">[2001] NSWSC 357</a><br/>Wood CJ at CL</p>   | <p>PG<br/>(25%)<br/>Murder</p> <p>s.97(2)</p> <p>Sched:<br/>3 offences</p> | <p>13y<br/>NPP 8y</p> <p>FT 3y</p> <p>Total:<br/>14y<br/>NPP 9y</p>   |               | <p>some prior and<br/>subsequent<br/>offences</p> | <p>Shooting</p> <p>Felony murder</p>  | <p>With co-offender robbed two males at entertainment arcade of various personal property - used .32 calibre weapon wrapped in towel – shooting occurred during second robbery committed five hours later – shot male attempting to aid victim of robbery in chest<br/>Deprived childhood resulting in living on streets and drug addiction at early age - no contact with any family - good rehabilitation since custody.</p> |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|    | NAME<br>(age if known)   | PLEA   | SENTENCE   | APPEAL   | SUMMARY OF<br>RECORD   | HOW KILLED                                    | INVOLVEMENT & SUMMARY  |
|----|--|--|--|--|--|---|--|
| 5. | <b>WIGNEY</b><br>(36)<br><a href="#">[2003] NSWSC 1136</a><br>Adams J<br><br><a href="#">[2004] NSWCCA 171</a><br><br>Co-offender:<br>SMALE  | PG<br>(combined 35%)<br>Murder<br><br>AR<br><br>Sched:<br>5 serious and<br>unrelated off                     | 13y 8m<br>NPP 8y 6m<br><br>6y<br>NPP 4y 6m<br><br><u>Total:</u><br>16y 8m<br>NPP 11y 6m  | Crown AA<br>16y 3m<br>NPP 12y 2m<br><br>6y<br>NPP 4y 6m<br><br><u>Total:</u><br>20y 9m<br>NPP 16y 8m | Lengthy<br>although less<br>serious –<br>breached parole   | Shooting<br><br>Felony murder                 | Robbed club using firearms – struggled with pursuing<br>manager and shot him in chest<br>Assistance against co-offender – genuine remorse – long<br>history of drug abuse<br>On appeal found error in finding reflexive discharge of<br>weapon   |
| 6. | <b>MEHAJER</b><br>(23)<br><br><br><br><br><br><br><br><br><br><b>JACOBS</b><br>(21)<br><br><a href="#">[2003] NSWSC 885</a><br>Studdert J<br><br>(2004) 151 A Crim R<br>452<br><a href="#">[2004] NSWCCA 462</a> | VG<br>Murder<br><br>Rob in Co<br><br>Agg Rob in Co<br><br>VG<br>Murder<br><br>Rob in Co<br><br>Agg Rob in Co | 18y<br>NPP 13y 6m<br><br>FT 4y<br><br>FT 5y<br><br><u>Total:</u><br>18y 6m<br>NPP 14y<br><br>16y 6m<br>NPP 12y 6m<br><br>FT 4y<br><br>FT 5y<br><br><u>Total:</u><br>17y<br>NPP 13y | AD<br><br><br><br><br><br><br><br><br><br>Minor prior<br>offence                                     | Nil prior – minor<br>subsequent<br>offence<br><br><br><br><br><br><br><br><br><br>Minor prior<br>offence | Assault<br><br>Felony murder<br><br>Accessory | Robbery of takeaway shop – one man threatened by M with<br>knife and assaulted – owner kicked in head and<br>subsequently died – unclear who caused death – M<br>ringleader<br>M – prior good character – good prospects of rehabilitation<br>J – extremely harsh upbringing – favourable prospects of<br>rehabilitation |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|    | NAME<br>(age if known)   | PLEA  | SENTENCE   | APPEAL  | SUMMARY OF RECORD   | HOW KILLED                          | INVOLVEMENT & SUMMARY   |
|----|--|---|--|---|---|-------------------------------------|---|
| 7. | <b>ASLETT</b><br>(33)<br><a href="#">[2004] NSWSC 1228</a><br>Wood CJ at CL<br><br><a href="#">[2006] NSWCCA 360</a> | PG<br>Murder<br><br>2 x s.61JA<br>8 x s.97(2)<br>2 x s.97(1)<br>Sp agg kidnap<br>Agg car jacking<br>Att obtain money<br>by deception<br><br>3 x LMV<br><br>Sched:<br>9 offences | Life<br><br><u>Total other offences:</u><br>36y<br>NPP 28y                                     | AA<br>28y<br>NPP 22y<br><br><u>Total other offences:</u><br>36y<br>NPP 28y<br><br><u>Total:</u><br>42y<br>NPP 36y | Lengthy and disturbing – almost continuous custody since 11 years old – recently sentenced for brutal home invasion and sexual assault on 16y female occupant | Gunshot<br><br>Felony murder        | <b>SNPP 20 years</b><br>Murder involved attempt robbery of male proprietor of pharmacy – struggled with victim in car, took out loaded gun to threaten and gun discharged - other offences committed over 3 months – stole car with female occupant using knife and gun – sexually assaulted complainant twice – robberies of various retail premises using guns and knives<br>Drug abuse – some remorse - finding of dangerousness – psychological profile suggests no hope of rehabilitation<br>On appeal: erred in using other offences to impose life sentence on murder that did not warrant life sentence alone |
| 8. | <b>EM</b><br>(19)<br><a href="#">[2005] NSWSC 212</a><br>James J<br><br><a href="#">[2006] NSWCCA 336</a>            | VG:<br>Murder<br><br>s 97(2)<br>s 93G(1)(c)<br><br>PG<br>5 x s 97(2)  | 25y<br>NPP 16y<br><br>FT 10y<br><br>FT 2y<br><br>FT 12y<br><br><u>Total:</u><br>36y<br>NPP 27y | AD  | Driving offences  | Shooting<br><br>Constructive murder | Home invasion with co-offender – 5 occupants forced to lie on floor – victim shot and killed in struggle – victim’s wife shot in thumb – 10 days later, similar offence with 2 co-offenders - robbery completed and 5 occupants left tied up in house<br>Cambodian – poly substance abuse – mood disorder   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA                                    | SENTENCE   | APPEAL | SUMMARY OF RECORD                              | HOW KILLED                    | INVOLVEMENT & SUMMARY  |
|-----|---|---|--|--------|--|-------------------------------|--|
| 9.  | <b>SMALE</b><br>(47)<br><a href="#">[2005] NSWSC 903</a><br>Patten AJ<br><br><a href="#">[2005] NSWSC 923</a><br>Patten AJ<br><br><a href="#">[2007] NSWCCA 328</a><br><br>Co-offender:<br>WIGNEY | VG<br>Murder<br><br>PG<br>s.97(2)       | 18y<br>NPP 13y 6m<br><br>13y<br>NPP 9y 9m<br>(concurrent)                                    | AD     | Extensive record – breached suspended sentence | Shooting<br><br>Felony murder | Male shot by co-offender during armed robbery of tavern – not involved in shooting<br>Remorse – drug addiction   |
| 10. | <b>SILVANO</b><br>(26)<br><a href="#">[2006] NSWSC 832</a><br>Hulme J<br><br>(2008) 184 A Crim R 593<br><a href="#">[2008] NSWCCA 118</a>   | VG<br>Murder<br><br>s.97(2)<br><br>s.33 | 21y 4m<br>NPP 16y<br><br>9y 4m NPP 7y<br><br>5y 4m NPP 4y<br><br>Total:<br>22y 4m<br>NPP 17y | AD     | Priors – no incarceration                      | Shooting<br><br>Felony murder | <b>SNPP 20 years</b><br>With girlfriend attempted to rob male stranger at night with loaded shotgun – girlfriend accidentally shot – fired at male hitting him in shoulder – just below mid-range<br>Raped and assaulted in custody – protective custody – remorse and grief – father of young child |
| 11. | <b>A</b><br>(16)<br><a href="#">[2006] NSWSC 1035</a><br>Buddin J<br><br>Co-offender:<br>HOURI  | PG                                      | 12y 8m<br>NPP 9y 6m  |        | Priors   | Stabbing<br><br>Felony murder | <b>SNPP 20 years</b><br>Involved in armed robbery of service station – after robbery co-offender suddenly and without provocation stabbed operator four times<br>Remorse – prospects of rehabilitation – discount for assistance – protective custody  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA  | SENTENCE  | APPEAL | SUMMARY OF RECORD  | HOW KILLED  | INVOLVEMENT & SUMMARY  |
|-----|---|---|---|--------|--|---|--|
| 12. | <b>BROWN</b><br><a href="#">[2006] NSWCCA 395</a><br><br>Co-offender<br>HUDD                  | VG<br>Murder<br><br>2 x Agg AR<br><br>s.33<br><br>AOABH in Co | 20y<br>NPP 15y<br><br>8y NPP 6y<br><br>3y NPP 2y 3m<br><br>2y 6m<br>NPP 1y 10m<br><br><u>Total:</u><br>21y 10m<br>NPP 16y 10m | AD     | Lengthy  | Shooting<br><br>Felony murder<br>– accessorial<br>liability     | Two offenders involved in planned armed robbery of electrical store – three employees tied up – one employee hit on head with gun and one with vacuum cleaner – third employee shot dead by co-offender in pursuit<br>Lesser offender  |
| 13. | <b>NGUYEN</b><br>(20)<br><a href="#">[2007] NSWSC 389</a><br>Whealy J                         | PG<br>(25%)   | 18y<br>NPP 13y 6m   |        | Criminal record<br>for lesser<br>offences –<br>breached parole | Stabbing<br><br>Felony murder                                   | <b>SNPP 20 years</b><br>Stabbed shop owner during attempted robbery of newsagency – repeated stabbing - below mid-range – spontaneous and unplanned killing<br>Long history of drug addiction  |
| 14. | <b>HOURI</b><br>(19)<br><a href="#">[2007] NSWSC 615</a><br>Buddin J<br><br>Co-offender:<br>A | PG<br><br>Sched:<br>3 x BES                                   | 18y<br>NPP 12y 6m   |        | Nil relevant   | Stabbing<br><br>Felony murder<br>/ intent GBH                   | <b>SNPP 20 years</b><br>Stabbed console operator during armed robbery of service station – unprovoked attack on co-operating victim – use of weapon – in company – vulnerable victim – mid range offence<br>Troubled childhood with heavy drug and alcohol addiction – reasonable prospects of rehabilitation – serious physical disability resulting from shooting subsequent to offence - depression |
| 15. | <b>GRUPE</b><br>(26)<br><a href="#">[2007] NSWSC 1303</a><br>Berman AJ                        | PG<br>(combined 35%)  | 19y 6m<br>NPP 14y 6m  |        | Priors for<br>violence   | Shooting<br><br>Joint criminal<br>enterprise /<br>felony murder | (2000) Carefully planned attempt to kidnap victim on behalf of third person while heavily armed – offender deliberately shot at fleeing victim 6 times – co-offender caught victim and shot him 15 times – motivated by greed and financial reward – co-offender subsequently killed by offender in self defence<br>Lesser offender – remorse - assistance   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA   | SENTENCE  | APPEAL                           | SUMMARY OF RECORD  | HOW KILLED                     | INVOLVEMENT & SUMMARY   |
|-----|---|--|---|----------------------------------|--|--------------------------------|---|
| 16. | <b>WEBB</b><br>(39)<br><a href="#">[2008] NSWSC 1351</a><br>Howie J   | PG<br>(15%)<br>Murder<br><br>Carried in stolen conveyance                    | 22y<br>NPP 16y 6m<br><br>FT 18m<br>(concurrent)                   |                                  | Bad record –<br>breached bonds                                     | Stabbing<br><br>Felony murder  | <b>SNPP 20 years</b><br>Stabbed employee while struggling during armed robbery of restaurant with co-offender – entered restaurant armed with club-lock – picked up knife in kitchen – unplanned killing – just below mid-range<br>Drug abuse – low intellectual functioning  |
| 17. | <b>BH</b><br>(17)<br><a href="#">[2009] NSWSC 358</a><br>Hidden J   | PG<br>(25%)  | 17y<br>NPP 13y  |                                  | Disturbing record – includes AR and Rob in Co – breached probation | Assault<br><br>Felony murder   | <b>SNPP 20 years</b><br>Assaulted 23y homeless male with garden stake outside Town Hall – intended to rob victim of poker winnings – below mid-range<br>Troubled childhood – sexual abuse – early substance abuse – remorse – gaining insight – reasonable prospects of rehabilitation  |
| 18. | <b>RAAD</b><br>(41 at offence – 49 at sentence)<br><a href="#">[2009] NSWSC 830</a><br>Rothman J<br><br><a href="#">[2011] NSWCCA 138</a> | PG<br>(25%)<br><br>Armed robbery   | 14y<br>NPP 10y 6m<br><br>FT 5y<br>(concurrent)                    | AA<br>12y<br>NPP 9y<br><br>FT 5y | Lengthy record   | Shooting<br><br>Felony murder  | (2001) - Robbed and killed security guard – shot during struggle – killing not deliberate – elements of planning for robbery<br>Voluntarily surrendered to police 6.5y later – significant Ellis discount – would not have been charged without admission – profound remorse - dysfunctional childhood resulting in life on streets and drug addiction – significant transformation and rehabilitation  |
| 19. | <b>THOMPSON</b><br><a href="#">[2011] NSWSC 1130</a><br>Rothman J   | PG<br>(discount at highest level)  | 20y<br>NPP 14y  |                                  | Nil relevant   | Shooting<br><br>Felony murder  | <b>SNPP 20 years</b><br>Shot dead drug dealer during robbery – arranged meeting in secluded area armed with loaded and shortened shotgun – planned robbery – stole drugs, money and mobile phone – disposed of body and gun.<br>Drug addiction  |
| 20. | <b>JK</b><br>(juvenile)<br><a href="#">[2012] NSWSC 710</a><br>Harrison J   | PG<br>(17.5%)<br>Murder<br><br>Attempted Agg BES<br><br>Sched:<br>6 offences | 15y<br>NPP 10y<br><br>FT 2y<br><br>Total:<br>15y 9m<br>NPP 10y 9m |                                  | Breached parole – record for dishonesty and car theft              | Car<br><br>Constructive murder | With group of young men stole cars – attempted to break into service station – attacked male victim and his adult son standing near car – stole car and drove out of service station – struck male victim on road who was attempting to escape on foot – no intent to run over or inflict harm – affected by alcohol<br>Difficult and traumatic childhood – low intelligence – limited education - early drug and alcohol abuse – mental illness – aboriginal - youth |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)   | PLEA  | SENTENCE  | APPEAL        | SUMMARY OF RECORD                                      | HOW KILLED                             | INVOLVEMENT & SUMMARY  |
|-----|--|---|---|---------------|--|--|--|
| 21. | <b>WALSH</b><br>(34)<br><a href="#">[2012] NSWSC 1399</a><br>Bellew J<br><br><a href="#">[2014] NSWCCA 252</a> | VG<br>Murder<br><br>s.86(3)                             | 28y<br>NPP 21y<br><br>FT 8y<br>(concurrent)   | Conviction AD | Lengthy but<br>much less<br>serious                    | Unclear<br><br>Constructive<br>murder  | <b>SNPP 20 years</b><br>Met with victim and female co-offender at park to discuss stolen property – victim taken to home of third person and detained in garage – victim killed by offender in altercation – body incinerated<br>Long history of alcohol and drug abuse<br>Co- offender sentenced for accessory after fact - <i>Batcheldor</i> [2015] NSWSC 1688   |
| 22. | <b>BELL</b><br>(27)<br><a href="#">[2013] NSWSC 1838</a><br>Hall J   | PG<br>(10%)<br>Murder<br><br>s97(2)<br><br>s33(1)(a)    | 25y 4m<br>NPP 19y<br><br>5y<br>NPP 3y 9m<br><br>10y<br>NPP 7y 6m<br><br><u>Total:</u><br>27y<br>NPP 21y 6m                |               | Rob in co,<br>AOABH, drugs                             | Shooting<br><br>Constructive<br>murder | <b>SNPP 20 years</b><br>Home invasion with co-offender to obtain money and drugs – armed with firearms – during struggle accidentally shot in face by co-offender – offender discharged his firearm killing male aged 17y – co-offender shot and injured second male - intent to inflict injury for purpose of effecting escape - did not form intent to shoot until very shortly before fatal shot fired<br>Left school Year 8 – learning difficulties - long standing personal problems including drug use and anti-social personality characteristics - no link established between anti-social personality disorder and any abusive or deprived upbringing |
| 23. | <b>ISHERWOOD</b><br>(30)<br><a href="#">[2013] NSWSC 1868</a><br>Latham J                                      | PG<br>(15%)   | 17y<br>NPP 11y  |               | Drugs, assault –<br>breached<br>conditional<br>liberty | Assault<br><br>Constructive<br>murder  | <b>SNPP 20 years</b><br>Assault and rob on 76y homeless man on train - co-offender found guilty of manslaughter - offender played principal role – victim punched and smashed over head with broken pane of glass – died of head injury - just below middle range<br>Relative youth - first time in custody  |
| 24. | <b>HUDD</b><br><a href="#">[2013] NSWCCA 57</a><br><br><br><br>Co-offender:<br>BROWN                           | VG<br>Murder<br><br>2 x AR<br><br>s.33<br><br>Agg AOABH | 27y<br>NPP 20y 3m<br><br>10y NPP 7y 6m<br><br>5y NPP 3y 9m<br><br>2y NPP 18m<br><br><u>Total:</u><br>28y 6m<br>NPP 21y 9m | AD            |  | Shooting<br><br>Felony Murder          | (2002) Two offenders involved in planned armed robbery of electrical store – three employees tied up – one employee shot dead by offender in pursuit<br>Fresh evidence as to ill health  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.



|     | NAME<br>(age if known)   | PLEA  | SENTENCE   | APPEAL        | SUMMARY OF RECORD  | HOW KILLED   | INVOLVEMENT & SUMMARY   |
|-----|--|---|--|---------------|--|--|---|
| 25. | <b>HAINES</b><br>(31)<br><br><b>LEE</b><br>(37)<br><br><a href="#">[2016] NSWSC 1333</a><br>Harrison J             | PG<br>(20% - plea and assist)<br>Murder<br><br>AR       | 14y 8m<br>NPP 11y<br><br>5y<br><br><u>Total:</u><br>15y 8m<br>NPP 12y                          |               | Moderate record<br><br><br><br><br><br><br><br><br>Significant record            | Stabbing<br><br><br>Constructive / joint criminal enterprise | <b>SNPP 20 years</b><br>Three offenders approach unit of known drug dealers with intention to rob occupants of drugs and money – during violent struggle one occupant fatally stabbed by L – second occupant assaulted by H and stabbed by L – planned robbery shortly before arriving at unit – constructive murder based on armed robbery with wounding - H did not foresee possibility knife would be used with relevant intent – below mid-range for both offences<br>Lifelong drug addicts – difficult family backgrounds - remorse<br>H - borderline intelligence – reasonable prospects of rehabilitation<br>L – limited prospects of rehabilitation |
| 26. | <b>PHAN</b><br>(30)<br><br><a href="#">[2016] NSWSC 483</a><br>Mathews AJ  | VG<br>Murder<br><br>PG<br>(20%)<br>4 x s.97(2)          | <u>Indicative:</u><br>14y<br>NPP 10y<br><br>6y / 7y<br><br><u>Aggregate:</u><br>20y<br>NPP 14y |               | Lengthy record for minor offences  | Shooting<br><br><br>Accessory to constructive murder         | <b>SNPP 20 years</b><br>Armed robbery of fruit shop – armed with hammer – co-offender armed with pistol – employee shot twice by co-offender while detaining offender – liable on basis foresaw gun being discharged but not being used to cause GBH or death – lower range - other armed robbery offences committed week before in company with co-offender<br>Difficult childhood   |
| 27. | <b>DENT</b><br>(53)<br><br><a href="#">[2016] NSWSC 444</a><br>RA Hulme J<br><br><a href="#">[2017] NSWCCA 166</a> | VG<br>Murder<br><br>Agg rob in comp<br><br>3 x contempt | 40y<br>NPP 30y<br><br>No penalty<br><br>FT 1y / 6m<br><br><u>Total:</u><br>42y<br>NPP 32y      | Conviction AD | Extensive record including murder as a 17y old – breached bail for drug offences | Assault<br><br><br>Constructive murder                       | <b>SNPP 20 years</b><br>Joint plan between four offenders - victim lured by offender and co-offender to park for robbery – assaulted, clothing removed, hogtied and gaged with underpants by offender – dominant offender – intended GBH and did not care if died<br>Contempt offences – assaulted co-offenders in dock – threatened judge – sacked counsel and refused to proceed with trial<br>Institutionalised  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA                        | SENTENCE   | APPEAL        | SUMMARY OF<br>RECORD   | HOW KILLED                              | INVOLVEMENT & SUMMARY  |
|-----|---|-----------------------------|--|---------------|--|---|--|
| 28. | <b>ADAMS</b><br>(31 at offence – 64 at sentence)<br><a href="#">[2017] NSWSC 179</a><br>Button J<br><br><a href="#">[2017] NSWCCA 215</a> | VG                          | 20y<br>NPP 15y   | Conviction AD | Rape conviction prior to murder – committed in similar circumstances – nil relevant since murder | Asphyxiation<br><br>Constructive murder | (1983) gave lift home to female stranger from wine bar – falsely claimed to be police officer – placed fatal pressure on windpipe in attempt to force intercourse – disposed of body<br>Long standing tendency to strangle women who resisted sexual advances – no subjective material placed on sentence – minimal discount for delay |
| 29. | <b>PETRYK</b><br>(23)<br><a href="#">[2018] NSWSC 119</a><br>Wilson J<br><br><a href="#">[2020] NSWCCA 157</a>                            | VG<br>Murder<br><br>s.97(2) | <u>Indicative:</u><br>26y<br><br>8y<br><br><u>Aggregate</u><br>26y<br>NPP 19y 6m | Conviction AD | Lengthy record – breached conditional liberty  | Shooting<br><br>Constructive murder     | <b>SNPP 20 years</b><br>Broke into home with two co-offenders and shot male occupant during confrontation – threatened second, elderly occupant - intended to steal money and drugs targeting drug dealer - borrowed gun from friend prior to robbery – spontaneous shooting – robbery pre-meditated – mid-range seriousness           |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)   | PLEA  | SENTENCE  | APPEAL   | SUMMARY OF<br>RECORD   | HOW KILLED  | INVOLVEMENT & SUMMARY  |
|-----|--|---|---|--|--|---|--|
| 30. | <b>DS</b><br>(15)  | PG<br>(10%)<br>Murder<br><br>Agg take and<br>drive MV<br><br>Sched:<br>Agg enter<br>dwelling to steal   | 15y 4m<br>NPP 10y 9m<br><br>6y 4m<br><br><u>Total:</u><br>18y 4m<br>NPP 13y 9m                          | AA<br>13y 6m<br><br>3y<br><br><u>Total:</u><br>14y 6m<br>NPP 10m                     | dishonesty<br>offences –<br>carrying knife in<br>public place                                      | Stabbing<br><br>Intent to kill<br><br>Constructive<br>murder<br><br>Accessory | 'Violent and uncontrolled criminal rampage' over one evening and early morning - group approached male acquaintance sitting on bench – DM struck victim to head with bottle causing nose fracture and lacerations – with third male attended home of different male acquaintance with intent to steal – during struggle victim struck to head – two offenders then attended service station – DM fatally stabbed attendant multiple times in cowardly and unexpected attack – wrote letters on window using blood of victim – DS stole till and cigarettes – offenders left service station and waved down passing car – DM stabbed occupant and DS threatened him with wheel brace - offenders drove off in car – both victims vulnerable.<br>DM – intent to kill prior to entering service station – cold-blooded murder – primary offender - exposed to family violence causing PTSD – early substance abuse – mild intellectual disability – schizophrenia – some acceptance of responsibility – substantial risk of re-offending<br>DS – lesser offender – not aware of intent to kill in advance but no attempt to stop DM or assist victim – continued to steal – Aboriginal – difficult childhood – early drug use – borderline intelligence – genuine remorse – favourable prospects of rehabilitation<br>CCA:<br>DS – sentencing judge erred in assessing objective seriousness of offending by reference to his involvement in DM's offence - failed to give effect to special circumstances based on youth and rehabilitation.<br>DM – Murder sentence disproportionate – sentences for other offences manifestly excessive – murder above middle of range of objective seriousness. |
|     | <b>DM</b><br>(16)<br><br><a href="#">[2020] NSWSC 422</a><br>Bellew J<br><br><a href="#">[2022] NSWCCA 156</a> | PG<br>(10%)<br>Murder<br><br>AR with<br>wounding<br><br>Wound with<br>intent GBH<br><br>Agg take and<br>drive motor<br>vehicle<br><br>Sched:<br>AOABH<br>Agg enter<br>dwelling to steal | 31y 6m<br>NPP 23y 6m<br><br>11y 8m<br><br>12y 6m<br><br>9y<br><br><u>Total:</u><br>35y 6m<br>NPP 27y 6m | 20y 8m<br><br>7y 2m<br><br>7y 2m<br><br>4y<br><br><u>Total:</u><br>27y<br>NPP 20y 7m | lengthy record<br>for minor<br>violence;<br>assault law<br>enforcement<br>officer, inflict<br>ABH. |   |  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA   | SENTENCE   | APPEAL   | SUMMARY OF<br>RECORD | HOW KILLED   | INVOLVEMENT & SUMMARY  |
|-----|---|--|--|----------|----------------------|--|--|
| 31. | <p><b>HOPKINSON</b><br/>(18y 10m)</p> <p><b>ROBERTSON</b><br/>(18y 8m)</p> <p><a href="#">[2021] NSWSC 861</a><br/>lerace J</p> <p><a href="#">[2022] NSWCCA 80</a></p> | <p>PG<br/>(25%)</p> <p>PG<br/>(45% combined)</p> | <p>12y 9m<br/>NPP 8y 3m</p> <p>13y 2m<br/>NPP 9y</p>   | Crown AD | nil                  | <p>Assault /<br/>constructive /<br/>extended JCE</p> <p>Assault / intent<br/>to kill / JCE</p> | <p><b>SNPP 25 years</b><br/>17y victim detained in home of offenders over 8 hours – subjected to severe beating by co-accused S and fatally stabbed by S – offence aggravated by use of weapon and commission in company<br/>H watched assault and on several occasions took responsibility to keep victim detained – assisted in concealing offence – mid range seriousness<br/>R asleep during initial assault – later helped detain victim in car and assaulted victim to head with cricket bat to ‘put him out of his misery’ – non-exculpatory duress - above mid-range<br/>H – difficult childhood – some mental health issues – genuine remorse – very good prospects of rehabilitation<br/>R – unusually immature – high prospects of rehabilitation – genuine remorse – prior good character - assistance<br/>On appeal: sentences light but not manifestly inadequate – discussion as to SNPP where age gap between victim and offenders small</p> |
| 32. | <p><b>COSKUN (No.5)</b><br/>(28)</p> <p><a href="#">[2022] NSWSC 1216</a><br/>RA Hulme J</p> <p><a href="#">[2024] NSWCCA 67</a></p>                                    | <p>VG<br/>Murder</p> <p>Att s.97(2)</p>          | <p><u>Indicative</u><br/>32y<br/>NPP 24y</p> <p>5y</p> <p><u>Aggregate:</u><br/>34y<br/>NPP 25y 6m</p> | AD       | Lengthy record       | <p>Shooting</p> <p>Constructive<br/>murder</p>   | <p><b>SNPP 20 years</b><br/>One of two men who entered unit in early hours of morning, both armed and intent to rob drug dealer of money or drugs – offender fired ten shots – one occupant fatally shot in head and second occupant shot twice in arm – female occupant threatened with gun to head by second assailant – intent to cause GBH or at least high degree of recklessness – both offences above mid-range<br/>Born in Turkey – difficult childhood including physical and sexual abuse and early substance abuse – suffering PTSD and other mental health disorders</p>   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA        | SENTENCE            | APPEAL | SUMMARY OF<br>RECORD                      | HOW KILLED  | INVOLVEMENT & SUMMARY   |
|-----|---|-------------|---------------------|--------|---|---|---|
| 33. | HAMDACH<br>(31)<br><a href="#">[2023] NSWSC 298</a><br>Campbell J   | PG<br>(10%) | 16y 2m<br>NPP 14y   |        | Nil relevant                              | Bashed /<br>assault<br><br>Constructive<br><br>Accessorial<br>liability | <b>SNPP 20 years</b><br>Victim defrauded offender through sale of fake airpods – offender recruited co-offender to use violence upon victim in order to obtain refund – with co-offender met victim at shopping centre carpark where co-offender assaulted victim - walked victim to another location – co-offender continued assault: bashed and kicked victim to head - victim suffered catastrophic brain injury - offence planned 24 hours prior – premeditated - constructive murder – not part of agreement that GBH would be intentionally inflicted - joint criminal enterprise - specially aggravated kidnapping – offender instigator of foundational offence.<br>Domestic violence in childhood - schizoaffective disorder with symptoms of mania involving over-confidence and assertiveness at time of offending - prior good character - pro-social life - unlikely re-offend – remorse.  |
| 34. | SHILLINGSWORTH<br>(21)<br><a href="#">[2023] NSWSC 453</a><br>Wright J<br><br>Co-offender:<br>DPD<br>EE<br>DJJ: s.111(2)<br>MURDOCH: s.111(2) | PG<br>(25%) | 13y 6m<br>NPP 9y 6m |        | Not stated. On<br>conditional<br>liberty. | Stabbed<br><br>Constructive<br>murder<br><br>Accessorial<br>liability   | <b>SNPP 20 years</b><br>Male victim known to offenders – joint criminal enterprise to commit assault with intent to rob in company while armed with dangerous weapon – with four co-offenders forced themselves into victim's home, one co-offender armed with shortened rifle – victim assaulted and stabbed multiple times – unable to establish identity of killer – offender had substantial role - provided vehicle in which offenders travelled to victim's residence, pushed victim and present during assault and stabbing – some degree of planning and organisation – co-offender took money from victim's flatmate part of motivation was to obtain money - lower part of mid-range of objective seriousness<br>Aboriginal background – <i>Bugmy</i> principles applied, traumatic upbringing – mental health conditions - substance abuse – anxiety disorder – genuine remorse – reasonable prospects of rehabilitation – youth - special circumstances - need for significant mental health and drug/alcohol treatment |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)   | PLEA  | SENTENCE             | APPEAL | SUMMARY OF RECORD   | HOW KILLED   | INVOLVEMENT & SUMMARY   |
|-----|--|---|----------------------|--------|---|--|---|
| 35. | DPD<br>(17y 6m)<br><a href="#">[2023] NSWCCA 477</a><br><br>Co-offender:<br>SHILLINGSWORTH<br>EE<br>DJD: s.111(2)<br>MURDOCH: s.111(2)         | PG<br>(17.5%)<br><br>Sched:<br>Possess<br>shortened<br>firearm, Assault | 15y 3m<br>NPP 10y 3m |        |   | Stabbed<br><br>Constructive<br>murder<br><br>Accessorial<br>liability  | Male victim known to offenders – joint criminal enterprise to commit assault with intent to rob in company while armed with dangerous weapon – with four co-offenders forced themselves into victim’s home - offender armed with shortened rifle – victim assaulted and stabbed multiple times – unable to establish identity of killer – offender had significant role – knew victim – carried firearm – first to reach front door - provided vehicle in which offenders travelled to victim’s residence, pushed victim and present during assault and stabbing – some degree of planning and organisation – stayed behind and attempted to obtain keys to quad bike from victim whilst still alive having been stabbed and assaulted flatmate – mid-range<br>- <i>Bugmy</i> applied, dysfunctional upbringing – significant mental health conditions causally related to offending – drug abuse - remorse – youth – some significant prospects of rehabilitation – special circumstances. |
| 36. | EE<br>(17)<br><a href="#">[2023] NSWSC 104</a><br>Wright J<br><br>Co-offenders:<br>DPD<br>SHILLINGSWORTH<br>DJD: s.111(2)<br>MURDOCH: s.111(2) | PG<br>Murder<br>(50% combined)<br><br>Sched:<br>Robbery                 | 6y 3m<br>NPP 4y 2m   |        | Violence – agg<br>break and enter<br>– breached<br>conditional<br>liberty | Stabbing<br><br>Constructive<br>murder<br><br>Accessorial<br>liability | Went to home of victim with four accomplices for robbery – two accomplices armed with rifle and knife – not present in room when victim stabbed – did not intend or foresee co-offender acting with intent to kill or GBH – significantly less participation than co-offenders – robbed female resident of money - below mid-range<br>Remorse – good prospects of rehabilitation – born in Liberia – violent father – other <i>Bugmy</i> considerations – gang involvement – drug abuse – assistance  |
| 37. | TIRIAKI<br>(21 at offence)<br><a href="#">[2023] NSWSC 1480</a><br>Rothman J   | PG<br>(12.5%)   | 17y 6m<br>NPP 11y 8m |        | Unremarkable –<br>driving, assault<br>and break and<br>enter              | Shooting<br><br>Accessorial<br>liability<br><br>Constructive<br>murder | <b>SNPP 20 years</b><br>(2011) Broke into home of victim with co-offender in order to commit specially aggravated kidnapping – co-offender shot victim once to chest – offender did not encourage shooting or contemplate death – aware co-offender carrying ‘something to protect them’ – aware people in house – presence of children – co-offender sentenced for manslaughter<br>Family support – sound prospects of rehabilitation and reduced risk of re-offending - youth   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(age if known)  | PLEA        | SENTENCE            | APPEAL | SUMMARY OF<br>RECORD | HOW KILLED   | INVOLVEMENT & SUMMARY   |
|-----|---|-------------|---------------------|--------|----------------------|--|---|
| 38. | AD<br>(13y 11m)<br><a href="#">[2024] NSWSC 444</a><br>RA Hulme AJ<br><br>Co-Offender:<br>BE [2023]<br>BL [2024]<br>SIONE [2024]<br>DAWSON [2024] | PG<br>(20%) | 14y 4m<br>NPP 9y 3m |        | nil                  | Assault<br><br>Constructive<br>murder<br><br>Accessorial | One of group of people bashed 16y male victim over 33 minutes – victim suspected of stealing airpods so lured to home of owner – victim assaulted by adult male in bedroom while offender and others looked on – when adult male left offender and others continued assault – offender punched, kicked, and stomped on victim – kicked victim to face with such force head hit wall - sustained and extremely vicious assault involving kicking, punching and stomping – attack filmed – liability of offender based on constructive murder resulting from foundational offence of specially aggravated detain for advantage – offender did not intend or contemplate GBH and played no role in luring victim to house<br>Youth – remorse – reasonable prospects of rehabilitation – difficult childhood including exposure to violence and substance abuse, gang membership and lack of parental guidance reducing moral culpability<br>TB [2024] sentenced for manslaughter |

Last Updated – Apr 2024

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.