

## 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
1.	PETRINOVIC (39) <a href="#">[1999] NSWSC 1131</a> Greg James J  <a href="#">[2001] NSWCCA 118</a>	PG	MT 20y AT 7y	AD	in gaol most of adult life - multiple AR	Shooting  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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
2.	<b>MCNELLEE</b>  <b>TUCKER</b> (33)  <b>DALLEY</b> (16)  <a href="#">[2000] NSWSC 1154</a> Bell J  (Dalley) (2002) 132 A Crim R 169 <a href="#">[2002] NSWCCA 284</a>  Co-offender: BREWER	PG (25%)  VG  VG	14y NPP 10y 6m  13y NPP 9y  10y NPP 6y	Conviction AD	minor  nil  nil	Stabbing  Common purpose robbery	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 Good prospects of rehabilitation.
3.	<b>LEWIS</b> (62) NSWSC Ireland J 9.6.2000  <a href="#">[2001] NSWCCA 448</a>  Co-offender: ROSE	VG 2 x murder	Life	AD	nil	Shooting and stabbing  Intent to kill  Felony murder	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
4.	<b>PHUNG</b> (17) <a href="#">[2001] NSWSC 357</a> Wood CJ at CL	PG (25%) Murder  s.97(2)  Sched: 3 offences	13y NPP 8y  FT 3y  Total: 14y NPP 9y		some prior and subsequent offences	Shooting  Felony murder	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 Deprived childhood resulting in living on streets and drug addiction at early age - no contact with any family - good rehabilitation since 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
7.	<b>ASLETT</b> (33) <a href="#">[2004] NSWSC 1228</a> Wood CJ at CL  <a href="#">[2006] NSWCCA 360</a>	PG Murder  2 x s.61JA 8 x s.97(2) 2 x s.97(1) Sp agg kidnap Agg car jacking Att obtain money by deception 3 x LMV Sched: 9 offences	Life  <u>Total other offences:</u> 36y NPP 28y	AA 28y NPP 22y  <u>Total other offences:</u> 36y NPP 28y  <u>Total:</u> 42y 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  Felony murder	<b>SNPP 20 years</b> 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 Drug abuse – some remorse - finding of dangerousness – psychological profile suggests no hope of rehabilitation On appeal: erred in using other offences to impose life sentence on murder that did not warrant life sentence alone
8.	<b>EM</b> (19) <a href="#">[2005] NSWSC 212</a> James J  <a href="#">[2006] NSWCCA 336</a>	VG: Murder  s 97(2) s 93G(1)(c)  PG 5 x s 97(2)	25y NPP 16y  FT 10y FT 2y FT 12y  <u>Total:</u> 36y NPP 27y	AD	Driving offences	Shooting  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 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
9.	<b>SMALE</b> (47) <a href="#">[2005] NSWSC 903</a> Patten AJ  <a href="#">[2005] NSWSC 923</a> Patten AJ  <a href="#">[2007] NSWCCA 328</a>  Co-offender: WIGNEY	VG Murder  PG s.97(2)	18y NPP 13y 6m  13y NPP 9y 9m (concurrent)	AD	Extensive record – breached suspended sentence	Shooting  Felony murder	Male shot by co-offender during armed robbery of tavern – not involved in shooting Remorse – drug addiction
10.	<b>SILVANO</b> (26) <a href="#">[2006] NSWSC 832</a> Hulme J  (2008) 184 A Crim R 593 <a href="#">[2008] NSWCCA 118</a>	VG Murder  s.97(2)  s.33	21y 4m NPP 16y  9y 4m NPP 7y  5y 4m NPP 4y  <u>Total:</u> 22y 4m NPP 17y	AD	Priors – no incarceration	Shooting  Felony murder	<b>SNPP 20 years</b> 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 Raped and assaulted in custody – protective custody – remorse and grief – father of young child
11.	<b>A</b> (16) <a href="#">[2006] NSWSC 1035</a> Buddin J  Co-offender: HOURI	PG	12y 8m NPP 9y 6m		Priors	Stabbing  Felony murder	<b>SNPP 20 years</b> Involved in armed robbery of service station – after robbery co-offender suddenly and without provocation stabbed operator four times 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
12.	<b>BROWN</b> <a href="#">[2006] NSWCCA 395</a>  Co-offender HUDD	VG Murder  2 x Agg AR  s.33  AOABH in Co	20y NPP 15y  8y NPP 6y  3y NPP 2y 3m  2y 6m NPP 1y 10m  <u>Total:</u> 21y 10m NPP 16y 10m	AD	Lengthy	Shooting  Felony murder – accessorial 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 Lesser offender
13.	<b>NGUYEN</b> (20) <a href="#">[2007] NSWSC 389</a> Whealy J	PG (25%)	18y NPP 13y 6m		Criminal record for lesser offences – breached parole	Stabbing  Felony murder	<b>SNPP 20 years</b> Stabbed shop owner during attempted robbery of newsagency – repeated stabbing - below mid-range – spontaneous and unplanned killing Long history of drug addiction
14.	<b>HOURI</b> (19) <a href="#">[2007] NSWSC 615</a> Buddin J  Co-offender: A	PG  Sched: 3 x BES	18y NPP 12y 6m		Nil relevant	Stabbing  Felony murder / intent GBH	<b>SNPP 20 years</b> 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 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> (26) <a href="#">[2007] NSWSC 1303</a> Berman AJ	PG (combined 35%)	19y 6m NPP 14y 6m		Priors for violence	Shooting  Joint criminal enterprise / 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 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
16.	<b>WEBB</b> (39) <a href="#">[2008] NSWSC 1351</a> Howie J	PG (15%) Murder  Carried in stolen conveyance	22y NPP 16y 6m  FT 18m (concurrent)		Bad record – breached bonds	Stabbing  Felony murder	<b>SNPP 20 years</b> 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 Drug abuse – low intellectual functioning
17.	<b>BH</b> (17) <a href="#">[2009] NSWSC 358</a> Hidden J	PG (25%)	17y NPP 13y		Disturbing record – includes AR and Rob in Co – breached probation	Assault  Felony murder	<b>SNPP 20 years</b> Assaulted 23y homeless male with garden stake outside Town Hall – intended to rob victim of poker winnings – below mid-range Troubled childhood – sexual abuse – early substance abuse – remorse – gaining insight – reasonable prospects of rehabilitation
18.	<b>RAAD</b> (41 at offence – 49 at sentence) <a href="#">[2009] NSWSC 830</a> Rothman J  <a href="#">[2011] NSWCCA 138</a>	PG (25%)  Armed robbery	14y NPP 10y 6m  FT 5y (concurrent)	AA 12y NPP 9y  FT 5y	Lengthy record	Shooting  Felony murder	(2001) - Robbed and killed security guard – shot during struggle – killing not deliberate – elements of planning for robbery 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> <a href="#">[2011] NSWSC 1130</a> Rothman J	PG (discount at highest level)	20y NPP 14y		Nil relevant	Shooting  Felony murder	<b>SNPP 20 years</b> 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. Drug addiction
20.	<b>JK</b> (juvenile) <a href="#">[2012] NSWSC 710</a> Harrison J	PG (17.5%) Murder  Attempted Agg BES  Sched: 6 offences	15y NPP 10y  FT 2y  Total: 15y 9m NPP 10y 9m		Breached parole – record for dishonesty and car theft	Car  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 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
21.	<b>WALSH</b> (34) <a href="#">[2012] NSWSC 1399</a> Bellew J  <a href="#">[2014] NSWCCA 252</a>	VG Murder  s.86(3)	28y NPP 21y  FT 8y (concurrent)	Conviction AD	Lengthy but much less serious	Unclear  Constructive murder	<b>SNPP 20 years</b> 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 Long history of alcohol and drug abuse Co- offender sentenced for accessory after fact - <i>Batcheldor</i> [2015] NSWSC 1688
22.	<b>BELL</b> (27) <a href="#">[2013] NSWSC 1838</a> Hall J	PG (10%) Murder  s97(2)  s33(1)(a)	25y 4m NPP 19y  5y NPP 3y 9m  10y NPP 7y 6m  <u>Total:</u> 27y NPP 21y 6m		Rob in co, AOABH, drugs	Shooting  Constructive murder	<b>SNPP 20 years</b> 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 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> (30) <a href="#">[2013] NSWSC 1868</a> Latham J	PG (15%)	17y NPP 11y		Drugs, assault – breached conditional liberty	Assault  Constructive murder	<b>SNPP 20 years</b> 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 Relative youth - first time in custody
24.	<b>HUDD</b> <a href="#">[2013] NSWCCA 57</a>      Co-offender: BROWN	VG Murder  2 x AR  s.33  Agg AOABH	27y NPP 20y 3m  10y NPP 7y 6m  5y NPP 3y 9m  2y NPP 18m  <u>Total:</u> 28y 6m NPP 21y 9m	AD		Shooting  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 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
25.	<b>HAINES</b> (31)  <b>LEE</b> (37) <a href="#">[2016] NSWSC 1333</a> Harrison J	PG (20% - plea and assist) Murder  AR  PG (15%) Murder  AR	14y 8m NPP 11y  5y  <u>Total:</u> 15y 8m NPP 12y  17y 6m NPP 13y 6m  5y  <u>Total:</u> 18y 6m NPP 14y 6m		Moderate record  Significant record	Stabbing  Constructive / joint criminal enterprise	<b>SNPP 20 years</b> 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 Lifelong drug addicts – difficult family backgrounds - remorse H - borderline intelligence – reasonable prospects of rehabilitation L – limited prospects of rehabilitation
26.	<b>PHAN</b> (30) <a href="#">[2016] NSWSC 483</a> Mathews AJ	VG Murder  PG (20%) 4 x s.97(2)	<u>Indicative:</u> 14y NPP 10y  6y / 7y  <u>Aggregate:</u> 20y NPP 14y		Lengthy record for minor offences	Shooting  Accessory to constructive murder	<b>SNPP 20 years</b> 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 Difficult childhood
27.	<b>DENT</b> (53) <a href="#">[2016] NSWSC 444</a> RA Hulme J  <a href="#">[2017] NSWCCA 166</a>	VG Murder  Agg rob in comp  3 x contempt	40y NPP 30y  No penalty  FT 1y / 6m  <u>Total:</u> 42y NPP 32y	Conviction AD	Extensive record including murder as a 17y old – breached bail for drug offences	Assault  Constructive murder	<b>SNPP 20 years</b> 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 Contempt offences – assaulted co-offenders in dock – threatened judge – sacked counsel and refused to proceed with trial 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
28.	<b>ADAMS</b> (31 at offence – 64 at sentence) <a href="#">[2017] NSWSC 179</a> Button J  <a href="#">[2017] NSWCCA 215</a>	VG	20y NPP 15y	Conviction AD	Rape conviction prior to murder – committed in similar circumstances – nil relevant since murder	Asphyxiation  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 Long standing tendency to strangle women who resisted sexual advances – no subjective material placed on sentence – minimal discount for delay
29.	<b>PETRYK</b> (23) <a href="#">[2018] NSWSC 119</a> Wilson J  <a href="#">[2020] NSWCCA 157</a>	VG Murder  s.97(2)	<u>Indicative:</u> 26y  8y  <u>Aggregate</u> 26y NPP 19y 6m	Conviction AD	Lengthy record – breached conditional liberty	Shooting  Constructive murder	<b>SNPP 20 years</b> 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
30.	<b>DS</b> (15)  <a href="#">[2020] NSWSC 422</a> Bellew J  <a href="#">[2022] NSWCCA 156</a>	PG (10%) Murder	15y 4m NPP 10y 9m	AA 13y 6m	dishonesty offences – carrying knife in public place	Stabbing	'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. 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 DS – lesser offender – not aware of intent to kill in advance but no attempt to stop DM or assist victim – continued to steal – Aboriginal youth – difficult childhood – early drug use – borderline intelligence – genuine remorse – favourable prospects of rehabilitation CCA: 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. DM – Murder sentence disproportionate – sentences for other offences manifestly excessive – murder above middle of range of objective seriousness.
		Agg take and drive MV	6y 4m	3y		Intent to kill	
		Sched: Agg enter dwelling to steal	<u>Total:</u> 18y 4m NPP 13y 9m	<u>Total:</u> 14y 6m NPP 10m		Constructive murder	
						Accessory	
	<b>DM</b> (16)	PG (10%) Murder	31y 6m NPP 23y 6m	20y 8m	lengthy record for minor violence; assault law enforcement officer, inflict ABH.		
		AR with wounding	11y 8m	7y 2m			
		Wound with intent GBH	12y 6m	7y 2m			
		Agg take and drive motor vehicle	9y	4y			
		Sched: AOABH Agg enter dwelling to steal	<u>Total:</u> 35y 6m NPP 27y 6m	<u>Total:</u> 27y NPP 20y 7m			

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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
31.	<b>HOPKINSON</b> (18y 10m)  <b>ROBERTSON</b> (18y 8m) <a href="#">[2021] NSWSC 861</a> leraice J <a href="#">[2022] NSWCCA 80</a>	PG (25%)  PG (45% combined)	12y 9m NPP 8y 3m  13y 2m NPP 9y	Crown AD	nil	Assault / constructive / extended JCE  Assault / intent to kill / JCE	<b>SNPP 25 years</b> 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 H watched assault and on several occasions took responsibility to keep victim detained – assisted in concealing offence – mid range seriousness 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 H – difficult childhood – some mental health issues – genuine remorse – very good prospects of rehabilitation R – unusually immature – high prospects of rehabilitation – genuine remorse – prior good character - assistance On appeal: sentences light but not manifestly inadequate – discussion as to SNPP where age gap between victim and offenders small
32.	<b>COSKUN (No.5)</b> (28) <a href="#">[2022] NSWSC 1216</a> RA Hulme J  <a href="#">[2024] NSWCCA 67</a>	VG Murder  Att s.97(2)	<u>Indicative</u> 32y NPP 24y  5y  <u>Aggregate:</u> 34y NPP 25y 6m	AD	Lengthy record	Shooting  Constructive murder	<b>SNPP 20 years</b> 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 Born in Turkey – difficult childhood including physical and sexual abuse and early substance abuse – suffering PTSD and other mental health disorders

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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
33.	<b>HAMDACH</b> (31) <a href="#">[2023] NSWSC 298</a> Campbell J	PG (10%)	16y 2m NPP 14y		Nil relevant	Bashed / assault  Constructive  Accessorial liability	<b>SNPP 20 years</b> 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. 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.	<b>SHILLINGSWORTH</b> (21) <a href="#">[2023] NSWSC 453</a> Wright J  Co-offender: DPD EE DJJ: s.111(2) MURDOCH: s.111(2)	PG (25%)	13y 6m NPP 9y 6m		Not stated. On conditional liberty.	Stabbed  Constructive murder  Accessorial liability	<b>SNPP 20 years</b> 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 Aboriginal male – <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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
35.	<b>DPD</b> (17y 6m) <a href="#">[2023] NSWCCA 477</a>  Co-offender: SHILLINGSWORTH EE DJD: s.111(2) MURDOCH: s.111(2)	PG (17.5%)  Sched: Possess shortened firearm, Assault	15y 3m NPP 10y 3m			Stabbed  Constructive murder  Accessorial 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 - <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.	<b>EE</b> (17) <a href="#">[2023] NSWSC 104</a> Wright J  Co-offenders: DPD SHILLINGSWORTH DJD: s.111(2) MURDOCH: s.111(2)	PG Murder (50% combined)  Sched: Robbery	6y 3m NPP 4y 2m		Violence – agg break and enter – breached conditional liberty	Stabbing  Constructive murder  Accessorial 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 Remorse – good prospects of rehabilitation – born in Liberia – violent father – other <i>Bugmy</i> considerations – gang involvement – drug abuse – assistance
37.	<b>TIRIAKI</b> (21 at offence) <a href="#">[2023] NSWSC 1480</a> Rothman J	PG (12.5%)	17y 6m NPP 11y 8m		Unremarkable – driving, assault and break and enter	Shooting  Accessorial liability  Constructive murder	<b>SNPP 20 years</b> (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 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 (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
38.	AD (13y 11m) <a href="#">[2024] NSWSC 444</a> RA Hulme AJ  Co-Offender: BE [2023] BL [2024] SIONE [2024] DAWSON [2024]	PG (20%)	14y 4m NPP 9y 3m		nil	Assault  Constructive murder  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 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 TB [2024] sentenced for manslaughter
39.	GILKES (19) <a href="#">[2025] NSWSC 23</a> Hamill J	PG (25%)	14y 3m NPP 9y 6m		Lengthy record including violence – offence committed while on parole	Shot  Constructive murder	<b>SNPP 20 years</b> Attempted home invasion and robbery of drug dealer with two co-offenders in early hours of morning armed with shotgun – when light came on offender shot at front door from verandah at urging of co-offenders striking victim in leg – victim had approached front door inside house unbeknown to offender – victim died enroute to hospital – no intent to kill or inflict GBH or recklessness – had attempted robbery of same victim several weeks earlier – below mid-range Aboriginal male - background of profound neglect and deprivation – early exposure to violence and drug use – sexual abuse in juvenile detention – cognitive impairment and mental health issues – youth – institutionalised - protection of community – no remorse or prospects of rehabilitation Totality issue raised by delay in charging and sentences for earlier attempted robbery and custodial offences – slight reduction in sentence made instead of backdate

Last Updated – Feb 2025

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